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**Cc:** [Greg Totten](#)  
**Subject:** CDAA Priority Bills  
**Date:** Friday, July 16, 2021 11:52:06 AM  
**Attachments:** [Public Defender Funding.docx](#)  
[SB 775 Talking Points.docx](#)  
[AB 759 \(McCarty\) Oppose.docx](#)  
[SB 710 Oppositon Senate Public Safety.docx](#)  
[AB 124 Bullet Points.docx](#)  
[AB333 Issues Abbreviated 071521\[23\].docx](#)  
[SB 300 Joint Floor Alert.pdf](#)  
[AB 1540 Oppose - Talking Points 7.13.21.docx](#)  
[AB 256 Floor Alert.docx](#)

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Greetings:

The Legislature adjourned for its summer recess today and will be out until August 16. Several of the bills that were top CDAA oppose bills have fallen by the wayside fortunately, but there are others that are still moving and remain of great concern. We have listed bills that our Legislation Committee has voted to oppose and that will be our focus when the Legislature reconvenes. They are listed in bill order, not the order of priority as that may differ among you.

Our hope is that you will schedule appointments with your Senators and Assembly members during the recess to discuss CDAA's position on these bills. We have provided some information for each of these bills—bullet points, summaries, CDAA letters—that should help in these conversations. If you have questions or need more information, please contact either Tiffany or me.

On a separate and depressing note, the Governor denied our budget request for restoration of our LPPPD (Local Public Prosecutor/Public Defender) funds, which are state funds allocated for training. After our support of Prop 57 in 2016, Governor Brown retaliated by slashing our share of that funding from \$498k to \$100k. Needless to say, he didn't reduce the Public Defender's money. They have continued to receive the full \$498k despite having far fewer members than CDAA. Our share was slightly increased two years ago to \$150k. We had asked for a full restoration of the money in this year's budget in large part because of sweeping new laws this Governor has signed such as the so-called Racial Justice Act, last year's AB 3070 (jury selection), DJJ Realignment, and others that have required substantial additional training for prosecutors. Unfortunately, our request fell on deaf ears.

To add insult to injury, the Governor's recently unveiled budget contains a pilot project allocating

\$150 **million** over the next three years for a variety of Public Defender/Indigent Defense services we are still sorting through. We will send more information as we figure out the parameters of that money, but in the meantime a copy of the current language is attached.

Finally, here is a link to a last-minute budget trailer bill ([AB 157](#)) that's been sent to the Governor. It removes Asset Forfeiture, High Tech, and CalEPA funding for CDAA.

Regards,

Larry

**TOP 10** (*not listed in priority order*)

[AB 124 \(Kamlager\)](#)—Vacatur relief

[AB 256 \(Kalra\)](#)—Racial Justice Act retroactivity

[AB 333 \(Kamlager\)](#)—Gang enhancements (working on amendments)

[AB 759 \(McCarty\)](#)—DA elections

[AB 1540 \(Ting\)](#)—Post conviction re-sentencing

[SB 81 \(Skinner\)](#) – Dismissal of enhancements [**\*NOTE:** SB 81 creates a presumption that an enhancement shall be dismissed if any of nine (9) circumstances are present. The presumption can only be overcome by a showing of *clear and convincing* evidence that dismissal would endanger public safety. The nine (9) circumstances include: (1) Disparate racial impact; (2) Multiple enhancements in a single case; (3) Sentence over 20 years.; (4) Offense is connected to mental illness; (5) Offense is connected to prior victimization or childhood trauma; (6) Non-violent offenses; (7) Def is/was a juvenile; (8) Prior conviction over five years old; (9) Firearm was inoperable or unloaded.

CDAA has proposed several amendments to the bill, including eliminating the presumption and simply listing criteria for the court to consider in its discretion. Sen. Skinner will not budge on the presumption, claiming that is the whole purpose of the bill. But she is willing to lower the burden to overcome the presumption to *preponderance of the evidence*, as well as make other (more minor) changes to the bill, including allowing the court to strike just the punishment (i.e., 1385(b)) and requiring that prior victimization and childhood trauma “substantially contributed” to the underlying offense.

