
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 811 **Hearing Date:** April 25, 2017
Author: Committee on Public Safety
Version: March 15, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Public Safety: Omnibus*

HISTORY

Source: Various

Prior Legislation: SB 795 (Committee on Public Safety) Chapter 499, Stats. 2015
SB 1461 (Committee on Public Safety) Chapter 54, Stats. 2014
SB 514 (Committee on Public Safety) Chapter 59, Stats. 2013
SB 1144 (Strickland) Chapter 867, Stats. 2012
SB 428 (Strickland) Chapter 304, Stats. 2011
SB 1062 (Strickland) Chapter 708, Stats. 2010
SB 174 (Strickland) Chapter 35, Stats. 2009
SB 1241 (Margett) Chapter 699, Stats. 2008
SB 425 (Margett) Chapter 302, Stats. 2007
SB 1422 (Margett) Chapter 901, Stats. 2006
SB 1107 (Committee on Public Safety) Chapter 279, Stats. 2005
SB 1796 (Committee on Public Safety) Chapter 405, Stats. 2004
SB 851 (Committee on Public Safety) Chapter 468, Stats. 2003
SB 1852 (Committee on Public Safety) Chapter 545, Stats. 2002
SB 485 (Committee on Public Safety) Chapter 473, Stats. 2001
SB 832 (Committee on Public Safety) Chapter 853, Stats. 1999
SB 1880 (Committee on Public Safety) Chapter 606, Stats. 1998

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to make technical and corrective changes to various code sections relating generally to criminal justice laws, as specified.

Existing law provides that, in a criminal action, expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims. Existing law defines the term “human trafficking” pursuant to a specified provision of the Penal Code. (Evidence Code § 1107.5.)

This bill would clarify that the term “human trafficking victim” is defined as a victim of an offense as described in that provision of the Penal Code.

Existing law, the End of Life Option Act, authorizes an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for a drug prescribed pursuant to these provisions for the purpose of ending his or her life. Existing law makes a violation of certain provisions of the act a felony, as specified, and provides that the application of those penalties does not preclude the application of any other criminal penalties under any other law for conduct inconsistent with the provisions of that section. (Health and Safety Code § 443.17.)

This bill would clarify that the application of those penalties does not preclude the application of any other criminal penalties for conduct inconsistent with the act.

Existing law provides that it is a crime, punishable by a fine or imprisonment in county jail, as specified, for any person to possess specified controlled substances, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. Existing law creates an exemption from the prohibitions for possession of those controlled substances by a person other than the prescription holder if the possession of the controlled substance is at the direction or with the express authorization of the prescription holder, as specified. Existing law, as amended by the Safe Neighborhoods and Schools Act (Proposition 47), an initiative measure approved by the voters at the November 4, 2014, statewide general election, generally makes the possession of those controlled substances a misdemeanor, as specified. Existing law codifies these provisions in separate but identically numbered sections. (Health and Safety Code §§ 11350 and 11377.)

This bill would reorganize these provisions by incorporating all of these nonconflicting provisions into the section as amended by Proposition 47 and would repeal the other section as obsolete.

Existing law provides for various penalty provisions related to sex offenders. (Penal Code § 290.004.)

This bill would make technical, nonsubstantive changes to those provisions.

Existing law prescribes the circumstances upon which confidential communications may be recorded, as specified. (Penal Code § 633.5.)

This bill would make technical, nonsubstantive changes to those provisions.

Existing law establishes procedures that apply in a criminal proceeding in which a defendant is charged with a violation of human trafficking, as defined, with regard to a minor’s testimony, as specified. Existing law makes reference in those provisions to alleged sexual offenses relating to human trafficking. (Penal Code § 1347.1.)

This bill would clarify that those provisions relate to alleged offenses relating to human trafficking.

Existing law, the Safety for All Act of 2016, an initiative statute enacted as Proposition 63 at the November 8, 2016, statewide general election, prohibits the possession of certain firearms, as specified. The act provides that its provisions may be substantively amended by a statute that is consistent with and furthers its intent and that is passed by a 55% vote of each house of the Legislature. (Penal Code §1524.)

This bill would fix an erroneous cross-reference in a provision of the act, thereby making a technical, nonsubstantive change.

