

**Jon Wainwright:** Hello, and welcome to another edition of California Lawmaking In Depth. I'm Jon Wainwright. Today we're going to be doing a kind of 2018 preview edition on criminal justice issues coming up next year. To talk about that with us, we've brought back in Liah Burnley with Californians for Safety and Justice. Thank you so much for joining us.

**Liah Burnley:** Always fun to be here.

**JW:** So, I know in one of our other conversations we talked little bit about some follow up to Ban the Box 2.0 - the bill that was run by Assembly Member McCarty. It sounds like that's something you guys will have on your plate this coming year. What are some of the other policy areas that you see yourselves dipping your toes in in 2018?

**LB:** So, Californians for Safety and Justice is going to have a very fun, very busy 2018. Along with co-sponsoring legislation with other members of the criminal justice community, we'll be having legislation in three distinct areas.

One is our Second Chances legislation dealing with barriers after you're release from incarceration. The other is our Crime Survivors for Safety and Justice legislation, and increasing access to healing for people who have survived crime. And the third deals with sentencing reform and sentencing enhancements and further efforts to reduce incarceration in California.

**JW:** Okay. And I realize that you probably don't want to tip your hand too much, so we'll mostly keep this at broad, top-level. But let's look at each one of those individually. What are some of the Second Chance policies that you guys are looking at?

**LB:** Our Second Chance policies broadly address the occupational licensing system and licensing boards and their abilities to deny a person an occupational license and to deny a person an opportunity for professional employment based off a person's prior criminal record. Especially a criminal record that was old, that didn't have a disposition - meaning that there may not be a conviction record or a complete outcome of the case. Records that were dismissed or expunged. The types of convictions that really have no relationship to the occupation whatsoever.

We're also looking at reforming the background check process which, because it is very messy right now these records that are often incomplete, inaccurate are going to licensing boards and prejudices a person's ability to successfully get and obtain a license.

**JW:** So it sounds like right now, current law, that these licensing boards have pretty broad authority to deny someone's ability to get a license or maybe even apply for a license, based on a prior criminal record. Is that more or less correct, or am I totally off base?

**LB:** That's absolutely correct. In California we require the most occupational licenses, [more] than any other state.

**JW:** That doesn't surprise me.

**LB:** Many view this as a restriction on your profession and a restriction to earn a living. And myself, I'm not quite sure that we actually need licenses for all of these occupations. It really does hinder a person's ability to get out there and earn money for themselves and their families and their community.

So one, it is expensive and time-consuming and hard to apply for a license. And two, licensing boards are these kind of; you never really know what you're going to get yourself into. They're just agencies, bureaucratic type of thing. And if you're a person who doesn't have counsel to navigate the process, you don't have money to navigate the process, you really can be held back in trying to make a profession out of your skill.

And that is true for people without a record, a criminal record. Now people with a criminal record have an even higher barrier to surmount.

**JW:** Yeah, and you said the other part of this was also looking at reforming the background check process?

**LB:** Absolutely. And it goes hand in hand because the boards will request a background check from the Department of Justice on a person and the entire process is, like I said, very hard to navigate, very expensive. You pay the application fee. You pay to go get a live scan - which, that profit goes to a third party, not the state. And then, the live scan has to transmit your prints to DOJ, often that doesn't work you have to go in and re-print again. You don't get a copy of your record.

The DOJ, you don't know what they're sending to the licensing board. They use a query. Often they could report a conviction that was dismissed. They report convictions from years and years and years ago, and you have no new convictions. And licensing boards see this and use it as a reason to deny you that opportunity.

**JW:** And I can that also fitting into the follow up from the Ban the Box legislation in 2017 too.

**LB:** Absolutely, and there's even problems with private employment and the way that that private background check process works. Private employers go through consumer reporting agencies who compile and buy and purchase records in bulk and they're all over. You know, when you do a name search, or you're Facebook stalking someone, it's about that accurate.

**JW:** Okay. Alright. So it sounds like there's a decent bit of work there. What about some of the policies that affect crime survivors?

**LB:** Right, what we are really focused on is trauma, and trauma recovery. How many people are experiencing trauma and have no way to recover from that trauma? It's insane that we don't have services for people.

What we're looking at right now is providing trauma informed services in K-12 schools. So many children, and this gets also to our barrier - breaking the cycle of crime - have experienced one or more adverse childhood experiences called ACEs. And, there's been a lot of research on ACEs about that child's future and how many ACEs you've experienced. So, something like 90% of juveniles have experience 1 or 2 ACEs.

**JW:** Is that an acronym for something?

**LB:** ACEs is, it's A, C, E. And that stands for adverse childhood experiences. And adverse childhood experience is basically a traumatic event that the child would experience in life. That would include seeing family violence, seeing a parent locked up, experiencing crime.

**JW:** Okay.

**LB:** That type of thing, and more. And juveniles, most all, have ACEs. Our youth in the foster system have four or more adverse childhood experiences all before the age of 18. And it really affects your development as youth and can lead to justice system involvement at an early age which leads to justice system involvement as an adult which leads to you not being able to get an occupational license and employment.