[SB 262 \(Hertzberg\)](#) – Bail [**\*NOTE:** Along with the California Police Chiefs we have been in negotiations with Sen. Hertzberg on this bill. What we have requested is the inclusion of some type of ‘catch all’ language that would say something to the effect, “Notwithstanding any other provision

of this bill, a judge may impose bail if in the court’s opinion the imposition of bail is in the interest of public safety.” Hertzberg is considering that amendment but expects that CDAA and Cal Chiefs will go neutral on the bill in exchange.]

**SB 300 (Cortese)**—Special circumstances

**SB 710 (Bradford)**—DA conflicts of interest

**SB 775 (Becker)**—Felony murder: resentencing

AB 124 changes PC 1170(d) with vague, undefined language.

AB 124 will grant the right to anyone who claims to have suffered any type of trauma in their life, no matter the degree of trauma, to a powerful presumption of receiving no more than the lowest state prison term for their offense for all cases except death penalty cases.

- Any physical, psychological, or childhood trauma suffices to provide this presumption. The only requirement is that it “contribute” to the commission of the crime. There is no definition of “contribute” included in AB 124, and no direct nexus between the trauma and the crime is necessary.
- “Trauma” is not defined, there is requirement that any minimum level of trauma be established, and there is no requirement that any direct nexus between the trauma and the crime be established.
- Even “childhood” is not defined.

AB 124 creates the same strong presumption against the imposition of any consecutive sentences for multiple crimes being imposed where the same factors of “trauma” and “contribute” are raised.

AB 124 also creates the same strong presumption against the imposition of any additional time for any enhancements, including gun use enhancements, multiple victim enhancements, infliction of great bodily injury enhancements, and enhancements for suffering prior convictions including prior serious and violent convictions.

AB 124 further provides the above protections to *all* offenders under the age of 26 at the time of the commission of the crime. For that class of offenders, there is no need to present any evidence of any past trauma whatsoever – the presumption of the lowest possible term, prohibition against consecutive sentences, and prohibition against any additional time regardless of how many people were hurt or killed, regardless of whether a gun was used, and regardless of how many times the person had previously been convicted of offenses ranging from auto theft to murder.

AB 124 establishes a new defense without any defining parameters.

AB 124 provides that a person claiming to be a victim of sexual violence or intimate partner violence is entitled to an acquittal or dismissal if they committed their crime as a “direct result” of their victimization and they had a reasonable fear of “harm.”

- There is no definition of the term “direct result” which will thus become the subject of intensive litigation in every case where this defense is raised. Courts will be forced to decide whether “direct result” means something akin to duress, which already is a defense under California law, or whether it includes being at a particular place at a certain time, or whether it includes a person whose abuse ended years ago but caused the person to abuse alcohol and the person then drove drunk and hurt or killed someone.
- There is likewise no definition of what kind of “harm” is required for this defense, which leaves the Courts in the position of having to decide whether physical harm, emotional harm, financial harm, or some other type of harm will suffice.
- There is no minimum degree of harm included that would differentiate between the loss of \$5 and the loss of one’s life savings – either would suffice under AB 124.

- There is no requirement whatsoever that the harm be related in any way to the person's actual abuser, or to anything else. The Superior Courts are left to settle all of this, which will result in disparate rulings throughout the state and a wide array of different appellate rulings in our Courts of Appeal.
- All crimes except those punishable by death are eligible for this defense. Domestic violence, child abuse, elder abuse, animal abuse, and Human Trafficking crimes are eligible. So are the crimes of vehicular manslaughter while intoxicated, DUI with injury, real estate fraud, embezzlement, and fentanyl sales. Serious and violent felonies are eligible as well, including murder, manslaughter, abuse of a child under 8 resulting in death, assault with any kind of gun including a machine gun, torture, and all sex offenses including rape, child molest, sodomy, and oral copulation.
- There is no requirement that the Court or the prosecution even receive advance notice of this defense, as AB 124 provides that it may be raised at any time until the completion of the trial.

