ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2022 Legislative Summary

Reginald Byron Jones-Sawyer, Sr.
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Vice Chair

Members
Mia Bonta
Isaac G. Bryan
Bill Quirk
Miguel Santiago
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LEGISLATIVE SUMMARY 2022

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BACKGROUND CHECKS

Cannabis Crimes: Resentencing

The passage of Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), in 2016, legalized specified personal use and cultivation of marijuana for adults 21 years of age or older and reduced criminal penalties for specified marijuana-related offenses. Proposition 64 also created a process whereby individuals could petition for the reduction, dismissal, and sealing of their prior cannabis convictions for acts that now are legal under state law. However, the process was vastly underutilized because individuals with prior convictions were not aware it existed.

Following Proposition 64, California passed AB 1793 (Rob Bonta), Chapter 993, Statutes of 2018, which provided for automatic sealing of cannabis criminal records for old offenses that are no longer illegal. However, AB 1793 was implemented inconsistently across the state. While some counties were proactive in implementing the bill, others were not, and the statute lacked certain deadlines to ensure completion of the process. According to data from the Judicial Council, there is wide variance in county compliance with the law, which has resulted in many Californians not receiving the relief for which they are eligible.

AB 1706 (Mia Bonta), Chapter 387, requires the court to resentence, redesignate, or dismiss specified cannabis-related convictions. Specifically, this new law:

- Provides that if the prosecution did not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation of the conviction on or before July 1, 2020, the conviction shall be deemed unchallenged, recalled, dismissed, and redesignated, as applicable, and the court shall issue an order recalling or dismissing the sentencing, dismissing and sealing, or redesignating the conviction in each case no later than March 1, 2023.

- Requires the court, on or before March 1, 2023, to update its records and report all convictions that have been recalled, dismissed, redesignated, or sealed to the Department of Justice (DOJ) for adjustment of the state summary criminal history information database.

- Requires DOJ, on or before July 1, 2023, to ensure that all of the records in the state summary criminal history information database that have been recalled, dismissed, sealed or redesignated have been updated and ensure that inaccurate state summary criminal history is not disseminated.

- Provides that for those individuals whose state summary criminal history information was disseminated by DOJ as part of a statutorily authorized background check in the 30 days prior to an update based on this bill's provisions, DOJ shall provide a subsequent notice to the requesting entity provided that the entity is still entitled to

receive the state summary criminal history information.

- Requires DOJ to conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized pursuant to existing law so that individuals that may be impacted by this process are informed of the process, to request their criminal history information to verify the updates or how to contact the courts, prosecution or public defenders' offices to assist in verifying the updates.

- States that a cannabis-related conviction, arrest, or other proceeding that has been ordered sealed is deemed never to have occurred and the person may reply accordingly to an inquiry about the events.

- Requires, beginning March 1, 2023 and until June 1, 2024, DOJ, in consultation with Judicial Council, to submit quarterly joint progress reports to the Legislature that includes specified information.

Background Checks: Youth Service Organizations

Business & Professions Code section 18975, subdivision (c) requires a youth service organization to develop and implement child abuse prevention policies, including, requiring to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children. However, some non-profit organizations raise concerns that this requirement directly conflicts with the successful one-to-one mentoring model that has been the hallmark of nonprofit organizations like Big Brothers Big Sisters. They argue it turns one-to-one mentoring into three-to-one mentoring, and threatens a system that has been heralded for generations for improving the lives of millions of young people.

AB 2669 (Nazarian), Chapter 261, exempts an organization that provides one-to-one mentoring to youth from the requirement that youth service organizations implement a policy requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with children, but only if that organization has implemented policies to ensure comprehensive screening of volunteers, and training and regular contact with both volunteers and parents or guardians.

BIAS

Discrimination

In its landmark *McCleskey* decision, the United States Supreme Court rejected the defendant's claim that the Georgia capital punishment statute violated the equal protection clause of the Fourteenth Amendment. The defendant argued "that race ha[d] infected the administration of Georgia's statute in two ways: persons who murder whites are more likely to be sentenced to death than persons who murder blacks, and black murderers are more likely to be sentenced to death than white murderers." (*McCleskey v. Kemp* (1987) 481 U.S. 279, 291-292.) In rejecting the claim, the Court concluded the defendant had failed to demonstrate that the statute was enacted for, or that decision makers in defendant's case acted with, a discriminatory purpose. (*Id.* at pp. 297-299.) The Court acknowledged that biased decision making may affect sentencing. (*Id*. at p. 309.) However, the Court suggested that the legislature, not the judiciary, was the proper branch to engineer remedies to these systemic problems. (*Id*. at p. 319.)

In its first annual report, the California Committee on the Revision of the Penal Code concluded: "The current system has deep racial inequity at its core. New data published for the first time in this report reveals that racial disparities may be even worse than many imagined. Data obtained by the Committee for this report confirms people of color are disproportionately punished under state laws — from traffic infractions to serious and violent felonies." (http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf at p. 6.)

In response, the Legislature passed AB 2542 (Kalra), Statutes of 2020, the California Racial Justice Act (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin. The CRJA allows racial bias to be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities or national origin in the county where the convictions were sought or obtained; or longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. Racial bias may also be shown by evidence that a judge or attorney, among other listed persons associated with the defendant's case, exhibited bias towards the defendant, or used racially discriminatory language in court and during the trial proceedings, or otherwise exhibited bias or animus based on the defendant's race, ethnicity or national origin. The Act does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case. The CRJA currently applies only to judgments of conviction occurring on or before January 1, 2021.

> **AB 256 (Kalra), Chapter 739**, makes the CRJA, which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, applicable to cases in which judgment was entered prior to January 1, 2021, among other things. Specifically, this new law:
>
> - Creates a timeline for retroactive application of the CRJA, as follows:

- Commencing January 1, 2023, to all cases in which the petitioner is sentenced to death or to cases in which there are actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgement or disposition became final.

- Commencing January 1, 2024, to all cases in which, the petitioner is currently serving a sentence in state prison or in a county jail for a realigned felony offense, or is committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

- Commencing January 1, 2025, to all cases in which judgement became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

- Commencing January 1, 2026, to all cases in which judgement was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgement or disposition became final.

- Provides that for petitions filed in cases for which judgment was entered before January 1, 2021, and that are based on the actions or statements of a judge, attorney, law enforcement officer involved in the case, expert witness, or juror, the petitioner shall be entitled to relief unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

- Clarifies that for out-of-court statements that "the court finds trustworthy and reliable," statistical evidence and aggregate data are admissible for the limited purpose of proving a violation.

- Provides that whether more serious charges or longer sentences were "more frequently sought or obtained" or "more frequently imposed" is determined based on the totality of the evidence, which may include statistical evidence, aggregate data, or nonstatistical evidence.

- Provides that the defendant does not need to prove intentional discrimination.

- Provides that motions made at trial must be made as soon as practicable upon the defendant learning of the alleged violation and that untimely motions may be waived in the discretion of the court.

- Modifies the provision regarding disclosure to the defense of records relevant to a CRJA violation to apply to privileged records unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order.

- States that the CRJA applies to adjudications to transfer a juvenile case to adult court.

- Clarifies that if after judgment has been entered, the court finds that the only violation was based on the defendant having been charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, the court may modify the judgment to a lesser-included or lesser-related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

- Clarifies that when a defendant files a habeas corpus petition based on the CRJA, and the court issues an order to show cause and holds an evidentiary hearing, the defendant may appear remotely, and the court may conduct the hearing through the use of remote technology.

Peace Officers: Minimum Standards: Bias Evaluation

AB 846 (Burke) Chapter 322, Statutes of 2020, amended Government Code section 1031 by adding a bias requirement for the evaluations of peace officers. AB 846, which took effect on January 1, 2021, required that peace officers be found to be free from any physical, emotional, or mental 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.

The following year, Governor Newsom approved AB 1096 (L. Rivas), Chapter 296, Statutes of 2021. AB 1096 eliminated the term "alien" from all relevant state codes and instead replaced it with more appropriate terminology, including from Government Code section 1031. The intent of the Legislature in enacting AB 1096 was to make only nonsubstantive changes that remove the dehumanizing term "alien" from all California code sections; nothing in AB 1096 shall be interpreted to make any substantive change to existing law.

AB 1096, which was introduced in the Legislature on February 18, 2021, was mistakenly based on the old version of Government Code section 1031, given that the changes from AB 846 had just gone into effect on January 1, 2021. Therefore, AB 1096 inadvertently reverted Government Code section 1031 back to the pre-AB 846 version, and unintentionally eliminated the bias requirement added by AB 846 in 2020.

> **AB 2229 (L. Rivas), Chapter 959**, addresses the inadvertent removal of statutory bias language by re-adding the same, identical language that was passed by AB 846, thereby reenacting the requirement that peace officers be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of their powers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

Justice Data Accountability and Transparency Act

The California Attorney General has the duty to collect, analyze, and report statistical data, which provide valid measures of crime and the criminal justice process to government and the citizens of California. The Department of Justice (DOJ) Criminal Justice Statistics Center (CJSC) collects, analyzes, and develops statistical reports and information which provide valid measures of crime and the criminal justice process in California, as required by the Penal Code. The goal of the CJSC is to provide accurate, complete, and timely criminal statistical information to the public, local government, criminal justice administrators and planners, the legislature, the Attorney General, the Governor, state agencies, federal agencies, and criminal justice researchers through a variety of publications and services.

District attorneys report very little public data on critical decisions such as charging rationale and demographics of those charged. This lack of transparency may contribute to racial bias within the criminal justice system leading to the vast overrepresentation of people of color in California's prison population.

AB 2418 (Kalra), Chapter 787, enacts the Justice Data Accountability and Transparency Act. Specifically, this new law:

- Establishes several objectives and mandates for the DOJ including:
    - The collection of specified data elements from state and local prosecutor offices, as specified, and development of consistent and clear guidelines for how agencies are to define data elements transmitted to the department.
    - The transmission and aggregation of data elements, as defined.
    - The development and publication of metrics, as defined, and ensuring that personal identifying information is not published except as allowed by law.
- Includes guidance for the DOJ in carrying out its objectives and mandates, including what technology, processes and practices to employ.
- Requires the DOJ, by October 1, 2023, to establish the Prosecutorial Transparency Advisory Board (Board) for the purpose of ensuring transparency, accountability, and equitable access to prosecutorial data, whose primary responsibilities are to provide guidance to the department on draft rules, regulation, policies, plans, reports, or other decisions made by the department with regard to this bill.
- Specifies the composition of the Board.
- Provides that, by July 1, 2024, the DOJ, in consultation with the Board, shall develop a data dictionary that includes standardized definitions for each data element so that data elements transmitted to the department are uniform across all jurisdictions, taking into account any technical and practical limitations on the collection of that data element.

- Requires the DOJ, upon completion of the data dictionary, to share it with all agencies statewide.

- Provides that, beginning March 1, 2027, every agency statewide shall collect all specified data elements for cases in which a decision to reject charges or to initiate criminal proceedings by way of complaint or indictment has been made by that agency from that date forward.

- Provides that each data element shall be collected according to specified definitions with any ambiguity to be resolved by the DOJ, and shall be submitted in a format designated by the department, as specified.

- Provides that, beginning June 1, 2027, every agency statewide, at the direction of the DOJ, shall begin transmitting its required data elements to the department, which shall occur on a quarterly basis until June 1, 2028, after which data elements shall be transmitted on a monthly basis.

- Provides that, beginning June 1, 2027, the DOJ shall begin collecting data elements from all agencies as specified, and shall aggregate data elements for all agencies in order to publish this data by June 1, 2028. This publication shall continue on a quarterly basis for one year, and then the publication shall occur on a monthly basis thereafter.

- Allows the DOJ to obtain information from sealed and expunged records and in other circumstances that may normally be prohibited from being disclosed, but provides that the DOJ shall not publish the name, birthdate, or Criminal Identification and Information number assigned by the department of any defendant or victim.

- Specifies the 54 discrete data elements that each prosecuting agency is responsible for collecting and transmitting to the DOJ.

- Provides that each prosecuting agency that only has select divisions that prosecute crimes must provide specified information each year by July 1.

- Specifies that the information contained in the prescribed data elements shall be public records for the purposes of the California Public Records Act, but that any personal identifying information may be redacted prior to disclosure.

- Specifies that operation of these provisions is contingent upon an appropriation by the Legislature.

Race-Blind Charging

Prosecutors generally retain "broad discretion" as to whom to prosecute when at least some probable cause exists to substantiate a charge. (*Wayte v. United States* (1985) 470 U.S. 598, 607 (*Wayte*).) Judicial deference is given to prosecutors based on the fact that the decision to prosecute is ill-suited to judicial review. This is due, in part, to factors such as: the strength of the case, the prosecution's general deterrence value, and the government's enforcement priorities. In addition, examination of a prosecutor's decisionmaking can threaten to chill law enforcement by, subjecting the prosecutor's motives and decisionmaking to outside inquiry."

A decision to prosecute may not be deliberately based on an unjustifiable standard such as race, religion, or other arbitrary classification. (*Wayte*, *supra*, 470 U.S. at 608.) However, it cannot be denied that in the United States "racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole. Perhaps today that discrimination takes a form more subtle than before. But it is not less real or pernicious." (*Rose v. Mitchell* (1979) 443 U.S. 545, 558-59.) Such subtle forms of discrimination are difficult to quantify due to their very nature, and even when they have been quantified, they are subject to disagreement. (See *McCleskey v. Kemp* (1987) 481 U.S. 279, 286-87, 353 [wherein the majority opinion and the dissent agreed that statistical data demonstrated a lower likelihood of receiving a death sentence in Georgia depending on if the victim was black rather than white, but disagreed as to whether it was proven that bias was the impetus for the disparity].)

Nevertheless, procedural safeguards designed to prevent purposeful or unconscious bias can help restore faith in the integrity of the criminal justice system, especially as more recent studies still show that race and ethnicity can influence, "case outcomes, even when a host of other legal and extra-legal factors are taken into account." (Kutateladze, B., Lynn, V., & Liang, E. (2012). *Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies*. Vera Institute of Justice.].) According to a recent study by the Public Policy Institute of California (PPIC), in 2016, Latinos made up 41% of arrests in the state, 36% were white and 16% were African Americans, despite African Americans making up just 6% of the population. Nearly all counties see a large disparity between African Americans and whites: of the 49 counties examined, the African American arrest rate is at least double the white arrest rate in 45 counties, at least three times greater in 33 counties, at least four times greater in 21 counties, and at least five times greater in 13 counties.

> **AB 2778 (McCarty), Chapter 806**, requires the Department of Justice (DOJ) to develop a "Race-Blind Charging" guideline for enumerated prosecutorial agencies to follow which, at the initial charging stage, would require redacting documents of certain identifying information related to the race of the suspect, victim, or witness. Specifically, this new law:
>
> - Requires that, commencing January 1, 2024, the DOJ develop and publish guidelines for a process called "Race-Blind Charging" which must be adhered to by agencies prosecuting misdemeanors or felonies.

- Requires any initial review of a case for charging, be based on documents from which all direct means of identifying the race of the suspect, victim, or witness has been redacted by the prosecuting agency.