Existing law requires a government entity that executes a warrant, or obtains electronic information in an emergency, as specified, to provide specified notice to the identified targets of the warrant or emergency access that informs the recipient that information about the recipient has been compelled or obtained. However, existing law also authorizes a government entity, without a warrant or other order, to access electronic device information by means of physical interaction or electronic communication with the device for the purpose of accessing information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device. (Penal Code § 1546.2.)

This bill would clarify that a government entity is not required to provide the notice described above under circumstances in which the government entity has accessed the electronic information under the emergency 911 authority described above.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), added by the approval of Proposition 64 at the November 8, 2016, statewide general election, authorizes the consumption of nonmedical marijuana by persons over 21 years of age and provides for the licensure and regulation of certain commercial nonmedical marijuana activities by various state entities. The AUMA, an initiative measure, authorizes the Legislature to amend certain provisions of the act by a majority vote, provided that the amendments are consistent with, and further the purposes and intent of, the act. (Revenue and Taxation Code § 34016.)

This bill would correct an erroneous cross-reference in a provision of the act, thereby making a technical, nonsubstantive change.

Existing law added new circumstances upon which a person convicted of certain crimes is required to install a functioning, certified ignition interlock device. (Vehicle Code § 23575.3.)

This bill would make conforming cross-reference changes to a related provision.

Existing law places limitations on who may inspect a juvenile case file, as defined. Existing law enumerates the persons or entities that may inspect those case files. (Welfare and Institutions Code § 827.)

This bill would add to that enumerated list, the Department of Justice to carry out specified duties related to sex offender registrations.

COMMENTS

1. Purpose of This Bill

This is the annual omnibus bill. In past years, the omnibus bill has been introduced by all members of the Committee on Public Safety. This bill is similar to the ones introduced as Committee bills in the past, in that it has been introduced with the following understanding:

- The bill's provisions make only technical or minor changes to the law; and,
- There is no opposition by any member of the Legislature or recognized group to the proposal.

This procedure has allowed for introduction of fewer minor bills and has saved the Legislature time and expense over the years.

2. End of Life Option Act

The End of Life Option Act details how a person suffering from a terminal illness may, in conjunction with a physician, obtain and take drugs to end that person's life. Aware that the drugs at issue might be used for nefarious purposes, the Legislature enacted Health & Safety Code section 443.17. Subdivision (f) appears to leave open the option of a murder charge against a person who engaged in the conduct proscribed in subdivisions (a) and (b). However, the language in subdivision (f) refers to "conduct inconsistent with the provisions of this section." Forging a request for aid in dying drugs with the intent and result of causing a person's death, for example, is the exact conduct discussed in "this section". It seems that, taken literally, such an action would be "consistent" with section 443.17 and thus not subject to a murder charge. Changing "section" to "Act" makes for a more rational reading of the statute.

3. Theft of a Firearm

Penal Code section 1524(a)(15), added by Proposition 63, contains a cross-reference to Penal Code section 29810(c)(3) as the section pursuant to which a court has found that a person has failed to relinquish a firearm as required by law. It is actually Penal Code section 29810(c)(4) that requires the court to issue an order for the search and removal of firearms upon a probable cause finding that the defendant has failed to relinquish firearms. This legislation fixes the erroneous cross-reference.

4. The Control, Regulate and Tax Adult Use of Marijuana Act of 2016

The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), added by Proposition 64, authorizes the consumption of nonmedical marijuana by persons over 21 years of age and provides for the licensure and regulation of certain commercial nonmedical marijuana activities by various state entities. The AUMA, an initiative measure, authorizes the Legislature to amend certain provisions of the act by a majority vote, provided that the amendments are consistent with, and further the purposes and intent of, the act. The act contains an erroneous cross-reference as to what places can be inspected, this legislation fixes that cross-reference.

5. Human trafficking: Criminal Procedures

Existing law establishes procedures that apply in a criminal proceeding in which a defendant is charged with a violation of human trafficking with regard to a minor's testimony, as specified. Existing law makes reference in those provisions to alleged sexual offenses relating to human trafficking. Human trafficking under Penal Code section 236.1(a) applies to forced labor and sexual offenses—to this end, this legislation removes reference to the word “sexual.”