AB 124 amends Penal Code section 236.14 to include violent offenses.

AB 124 will expand the remedy of vacatur relief to all violent felonies – even those punishable by death. This means that sex offenders, kidnappers, murderers, those who inflict significant injuries including paralysis and permanent brain injury, robbers, and those who shoot other people will now be able to petition to have their crimes wiped from their record.

- PC section 236.14 took effect in 2016 but excluded violent crimes. AB 124 will include them.
- The victim, or the surviving family members of any victim killed by the petitioner, will be notified of the attempt to wipe the crime from the offender's record. This is an extremely harmful psychological blow to victims, most of whom strive to move past the life-changing effect the crime had on them and move forward. AB 124 pulls them back into their victimization even if they were raped, trafficked, severely beaten, shot, molested, or had to bury their murdered loved one.
- A person obtaining relief under this part of AB 124 will be free to seek employment as a teacher, a child daycare worker, a real estate broker, a nurse, and anything that requires a license because the arrest and conviction will be deemed not to have occurred and will not be shared with any licensing agency.

There is no funding provided for massive litigation that AB 124 will bring to all levels of our Court system.

- AB 124 provides no funding.
- The imposition of AB 124's mandates will put the entire burden of defining terms such as "contributes to," "harm," "trauma," "abuse," and "childhood" – none of which are defined by AB 124, and none of which are defined elsewhere by reference.
- AB 124 applies prospectively, permitting anyone claiming certain types of abuse to present an absolute defense in a future trial to any charged crime, entitling all those under 26 to the presumption of the lowest possible term without any consecutive sentence for additional crimes or victims and no enhancements being imposed regardless of any injury, gun use, or multiple victim allegation being found true.

- AB 124 applies retroactively, permitting anyone to file a petition in which they claim they suffered a certain type of victimization to seek conviction and sentence vacatur, no matter the crime they committed. It is not hard to anticipate that an enormous number of inmates will file these petitions, and the justice system will bear the entire burden with zero additional funding.



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# FLOOR ALERT

## **BILL NUMBER: AB 256 (KALRA)**

## **POSITION: OPPOSE**

## **RETROACTIVITY OF RACIAL JUSTICE ACT**

The California District Attorneys Association (CDAA) is opposed to AB 256 (Kalra), a bill rendering Penal Code section 745 retroactive. Here is why, notwithstanding its valid goal of eliminating discrimination in the criminal justice system, AB 256 is a poor vehicle for carrying out that goal.

- By rendering newly enacted section 745 retroactive, it exponentially *expands the risk of depriving society and victims of every race, ethnicity, and national origin of justice by permitting reversal of cases for rape, murder, or torture notwithstanding indisputable and overwhelming evidence of an offender's guilt*, the lack of any evidence a defendant was actually deprived of a fair trial, and even if the only bias exhibited was from a juror who never even served on the jury or an officer who never testified.
- Penal Code section 745 has only been on the books for several months. *The statute is riddled with ambiguous language and dozens of unanswered questions that have yet to be resolved by any appellate court.* Although the impact of section 745 has not been evaluated and AB 256 could, with a little forethought, make changes that would avoid the need to spend countless hours litigating these issues, it instead *guarantees such litigation will occur on a massive scale by expanding the scope of section 745 to all past convictions without seeking to clarify the vast majority of these issues.*
- The Judicial Council of California (JCC) estimates that the fiscal impact of making section 745 retroactive on trial courts would be \$20.8 million in workload cost for the first two years. As acknowledged in the most recent Appropriations Committee analysis, this *vastly underestimates* the costs because AB 256 permits challenges regardless of the date of conviction and the JCC's estimate is based only on criminal convictions over the past ten years. Moreover, this estimate *completely ignores* the costs of complying with discovery requests *on the state* (which can be ordered on a limited showing and which can easily exceed \$100,000 *in a single case*), and the costs of in camera hearings for review of discovery that is subject to a privacy right or privilege and/or to determine if redaction of the materials sought is proper. This is an unfunded mandate. Lastly, the estimate is also based on an unrealistic assessment of the length and costs of required evidentiary hearings given that section 745 authorizes the use of statistical evidence, competing expert testimony, and the sworn testimony of witnesses at the hearing.