- Provides that, beginning January 1, 2025, prosecution agencies shall independently develop and execute versions of the process created by the DOJ.

- States that the prosecution agencies' redaction process adhere to the following:

    - Redacting racially identifying information from criminal histories, reports received from law enforcement agencies, and other pertinent documents. Such redactions may occur manually, by hand, performed by personnel not involved in the charging process. Or such redactions may occur by use of computer programming so long as the method reasonably assures correct redaction;

    - Applying any such redactions to any part of the police report which would reasonably assure any racial identifying information is sufficiently removed;

    - Only using a prosecutor without knowledge of the redacted facts to make the initial charging decision;

    - After the initial charging decision is made, i.e. whether at least one crime has been determined to have been committed, then the case may proceed to a second review where the previously redacted information is revealed;

    - At the second review stage, specific charges and enhancements may be considered and charged; and,

    - Documenting the following:

        - Whether the initial charging decision determined that no charges be filed, but the second review determined a charge be filed;

        - Whether the initial charging decision determined a charge be filed, but the second review determined no charge be filed; and,

        - An explanation for the charging decision under these circumstances.

- States that any documentation or explanation for the change between the initial charging evaluation and the second review must be released or disclosed upon request after sentencing or dismissal of all charges filed, subject to applicable laws.

- Requires, in cases where race-blind initial charging did not occur, the prosecution agency to document and retain the reason for such occurrence and to make it available upon request.

- Authorizes a prosecuting agency to remove certain offenses or factual circumstances from race-blind charging.

CORRECTIONS

Compassionate Release

Under current law, an incarcerated person meets the medical requirements for compassionate release if they are terminally ill with an incurable condition that is expected to cause death within 12 months or the person is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the incarcerated person requiring 24-hour total care.

These narrow criteria limit the number of seriously ill and dying people who can be considered for relief. Accurately predicting how much time a person has left to live can be elusive; the science is inexact and predictions can be unreliable. (Dr. Brie Williams, M.D. et al., "Balancing Punishment and Compassion for Seriously Ill Prisoners," Ann Intern Med. 2011 July 19; 155(2): 122–126.)

Federal compassionate release guidelines are broader in that "[a] specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required." (U.S.S.G. Section 1B1.13 cmt. n.1(A)(i).) Instead, a defendant need only show that they are "suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory)." (*Ibid*.) Further, federal guidelines do not have a 24-hour care requirement. A defendant need only show they are suffering from a medical condition that substantially diminishes their ability to provide self-care within the correctional environment and from which they are not expected to recover. (U.S.S.G. Section 1B1.13 cmt. n.1(A)(ii).)

AB 960 (Ting), Chapter 744, requires the California Department of Corrections and Rehabilitation (CDCR) to make a recommendation for compassionate release of an incarcerated person who has a serious and advanced illness with an end-of-life trajectory or who is found to be permanently medically incapacitated. Specifically, this new law:

- Requires CDCR to make a recommendation to the court that a person's sentence be recalled when the Chief Medical Officer determines the person meets either of the following medical criteria:
    - The person has a serious and advanced illness with an end-of-life trajectory, including, but not limited to, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia; or,
    - The person is permanently medically incapacitated with a medical condition or functional impairment that renders them permanently unable to complete basic activities of daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end-stage dementia, and that incapacitation did not exist at the time of the original sentencing.

- Creates a presumption favoring recall if the medical criteria exists which may only be overcome if the court finds that the person is an unreasonable risk of danger to public safety, as defined.

- Establishes a timeline for CDCR staff to follow to refer an incarcerated person for compassionate release based on this medical criteria.

- Requires the referring physician or their designee to be available to the court or defense counsel as necessary through the recall and resentencing process.

- Entitles the incarcerated person to counsel upon a recommendation to the court for compassionate release.

- Requires the Judicial Council to prepare an annual report beginning January 1, 2024, reporting on this compassionate release program, as specified.

Service of Process for Incarcerated Persons

Penal Code Section 4013 previously outlined the process by which an incarcerated person must be served papers for judicial proceedings. Section 4013 authorized only a "sheriff or jailer" to receive service of process of a paper in a judicial proceeding on behalf of an incarcerated person, and required the sheriff or jailer to deliver the paper to that person forthwith. (*Ibid*.). In *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, the Second District Court of Appeal interpreted section 4013 to apply to individuals incarcerated in the state's prisons as well as those in county jails.

The appellant in *Sakaguichi*, an incarcerated person housed at Avenal State Prison, argued that service of process in a civil action filed against him by his wife was defective, rendering the judgment imposed against him void. In this case, the appellant's wife had served process on the litigation unit coordinator at the prison where the appellant was housed in accordance with the procedures for service by mail. (*Id*. at p. 859.) The court found the statutory requirements of service of process had been met. (*Ibid*.) The court reasoned that service may be effectuated on an incarcerated person by serving process on the sheriff or jailer who has custody of the incarcerated person and noted that the rule was derived from section 416.90 of the Code of Civil Procedure and section 4013 of the Penal Code. (*Id*. at p. 858.)

Subsequent cases have also interpreted Penal Code section 4013 to apply to incarcerated persons in state prison. (*Crane v. Dolihite* (2021) 70 Cal.App.5th 772.)

> **AB 1974 (Chen), Chapter 255**, clarifies that Penal Code Section 4013 applies to both county jails and state prisons and states that a warden shall, upon receiving judicial papers directed to a incarcerated person in their custody, deliver those judicial papers to the incarcerated person.

Jails: Discharge Plans

With a severe shortage of inpatient care for people with mental illness, and the country's inability to meet the growing demand for mental health services, the United States has found itself in a new public health emergency. A report conducted by California Health Policy Strategies, analyzed data from the Board of State and Community Corrections (BSCC) Jail Profile Survey (JPS). Researchers found that in 2009, in California alone, there was an average of approximately 15,500 open mental health cases reported by the counties on a monthly basis. In 2019, the same average jumped to about 22,000. This represents a 42% increase in the number of active mental health cases reported by the counties on a monthly basis. Additionally, the proportion of incarcerated individuals in California jails with an open mental health case rose from 19% in 2009 to 31% in 2019. Between 2009 and 2019, the number of incarcerated individuals decreased while the number of incarcerated individuals with an open mental health case increased. Data regarding psychotropic medication prescriptions shows a similar trend.

Upon release from jail, many people lack access to services and, too often, become enmeshed in a cycle of costly justice system involvement. The days and weeks following community reentry are a time of heightened vulnerability.

AB 2023 (Bennett), Chapter 327, entitles a person incarcerated in, or recently released from, a county jail to have access to up to three free phone calls in the county jail to plan for a safe and successful release. Specifically, this new law:

- Requires the sheriff to make the release standards, release processes, and release schedules of the county jail available to a person following the determination to release that person.
- Requires the release standards to include the list of enumerated rights and the timeframe for the expedient release of a person following the determination to release that person.

- Requires a person incarcerated in, or recently released from, a county jail to have access to up to three free phone calls from a phone in the county jail to plan for a safe and successful release.

- Provides that the rights established above apply to any person being released from a county jail, including, but not limited to, a person who has completed a sentence served, has been ordered by the court to be released, has been released on the person's own recognizance, has been released because the charges have been dismissed by the court, is acquitted by a jury, is cited and released on a misdemeanor charge, has posted bail, has complied with pretrial release conditions, or has had the charges dropped by the prosecutor.

Juveniles: Room Confinement

Existing law establishes guidelines and limits for confining a minor or ward in a juvenile facility in a locked sleeping room or cell. Under existing law, a minor or ward may be held up to four hours in room confinement. California law bans solitary confinement of minors and limits room confinement of minors to brief periods of time for purposes of safety, banning its use for the purposes of punishment, coercion, convenience, or retaliation. In spite of existing law, recorded instances of abuse have shown minors being confined in their rooms for extended periods of time without any documented reason as to why the confinement occurred in the first place. Investigations by the Attorney General's Office and the Board of State and Community Corrections (BSCC) of Los Angeles County's juvenile halls found violations of state and federal laws. Consequently, the BSCC has recommended defining the term "brief periods of time" for which minors can be confined.

AB 2321 (Jones-Sawyer), Chapter 781, redefines the exception to room confinement in juvenile facilities for brief periods to a brief period lasting no more than two hours when necessary for institutional operations, and ensures that minors and wards subject to room confinement are provided reasonable access to toilets at all hours, including during normal sleeping hours. Specifically, this new law:

- Provides that room confinement does not include confinement of a minor or ward in a locked single-person room or cell for a brief period lasting no longer than two hours when it is necessary for required institutional operations.

- Requires that minors and wards subject to room confinement be provided reasonable access to toilets at all hours, including during normal sleeping hours.

Incarcerated Persons: Health Records

The Mentally Disordered Offender (MDO) law requires mental health evaluations of certain incarcerated persons by California Department of Corrections and Rehabilitation (CDCR) psychologists prior to release on parole to aid in determining if the person should be released into the community or needs additional treatment from the Department of State Hospitals (DSH). The MDO law is designed to confine a mentally ill person who is about to be released on parole when it is deemed that they have a mental illness that contributed to the commission of a violent crime. Rather than release the person to the community, CDCR paroles the person to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period.

With respect to evaluations for MDO commitments, existing law requires a practicing psychiatrist or psychologist from DSH and CDCR be afforded prompt and unimpeded access to the person and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

AB 2526 (Cooper), Chapter 968, requires the transfer of mental health records when an incarcerated person is transferred from or between CDCR, the DSH, and county agencies. Specifically, this new law:

- Provides that mental health records may be disclosed by a county correctional facility, county medical facility, state correctional facility, or state hospital, as specified.

- Requires, when jurisdiction of an inmate is transferred from or between CDCR, DSH, and county agencies caring for incarcerated persons, that these agencies disclose, by electronic transmission when possible, mental health records for any transferred incarcerated person who received mental health services while in the custody of the transferring facility.

- Requires the mental health records to be disclosed at the time of transfer or within seven days of the transfer of custody, except as specified.

- Provides that all transmissions made pursuant to the provisions of this bill comply with the Confidentiality of Medical Information Act, the Information Practices Act of 1977, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal Health Information Technology for Economic and Clinical Health Act (HITECH), and the corresponding implementing federal regulations.

Deaths in Custody: Reporting

The public currently does not have timely access to data on deaths that occur while in the custody of state or local correctional facilities. While existing law requires law enforcement agencies and correctional facilities to report deaths in custody to the California Department of Justice (DOJ), it does not require these agencies to publicly share this information.

AB 2761 (McCarty), Chapter 802, requires a state or local correctional facility to post specified information on its website within 10 days after the death of a person who died while in custody, and to update that information within 30 days of any change. Specifically, this new law:

- Requires a state or local correctional facility to post the following information on its website within 10 days after the death of a person who died while in custody:

  - The full name of the agency.

  - The county in which the death occurred.

  - The facility in which the death occurred and the location within that facility where the death occurred.

  - The race, gender, and age of the decedent.

- The date on which the death occurred.
- The custodial status of the decedent, including, but not limited to, whether the person was awaiting arraignment, awaiting trial, or incarcerated.
- The manner and means of death.

- Provides that if any of the information changes, including, but not limited to, the manner and means of death, the agency shall update the posting within 30 days of the change.

- Provides that if the agency in charge of the facility seeks to notify the next of kin and is unable to do so within 10 days of the death, the agency shall be given an additional 10 days to make good faith efforts to notify the next of kin before the information must be posted online.

Corrections: County of Release

Less than 15% of individuals released from prison are picked up by family or friends. Most must use their release money to pay for clothing, transportation home, housing, or other essentials. These obstacles compound for minority populations and people of color.

Currently, when someone completes their prison sentence, they return to the county of last legal residence, barring any release restrictions relating to public safety. A person's parole is usually restricted to that same county as well, with very few options for relocation.

SB 990 (Hueso), Chapter 826, requires that a person being released from state prison on parole be released, transferred, or permitted to travel to a county where they have an educational, vocational, outpatient treatment, or housing opportunity, as specified, unless there is evidence that the person would present a threat to public safety. Specifically, this new law:

- Amends the factors the California Department of Corrections (CDCR) must consider when deciding to return a person to a county or city other than the last county or city of legal residence to specify that the educational or vocational program that is located in another county be a program chosen by the incarcerated person, and requires CDCR to also consider the existence of a housing option in another county, including with a relative or acceptance into a transitional housing program of choice.

- Requires that a person incarcerated in state prison, who is being released on parole, be released to the county in the location of a post-secondary educational or vocational training program of the incarcerated person's choice, or of a work offer, the incarcerated person's family, outpatient treatment, or housing, absent evidence that a parole transfer would present a threat to public safety.

- Requires CDCR to complete the parole transfer process prior to release and ensure the person is released from prison directly to the county where the post-secondary

educational or vocational training program, the work offer, the person's family, outpatient treatment, or housing is located.

- Requires a person on parole be granted a permit to travel outside the county of commitment to a location where the person has post-secondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment opportunity, or inpatient or outpatient treatment, unless there is evidence that travel outside of the county of supervision would present a threat to public safety.

- Requires a person on parole to be granted approval of an application to transfer residency and parole to another county where the person has a verified existence of post-secondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment opportunity, or inpatient or outpatient treatment.

- States that the aforementioned requirements regarding parole release and transfer do not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole, as specified.

- Revises the requirement that the paroling authority give "serious consideration" to releasing a joint venture program participant to the county where the joint venture program employer is located if that employer intends to employ the person upon release, and instead requires the paroling authority to release the person to the county where the joint venture program employer is located.

- Authorizes probation to extend the aforementioned provisions regarding release, transfer, and travel to individuals released from state prison on PRCS, and states a legislative intent strongly encouraging probation to do so.

- Delays implementation of these provisions until January 1, 2024.

Corrections: Telecommunications

Pursuant to Title 15 Regulations and the California Department of Corrections and Rehabilitation's (CDCR) Operations Manual, incarcerated persons are provided with the means and the opportunity to make personal calls to persons outside the institutions. Each facility is required to provide public telephones for the use of general population inmates to make personal calls. Limitations are placed on the frequency of such calls as to allow equal access to telephones, but there are no limitations on the numbers, identity, or relationship of the person called, providing the person being called agrees to accept all charges for the call. Incarcerated persons can sign up to use the telephone in periods of 15-minute increments. In addition to traditional voice calling through telephones, the providers of communications services within jails and prisons also make video conferencing, electronic messages, and other communication

services available in some facilities. All of the communications services provided to incarcerated persons are referred to as "incarcerated person's calling services" (IPCS).

IPCS providers charge high and varying rates across California. IPCS is a lucrative business for providers servicing jails and prisons in California, and nationwide it is a $1.4 billion dollar industry. IPCS in California are generally provided by private communications companies under contract with the entity that oversees or owns the correctional or detention facility, such as CDCR or the county sheriff's office. According to the California Public Utilities Commission, six providers serve the IPCS market in California, providing calling services to approximately 354 incarceration or detention facilities. However, the market is dominated by two companies—Securus and GTL—which have collectively absorbed dozens of competitors since the 1990s. Within the institutions in California, each provider operates essentially as a monopoly; as such, an incarcerated person is a captive customer. This dynamic has resulted in highly unequal and in some cases exorbitant rates for IPCS across incarceration facilities and as compared to current commercial markets.