**JW:** Yeah.

**LB:** And you get mass incarceration. So it really is focusing on K-12 schools, where we have children, and making sure teachers are trauma informed about why a child may be acting out a certain way and how to respond to that trauma. And how to give a child the attention and help they need if they are suffering from trauma. Most of our schools don't have counselors. The statistic is pretty astounding, and you can't cite me on this, but it's like one in way to many, like 1 in 80 counselors per student. So we need to be doing more to help our youth overcome these experiences.

**JW:** Okay, and then that last area we talked about, sentencing reform, which I feel like in some ways might be a lighter lift, at least because the Governor's attention has been on it and that seems like an area where he wants to dive in correct some of what he might perceive as his own past wrongs. So what are some of the sentencing reform ideas you're looking to tackling in 2018?

**LB:** So, we have a couple ideas. And sentencing reform is, I think, incredibly important right now. Our prisons, even though California has done a lot to decarcerate - which I don't know is a real world but it's an easy way to say it some I'm going to run with it - to decarcerate. But we're still at over 130% capacity in our prisons. And I think just this morning; Valley State Prison is at 187% capacity.

And the reason is because California has the longest sentences. We are, we consider our self a liberal progressive state, and lead the country. But we do not lead the country in criminal justice reform. Our sentencing scheme is very punitive. Very harsh. Our sentences are way too long.

People spend too long incarcerated. And the data shows that being in prison for that long has no benefit. The deterrent benefit, the incapacitation benefit, all of it just fails after a certain amount of time. So there's really no benefit for these overly long, overly harsh sentences.

One reason for that is because California's penal code is so expansive. We have all of this piecemeal legislation in response to one-off crazy things. So we have all of these different types of enhancements, and once you tack on enhancements to your primary sentence you're looking at your sentence being doubled, or tripled than what we actually said that your time should be for that particular crime.

A couple areas that we are looking at getting into are priors, the way that your prior criminal conviction can be used to enhance the time that you serve on a new criminal conviction. It's like; you've already done your time and served it for that prior conviction. Whether you should get five more years or so, because you have that prior, or because you have that prior, you get your time doubled because it's a strike under the Three Strikes. So now you're looking at five more years, plus your time doubled, plus your base sentence, plus any other enhancements that may be added to your sentence.

You're going from what could've been a three year sentence to a twenty year sentence, which is quite absurd when you really look at what the underlying conviction is for.

So we're looking at reforming how priors are used. If you're going to use it as a strike, maybe you shouldn't also use it as an enhancement. That person's already getting doubly slammed. We're also looking at going into the gang enhancement territory.

It's very hard, I think, because we really do want to deter people from participating in gang activity, but those enhancements are still applied disproportionately. I was speaking with someone recently about the gang enhancements in San Francisco and up until, I don't have any recent information on this, but I don't think a single white person has had a gang enhancement added to their sentence in San Francisco.

It's because they don't have anyone investigating white gangs.

**JW:** Yeah.

**LB:** What activity is being done for the purpose of a gang is very vague. What a gang is, is very vague in law.

**JW:** I can think of one anecdotal piece of information to that. I was speaking with an alumni from McGeorge School of Law here. And he was talking about the fraternity he was involved with at his undergraduate institution in Redlands. And that fraternity tended to throw some extra raucous parties, to the point where the police there were going to slap gang enhancements on that specific fraternity. They said, if we see you wearing your letters, we're going to consider you a member of a gang and we're going to come at you as we would a gang member. Which seems a little insane for a fraternity, but... \*chuckles\*

**LB:** But does it?

\*both chuckle\*

**LB:** When you think about it, I mean, I have nothing against fraternities. My little brother is a frat brah. But they dress alike, they do illegal activity - such as drugs - often, we see frats gang raping students, and let's look at our street gangs. They dress alike, they do criminal activities - such as drugs - they harm members of the community, often. But they're both, frats and gangs, [about] banded together, brotherhood, support. And in the gang enhancement statute, to get the enhancement added, whatever the activity is has to be for the benefit of the gang.

I can see someone in a frat doing something for the benefit of the frat, and in order to be considered a gang, it's only that one of the activities of the group is criminal. So, the activity of the group can be a lot of things. It could be providing support in the community. It could be just a number of things associating business transactions, right? But if one of those activities is criminal then it's a gang.

So, frats all the time, drugs and maybe participating in criminal things - downloading music. I don't know. But one of those activities is criminal, so whether that gang enhancement can be added to a frat, but it would never happen because of who they are and who tends to be in frats. But it will happen to people in a gang because of who they are, which is unfortunate. It's like, you can make the same mistakes in life and who you are and who you're associated with is really going to determine the outcome.

But that's also beyond that fact that also, these enhancements are contributing to over-incarceration in California, which we're all paying for and it's not making us any safer. At all. So, I think we all have a vested interest in getting rid of that, or at least, reforming that enhancement so that it makes more sense. So that you need more than just three people to be considered a gang, so that you need the primary activity of this group is criminal enterprise. So that what you're doing, it's a stronger relationship that just for the benefit of the gang.

Let's really get at people who are criminal, who are violent, who we need to be incapacitated for a little while. And then let's try to reroute others into lives that aren't full of crime.

**JW:** Sounds like you'll have a very interested 2018.

**LB:** Oh yeah.

**JW:** Thank you so much, again, for taking the time to chat with us today.

**LB:** Thank you.