6. Human trafficking: Expert Testimony

Existing law provides that, in a criminal action, expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims. As this section currently reads, it says that “human trafficking victim” is defined in Penal Code 236.1. That is incorrect. While PC 236.1 describes many human trafficking offenses, and defines many terms, it does not define “human trafficking victim.” This legislation would correct this to read “victim of human trafficking as defined in PC 236.1.”

7. Confidential Communications: Human Trafficking

Existing law prescribes the circumstances upon which confidential communications may be recorded. There is an erroneous cross-reference to the definition of human trafficking, which is found in Penal Code section 236.1, not 231.6.

8. Interlock Device

Existing law added new circumstances upon which a person convicted of certain crimes is required to install a functioning, certified ignition interlock device. Vehicle Code section 23575.3 specifies the driving under the influence alcohol crimes that require an ignition interlock device beginning January 1, 2019. On July 1, 2018, AB 2687 (Chapter 765, Statutes of 2016) will add a new subdivision (e) to both Vehicle Code sections 23152 and 23153, and will re-letter subdivision (f) to (g) in both sections. Thus, Vehicle Code section 23575.3 needs to be amended to cover the new subdivision (e) in both sections, and to reflect the re-lettering of subdivision (f) to (g) in both sections.

9. Sex Offender Penalty Provisions

Existing law provides for various penalty provisions related to sex offenders. Penal Code section 290.004 deals with sex offender registration for individuals who are determined to be Mentally Disordered Offenders, or have been found not guilty by reason of insanity. Prior to 2007, the provisions of the Sex Offender Registration Act were contained within one section, PC 290, so the reference to “an offense for which registration is required by this *section*” made sense. When Penal Code section 290 was split up into 23 different sections, references to offenses under “this section” should have been changed to offenses under “this Act.” Most were corrected at the time, but one section still has a reference to “this section.” This legislation fixes this by changing “this section” to “this Act.”

10. Juvenile Records

Existing law places limitations on who may inspect a juvenile case file. Currently, the Department of Justice (DOJ) is required to petition the court for the necessary documents, which

the court is not required to grant. In several counties, the DOJ must complete the JV-570, Request for Disclosure of Juvenile Case File, in order to request permission to view a juvenile record from the individual whose record is in question. The individual is not required to grant access to his or her juvenile record. The omission of the DOJ from the current version of Welfare and Institutions Code section 827 has created a backlog in processing and assessing juvenile sex offender registration records. Additionally, the DOJ is unable to advise local agencies whether registration is required pursuant to Penal Code section 290.008 if the DOJ cannot obtain juvenile court records to confirm that the juvenile was committed to the Division of Juvenile Justice on the sex offense(s).

11. Search Warrants

Existing law requires a government entity that executes a warrant, or obtains electronic information in an emergency, as specified, to provide specified notice to the identified targets of the warrant or emergency access that informs the recipient that information about the recipient has been compelled or obtained. However, existing law also authorizes a government entity, without a warrant or other order, to access electronic device information by means of physical interaction or electronic communication with the device for the purpose of accessing information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device.

Recent amendments clarified several issues, including that officers may access, without a search warrant, the location of a cell phone used to report an emergency to 911. In developing those amendments, it was not intended that such situations would require a government entity to comply with specified notice requirements. Despite those intentions, some ambiguity remains in the statute and it is unclear whether these situations require notice. It could certainly be argued that, given the entire scheme, notice is not required, but it seems better to simply specify as much in statute. This legislation makes explicit the intent that notice is not required when cell phone location information is accessed in order to respond to a 911 call from that device.

12. Proposition 47: Controlled Substances

Existing law provides that it is a crime, punishable by a fine or imprisonment in county jail, as specified, for any person to possess specified controlled substances, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. Existing law creates an exemption from the prohibitions for possession of those controlled substances by a person other than the prescription holder if the possession of the controlled substance is at the direction or with the express authorization of the prescription holder, as specified. Existing law codifies these provisions in separate but identically numbered sections.

In 2014, Assembly Bill 2603 (V.M Perez) passed and was to take effect on January 1, 2015. On November 4, 2014, Proposition 47 passed and did not include the AB 2603 language. Therefore, Proposition 47 and existing law are inconsistent, resulting in two separately listed parallel statutes. This bill integrates Proposition 47 and Assembly Bill 2603 into one statute.