According to the Prison Phone Justice campaign, the average cost of a fifteen-minute intrastate phone call placed from one of California's jails or prisons is $1.23, the 28th most expensive in the nation. Within California, the cost of a 15-minute phone call with a young person incarcerated in a juvenile facility varies from county to county. In some counties, these calls are free, but a 15-minute call from a youth to their family can range from $2.40 in Solano County to $6.00 in San Mateo County to $13.65 in San Benito County. These exorbitant phone prices are born by the incarcerated person and their support systems, and disproportionally impact low-income communities in California.

SB 1008 (Becker), Chapter 827, requires each state prison and youth detention facility, county jail, city jail, and county youth detention facility to offer free voice communication services; imposes a daily 60-minute access to voice communication requirement; and prohibits government agencies from generating revenue from those communication services contracts. Specifically, this new law:

- Requires a state prison or youth residential placement or detention center operated by CDCR to provide persons in their custody and confined in a correctional or detention facility with voice communication services free of charge to the person initiating and the person receiving the communication.

- Requires a state prison or youth residential placement or detention center to provide incarcerated persons with a minimum of 60 minutes of voice communication services per day, to the extent those services do not interfere with rehabilitative, educational, and vocational programming or regular facility operation.

- Prohibits a state agency from receiving revenue from the provision of voice communication services or any other communication services to a person confined in a state correctional or detention facility.

- Requires a county jail, city jail, or youth residential placement or detention center to provide persons in their custody and confined in a correctional or detention facility with voice communication services free of charge to the person initiating and the person receiving the communication.

- Requires a county jail, city jail, or youth residential placement or detention center to provide incarcerated persons with a minimum of 60 minutes of voice communication services per day, to the extent that those services do not interfere with rehabilitative, educational, and vocational programming or regular facility operation.

- Prohibits a county or city agency from receiving revenue from the provision of voice communication services or any other communication services to any person confined in a state or local correctional or detention facility.

Prisons: Visitations

Pursuant to California Department of Corrections and Rehabilitation (CDCR) procedures, a designated person can sign a medical release form to receive an incarcerated person's medical information. However, many families report not being made aware of this process until it is too late, leaving them unaware of the incarcerated person's health care status. As a result, incarcerated people may suffer from illness and pass away alone with family members not being notified for days. Prisons were hit particularly hard during the COVID-19 pandemic and hundreds of incarcerated people died. In many cases family members were not timely notified of the person's health status or death.

SB 1139 (Kamlager), Chapter 837, makes a number of changes to CDCR policies regarding emergency phone calls, including calls made by and to an incarcerated person, notification of hospitalization of an incarcerated person for a serious medical reason, the frequency that visitation and medical documents are updated, visitation when an incarcerated person is hospitalized, and the health care grievance process. Specifically, this new law:

- Prohibits the Secretary of CDCR from charging a fee for an incarcerated person to request, review, or use their medical records.

- Requires that emergency phone calls are made available to persons outside of CDCR and to incarcerated people, as specified. Requires CDCR to provide persons outside the facility the means to initiate a phone call to an incarcerated person in either of the following circumstances:

    - When the incarcerated person has been admitted to the hospital for a serious medical reason; and,

    - When a family member, approved visitor, next of kin, or persons listed on the medical release of information form or medial power of attorney form has become

critically ill or has died while the incarcerated person has been hospitalized.

- Requires that at intake and at least once a year thereafter, every incarcerated person be asked whom they want covered by the following documents:
    - Approved visitor list;
    - Medical release of information form;
    - Medical power of attorney form; and,
    - Next of kin form.
- Requires that incarcerated individuals be assisted in completing the above paperwork.
- Requires CDCR, within 24 hours of an incarcerated person being hospitalized for a serious medical reason, to inform persons covered by the current medical release of information form about the incarcerated person's health status and to facilitate phone calls between the incarcerated person and those persons if the incarcerated person consents.
- Requires within 24 hours of an incarcerated person being hospitalized and if the incarcerated person is able to provide knowing and voluntary consent, CDCR to ask the incarcerated person whether they want to add people to any of the above specified forms who have not previously been designated.
- Requires CDCR to maintain a phone line for outside people to call to inform the department that a family member or a person designated in any of the above listed forms has become critically ill or has died while the incarcerated person has been hospitalized. Requires CDCR to notify the incarcerated person of these calls upon their receipt.
- Requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in a critical or more serious medical condition.
- Requires CDCR to allow up to four visitors at one time to visit the incarcerated person when the incarcerated person is in imminent danger of dying.

CRIMINAL OFFENSES

Crimes: Theft: Animals

In *People v. Sadowski* (1984) 155 Cal.App.3d 332, the Court of Appeal upheld a defendant's conviction for grand theft of a cat noting that the general grand theft statute provides adequate notice of conduct that the taking of any personal property, which includes pets, is unlawful. A separate existing statute specifically declares dogs to be personal property, but does not reference other companion animals. (Pen. Code, § 491.)

AB 1290 (Lee), Chapter 546, clarifies that any person who steals, takes, or carries away a companion animal of another is guilty of theft. Specifically, this new law:

- Clarifies that stealing a companion animal of another is theft.
- Specifies that companion animals are personal property, their value to be ascertained in the same manner as other property, for the purposes of theft.
- Defines "companion animal" as an animal, including but not limited to, a dog or cat that a person keeps and provides care for as a household pet or otherwise for the purpose of companionship, emotional support, service, or protection. "Companion animal" excludes feral animals, including feral cats, as specified.

Criminal Profiteering: Asset Forfeiture: Unemployment and Disability Insurance Fraud

The California Control of Profits of Organized Crime Act, Penal Code section 186 *et seq*., provides for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity. Criminal profiteering is defined as certain acts made for financial gain that may be charged as specified crimes, including, among others, offenses relating to insurance fraud. The Act includes several unemployment insurance fraud acts that come within the definition of "criminal profiteering," including embezzlement, forgery, presentation of a false claim, and specified insurance fraud offenses such as failing to make unemployment insurance contributions, failing to withhold worker deductions, and supplying false or fraudulent information.

According to the Legislative Analyst's Office, the COVID-19 pandemic pushed unemployment in California to record highs. In response to the pandemic, the federal government expanded the unemployment insurance program under the Pandemic Unemployment Assistance (PUA) program. Although the PUA program was federally funded, the state was responsible for its implementation. These efforts added to the already high workload at California's Employment Development Department (EDD) and fraudulent activity in the new federal benefit program for self-employed workers spiked. Of California's confirmed fraudulent payments, 95% are associated with the federal PUA program, which the U.S. Department of Labor has suggested is

particularly susceptible to fraud. EDD estimates that it paid $20 billion in fraudulent COVID-19 related unemployment insurance claims.

> **AB 1637 (Cooper), Chapter 950**, specifies fraud offenses relating to COVID-19 pandemic-related insurance programs administered by EDD are included within the definition of criminal profiteering activity for the purposes of asset forfeiture under the California Control Profits of Organized Crime Act.

False Personation

Several provisions of the Penal Code prohibit the fraudulent impersonation or attempted impersonation of peace officers and other public officers and employees. These provisions proscribe willfully wearing, exhibiting, or using the authorized badge, uniform, insignia, emblem, device, label, certificate, card, or writing of those officers and employees to commit the fraudulent impersonation. (See Pen. Code, §§ 538d-538h.)

Current law also prohibits the credible impersonation "of another *actual person*" on an internet website, or by other electronic means for purposes of defrauding another person. (Pen. Code, § 528.5, subd. (a), emphasis added.)

However, it is unclear whether purporting to be a peace officer or other public officer or employee generally, as opposed to an actual person who is such an officer or employee, via an internet website or by other electronic means is prohibited under existing law.

> **AB 1899 (Mathis), Chapter 954**, prohibits the false impersonation of peace officers, firefighters, and other public officers and employees through, or on, an Internet website, or by other electronic means.

Hate Crimes: Symbols

Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the Department of Justice (DOJ) reported hate crime events increased 31 percent from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9 percent from 1,261 in 2019 to 1,563 in 2020. (DOJ, Hate Crime in California 2020.)

Existing law punishes certain hate crimes in an inconsistent manner. While existing law recognizes the swastika, the noose, and the desecrated cross can be used to terrorize, it metes out different criminal penalties depending on the symbol used to do so. The emotional effect is not more or less significant for hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols for the purpose of terrorizing. It makes no sense to have different penalties for these offenses as is the case under the current statute.

AB 2282 (Bauer-Kahan), Chapter 397, equalizes the penalty for the crimes of hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols, on specified property, for the purpose of terrorizing, and expands and aligns the places where this conduct is prohibited for each offense.

- Makes the first conviction of all three crimes punishable by imprisonment in a county jail for 16 months or two or three years (felony), by a fine of not more than $10,000, or both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year (misdemeanor), by a fine not to exceed $5,000, or by both the fine and imprisonment.

- Makes a subsequent conviction of all three crimes punishable by an enhanced fine of up to $15,000 for a felony conviction and up to $10,000 for a misdemeanor conviction.

- Makes all three crimes applicable to the same property: schools, generally, a college campus, a public place, a place of worship, a cemetery, and a place of employment.

- States the intent of the Legislature to criminalize the placement or display of the Nazi Hakenkreuz (hooked cross), also known as the Nazi swastika that was the official symbol of the Nazi party, for the purpose of terrorizing a person, and not the placement or display of ancient swastika symbols associated with Hinduism, Buddhism, and Jainism and are symbols of peace.

Illegal Dumping

California communities have experienced an increase in illegal dumping. For example, the City of Oakland found that illegal dumping increased 100% between 2012 and 2017.

Illegal dumping is difficult to enforce. Violators dump waste and debris along roadways, highways, and other locations that are easily accessible but infrequently patrolled. This is often done under cover of darkness. To help catch offenders, Los Angeles created a program offering rewards of $1,000 for tips that lead to arrests and conviction for illegal dumping, but it has had little success. Oakland recently installed cameras in an attempt to catch persons in the act.

In 2021, the Los Angeles Controller conducted an investigation into illegal dumping in public rights of way. The Controller observed that "[t]he proliferation of illegal dumping in Los Angeles has a direct negative impact on public health conditions, public safety, and the environment." Among its numerous recommendations, the Controller recommended "increasing administrative fine amounts in order to deter would-be violators and assess a fine that reflects the seriousness of the violation."

AB 2374 (Bauer-Kahan), Chapter 784, increases the maximum fines for illegal dumping for persons employing more than 10 full-time employees, and requires any

person convicted of illegal dumping to remove or pay the cost of removing the waste matter they were convicted of illegally dumping. Specifically, this new law:

- Increases the maximum mandatory fine for illegally placing, depositing, dumping, or causing to be placed, deposited or dumped, waste matter in commercial quantities by a person employing more than 10 full-time employees, as follows:
    - From not more than $3,000 for the first offense to not more than $5,000;
    - From not more than $6,000 for the second conviction to not more than $10,000; and,
    - From not more than $10,000 for a third or subsequent conviction to not more than $20,000.
- Requires the court to order a person convicted of illegal dumping to remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped on public or private property.
- Requires the court, if that person holds a license or permit to conduct business that is substantially related to the conviction, to notify the applicable licensing or permitting entity, if any, that a licensee or permittee had been convicted of illegal dumping.
- Requires the licensing or permitting entity to record and post the conviction on the public profile of the licensee or permittee on the entity's website.
- Provides that any fine shall be based on the person's ability to pay, as specified.

Crimes: Obstruction of Justice

Penal Code section 146e is one of many criminal statutes that prohibits publishing information about a public official or peace officer without authorization. The purpose of section 146e is to prevent individuals from threatening peace officers and public officials from carrying out their official duties.

To be convicted under section 146e, a defendant must have (1) published, disseminated, or otherwise disclosed the residence address or telephone number; (2) of any peace officer or public safety official, as specified, or their spouse or children who reside with them; (3) designated the person as a peace officer or public official, or their relative; (4) acted either maliciously and with the intent to obstruct justice or the due administration of the laws, or with the intent or threat to inflict imminent physical harm in retaliation for the due administration of the laws; and, (5) acted without authorization of the employing agency.

A violation of section 146e is a misdemeanor unless the elements of the statute are met and the public official, or their spouse or child, receives a bodily injury as a result of the publication, in

which case the offense can be prosecuted as an alternate misdemeanor/felony (wobbler).

AB 2588 (Maienschein), Chapter 697, expands the crime of disclosing specified information pertaining to a public safety official with the intent to obstruct justice or the due administration of the laws to the official's "immediate family," rather than their "spouse and child." Specifically, this new law:

- Provides that it is a felony to commit such a violation with regard to the "immediate family" (rather than the "spouse or child") of a specified public official if the violation results in bodily injury to the public official or their immediate family.

- Defines "immediate family" as a spouse, parent, child, a person related by consanguinity or affinity within the second degree, or another person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

Loitering with Intent to Commit Prostitution

The crime of loitering with the intent to commit prostitution was enacted by AB 1035 (Katz) Chapter 981, Statutes of 1995. At the time, soliciting or agreeing to engage in prostitution was already a crime. According to the Senate Committee's analysis of AB 1035, the author and proponents of the bill expressed that the bill was needed because existing laws were ineffective at producing arrests of persons who were believed to be sex workers, and the presence of such individuals added to crime and blight to neighborhoods.

The broad subjective nature of the anti-loitering law has created opportunities for law enforcement to engage in discriminatory policing that targets Black and Brown women and members of the transgender community. For instance, Black adults accounted for 56.1% of the Penal Code section 653.22 charges in Los Angeles between 2017-2019, despite only making up 8.9% of the city's population. Moreover, women accounted for 67.1% of all section 653.22 charges, a figure that is likely an underrepresentation given that the data set may count many trans women as males. (See Gaffney, Maggie, Simon Sherred, Michelle Zhang, and Ilan Zur. "Tracing Criminalization: Policing and Prosecution in LA, 2017-2019." UCLA Law, 2019.)

SB 357 (Wiener), Chapter 86, decriminalizes the act of loitering with the intent to commit prostitution. Specifically, this new law:

- Repeals provisions of law that prohibited loitering in a public place with the intent to commit prostitution.

- Authorizes a person currently serving a sentence for loitering to petition for a resentencing or dismissal and sealing of the conviction, as applicable.

- Authorizes a person who completed their sentence for loitering to petition for a dismissal and sealing of their conviction.

- Outlines the procedural rules for recalling a prior conviction for loitering and requires the Judicial Council to promulgate and make available necessary forms for filing such requests.

- Makes conforming changes to cross-references.

Trespass: Private Universities

Trespassing laws generally prohibit a person from entering or remaining on property without permission or a right to be present there. (Pen. Code, § 602.) In the context of institutions of higher learning, existing laws prohibit persons from remaining on, or re-entering, the school campus after being told to leave or that they no longer have permission to be present. (Pen. Code, §§ 626-626.7.) These laws specify who these provisions apply to (e.g. students, employees, other persons); the impetus for the withdrawal of permission to be present on campus (e.g. suspension, dismissal, or willful disruption or interference with the peaceful conduct of the school); what kind of notice is required (certified mail or written notice); who makes the decision to withdraw consent for the person to be present on campus (chief administrative officer or their designee); and the duration that the person is not allowed on campus (ranges from seven days up to one year). (*Id*.) The institutions covered by these existing laws include UCs, CSUs, community colleges, and other public and private schools, as defined. However, private nonprofit colleges and universities are not currently covered under existing law.