**Vote NO on AB 256**



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July 1, 2021

The Honorable Kevin McCarty  
California State Assembly  
State Capitol Building  
Sacramento, CA 95814

**Re: Assembly Bill 759 – Oppose**

Dear Assemblyman McCarty:

On behalf of the California District Attorneys Association, I regret to inform you that we are opposed to your measure, Assembly Bill 759, which would move the election of certain county offices from gubernatorial election years to presidential election years.

While we share the author's commitment to maximizing voter participation in our elections, this proposal is replete with structural and legal flaws that could have the unintended effect of reducing the engagement of voters in county district attorney and sheriff races. Given the debatable premises of the bill and its far-reaching implications for county elections, we urge you to table this proposal until it can be more thoroughly analyzed.

Among the concerns that are readily apparent, however, are the following:

\*AB 759 may very well be unconstitutional. There are 14 charter counties in California. The California Constitution gives these charter counties wide latitude to exert greater authority over local affairs. AB 759 states that it applies both to the charter counties and the remaining 44 "general law" counties. Of the 14 charter counties, at least four county charters (Los Angeles, San Bernardino, Santa Clara and San Francisco) expressly provide the time at which certain county officers must be elected, according to research done by the California Assembly Elections Committee. Consequently, it is unclear, at best, whether the provisions of this bill can be made applicable to charter counties – especially those whose charters conflict with this bill. Given that the population of the four counties noted is approximately 15 million, if AB 759 were found to conflict with their charters, more than a third of California voters would fall outside its purview, undermining its stated purpose. There are arguments on both sides of this issue, but it would almost certainly require protracted litigation to resolve.

\*AB 759 also provides that in order to achieve its goal of holding elections for district attorney and sheriff in presidential years, each county's board of

supervisors would determine whether district attorneys and sheriffs elected in 2022 would have to stand for election again in 2024 after just two years in office or be granted a six-year term until 2028 at which time all district attorneys and sheriffs would be on the presidential cycle. We are uncertain whether boards of supervisors, in either general law or charter counties, possess the authority to abrogate the decision of the electorate and either shorten or lengthen the terms of district attorneys and sheriffs who voters elected in 2022 to four-year terms. Again, the issue would almost inevitably be a subject of prolonged litigation. Moreover, assuming for the sake of argument that such authority exists, AB 759 fails to consider the city and county of San Francisco, which holds its election for district attorney and sheriff, among other elected offices, in odd-numbered years. The next scheduled election for these offices is in 2023.

Does the San Francisco Board of Supervisors possess the authority to limit its district attorney and sheriff to a one-year term (2023 to 2024) or confer upon those office holders a five-year term (2023 to 2028)? Once more, this is a murky area that likely will be vigorously litigated. And if the bill *purposefully* excluded San Francisco how does that advance the author's stated purpose in aligning all 58 district attorney and sheriff races with the presidential cycle?

The underlying premise of AB 759 is that voter turnout is higher in presidential election years and, consequently, more voters would have a say in who is elected district attorney and sheriff. That seems a straightforward proposition, but the reality is much more contradictory and debatable. If more voters turn out for presidential elections, many of them do so for the sole purpose of casting a vote for president. As just one example, in Napa County the drop off from Governor to the U.S. House of Representatives race in June 2018 was 8.34%. The drop off from President to House of Representatives in the June 2016 Presidential Primary was 43.7%. Presumably, since the U.S. House of Representatives race would appear higher on the ballot than the county races, that disparity increased going down the ballot. Napa County's experience may be unique, but likely isn't. In any event, since these statistics can be obtained from each county's Elections Department, an effort should be made to contact each county, obtain the information, and study the findings before proceeding with such a half-baked bill.