SB 748 (Portantino), Chapter 134, expands provisions of law regarding trespass and access to college, university, and school premises to "independent institutions of higher learning," as defined. Specifically, this new law:

- Adds "independent institutions of higher education" to the types of schools that, under existing criminal trespass laws, may prohibit students or employees who have been suspended or dismissed, as well as certain persons who have been directed to leave, from re-entering the campus or facility.

- Defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in California and are accredited by an agency recognized by the United States Department of Education.

- Deletes minimum mandatory terms of imprisonment for subsequent trespassing offenses at specified institutions, including "independent institutions of higher learning," and instead provides that such offenses are punishable by a fine not exceeding $500, by imprisonment in county jail for a period not to exceed six months, or by both that fine and imprisonment.

Revenge Porn: Distribution of Intimate Images

Sending or posting sexually explicit photographs or videos of another person without their permission, even if they were taken with their consent, is known as nonconsensual pornography or revenge porn. California has specifically criminalized revenge porn. (Pen. Code, § 647, subd. (j)(4)(A).) In 2013, the Legislature passed SB 255 (Canella), Chapter 466, which created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private.

In *People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1, 10-11, the defendant argued insufficient evidence supported his conviction because he had failed to "distribute" the photo by posting it on Facebook. The court concluded, however, there is no indication in the statute that the term "distribute[s]" was intended to have a technical legal meaning, or to mean anything other than its commonly used and known definition of "to give or deliver (something) to people." (*Id*. at p. 10.) The court further noted, "Legislative analyses of the Senate bill that enacted section 647, subdivision (j)(4), are replete with indications that posting images on public Web sites was *precisely* one of the evils the statute sought to remedy." (*Ibid*.)

The term distribute as commonly understood would not necessarily include other activities like exhibiting the images in a public place. This happened in Shasta County, for example, where a perpetrator had naked images of the victim's body on his vehicle and drove it around town.

> **SB 1081 (Rubio), Chapter 882**, expands the existing crime of unlawful distribution of a private image, also known as revenge porn. Specifically, this new law:
>
> - Defines "distribute" to include "exhibiting in public or giving possession."
> - Clarifies that "intentionally causes an image to be distributed" means "when that person arranges, specifically requests, or intentionally causes another person to distribute the image."
> - Defines "identifiable," as "capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established."
> - Exempts the distribution of an image that is related to a matter of public concern or public interest, but clarifies that a distributed image is not a matter of public interest or public concern solely because it depicts a public figure.

Catalytic Converters

Californians have been largely affected by the rise of catalytic converter theft. These thefts have more than tripled since the initial stay-at-home orders due to the COVID-19 pandemic based on reports by the National Insurance Crime Bureau. Catalytic converters have become a precious possession due to their highly valuable metals, like palladium and rhodium. Victims of catalytic

converter theft are left with the cost of replacing their catalytic converter, which has become economically challenging for many Californians.

Existing law sets various requirements for core recyclers who accept catalytic converters for recycling. (Bus. & Prof. Code, § 21610.) Any person who violates any of the requirements is guilty of a misdemeanor, punishable by up to six months in jail and a fine of up to $4,000 for subsequent convictions. (Bus. & Prof. Code, § 21610, subd. (k).)

SB 1087 (Gonzalez), Chapter 514, prohibits a person from purchasing a used catalytic converter except from certain specified sellers. Specifically, this new law:

- Requires a traceable method of payment for catalytic converters.
- Provides that the exemption for catalytic converters received by a core recycler pursuant to a written agreement is only valid if the written agreement also includes a regularly updated log or record describing each catalytic converter received under the agreement, as specified.
- Prohibits a core recycler from purchasing a catalytic converter from anybody other than certain specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter.
- Prohibits any person from purchasing a used catalytic converter from anybody other than certain specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter.

Vehicular Manslaughter: Speeding and Reckless Driving

In 2020, the United States Department of Transportation's National Highway Traffic Safety Administration issued findings that showed while Americans drove far less in 2020 due to the pandemic, motor vehicle crashes resulting in fatalities increased 7.2% (approx. 39,000 fatalities) compared to 2019 (36,096 fatalities). Last year, traffic collisions killed 294 individuals in the City of Los Angeles, a 24-percent increase from 2020. Traffic accidents in Los Angeles involving serious injury to pedestrians were up by 45 percent, and serious injury to bicyclists was up by 34 percent from 2020. And according to the Department of the California Highway Patrol, in 2021, it responded to almost 6,000 street races and sideshows, issuing 2,500 citations statewide and making 87 arrests.

SB 1472 (Stern), Chapter 626, provides that, for the purposes of vehicular manslaughter, "gross negligence" may include, based on the totality of the circumstances, participating in a sideshow, an exhibition of speed, or speeding over 100 miles per hour.

DIVERSION

Retail Theft: Diversion

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services.

After the passage of Proposition 47, opponents of the measure argued that because shoplifting had to be charged as a misdemeanor unless the amount stolen exceeds $950, repeat offenders and those who work in concert with others in an organized retail theft ring were not being appropriately punished.

In 2017, the National Retail Federation (NRF) conducted the Organized Retail Crime Survey and found that organized retail theft continued to be pervasive within the industry. The survey stated that 95% of merchants reported having been a victim of coordinated theft, resulting in revenue losses estimated at $30 billion per year. NRF defined organized retail crime as theft/fraudulent activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain, often through subsequent online or offline sales. Organized retail crime typically involves a criminal enterprise that organizes multiple theft rings at a number of retail stores and employs a fencing operation to sell the illegally-obtained goods for financial gain. Organized retail crime can also simply involve the recruitment of others to steal on another's behalf. Despite the growing trend in various forms of "Organized Retail Crime," California had never adopted a Penal Code section making it a crime.

In response, AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft, alternatively punishable as a felony or misdemeanor (wobbler). Among other things, AB 1065 also established the CHP property crimes task force. AB 1065 included a sunset date of January 1, 2021. In a budget bill, the sunset date was extended to July 1, 2021. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-enacted the crime of organized retail theft and the property crimes task force with an urgency clause allowing these provisions to take effect immediately. These provisions will sunset on January 1, 2026.

AB 1065 contained various other provisions directed at reducing theft recidivism which have since sunsetted.

> **AB 2294 (Jones-Sawyer), Chapter 856**, re-authorizes the prosecuting attorney's office or county probation department to create a diversion or deferred entry of judgment (DEJ) program for persons who commit theft offenses, as modified; re-enacts various changes to existing laws related to arrest and bench warrants for theft-related offenses, as modified; and re-establishes a grant program to create demonstration projects to reduce recidivism to high-risk misdemeanor probationers. Specifically, this new law:

- States that a peace officer may take into custody a person who has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months or if there is probable cause to believe the person committed organized retail theft, as specified.

- States that a court may issue a bench warrant if a defendant has been cited or arrested for misdemeanor or felony theft from a store and has failed to appear in court in connection with that charge or those charges within the past six months.

- Authorizes a city attorney, district attorney, or county probation department to create a diversion or DEJ program for persons who commit a theft offense or repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department.

- Provides that if a county creates a diversion or DEJ program for individuals committing a theft offense or repeat theft offenses, on receipt of a case or at arraignment, the prosecuting attorney shall either refer the case to the county probation department to conduct a pre-filing investigation report to assess the appropriateness of program placement or, if the prosecuting attorney's office operates the program, determine if the case is one that is appropriate to be referred to the program.

- Specifies that in determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

    - Any pre-filing investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement;

    - If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity;

    - If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or DEJ program;

    - If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program; and,

    - Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

- States that on referral of a case to the program, a notice shall be provided, or forwarded by mail, to the person alleged to have committed the offense with both of

the following information:

- The date by which the person must contact the diversion program or DEJ program in the manner designated by the supervising agency; and,

- A statement of the penalty for the offense or offenses with which that person has been charged.

- States that the authority to create a diversion or DEJ program does not limit the power of the prosecuting attorney to prosecute a theft or repeat theft, except that the prosecuting attorney may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:

  - Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney; and,

  - Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by program.

- Requires the Board of State and Community Corrections (BSCC), upon appropriation, to award grants to four or more county superior courts or probation departments to create projects to reduce recidivism of high risk misdemeanor probationers.

- Specifies that the demonstration projects shall use risk assessments at sentencing when a misdemeanor conviction results in a term of probation to identify high-risk misdemeanants and to place these misdemeanants on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral or treatment needs to achieve rehabilitation and successful completion of probation. The formal probation program may include incentives such as shortening probation terms as probationers complete the individually tailored program or probation requirements.

- Requires the demonstration projects to evaluate the probation completion and recidivism rates for project participants and authorizes comparison to control groups to evaluate program efficacy.

- Requires BSCC to determine criteria for awarding the grants on a competitive basis that considers the ability of a county to conduct a formal misdemeanor probation project for high-risk misdemeanor probationers, including components that align with evidence-based practices in reducing recidivism, including, but not limited to, risk and needs assessment, programming to help with drug or alcohol abuse, mental illness, or housing, and the support of the superior court if the application is from a county probation department.

- Provides that BSCC shall develop reporting requirements for each county receiving a grant to report the results of the demonstration project. The reports may include, but are not limited to, the use of risk assessment, the formal probation program components, the number of individuals who were placed on formal probation, the number of individuals who were placed on informal probation, and the number of individuals in each group who were subsequently convicted of a new offense.

- Requires BSCC to prepare a report compiling the information received from each county receiving a grant, to be completed and distributed to the Legislature and county criminal justice officials two years after an appropriation by the Legislature.

- Establishes a sunset for these provisions of January 1, 2026.

Mental Health Diversion: Eligibility

The Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. One of the Committee's recommendations is to strengthen the mental health diversion law. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program. According to the report:

> "While there is limited data on the use of mental health diversion, it appears that the law could be used much more frequently. For example, Los Angeles County has only diverted a few hundred people using the law. Yet an estimated 61% of people in the Los Angeles County jail system's mental health population were found to be appropriate for release into a community-based diversion program, according to a recent study by the RAND Corporation.
>
> To increase the use of mental health diversion in appropriate cases, the procedural process for obtaining diversion could be simplified by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.
>
> This modification of the mental health diversion statute would harmonize the law with other more specialized mental health diversion statutes that do not require showing such a connection, including Penal Code sections 1170.9 (post-conviction probation and mental health treatment for veterans) and 1001.80 (military pre-trial diversion program). And research into the related area of drug courts has shown that "tight eligibility requirements" are the most

important reason that drug courts have not contributed to a meaningful drop in incarceration."

(*Annual Report and Recommendations 2021*, p. 17, fn. omitted <http://www.clrc.ca.gov/CRPC.html#:~:text=The%20Committee%20on%20Revision%20of%20the%20Penal%20Code%20has%20released,California's%20mental%20health%20diversion%20law.> [as of Jun. 23, 2022].)

SB 1223 (Becker), Chapter 735, makes changes to mental health diversion eligibility and suitability provisions. Specifically, this new law:

- Changes the criteria for a court to be required to consider mental health diversion by:
    - Providing that a defendant must be diagnosed with a mental health disorder within five years, as specified, in order to be eligible for mental health diversion; and
    - Creating a presumption that a mental health disorder was a significant factor in the commission of an offense unless there is clear and convincing evidence that the mental disorder did not cause the offense to be committed.
- Authorizes a court to consider an outlined treatment plan that deals with the defendant's mental disorder when deciding whether the defendant poses an unreasonable risk of danger to society.
- States that an offense may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor.
- States that if the defendant is referred to a county mental health agency and the agency declares it is unable to provide services to the defendant, the declaration is not evidence that the defendant is unsuitable for diversion.
- Defines a "qualified mental health expert" to include a psychiatrist, psychologist, or other specified person with the requisite knowledge and training which would qualify them as an expert.

DOMESTIC VIOLENCE

Forensic Examinations: Domestic Violence

The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report the assault to law enforcement. The Office of Emergency Services (OES) uses discretionary funds from various federal grants to reimburse the costs of the examination, and makes a determination as to the amount of reimbursement. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every five years. Currently, victims of domestic violence assault have unequal access to care as they are not provided the same right to medical evidentiary exams as sexual assault victims.

There are statewide standards defining the specialized training and qualifications necessary to conduct sexual assault medical evidentiary exams. This includes being conducted by a "qualified health care professional." The definition of "qualified health care professional" includes physicians, surgeons, nurses, nurse practitioners, and physician assistants. There is also specified training for "qualified health care professionals" to conduct these exams. There are no statewide standards defining the specialized training and qualifications necessary to conduct medical evidentiary examinations for victims of domestic violence assault including strangulation and other physical injuries, as exist for sexual assault forensic medical examinations.

AB 2185 (Akilah Weber), Chapter 557, provides domestic violence victims access to medical evidentiary exams, free of charge, by local Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners. Specifically, this new law:

- Includes the California Sexual Assault Forensic Examiner Association in the entities which OES must collaborate with, to establish uniform forms and medical protocol for the examination of victims of domestic violence.
- Makes specified changes to the examination forms, including requiring the forms to include information regarding current or past strangulation history.
- States that documentation of suspected strangulation may be included on a supplemental strangulation form as part of the medical evidentiary exam.
- Requires the forms to be made accessible for use in an electronic format.
- States that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

- Permits victims receiving forensic medical exams for domestic violence to have a qualified social worker, victim advocate, or support person present during the examination, when available.

- Requires a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to develop and implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports, including proper preservation and disposition of the reports if the examination program ceases operation, in order to prevent destruction of the reports.

- Requires, on or before July 1, 2023, a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to implement a system to maintain medical evidentiary examination reports in a manner that facilitates release of the reports as required or authorized by law.

- Provides that a hospital, clinic, or other emergency medical facility is not required to review a patient's medical records before January 1, 2023, in order to separate medical evidentiary examination reports from the rest of the patient's medical records.

- Makes the costs associated with the medical evidentiary examination of a domestic violence victim separate from diagnostic treatment and procedure costs associated with medical treatment. Prohibits the costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of the assault.

- Provides that each county shall designate their approved SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence and to notify OES of the designation.

- States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature, and administered by OES.

- Specifies that each county's SART, SAFE, or other qualified medical evidentiary examiner shall submit invoices to OES.

- Requires a flat reimbursement rate to be established, and OES to establish a 60-day reimbursement process within one year upon initial appropriation.

- Specifies that OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

- Prohibits the rate of reimbursement from being reduced based on patient history or other reasons.

- Allows victims of domestic violence to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and provides that the county's approved

SART, SAFE teams, or qualified medical evidentiary examiners shall be reimbursed for the performance of these exams.

Domestic Violence: Death Review Teams

Domestic violence death review teams (DVDRTs) are interagency teams that assist local agencies to identify and review domestic violence deaths, including homicides and suicides, and facilitate communication among the various agencies involved in domestic violence cases. They are comprised of, among others, experts in the field of forensic pathology; medical personnel with expertise in domestic violence abuse; coroners and medical examiners; criminologists; domestic violence shelter service staff and battered women's advocates; and representatives of local agencies that are involved with domestic violence abuse reporting. The Legislature found that such teams were successful in ensuring that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

The Orange County DVDRT reports that between 2006 and 2017 there were 113 deaths that were flagged as domestic violence fatalities, although it states that this number is likely a significant undercounting of the true total.

SB 863 (Min), Chapter 986, authorizes interagency DVDRTs to assist local agencies in identifying and reviewing near-death domestic violence cases, as specified.

- Expands the authority of DVRT's to include the review of near-death review cases.

- Defines "near death" as occurring when the victim suffered life-threatening injuries, as determined by a licensed physician or a licensed nurse, as a result of domestic violence.

- Provides that a statement provided by a survivor to a domestic violence death review team, or between the survivor and the DVDRT, is confidential and not subject to disclosure or discoverable by a third party.

- Requires that, in near-death cases, a representative of a domestic violence victim service organization obtain an individual's informed consent before disclosing confidential information about that individual to another team member.

- Requires that, in death review cases, representatives of domestic violence victim service organizations only provide client-specific information in accordance with confidentiality requirements.

- Provides that near-death case reviews shall only occur after the conclusion of any prosecution.

- Prohibits compelling near-death survivors to participate in team investigations and requires voluntary participation.

- Provides that, in cases of death, the victim's family members may be invited to participate in the DVDRT investigation but prohibits compelling them to do so.

- Requires the DVDRT members to be prepared to provide referrals for services to address the unmet needs of survivors and their families when appropriate.

- Adds that the DVDRT may collect and summarize data under the following additional circumstances:

    - The victim suffered a substantial risk of serious bodily injury or death from domestic violence; and,

    - The circumstances of the domestic violence event indicate that the perpetrator more likely than not intended to kill or seriously injure the victim.

ENFORCEMENT OF OUT-OF-STATE LAW

Reproductive Rights

In *Dobbs v. Jackson Women's Health Organization* (2022) 142 S.Ct. 2228 (*Dobbs*), the United States Supreme Court overturned *Roe v. Wade* (1973) 410 U.S 113, and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, and held that the federal Constitution does not confer a right to abortion; rather, the authority to regulate abortion belongs to the states and is returned to them. (*Dobbs, supra,* at pp. 2242-2243.)

Two months after the Supreme Court overturned *Roe v. Wade*, about 20.9 million women have lost access to nearly all elective abortions in their home states, and a slate of strict new trigger laws expected to take effect in the coming days will shut out even more. (See *Three More 'Trigger Law' Abortion Bans are Coming Thursday*, R. Roubein, Washington Post, Aug. 23, 2022, available at https://www.washingtonpost.com/politics/2022/08/23/three-more-trigger-law-abortion-bans-are-coming-thursday/.) In anticipation of the U.S Supreme Court decision, 13 states had passed "trigger bans" which forbid doctors from providing abortions upon the court overturning *Roe* and which took effect automatically or did so shortly thereafter. And in about 10 states, abortion remains legal but only because there are lawsuits where advocates have sued to block abortion bans. (See *Tracking the States Where Abortion Is Now Banned*, New York Times, Aug. 26, 2022, available at https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html.)

Because many women have lost the right to have an abortion in their home states, it is anticipated that many will have to travel to other states where abortion remains legal in order to obtain the procedure. It is an open question whether states that ban abortions can legally punish women for leaving the state to get an abortion, or punish people who help them secure an out-of-state abortion.

And while abortion remains legal in California, abortion bans in other states raise questions on how California corporations are supposed to respond to search warrants and other requests for information to bolster prosecutions in those states. Electronic data from text messages, internet browsing history, and location services could be used to prosecute individuals obtaining, facilitating, or even performing abortions. For example, a mother from Nebraska is facing felony charges for allegedly helping her teenage daughter illegally abort a pregnancy based on information law enforcement obtained from Facebook Messenger. (See Search Warrants for Abortion Data Leave Tech Companies Few Options, N. Nix & E. Dwoskin, Washington Post, Aug. 12, 2022, available at https://www.washingtonpost.com/technology/2022/08/12/nebraska-abortion-case-facebook .)

> **AB 1242 (Bauer-Kahan), Chapter 627**, prohibits law enforcement from cooperating with, or providing information to, out-of-state entities regarding a lawful abortion under California law, and from knowingly arresting a person for performing or aiding in the performance of a lawful abortion or for obtaining an abortion. Specifically, this new law:

- Declares that a law of another state that authorizes the imposition of civil or criminal penalties related to an individual performing, supporting, or aiding in the performance of an abortion in this state, or an individual obtaining an abortion in this state, if the abortion is lawful under the laws of this state, is against the public policy of this state.

- Prohibits a law enforcement agency from arresting a person for performing or obtaining an abortion in this state, if the procedure is lawful under California law.

- Prohibits a law enforcement agency from cooperating with, or giving information to, a person, agency, or department from another state regarding a lawful abortion performed in this state and protected under the laws of this state.

- States that these prohibitions do not prohibit the investigation of any criminal activity in this state that may involve the performance of an abortion, as specified.

- Requires the countywide bail schedule to set bail at zero dollars for an individual who has been arrested in connection with a proceeding in another state regarding an individual performing, supporting, or aiding in the performance of an abortion in this state, or an individual obtaining an abortion in this state, if the abortion is lawful under California law.

- Defines "prohibited violation" as a violation of a law that creates liability for, or arising out of, either providing, facilitating, or obtaining an abortion or intending or attempting to provide, facilitate, or obtain an abortion that is lawful under California law.

- Prohibits a magistrate from entering an ex parte order authorizing a wiretap, interception of electronic communication, use of a pen register, or trap and trace device for purposes of investigating or recovering evidence of a "prohibited violation," as specified.

- Prohibits the issuance of a search warrant for items relating to an investigation of a "prohibited violation."

- Prohibits California corporations or those corporations whose principal executive offices are located in the state from producing records, electronic communications, or other information pursuant to a warrant, court order, or subpoena, that the corporation knows, or should know, relates to an investigation or enforcement of a "prohibited violation" as specified.

- Specifies that the corporation shall not comply with the out-of-state warrant unless the warrant includes, or is accompanied by, an attestation that the evidence sought is not related to an investigation into or enforcement of a prohibited violation, as defined.

- States that a corporation served with a warrant is entitled to rely on the representations made in an attestation.

Gender Affirming Health Care

In recent months, several states have taken action to prohibit transgender youth from accessing gender-affirming medical care. Such gender-affirming care can be essential to a minor's physical and emotional wellbeing. Nonetheless, as a result of these state actions, well-meaning parents of transgender minors in those states now face potential sanctions should they seek to assist their children to receive medical care.

SB 107 (Wiener), Chapter 810, enacts various safeguards against the enforcement of out-of-state anti-transgender laws to protect individuals seeking and providing gender affirming care in California. Specifically, this new law:

- States that it is the public policy of this state that an out-of-state arrest warrant for an individual based on violating another state's law against providing, receiving, or allowing their child to receive gender-affirming health care is the lowest law enforcement priority.

- Prohibits California law enforcement agencies from making or intentionally participating in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against providing, receiving, or allowing a child to receive gender-affirming health care.

- Prohibits California law enforcement agencies from cooperating with, or providing information to, any individual or out-of-state agency or department regarding lawful gender-affirming health care performed in this state.

- States that these provisions do not prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming health care, provided that information relating to any medical procedure on a specific individual many not be shared with an out-of-state agency or any other individual.

- Prohibits, to the fullest extent permitted by federal law, California law enforcement agencies from recognizing any demand for extradition of an individual pursuant to the criminal action under the law of another state that criminalizes allowing a person to receive or provide gender-affirming health care, if that conduct would not be unlawful under California law.

- States that notwithstanding provisions of law that demand a custodian of records to produce business records pursuant to a subpoena issued in a criminal action, a health care provider, service plan, or contractor shall not release medical information related to the receipt of gender-affirming health care, in response to any foreign subpoena that is based on a violation of another state's law authorizing a criminal action against

a person or entity that allowed a child to receive gender-affirming health care.

- Prohibits a health care provider, service plan, or contractor from releasing medical information related to a person or entity allowing a child to receive gender-affirming care in response to any civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil action against such a person.

- Prohibits a health care provider, service plan, or contractor from releasing medical information to otherwise-authorized persons or entities if the information is related to allowing a child to receive gender-affirming care, and the information is being requested pursuant to another state's law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care.

- Prohibits the issuance of a subpoena by a California court, if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

- Prohibits an authorized attorney, as specified, from issuing a subpoena if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

- Confers a California family court with jurisdiction to make an initial child custody determination if the presence of a child in this state is for the purpose of obtaining gender-affirming health care or mental health care.

- Provides that a California family court has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned, or it is necessary in an emergency to protect the child because the child, or a sibling, or parent is subjected to, or threatened with, mistreatment or abuse, or because the child has been unable to obtain gender-affirming health care or mental health care.

- States that a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care is against the public policy of this state and prohibits it from being enforced or applied in a case pending in a court in this state.

- Defines "gender-affirming health care" to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and includes specified examples.

EVIDENCE

Forensic Examinations: Domestic Violence

The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report the assault to law enforcement. The Office of Emergency Services (OES) uses discretionary funds from various federal grants to reimburse the costs of the examination, and makes a determination as to the amount of reimbursement. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every five years. Currently, victims of domestic violence assault have unequal access to care as they are not provided the same right to medical evidentiary exams as sexual assault victims.

There are statewide standards defining the specialized training and qualifications necessary to conduct sexual assault medical evidentiary exams. This includes being conducted by a "qualified health care professional." The definition of "qualified health care professional" includes physicians, surgeons, nurses, nurse practitioners, and physician assistants. There is also specified training for "qualified health care professionals" to conduct these exams. There are no statewide standards defining the specialized training and qualifications necessary to conduct medical evidentiary examinations for victims of domestic violence assault including strangulation and other physical injuries, as exist for sexual assault forensic medical examinations.

AB 2185 (Akilah Weber), Chapter 557, provides domestic violence victims access to medical evidentiary exams, free of charge, by local Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners. Specifically, this new law:

- Includes the California Sexual Assault Forensic Examiner Association in the entities which OES must collaborate with, to establish uniform forms and medical protocol for the examination of victims of domestic violence.
- Makes specified changes to the examination forms, including requiring the forms to include information regarding current or past strangulation history.
- States that documentation of suspected strangulation may be included on a supplemental strangulation form as part of the medical evidentiary exam.
- Requires the forms to be made accessible for use in an electronic format.
- States that when strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

- Permits victims receiving forensic medical exams for domestic violence to have a qualified social worker, victim advocate, or support person present during the examination, when available.

- Requires a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to develop and implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports, including proper preservation and disposition of the reports if the examination program ceases operation, in order to prevent destruction of the reports.

- Requires, on or before July 1, 2023, a hospital, clinic, or other emergency medical facility where medical evidentiary examinations are conducted to implement a system to maintain medical evidentiary examination reports in a manner that facilitates release of the reports as required or authorized by law.

- Provides that a hospital, clinic, or other emergency medical facility is not required to review a patient's medical records before January 1, 2023, in order to separate medical evidentiary examination reports from the rest of the patient's medical records.

- Makes the costs associated with the medical evidentiary examination of a domestic violence victim separate from diagnostic treatment and procedure costs associated with medical treatment. Prohibits the costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of the assault.

- Provides that each county shall designate their approved SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence and to notify OES of the designation.

- States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature, and administered by OES.

- Specifies that each county's SART, SAFE, or other qualified medical evidentiary examiner shall submit invoices to OES.

- Requires a flat reimbursement rate to be established, and OES to establish a 60-day reimbursement process within one year upon initial appropriation.

- Specifies that OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

- Prohibits the rate of reimbursement from being reduced based on patient history or other reasons.

- Allows victims of domestic violence to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and provides that the county's approved

SART, SAFE teams, or qualified medical evidentiary examiners shall be reimbursed for the performance of these exams.

Evidence: Admissibility of Creative Expressions

Rap lyrics evoke a unique prejudice when introduced as evidence. This is particularly true with respect to the subgenre of gangster rap. "Gangster rap artists seek to present their harsh environment through their lyrics. As such, gangster rap lyrics deal heavily with violence, drugs, and gangs." (Walls, *Note and Comment: Rapp Rapp Snitch Knishes: The Danger of Using Gangster Rap Lyrics to Prove Defendant's Character* (2019) 48 Sw. L. Rev. 173, pp. 175-176.) Prosecutors frequently use gangster rap lyrics against defendants. (*Ibid*.)

The Supreme Court recently reiterated its advisement that because "gang-related evidence creates a risk the jury will improperly infer the defendant has a criminal disposition," this evidence should be "carefully scrutinized by trial courts." (*People v. Mendez* (2019) 7 Cal.5th 680, 691.) "This caution applies with particular force to rap songs that promote and glorify violence. Trial courts should carefully consider whether the potential for prejudice posed by these songs outweighs their probative value. In particular, where the rap lyrics are cumulative of other evidence, like screenshots, or where the probative value rests on construing the lyrics literally without a persuasive basis to do so, the probative value will often be 'substantially outweighed by [the] prejudicial effect.'" (*People v. Conceal* (2019) 41 Cal.App.5th 951, 971-972, citing *People v. Carter* (2003) 30 Cal.4th 1166, 1194.)

AB 2799 (Jones-Sawyer), Chapter 973, provides that in determining whether evidence of creative expression is more prejudicial than probative, and therefore inadmissible, the court must consider specified factors. Specifically, this new law:

- Requires a court to hold a pretrial hearing outside the presence of the jury before admitting evidence of creative expression in a criminal proceeding.

- Specifies that in balancing the probative value of the evidence against the substantial danger of undue prejudice, the court must consider the factors currently required by law, as well as that:

    - The probative value of creative expression for its literal truth or as a truthful narrative is minimal unless that expression is created near in time to the charged crime(s), bears a sufficient level of similarity to the charged crime(s), or includes some factual detail not otherwise publicly available; and,

    - Undue prejudice includes, but is not limited to, the possibility that the trier of fact will treat the expression as inadmissible evidence of the defendant's propensity for violence or general criminal disposition as well as the possibility that the evidence will explicitly or implicitly inject racial bias into the proceedings.

- Requires the court to consider all of the following as well as any additional evidence, if proffered and relevant to the issues in the case:

    - Credible testimony on the genre of creative expression as to the social or cultural context, rules, conventions, and artistic techniques of the expression;

    - Experimental or social science research demonstrating that the introduction of a particular type of expression explicitly or implicitly introduces racial bias into the proceedings; and,

    - Evidence to rebut such research or testimony.

- Requires the court to state its ruling on whether or not to admit the evidence of creative expression and the reasons for its ruling on the record.

- Defines "creative expression" as the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including, but not limited to, music, dance, performance art, visual art, poetry, literature, film, and other such objects or media.