\*The presidential primary is a hugely complex ballot with multiple ballots for each party fielding a presidential candidate. Adding to the complexity is the ability of No Party Preference voters to ask for ballots from each party fielding a candidate. The amount of voter confusion during presidential primaries is substantially greater than in the gubernatorial primary making it the most difficult election to administer. Since a greater number of voters in presidential primary tend to ignore "down ballot" races, which is usually limited to congress, assembly and state senate races, and county supervisor, AB 759 would push countywide offices like district attorney and sheriff even further down a complex presidential ballot and reduce the number of votes cast for these important local races.

CDAAB 759 – Oppose Letter  
July 1, 2021  
Page 3

\*Adding county wide officers increases not just the complexity of the ballot, but its size as well, which is one reason that countywide offices like district attorney and sheriff are currently on the gubernatorial ballot.

\*The cost to run for office – not campaign related costs – but ballot statements and filing fees are lower in non-presidential election cycles. This creates more opportunity for those seeking office who don't have personal wealth or a cadre of wealthy supporters to call upon for financial support. Moreover, under this proposal, voter focus on races for district attorney and sheriff will likely be dwarfed by the attention generated in a presidential election leading to less informed voter decisions in these crucial positions. The cost of competing for airtime and other modes of voter communication will likely be much higher, too, squeezing out those candidates who do not have personal wealth or potent financial supporters.

In sum, AB 759 is based on the untested and possibly false premise that aligning the sheriff and district attorney elections with the presidential primary would increase voter turnout and engagement in these races when it is equally plausible that the exact opposite would be true. This proposal should be subjected to thorough and rigorous research and evaluation before becoming state law. We would be happy to work with you in obtaining reliable, rigorously reviewed data that would allow the Legislature to make an evidence driven decision as to the merits of this radical change in local elections.

For these reasons, CDAAB must respectfully oppose AB 759.

Please don't hesitate to contact me should you wish to discuss this matter further.

Sincerely,



Larry D. Morse II  
Director of Legislation

Cc: Members and Staff of the Senate Committee on Governance and Finance



## **OPPOSE AB 1540 (TING)** **RE-SENTENCING**

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This bill includes a presumption in favor of re-sentencing. “There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.”

**Public Safety.** This presumption will essentially require the prosecution to be Nostradamus and prove to a court that the defendant is an unreasonable risk to commit a “super strikes” in the future (a very limited set of violent felonies). That is counter to public safety.

**Arbitrary.** The presumption is arbitrary, favoring re-sentencing without regard for the nature of the case, injury to the victim, impact on the community or the particulars of the offender.

**Unnecessary.** The presumption is simply not needed. The law already provides that the court “shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.”

**Judicial Discretion.** Judges should be able to use their sound discretion and existing rules to determine what is in the interests of justice, taking into account the totality of circumstances, without an unnecessary and arbitrary presumption that tilts the scales of justice.

**Backwards.** If anything, there should be a presumption in favor of the original sentence, which is a valid and final judgement, lawfully imposed under law, and affirmed on appeal.

**Out of Custody Defendants?** The bill also expands re-sentencings to out-of-custody defendants. What is the point of re-sentencing a defendant who is not currently incarcerated? This could overwhelm courts with moot re-sentencing hearings, and cause added and unnecessary workload pressures on local prosecutors.

**PUBLIC SAFETY ALERT: AB333 Kills the Criminal Street Gang Allegation**  
**OPPOSE IF NOT AMENDED**

If AB333 passes, there will be no viable gang allegation, and gang members who commit serious or violent offenses in our communities will not be held accountable for the full extent of their criminal conduct at a time when gang-related shootings are up 129% in the City of San Diego in 2021 and statewide murders are at their highest point since 2008 with 2,202 lives lost in 2020 including ¾ to gun violence and 28% in gang-related homicides. Now is not the time to make it harder to prove gang crimes. All communities deserve to be safe from violent gang members and the most harmful effects of gang crime.