Expert Witnesses: Writ of Habeas Corpus

According to the National Registry of Exonerations, which tracks both DNA and non-DNA based exonerations, false or misleading forensic evidence was a contributing factor in 24% of all wrongful convictions nationally. This includes convictions based on forensic evidence that is unreliable or invalid and expert testimony that is misleading. It also includes mistakes made by practitioners and in some cases misconduct by forensic analysts. In some cases, scientific testimony that was generally accepted at the time of a conviction has since been undermined by new scientific advancements in disciplines. (https://innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/.)

SB 467 (Wiener), Chapter 982, permits a person to bring a habeas writ where a significant dispute has developed regarding expert medical, scientific, or forensic testimony that would have more likely than not changed the outcome of their trial, and expands the definition of false evidence for the purpose of a habeas writ. Specifically, this new law:

- Allows a person to file a writ of habeas corpus where a significant dispute has emerged or developed in their favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome of their trial.

- Specifies that the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their

opinion is based.

- Provides that the "significant dispute" may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

- States that a "significant dispute" can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

- Provides that in assessing whether a dispute is significant, the court shall give great weight to evidence that:

    - A consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony; or,

    - There is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

- States that the significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

- Requires the court to issue an order to show cause why relief should not be granted if the petitioner makes a prima facie showing that they are entitled to relief.

- Provides that to obtain relief, the person must make the required showing by a preponderance of the evidence.

- Expands the definition of "false evidence" to include the opinions of experts that are undermined by the state of scientific knowledge.

Evidence: Immigration Status

The fair and effective administration of justice requires that all participants in the process feel free and secure to present their case or provide their testimony before the court. Unfortunately, some undocumented immigrants may be reluctant to do so because taking part in the formal legal system might expose their immigration status.

In recognition of this dynamic, California enacted several laws to ensure that undocumented immigrants feel safe participating in the legal system. Of particular relevance to this bill, California enacted SB 785 (Wiener) Chapter 12, Statutes of 2018, prohibiting the disclosure of evidence about immigration status in open court unless pre-approved by a judge during a closed hearing on the matter. SB 785 established a system for avoiding the exposure of immigration status information in court unless and until a judge determined that the information was relevant and admissible. Specifically, rather than permitting parties to begin questioning or discussing the immigration status of any other party or witness in open court, SB 785 required the party seeking to introduce the evidence to request a confidential, in camera hearing during which the judge makes a determination as to whether or not the evidence is relevant and admissible. If the judge ruled the immigration status evidence to be relevant and admissible, the case proceeds accordingly. If the judge rules that the immigration status evidence is not relevant, both the evidence itself, and the discussion about whether to admit it remains confidential. However, SB 785 contained a sunset clause that caused it to expire on December 31, 2021.

SB 836 (Wiener), Chapter 168, restores lapsed statutes prohibiting the disclosure of a person's immigration status in open court by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing. Specifically, this new law:

- Prohibits the disclosure of a person's immigration status in open court in a criminal case by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure.

- States that this prohibition does not do any of the following:

    - Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense;

    - Limit discovery in a criminal action; or,

    - Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.

- Provides that these provisions do not change a prosecutor's existing obligation to disclose exculpatory evidence.

- Prohibits the disclosure of a person's immigration status in open court by a party or their attorney in a civil action other than a personal injury or wrongful death action (where evidence of immigration status is never admissible), unless the judge presiding over the matter first determines that the evidence is admissible at an in camera hearing.

- States that this prohibition does not do any of the following:

    - Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense;

    - Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action; or,

    - Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.

Criminal Procedure: DNA Samples

Currently, a sexual assault survivor can submit to a sexual assault examination in order to collect DNA evidence that may help identify the perpetrator. As part of the examination, reference samples of a survivor's own DNA are collected in order to distinguish the survivor's DNA from that of the perpetrator. Individuals who have close contact with the survivor—such as consensual sexual partners, the survivor's live-in family members, or household members—may also submit DNA reference samples to differentiate their DNA from that of the perpetrator.

In February 2022, the San Francisco District Attorney's Office announced it had learned that the San Francisco Police Department was running the DNA of victims of crimes against their local database of unsolved crimes and criminal offenses. Local officials and advocates quickly condemned the process over concerns that it would dissuade victims of sexual assault and other violent crimes from coming forward.

SB 1228 (Wiener), Chapter 994, establishes protections for DNA evidence that is collected directly from a victim of, or witness to, a crime and for DNA samples collected from intimate partners for the purpose of exclusion from criminal charges. Specifically, this new law:

- Provides that the following procedures apply to those known reference samples of DNA from a victim of or witness to a crime or alleged crime, and to known reference samples of DNA from intimate partners or family members of a victim or witness voluntarily provided for the purpose of exclusion, as well as to any profiles developed from those samples:

- Law enforcement agencies and their agents shall use DNA samples or profiles only for purposes directly related to the incident being investigated;

- A law enforcement agency or agent thereof is prohibited from comparing any of these samples or profiles with DNA samples or profiles that do not relate to the incident being investigated;

- A law enforcement agency or agent thereof is prohibited from including any of these DNA profiles in a database that allows these samples to be compared to or matched with profiles derived from DNA evidence obtained from crime scenes;

- A law enforcement agency or agent thereof is prohibited from providing any other person or entity with access to any of these DNA samples or profiles, unless that person or entity agrees to abide by the restrictions on the use and disclosure of that sample or profile;

- Every agent of a law enforcement agency is required to return any remaining part of every DNA sample to that law enforcement agency promptly after it has performed the requested testing or analysis of that sample;

- An agent of a law enforcement agency is prohibited from providing any of these DNA samples to any person or entity other than the law enforcement agency that provided them; and,

- A person whose DNA profile has been voluntarily provided for purposes of exclusion shall have their searchable database profile expunged from all public and private databases if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program.

FINES/FEES/RESTITUTION

Probation: Ability to Pay

Defendants who have successfully completed probation can petition the court to expunge their conviction. When expungement relief is granted, the conviction is set aside and the charging document is dismissed. However, the record clearance process is notoriously difficult to navigate and there are significant financial barriers to petitioning for expungement relief—the petitioner is on the hook for various costs such as legal work, filing fees, attorney fees, cost of transportation to court hearings, and costs related to obtaining criminal records. In addition to these costs, the petitioner must also reimburse the court at a rate not to exceed $150 and the county and/or city for its costs not to exceed $150. (Pen. Code, § 1203.4, subd. (d).)

Presently, the court may consider the petitioner's ability to pay the reimbursement fees, which is determined based on the court's assessment of the petitioner's present financial position. Upon a finding that the petitioner is able to pay, the petitioner is required to pay the fees even if the petition is not granted and the records are not sealed or expunged.

Also, in every case in which a defendant is granted probation, the court is required to order the defendant to make the payment of both a restitution fine and a restitution order as a condition of probation. (Pen. Code, § 1204.4, subds. (a)(3) & (m).) Combined, the restitution fine and restitution order can easily exceed tens of thousands of dollars, not including the accruing interests. Thus, conditioning expungement relief on fulfilling restitution makes expungement costs prohibitive for many individuals who are otherwise eligible to expunge their records.

AB 1803 (Jones-Sawyer), Chapter 494, exempts a person who meets the criteria for a waiver of court fees and costs from being obligated to pay the filing fee for specified expungement petitions. Specifically, this new law:

- Provides that a person seeking specified expungement relief, and who meets specified criteria, shall not be required to reimburse the court, the county, or any city for the actual costs of services rendered, whether or not the petition is granted and records are sealed or expunged.

- Provides that if a person otherwise qualifies to have their records sealed or expunged, relief shall not be denied to a person, whose probation was conditioned on making victim restitution, solely on the basis that the person has not satisfied their restitution obligation.

Criminal Resentencing: Restitution

Current law requires people convicted of crimes to pay restitution fines, as well as restitution payments to compensate survivors for harm caused. Courts can order people to pay direct

restitution based on the amount of loss or injury but, in setting the amount, are not required to take into account a person's ability to pay that restitution.

In practice, current law means that people leaving the criminal justice system are more likely to get trapped by fines and fees that exceed their likely income from potential employment, making it unlikely or impossible for them to actually pay off the amount owed. This helps neither the person ordered to pay restitution nor the person who would receive compensation from the payment. Victims of crime who are awarded restitution overwhelmingly receive either nothing or a small percentage of the restitution, due to the defendant lacking the resources to actually pay restitution.

SB 1106 (Wiener), Chapter 734, provides that an unfulfilled order of restitution or a restitution fine shall not be grounds for: (1) denial of a petition for specified expungement relief; (2) denial of release on parole to another state; or (3) denial of a petition for reduction of a conviction. Specifically, this new law:

- Specifies that when a court exercises its discretion to reduce an offense from a felony to a misdemeanor, or a misdemeanor to an infraction, an unfulfilled order of restitution or a restitution fine shall not be grounds for denial of a request or application for reduction.

- Specifies that a petition for expungement relief shall not be denied due to an unfulfilled order of restitution or restitution fine.

- States that an unfulfilled order of restitution or a restitution fine shall not be grounds for any of the following:

    - A finding that a defendant did not fulfil the condition of probation for the entire period of probation;

    - A finding that a defendant did not fully comply with and perform the sentence of the court or a finding that a defendant has not lived an honest and upright life and has not conformed to and obeyed the laws of the land; and,

    - A finding that a defendant did not successfully participate in the California Conservation Camp program as an incarcerated individual hand crew member, or that the defendant did not successfully participate as a member of a county incarcerated individual hand crew.

- States that a petition for sealing of records shall not be denied due to an unfulfilled order of restitution or restitution fine and an unfulfilled order of restitution or a restitution fine shall not be grounds for finding that a defendant did not fulfil the conditions of probation for the entire period of probation.

- Provides that when the court considers a petition for sealing of records, in its discretion and in the interest of justice, an unpaid order of restitution or restitution fine shall not be grounds for denial of the petition for relief.

FIREARMS

Firearms: Firearm Dealer Inspections

According to the Bureau of Alcohol, Tobacco, and Firearms (ATF), as of December 10, 2021 there were 1,907 federal firearm licenses (FFL) for being a dealer or a pawnbroker of firearms in California. To put that number in perspective, as of December 2016, there were 1,165 McDonald's in California. At that time, the number of FFLs in California was nearly double the number of McDonald's.

Firearms dealers in California are subject to a range of state and federal laws that include, among other things, firearm transfer requirements, firearms dealer records retention, and dealership facility requirements. In 2020, the latest year for which there is complete data, the ATF conducted 5,283 inspections, out of approximately 133,000 FFLs nationwide. Of those inspections, 283 were carried out in California and yielded 35 reported violations, generally regarding federal regulations on reporting and recordkeeping. The latest record available show at least 1952 active FFLs in California as of January 2022. The California Department of Justice (DOJ) is currently authorized to conduct inspections of firearms dealers in order to ensure compliance with state and federal law, however, the DOJ is not required to do so.

AB 228 (Rodriguez), Chapter 138, requires the DOJ to conduct an inspection of firearms dealers at least once every three years, unless the firearms dealer is located within a jurisdiction that has adopted an inspection program. Specifically, this new law:

- Requires the DOJ, as of January 1, 2024, to inspect all firearms dealers at least once every three years.
- Requires inspections of dealers to include an audit of dealer records that include a sampling of at least 25%, but no more than 50% of each type of record.
- Exempts dealers located in a jurisdiction with a local inspection program in place, from the DOJ's mandatory inspections and fees.

Firearm Sales: Del Mar Fairgrounds

AB 893 (Gloria), Chapter 731, Statutes of 2019, prohibited the sale of firearms and ammunition at the Del Mar Fairgrounds; however, the legislation did not specify a prohibition on firearm precursor parts. Since that legislation, the City and County of San Diego have adopted policies that ban the sale and use of ghost guns in the San Diego area.

AB 311 (Ward), Chapter 139, prohibits a vendor at a gun show or event on the property of the 22nd District Agricultural Association (Del Mar Fairgrounds) from selling firearm precursor parts.

Firearms: Firearm Precursor Parts and Unserialized Firearms

In the United States, traditional firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, "ghost guns" are manufactured in parts which can be acquired without a background check and can easily be assembled by an unlicensed buyer. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. Ghost guns are also unserialized, meaning they cannot be traced by law enforcement. According to recent reporting by the New York Times:

> "The criminal underground has long relied on stolen weapons with filed-off serial numbers, but ghost guns represent a digital-age upgrade, and they are especially prevalent in coastal blue states with strict firearm laws. Nowhere is that truer than in California, where their proliferation has reached epidemic proportions […] Over the past 18 months, the officials said, ghost guns accounted for 25 to 50 percent of firearms recovered at crime scenes. The vast majority of suspects caught with them were legally prohibited from having guns."

AB 1621 (Gipson), Chapter 76, revises several definitions relating to firearm precursor parts and unserialized firearms and establishes various restrictions on the possession, sale, transfer, import, manufacture and assembly of serialized and unserialized firearms, and firearm precursor parts, subject to exceptions. Specifically, this new law:

- Contains various findings and declarations regarding the dangerous proliferation of unserialized ghost guns, recent legislation to address the issue, and circumstances justifying the need for further reform.

- Defines a "federal licensee authorized to serialize firearms" as a person, firm, corporation, or other entity that holds any valid federal firearms license that authorizes the person, firm, corporation, or other entity to imprint serial numbers onto firearms pursuant to specified federal law.

- Defines a "federally licensed manufacturer or importer" as a person or entity that holds a valid license to manufacture or import firearms pursuant to federal law.

- Defines "federally regulated firearm precursor part" as any firearm precursor part deemed to be a firearm pursuant to specified federal law, and, if required, has been imprinted with a serial number by a federal licensee authorized to serialize firearms in compliance with all applicable federal laws.

- Revises, for specified provisions of the Penal Code, the definition of "firearm" to include a firearm precursor part, and makes conforming technical changes.

- Revises the definition of "firearm precursor part" to mean any forging, casting, printing, extrusion, machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.

- Defines "valid state or federal serial number or mark of identification" as either:

    - A serial number that has been imprinted by a federal licensee authorized to serialize firearms in accordance with federal law, or that has been assigned to a firearm pursuant to specified provisions of federal law; or

    - A serial number or mark of identification issued by the California Department of Justice (DOJ), as specified.

- Provides that the Attorney General, a district attorney, or a city attorney may bring an action to enjoin the importation into the state or sale or transfer of any firearm precursor part that is unlawfully imported, sold or transferred within the state.

- Provides that the DOJ is authorized but not required to assign a distinguishing number or mark of identification to any firearm whenever the manufacturer's number or other assigned distinguishing number has been destroyed or obliterated.

- Provides that any person who, on or after January 1, 2024, knowingly possesses or imports any firearm that does not have a valid serial number or mark of identification, as defined, is guilty of a misdemeanor.

- Exempts the following from the misdemeanor violation above:

    - Possession of a firearm that is not a handgun and was assembled before December 16, 1968.

    - Possession of a firearm that was registered with the DOJ prior to July 1, 2018 and has a serial number or identifying mark.

    - Possession of a firearm that is a curio, relic, or antique firearm, as specified.

    - Possession of a firearm by a federally licensed firearms manufacturer or importer, or any other federal licensee authorized to serialize firearms.