We have actively engaged this bill's author, its sponsors, and its other proponents as well as various legislators to advocate for appropriate and reasonable reform of the STEP Act. We have made significant concessions to change existing law in a way that meets the author's stated goals.

We strongly urge you to advocate for our amendments in order to protect public safety while meeting the proponents' stated goals of this legislation. If these amendments are not taken, we most oppose this bill in order to protect the disadvantaged communities where gang crime is most rampant. We seek to improve our criminal justice system through smart, responsible reform that balances both public safety and efforts to create a more just and equitable system for all.

**AB333 Issues Not in Dispute**

This bill can be considered a reasonable criminal justice reform measure due to the following significant changes to the law:

1. Bifurcation (PC1109)
2. Fewer Crimes that Prove a Gang's Primary Activities & Predicate Offenses (PC186.22(e)(1)(A)-(Z))
3. Prohibition of "Currently Charged Offenses" to Prove the Pattern of Criminal Gang Activity (PC186.22(e)(2))
4. 3 Year Time Period of Gang's Predicate Offenses (PC186.22(e)(1))
5. Gang Members' Commission of Gang's Predicate Offenses (PC186.22(e)(1))
6. Beyond a Reasonable Doubt Standard of Proof Remains

**AB333 Issues in Dispute**

Accepting the following proposed amendments will safeguard the prosecution's ability to prove the existence of the gang:

Proposed Amendment 1: Section 186.22(f) – **DELETE the term "organized"** from the definition of "criminal street gang."

Proposed Amendment 2: Section 186.22(e)(1) – **DELETE the phrase "and the common benefit from the offenses is more than reputational"** from the subsection defining the "pattern of criminal gang activity."

**PUBLIC SAFETY ALERT: AB333 Kills the Criminal Street Gang Allegation**  
**OPPOSE IF NOT AMENDED**

Proposed Amendment 3 (Alternative to Amendment 2): **ADD Section 186.22(e)(3)** to the definition of “pattern of criminal gang activity” if Proposed Amendment 2 is rejected, as stated below:

**(3) As used in this chapter, examples of a “common benefit” that are “more than reputational” may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, intimidation or silencing of a potential current or previous witness or informant, enforcement or expansion of control or power over the gang’s territory, enhancing the violent status of the gang, or enhancing one’s status among other gang members.**

## Public Defender Funding

The specific Penal Code sections referenced in the budget and the corresponding bills that effectuated those allocations are:

- SB 1437 (Skinner, 2018) accomplice liability for felony murder (Pen. Code § 1170.95)
- AB 2942 (Ting, 2018) allows for post-conviction relief (Pen. Code § 1170(d))
- AB 813 (Gonzalez, 2016) prevents deportation of certain individuals whose conviction was based on error (Pen. Code § 1473.7)

Explanation of the Public Defense Pilot Program: <https://www.bscc.ca.gov/wp-content/uploads/Agenda-Item-D-Public-Defense-Pilot-Funding-Recommendations-FINAL.pdf>

Specific funding allocations per county: <https://www.bscc.ca.gov/wp-content/uploads/Attachment-D-2-Funding-Allocation-by-County.pdf>

### SEC. 189.

Item 5227-116-0001 of Section 2.00 of the Budget Act of 2021 is amended to read:

5227-116-0001—For local assistance, Board of State and Community Corrections .....	50,000,000
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Schedule:

4945-Corrections Planning and (1) Grant Programs .....	50,000,000
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Provisions:

Of the amount appropriated in Schedule (1), \$49,500,000 shall be provided for the Public Defense Pilot to each county based on the county's share of the total adult population in the state for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code. This pilot shall end January 1, 2025. Prior to distribution of these resources for each county, the Board of State and Community Corrections shall work in consultation with the Office of the State Public Defender to identify those entities who provide public defender services on behalf of each county. No later than March 1, 2025, each of those entities who provide public defender services on behalf of a county and receive these resources shall report to the Board of State and Community Corrections on how much funding was received

and how the funding was used to address the workload pursuant to this provision. The Board of State and Community Corrections shall contract with a university or research institution to complete an independent evaluation to assess how these resources provided to public defender service providers impact outcomes for the workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code. The Board of State and Community Corrections will submit this evaluation to the Joint Legislative Budget Committee by August 1, 2025. This funding is intended to supplement, and not supplant, existing funding levels for public defender offices.

Of the amount appropriated in Schedule (1), \$500,000 shall be available for the Board of State and Community Corrections for administrative costs and to contract with a university or research institution to complete the independent evaluation. These funds shall be available for encumbrance or expenditure until June 30, 2026.



CALIFORNIA  
DISTRICT  
ATTORNEYS  
ASSOCIATION



TO: All Members of the California State Senate.

FROM: California Police Chiefs Association (CPCA), California District Attorneys Association (CDA), Peace Officers Research Association of California (PORAC), Los Angeles Association of Deputy District Attorneys (ADDA), Riverside Sheriffs Association, San Diego Deputy District Attorneys Association, San Diegans Against Crime, Crime Victims United of California.

**SUBJECT: Continued opposition to SB 300 - as amended July 7, 2021.**

DATE: July 13, 2021

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California Department of Justice recently released annual crime statistics for 2020, which showed a **31% increase in the homicide rate** over the previous year. At a moment when violent crime is spiking in cities throughout our country, including in California, *SB 300 (Cortese)* proposes to **offer reduced penalties** for individual convicted of some of the most heinous crimes imaginable. As such, the above signed public safety organizations and victims' advocates ask for a **NO vote on SB 300**.

There are crimes so shocking to the conscience and in violation of our societal rules that individuals convicted of those acts forfeit their right to live in society among us. These crimes include *murder involving kidnapping, murder involving rape, murder involving torture, murder of a peace officer, and murder involving lewd acts on a child under 14*. The qualified crimes partially listed here are known as special circumstances, and when proven beyond a reasonable doubt in conjunction with a murder, carry the sentence of life without the possibility of parole (LWOP).

In cases of multiple individuals involved in these acts, those proven to have acted with reckless disregard for human life will face LWOP, if convicted. These are not individuals who innocently may have been involved in lesser crimes, as proponents have alluded.

Instead of narrowing the list, or taking a more tailored approach, SB 300 provides of the possibility of parole in each and every special circumstance for those proven to have acted with disregard for human life. We cannot forget the victims, their families, and the communities torn apart by these horrific crimes, none of whom are given a second chance to restore what was taken from them.

California has already reduced sentences under special circumstances for those not directly involved in the murder (SB 1437, Skinner, 2018). This bill takes a dangerous next step to include those proven to be implicated in the killing, and as such we must urge a **NO vote on SB 300**.

Vote **NO** on Senate Bill 300

Mr. Chairman and Members:

Larry Morse on behalf of the California District Attorneys Association in respectful opposition to Senate Bill 710.

This bill singles out district attorneys among all elected officials as being incapable of reconciling their ethical duties with having received political support – in this case from law enforcement organizations. Why would DAs be held to a different standard than members of the California Legislature, many of whom routinely solicit significant campaign contributions from a vast array of special interests who have business in the Legislature?

What is the difference between an elected DA receiving the financial support of a law enforcement union in his or her county and then fairly and ethically assessing a subsequent officer involved shooting case and a member of the Legislature accepting contributions throughout his or her career from say, utility interests, and then voting on legislation regulating those same utilities? Practically speaking, none.

We would not suggest that just because a member of the Legislature has taken campaign contributions from a special interest he or she is rendered incapable of voting his or her conscience on a bill affecting that special interest. Yet, that is exactly what this bill tells elected District Attorneys.