    - Possession of a firearm by a person who, before January 1, 2024, has applied to the DOJ for a serial number or mark of identification, as specified, and fully

complies with other specified requirements.

- The possession of a firearm by a new resident who applies for a serial number or identifying mark within 60 days of arrival, as specified. Such an application after the expiration of the 60-day period shall not constitute probable cause for a violation of specified prohibitions; and,

- The possession of a firearm by a nonresident traveling within the state in accordance with specified federal law, or who possesses or imports a firearm exclusively for use in an organized sport shooting event.

- Prohibits the sale or transfer of a firearm that is not imprinted with a serial number imprinted by a federal licensee authorized to serialize firearms, except for:

  - Antiques, curios, relics and non-handgun firearms assembled prior to December 16, 1968.

  - A serialized firearm that has been entered into the DOJ registry, as specified.

  - The transfer, surrender or sale of a firearm to a law enforcement agency; and,

  - The sale or transfer of ownership of a firearm to a federally licensed firearms manufacturer or importer, as specified.

- Establishes various prohibitions related to the use, sale, possession, purchase and receipt of computer numerical control milling machines, and exempts various persons and entities from these prohibitions.

- Makes it unlawful for a person to purchase, sell, offer to sell, or transfer ownership of any firearm precursor part that is not a federally regulated firearm precursor part, except for purchases, sales, or transfers by and to federal licensees, as specified.

- Provides that persons convicted on or after January 1, 2023, of specified misdemeanor violations related to the manufacture and assembly of a firearm are prohibited from owning, purchasing, possessing or receiving a firearm for a period of 10 years.

- Prescribes a process by which the DOJ may issue determinations to persons regarding whether an item or kit is a firearm precursor part.

- Repeals numerous provisions of previously existing law enacted by AB 879 (Gipson) Chapter 730, Statutes of 2019.

Firearm Sales: State Property

At gun shows, individuals may buy, sell, and trade firearms and firearm-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. According to research, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show. However, gun shows have been identified as a source of illegally tracked firearms. Although violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being a place and time in which guns move from the regulated, legal market into the illegal market.

In 2019, AB 893 (Gloria), Chapter 731, Statutes of 2019, added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunition at the Del Mar Fairgrounds, effectively terminating the possibility for future gun shows at the Del Mar Fairgrounds. SB 264 (Min), Chapter 684, Statutes of 2021, built upon the provisions of AB 893 by prohibiting the sale of firearms, firearm precursor parts, and ammunition at the Orange County Fair and Event Center.

AB 1769 (Bennett), Chapter 140, prohibits the sale of any firearm, firearm precursor part, or ammunition on the property of the 31st District Agricultural Association (Ventura County Fair and Event Center in Ventura County). Specifically, this new law:

- Prohibits an officer, employee, operator, lessee, or licensee of the 31st District Agricultural Association, as defined, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the Ventura County Fair and Event Center, in the County of Ventura, the City of Ventura, or any successor or additional property owned, leased, or otherwise occupied by the district.
- Provides that the prohibition does not apply to any of the following:
    - A gun buyback event held by a law enforcement agency;
    - The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties;
    - The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2023; and,
    - The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties.

Firearms: Restocking Fee Cap

In California, a firearms purchaser generally must wait a period of ten days after applying to buy a firearm before the firearm can be delivered to them. (Pen. Code, § 26815.) If a firearms purchaser no longer wishes to go through with a sale, a firearms dealer generally charges a restocking fee for the firearm. There was previously no existing cap on the fee a firearms dealer could charge a purchaser for restocking a firearm in the event the purchaser no longer wished to go through with the sale during the ten day waiting period.

Waiting period laws are critical tools for keeping communities safe since they ensure time elapses for temporary emotions to fade. Studies have shown that waiting period laws reduce firearm suicides by 7-11% and firearm homicides by nearly 17%. However, costly restocking fees may deter purchasers who would like to cancel their order after having time to reconsider their purchase.

> **AB 1842 (Rodriguez), Chapter 141**, limits a restocking fee imposed by a licensed dealer during the ten day waiting period to no more than five percent of the purchase price of the firearm except if the firearm was specially ordered, as defined.

Firearm Manufacturers: Licensure

In its proposed rule to provide new regulatory definitions to various terms, including firearm, frame or receiver, gunsmith, and privately made firearm, the U.S. Department of Justice, Alcohol, Tobacco, Firearms, and Explosives Bureau (ATF), notes:

"Technological advances have also made it easier for unlicensed persons to make firearms at home from standalone parts or weapon parts kits, or by using 3D printers or personally owned or leased equipment, without any records or a background check. Commonly referred to as "ghost guns," these privately made firearms ("PMFs"), when made for personal use, are not required by the GCA to have a serial number placed on the frame or receiver, making it difficult for law enforcement to determine where, by whom, or when they were manufactured, and to whom they were sold or otherwise disposed. In recent years, the number of PMFs recovered from crime scenes throughout the country has increased. From January 1, 2016, through December 31, 2020, there were approximately 23,906 suspected PMFs reported to ATF as having been recovered by law enforcement from potential crime scenes, including 325 homicides or attempted homicides." (ATF, *Definition of "Frame or Receiver" and Identification of Firearms, Proposed Rule, 86 Fed. Reg. 27720* (May 21, 2021). Available at: https://www.federalregister.gov/d/2021-10058.)

Current state law requires a person manufacturing or assembling a firearm to apply to the DOJ for a unique serial number or other mark of identification for that firearm (Pen. Code, § 29180, subd. (b)(1)) but does not require a license to manufacture a firearm with a three-dimensional printer.

> **AB 2156 (Wicks), Chapter 142**, expands the prohibitions on the manufacture of firearms without a state license including reducing the number of guns a person may manufacture

without a license and prohibiting the use of a three-dimensional printer to manufacture any firearm without a license. Specifically, this new law:

- Reduces the number of firearms that a person, firm, or corporation may manufacture in a calendar year without having a state license to manufacture firearms from 50 to three. A violation is a misdemeanor.

- Prohibits a person, firm, or corporation from using a three-dimensional printer to manufacture any firearm, including a frame or receiver, or any firearm precursor part, without having a state license to manufacture firearms. A violation is a misdemeanor.
- Defines "three-dimensional printer" as "a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object."

Firearms: Prohibited Persons

California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person also may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to their psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).)

Misdemeanors that result in a 10-year firearm prohibition include the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm or deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, and threats of bodily injury or death. (Penal Code, § 29805, subd. (a).)
According to the Public Policy Institute of California, California saw 1,658 homicides in 2019; the number climbed to 2,161 in 2020—an increase of 503 homicides (or 30.3%). Of these deaths, gun homicides jumped by 460 in 2020. In other words, the increase in gun deaths account for 91% of the overall jump in homicides. There is a strong correlation between domestic violence and subsequent gun violence if the abuser possesses a gun.

AB 2239 (Maienschein), Chapter 143, creates a 10-year firearm prohibition for individuals convicted of child abuse, as well as elder and dependent adult abuse involving violence.

Firearms: Armed Prohibited Persons System Enforcement

Prior to 2001, the removal of firearms from prohibited persons was primarily the responsibility of local law enforcement agencies. The California Department of Justice (DOJ) conducted background checks on firearm purchasers, who were subject to a 10-day waiting period, and would notify local law enforcement when a person was identified as prohibited and possessed a registered firearm. Local law enforcement would then confiscate any unlawfully possessed firearms. In the 1990s, this system was deemed inefficient, as it relied heavily on paper records and slow internet and telephonic communication speeds. Consequently, the DOJ was given primary responsibility for direct enforcement of prohibited persons laws.

With recent advances in law enforcement and telecommunications technology, modernizing our current system of firearms enforcement could make it more efficient and less costly. One way to accomplish this would be to shift more responsibility for prohibited persons enforcement to local law enforcement agencies, which carry out patrols and interact with more individuals on a regular basis than the DOJ's Bureau of Firearms.

AB 2551 (McCarty), Chapter 100, requires the DOJ to notify local authorities in the appropriate jurisdiction when a prohibited person attempts to purchase a firearm, ammunition, or firearm precursor part. Specifically, this new law:

- Requires DOJ to notify local law enforcement and local mental health authorities in the jurisdiction in which the individual was last known to reside, that a person prohibited from owning or possessing a firearm, as specified, attempted to purchase ammunition, a firearm, or a firearm precursor part.

- Prohibits local law enforcement from contacting the individual until they try to confirm the individual is in fact prohibited from possessing ammunition or a firearm precursor part and that the individual did in fact attempt to make the reported purchase.

- Prevents the DOJ from notifying local law enforcement and local mental health authorities if the sale or other transfer was not approved merely because the address in the Automated Firearms System did not match what was on file.

- States that being informed by the DOJ of an attempted purchase by a prohibited person does not authorize law enforcement to conduct a search without a warrant.

Firearm Sales: Gun Shows and Events

A "gun show" is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people. According to the NRA's Institute for Legislative Action (NRA-ILA), less than one percent of persons incarcerated in state prisons for gun crimes acquired their firearms at a gun show. However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms.

AB 2552 (McCarty), Chapter 696, requires the inclusion of additional notices on the signs posted at the public entrance of gun shows, increases fines on gun show producers and vendors who fail to comply with specified requirements, and requires the Department of Justice (DOJ) to conduct annual inspections of one-half of all gun shows and events. Specifically, this new law:

- Adds additional notice requirements for signs posted in a readily visible location at the public entrance of a gun show or event.
- Requires the DOJ, commencing on July 1, 2023, to annually conduct enforcement and inspection of one-half of all gun shows or events in the state to ensure compliance, as specified.
- Requires the DOJ to post specified violations by a firearm dealer or ammunition vendor discovered during an inspection of a gun show or event on its internet website for a period of 90 days after an inspection.
- Requires the DOJ, no later than May 1, 2024 and annually thereafter, to prepare and submit a report to the Legislature summarizing their enforcement efforts.
- Increases the fine for willful failure by a gun show producer to comply with specified requirements not involving signage from $2,000 to $4,000, and increases the time for which the producer will be ineligible for a gun show producer license from one year to two years.
- Increases the maximum fine for willful failure by a gun show producer to post specified signs from $1,000 to $2,000 for the first offense and from $2,000 to $4,000 for the subsequent or subsequent offense.
- Increases the time for which a gun show producer will be ineligible for a gun show producer license for a failure to post specified signs from one year to two years.
- Requires gun show or event vendors to certify in writing to the gun show producer that they will not display, possess, or offer for sale:
    - Any unserialized frame or receiver, including an unfinished frame or receiver; or
    - Any attachment or conversion kit designed to convert a handgun into a short-barreled rifle or into an assault weapon.

- Changes the fine for a second or subsequent violation of specified gun show provisions from a fine not exceeding $1,000 to a fine of $1,000.

- Increases the fine for knowing violations of specified gun show provisions from a maximum fine of $1,000 for the first offense to $2,000 for the first offense.

- Provides that a person who knowingly violates specified gun show provisions cannot participate as a vendor at any gun show or event for a period of one year.

Gun Violence Restraining Orders

California's gun violence restraining order (GVRO) laws, modeled after domestic violence restraining orders, went into effect on January 1, 2016. (AB 1014 (Skinner), Chapter 872, Statutes of 2014.) A GVRO prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A temporary emergency GVRO may only be sought by a law enforcement officer and it is not affected by the provisions of this bill. The other two kinds of GVROs are ex-parte (direct communication to the court without the knowledge of the subject of the order) and a GVRO that is issued after notice to the subject and a hearing at which the person has an opportunity to be heard.

Current law limits who can file a GVRO to specific immediate family members, employers, specified coworkers, specified employees or teachers, and law enforcement officers.

AB 2870 (Santiago), Chapter 974, expands the category of persons that may file a petition requesting a court to issue a GVRO. Specifically, this new law:

- Allows the following persons to file a GVRO:
    - A roommate of the subject of the petition, as defined;
    - An individual who has a dating relationship with the subject of the petition, as defined; and,
    - An individual who has a child in common with the subject of the petition, if they have had substantial and regular interaction with the subject for at least one year.
- Expands the definition of "immediate family member" for purposes of filing a GVRO to include any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

Firearm Sales: State Property

Existing law requires gun shows to obtain a certificate of eligibility (COE) from the Department of Justice (DOJ) in order to operate. To obtain a COE from the DOJ, a promoter must certify that they are familiar with existing law regarding gun shows; obtain at least $1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to the DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and the vendor's employees; prepare an annual event and security plan; and require every firearm carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that it cannot be operated, and have an identification tag or sticker attached. Gun show COEs must be requested online via the DOJ Firearms Application Reporting System. Fees associated with obtaining a COE include the cost of the initial COE Application ($71). Renewal applications cost $22.

There have been several legislative attempts to regulate gun shows on state-owned property. AB 893 (Gloria), Chapter 731, Statutes of 2019, prohibited the sale of firearms and ammunition at the Del Mar Fairgrounds and SB 264 (Min), Chapter 684, Statutes of 2021, built upon these provisions by prohibiting the sale of firearms, firearm precursor parts, and ammunition at the Orange County Fair and Event Center.

SB 915 (Min), Chapter 145, prohibits the sale of firearms, firearm precursor parts and ammunition on state property. Specifically, this new law:

- Prohibits a state officer or employee, or operator, lessee, or licensee of any state property, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on state property or in the buildings that sit on state property or property otherwise owned, leased, occupied, or operated by the state.

- Exempts the following from this prohibition:

    - A gun buyback event held by a law enforcement agency;

    - The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties;

    - The sale of a firearm, firearm precursor part, or ammunition that occurs pursuant to a contract that was entered into before January 1, 2023;

    - The purchase of a firearm, firearm precursor part, or ammunition on state property by a law enforcement agency in the course of its regular duties;

    - The purchase of a state-issued firearm by a retiring peace officer, as specified; and,

- The purchase of a state-issued firearm by a peace officer if the person's department changes its state-issued weapon system, as specified.

Firearm Sales: Dealer Requirements

Thefts from licensed gun retailers have been a persistent problem in California. In 2015, according to data compiled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and California Department of Justice (DOJ), more than 400 guns were reported stolen from gun stores. The following year, the Sacramento area alone saw five gun store thefts in a period of less than three months, during which more than 200 guns were stolen. Many of these thefts involved the perpetrators ramming vehicles through storefronts, bypassing any security measures. According to an analysis by the Center for American Progress, between 2012 and 2019, 1,937 guns were reported stolen from federally licensed gun dealers in California, the 7th highest rate of theft for any state during that period. However, According to the ATF, the rate of gun store thefts seems to have tapered slightly in recent years since peaking in 2016 (690), with 208 reported thefts in 2021.

SB 1384 (Min), Chapter 995, requires licensed firearm dealers (licensees) to install specified security measures, submit proof of compliance with specified requirements, and carry general liability insurance policies. Specifically, this new law:

- Requires a licensee, commencing January 1, 2024, to install and maintain a digital surveillance system that has cameras permanently mounted in fixed locations capturing:
  - The interior view of all entry;
  - All areas where firearms are displayed;
  - All points of sale; and;
  - The identity of any person recorded, to the extent reasonably possible.
- Prohibits the release of any recordings except for purposes of DOJ compliance inspections, search warrants or other court orders, responding to insurance claims, and as part of civil discovery court orders.
- Requires that the DOJ remove any licensee from the centralized list of firearms dealers, if such licensee failed to provide proof of compliance with specified video surveillance requirements.