Why does the bill single out only law enforcement contributions? The sponsors of this bill, including my friend, DA Boudin, have been actively supported by defense bar interests, but the bill does not prohibit them from investigating or prosecuting an officer involved shooting where those same members of the defense bar have a keen interest in whether charges are filed. This would seem to be an egregious double standard, at best.

As we read the bill, if a district attorney did **not** receive political contributions from a local peace officer association or deputy sheriff association, but **did** receive a contribution from PORAC, a statewide association, which has members in both the local sheriff's department and local police agencies, the DA would be deemed to have a conflict of interest and thus precluded from conducting Officer Involved Shooting investigations in any agency that has PORAC members.

Under this bill, when an Officer Involved Shooting occurs, a DA would be compelled to review his or her campaign contributions to determine what, if any, police associations supported his or her candidacy and if that officer was a member of any of them.

The bill, if approved, would be guaranteed to dramatically increase the number of OIS cases that the AG will soon be investigating under last year's AB 1506. Moreover, you will almost certainly have situations in which both an AG and a local DA received contributions from PORAC or other statewide law enforcement associations. In such cases, the DA will not be able to conduct the OIS investigation, nor will the Attorney General, who will then be compelled to retain a special prosecutor to conduct the investigation.

If a district attorney doesn't want to accept contributions from public safety organizations, then he or she can decline them. But as would members of the California Legislature, district attorneys strenuously object to the implication that they cannot discharge their elected duties faithfully and without fear or favor, no matter who has supported their campaign for office.

We believe this bill creates significant constitutional challenges as well. In the California Supreme Court case *Woodland Hills Residents Association, Inc., v. City Council of Los Angeles*, the court noted that "political contributions involve an exercise of fundamental freedom protected by the First Amendment to the United States Constitution and Article 1, Section 2 of the California Constitution.

In the *Woodland Hills* case, the court rejected the idea that elected city council members must be recused from voting on a development issue because developers had donated to the council members' campaigns. In rejecting this claim, the court said, "(QUOTE) To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and association freedoms," (END QUOTE).

We support the transparency of reporting all contributions to elected officials, including DAs, and believe the voters can decide for themselves, just as they would with members of the California Legislature who accept campaign contributions, whether any official acts are tied to those contributions.

This bill is dangerous, arbitrary, inconsistent and unconstitutional and we respectfully ask for a NO vote.

Thank you.

Senate Bill 775 will further expand the elimination of criminal liability for those convicted of attempted murder under a natural and probable consequences doctrine and manslaughter under either a felony murder theory or under the natural and probable consequences doctrine.

The result of this bill will be extensive re-litigation of already resolved cases and it *will* inevitably trample on victim's rights.

**Bad for victims' rights:**

- Will upend cases that victims thought were done because the defendant has already been sentenced
- Will require prosecutors to inform victims they will have to come back to court to testify
- Will disturb the finality of verdicts that should be afforded to victims because plea agreements and judge-determined sentences based on specific circumstances in that case will no longer apply

**Will require mini trials:**

- Prosecutors must track down and force victims and witnesses back to court, sometimes years after the crime has been committed
- For cases where there is little "record of conviction" like changes of plea on attempted murders and manslaughters mini-trials would require the prosecution to prove the case beyond a reasonable doubt all over again

**Attempted Murders and Manslaughters already have reduced punishments**

- Attempted murder is a 5-7-9 triad (determinant, non-life)
- Manslaughter is a 3-6-9 triad (determinant, non-life)
- Manslaughter is a lesser of murder that does not require malice, and sentences are commensurate with their reduced involvement in the killing
- If an attempted murderer or manslaughterer gets relief under this bill, they will be immediately released back into the community with no mandatory supervision

This bill makes prosecutors re-prove what has already been pled to or proven before a jury.

This bill hurts victims of crime and their right to finality of verdicts and right to be safe in their own community.

This bill will cost courts and counties untold amounts of tax dollars to re-examine already settled cases.