HATE CRIMES

Hate Crimes: Reporting

The Department of Justice (DOJ) is required to report hate crime statistics on their website by July 1st of each year. The DOJ sources the report with data from local law enforcement agencies, which the DOJ receives on a monthly basis. Monthly reporting is required to comply with federal standards imposed by the Federal Bureau of Investigation.

Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the DOJ reported hate crime events increased 31.0 percent from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9 percent from 1,261 in 2019 to 1,563 in 2020.

Despite this rise, hate crimes are still under-reported by law enforcement. A 2018 report by the California State Auditor found that law enforcement had not taken sufficient action to identify, report, and respond to hate crimes. According to the report, “Officers at…law enforcement agencies might have been better equipped to identify hate crimes if their agencies had implement better methods for doing so and provided periodic training.” It added, “At local law enforcement agencies we reviewed, a lack of hate crime training and protocols, in addition to little proactive guidance and oversight from DOJ, have contributed to the underreporting of hate crimes.”

> **AB 485 (Nguyen), Chapter 852,** requires local law enforcement agencies to post information relative to hate crimes on their internet websites on a monthly basis.

Hate Crimes: Vertical Prosecution

The *California Attorney General's Guidance to Prosecutors on Hate Crimes* recommends establishing a specialized hate crimes unit in district attorney offices. The report notes, "To promote the accurate and consistent identification of hate crimes, it is recommended that, where possible, local prosecutorial agencies have a designated unit or deputy to review and/or prosecute all hate crimes. Having a designated unit or deputy assists affected communities because it conveys the importance of addressing hate crimes in the community. It also facilitates the reporting and investigation of hate crimes because there is a more easily identifiable point of contact who, optimally, is known to both local law enforcement and the community at large through engagement…." (Guidance to Prosecutors on Hate Crimes - Attorney General's Office - California Department of Justice. p. 3.)

> **AB 557 (Muratsuchi), Chapter 853**, creates the Hate Crime Vertical Prosecution Grant Pilot Program, subject to an appropriation by the Legislature, to help prosecuting agencies create, support, or expand vertical prosecution units for hate crime cases. Specifically, this new law:

- Creates the Hate Crime Vertical Prosecution Grant Pilot Program to be administered by the Department of Justice (DOJ) which will award grants to prosecutorial agencies for the purpose of creating, supporting, or expanding vertical prosecution units for the prosecution of hate crimes.

- Provides that the one-time grants will be made on a competitive basis and that the DOJ will determine the amount of the grants.

- Specifies the duties of the DOJ in administering the grant program.

- Requires each grant recipient to submit a report, as specified, to the DOJ by July 1, 2028, and the DOJ to submit a report to the Legislature by January 1, 2029.

- Defines "prosecuting agency" as a district attorney, city attorney, or other government entity responsible for the prosecution of crimes within a local jurisdiction.

- Defines "vertical prosecution" as having the same individual prosecutor assigned to a case from the time charges are reviewed through sentencing.

- Sunsets the grant program on July 1, 2029.

Hate Crimes: Symbols

Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the Department of Justice (DOJ) reported hate crime events increased 31 percent from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9 percent from 1,261 in 2019 to 1,563 in 2020. (DOJ, Hate Crime in California 2020.)

Existing law punishes certain hate crimes in an inconsistent manner. While existing law recognizes the swastika, the noose, and the desecrated cross can be used to terrorize, it metes out different criminal penalties depending on the symbol used to do so. The emotional effect is not more or less significant for hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols for the purpose of terrorizing. It makes no sense to have different penalties for these offenses as is the case under the current statute.

AB 2282 (Bauer-Kahan), Chapter 397, equalizes the penalty for the crimes of hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols, on specified property, for the purpose of terrorizing, and expands and aligns the places where this conduct is prohibited for each offense.

- Makes the first conviction of all three crimes punishable by imprisonment in a county jail for 16 months or two or three years (felony), by a fine of not more than $10,000, or both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year (misdemeanor), by a fine not to exceed $5,000, or by both the fine and

imprisonment.

- Makes a subsequent conviction of all three crimes punishable by an enhanced fine of up to $15,000 for a felony conviction and up to $10,000 for a misdemeanor conviction.

- Makes all three crimes applicable to the same property: schools, generally, a college campus, a public place, a place of worship, a cemetery, and a place of employment.

- States the intent of the Legislature to criminalize the placement or display of the Nazi Hakenkreuz (hooked cross), also known as the Nazi swastika that was the official symbol of the Nazi party, for the purpose of terrorizing a person, and not the placement or display of ancient swastika symbols associated with Hinduism, Buddhism, and Jainism and are symbols of peace.

IMMIGRATION

Crimes: Nuisance

There are numerous collateral consequences for criminal convictions. For non-U.S. citizens, the federal immigration consequences of a drug conviction are severe. For example, upon a drug conviction, a non-citizen may become automatically deportable and inadmissible, and the conviction may subject the defendant to mandatory immigration detention, without bond. (8 U.S.C. § 1227(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1226(c)(1).) However, a defendant can avoid negative immigration consequences of a drug conviction by accepting a plea to a non-drug offense, such as public nuisance.

AB 2195 (Jones-Sawyer), Chapter 487, gives the prosecution the discretion to offer a defendant a negotiated disposition, on a case-by-case basis, whereby the defendant can plead to a charge of committing a public nuisance in lieu of a drug charge. Specifically, this new law:

- Allows a defendant to accept a plea agreement for committing a public nuisance, if the negotiated disposition includes the dismissal of one or more charges that allege unlawfully cultivating, manufacturing, transporting, giving away, selling, or possession or use of a drug, or possession or use of drug paraphernalia.

- Provides that, if the dismissed drug charge is an infraction, then the conviction for committing a public nuisance is an infraction, punishable by a fine not to exceed $250.

- Provides that, if the dismissed drug charge is a misdemeanor, then the conviction for committing a public nuisance is a misdemeanor, punishable by a fine not to exceed $1,000, or imprisonment in a county jail for not more than one year, or both, or as an infraction punishable by a fine not to exceed $250.

- Provides that, if the dismissed drug charge is a felony, then the conviction for committing a public nuisance is a felony, punishable by a period of 16 months, two or three years, or by imprisonment in a county jail for not more than one year.

Evidence: Immigration Status

The fair and effective administration of justice requires that all participants in the process feel free and secure to present their case or provide their testimony before the court. Unfortunately, some undocumented immigrants may be reluctant to do so because taking part in the formal legal system might expose their immigration status.

In recognition of this dynamic, California enacted several laws to ensure that undocumented immigrants feel safe participating in the legal system. Of particular relevance to this bill,

California enacted SB 785 (Wiener) Chapter 12, Statutes of 2018, prohibiting the disclosure of evidence about immigration status in open court unless pre-approved by a judge during a closed hearing on the matter. SB 785 established a system for avoiding the exposure of immigration status information in court unless and until a judge determined that the information was relevant and admissible. Specifically, rather than permitting parties to begin questioning or discussing the immigration status of any other party or witness in open court, SB 785 required the party seeking to introduce the evidence to request a confidential, in camera hearing during which the judge makes a determination as to whether or not the evidence is relevant and admissible. If the judge ruled the immigration status evidence to be relevant and admissible, the case proceeds accordingly. If the judge rules that the immigration status evidence is not relevant, both the evidence itself, and the discussion about whether to admit it remains confidential. However, SB 785 contained a sunset clause that caused it to expire on December 31, 2021.

SB 836 (Wiener), Chapter 168, restores lapsed statutes prohibiting the disclosure of a person's immigration status in open court by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing. Specifically, this new law:

- Prohibits the disclosure of a person's immigration status in open court in a criminal case by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure.

- States that this prohibition does not do any of the following:

    - Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense;

    - Limit discovery in a criminal action; or,

    - Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.

- Provides that these provisions do not change a prosecutor's existing obligation to disclose exculpatory evidence.

- Prohibits the disclosure of a person's immigration status in open court by a party or their attorney in a civil action other than a personal injury or wrongful death action (where evidence of immigration status is never admissible), unless the judge presiding over the matter first determines that the evidence is admissible at an in camera hearing.

- States that this prohibition does not do any of the following:

- Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense;

- Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action; or,

- Prohibit a person or their attorney from voluntarily revealing the person's immigration status to the court.

JUVENILES

Juveniles: Room Confinement

Existing law establishes guidelines and limits for confining a minor or ward in a juvenile facility in a locked sleeping room or cell. Under existing law, a minor or ward may be held up to four hours in room confinement. California law bans solitary confinement of minors and limits room confinement of minors to brief periods of time for purposes of safety, banning its use for the purposes of punishment, coercion, convenience, or retaliation. In spite of existing law, recorded instances of abuse have shown minors being confined in their rooms for extended periods of time without any documented reason as to why the confinement occurred in the first place. Investigations by the Attorney General's Office and the Board of State and Community Corrections (BSCC) of Los Angeles County's juvenile halls found violations of state and federal laws. Consequently, the BSCC has recommended defining the term "brief periods of time" for which minors can be confined.

AB 2321 (Jones-Sawyer), Chapter 781, redefines the exception to room confinement in juvenile facilities for brief periods to a brief period lasting no more than two hours when necessary for institutional operations, and ensures that minors and wards subject to room confinement are provided reasonable access to toilets at all hours, including during normal sleeping hours. Specifically, this new law:

- Provides that room confinement does not include confinement of a minor or ward in a locked single-person room or cell for a brief period lasting no longer than two hours when it is necessary for required institutional operations.

- Requires that minors and wards subject to room confinement be provided reasonable access to toilets at all hours, including during normal sleeping hours.

Juveniles: Transfer to Court of Criminal Jurisdiction

Current law allows the juvenile court, on motion of the prosecution, to transfer a 16- or 17-year-old youth to adult court if the juvenile court determines, following a hearing, that the youth should be transferred to a court of criminal jurisdiction. The California Supreme Court has called the transfer of a minor from juvenile court for prosecution in adult court "the worst punishment the juvenile system is empowered to inflict." (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810.) Despite the enormous consequence of the transfer decision, current statutory provisions provide insufficient guidance as to how the juvenile court should make its determination and how the juvenile court should exercise its discretion.

AB 2361 (Mia Bonta), Chapter 330, requires the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction. Specifically, this new law:

- Requires the finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court to be supported by clear and convincing evidence.

- Requires the transfer order to state the reasons supporting the court's finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court.

Juveniles: Youth Bill of Rights

The Youth Bill of Rights was established by SB 518 (Migden), Chapter 649, Statutes of 2007. SB 518 was introduced in response to the conditions inside of Division of Juvenile Justice (DJJ) facilities, including violence, ward suicides, and DJJ's failure to provide mandated education and treatment. Under current law, the Youth Bill of Rights applies to youths incarcerated at DJJ; there is no bill of rights that applies to youths incarcerated at local juvenile facilities.

The May Revision of the 2020-2021 Budget included a proposal to close DJJ entirely and shift responsibility for all youth held in the state's custody to the counties and proposed to stop intake of new youths to DJJ effective January 1, 2021 and begin the closure of all three state juvenile facilities and the fire camp through the attrition of the current population.

In September 2020, Governor Newsom signed SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, which operationalized the realignment of the DJJ to the counties. In May 2021, Governor Newsom signed SB 92 (Committee on Budget and Fiscal Review), Chapter 18, Statutes of 2021, which sets a closure date for DJJ of June 30, 2023, and requires the DJJ Director to develop a plan for the transfer of jurisdiction of youth remaining at DJJ as of that date. Thus, beginning in 2023, all youth who are incarcerated will be held in county facilities, and the youth still remaining at DJJ will be transferred. Given that all youth will soon be confined in juvenile facilities at the local level, the Youth Bill of Rights, which only applies to youths confine at DJJ will effectively cease to exist.

AB 2417 (Ting), Chapter 786, makes the Youth Bill of Rights applicable to youth confined in any juvenile justice facility. Specifically, this new law:

- Defines "juvenile facility" as a place of confinement that is operated by, or contracted for, the county probation department or juvenile court for the purpose of confinement of youth who are taken into custody.

- Adds rights to the Youth Bill of Rights including, but not limited to, the following:

    - The right to receive clean water at any time, have timely access to toilets, access to daily showers, clean bedding, and requires that clothing, grooming, and hygiene products be adequate and respect the child's culture, ethnicity, and gender identity and expression;

    - The right to timely reproductive care;

- The right not to be searched to verify the youth's gender, and to searches that preserve the privacy and dignity of the person;

- Specifies that youth may be provided with access to computer technology to maintain contact with family members and guardians as an alternative to, but not replacement for, in-person visits;

- Extends the anti-discrimination provisions to also prohibit discrimination on the basis of a youth's language, gender expression, and immigration status;

- The right to daily opportunities for physical education and recreation;

- The right to exercise the religious or spiritual practice of their choice and to refuse to participate in religious services and activities;

- The right to not be deprived of clean water, toilet access, or hygiene products as a disciplinary measure and to not be subject to room confinement as a disciplinary measure;

- Expands the right of youth to receive an education to the right to receive a rigorous education that prepares them for high school graduation, career entry, and postsecondary education; and

- Adds family and reproductive rights, including the right to information about their rights as parents.

- Requires the Office of Youth and Community Restoration (OYCR) to develop standardized information explaining these rights by July 1, 2023.

- Requires the ombudsperson of OYCR to review, investigate, and attempt to resolve complaints made by or on behalf of youth in the custody of any juvenile facility and to compile and make available to the Legislature and the public all data collected over the course of the year regarding the complaints made.

- Prohibits discrimination against youths confined at juvenile facilities on the basis of gender, gender expression, or immigration status.

Juveniles: Dismissals

Punishment for the most serious criminal acts has caused the United States Supreme Court as well as many state supreme courts, including California's, to consider the differences in culpability between minors and adults. In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole. (*Graham v. Florida* (2010) 560 U.S. 48.) The Court discussed the fundamental differences between juvenile and adult offenders, and reasserted its earlier findings from *Roper v. Simmons* (2005) 543 U.S. 551 (prohibiting the death penalty for defendants who committed their crimes before the age of 18) that juveniles have lessened culpability than adults due to those differences.

Previously, a juvenile court could only dismiss a delinquency petition if the petition originated in the court, and if the court found that a dismissal would serve the interests of justice and the welfare of the minor, or if did not appear that the minor would need treatment or rehabilitation. California's juvenile justice system is intended to rehabilitate youth who commit offenses. The juvenile justice system exists separately from the criminal justice system, in part, to eliminate the collateral consequences of system involvement on youth after the termination of their court involvement. However, absent a dismissal, a person's past involvement in the juvenile justice system may still hinder their ability to enlist in the military, secure good employment, or obtain an occupational license, which are examples of factors that drive recidivism. These collateral consequences make it difficult for the juvenile justice system to achieve its purpose: rehabilitation.

AB 2629 (Santiago), Chapter 970, requires a juvenile court, upon termination of jurisdiction, to consider and afford great weight to the presence of one or more specified mitigating circumstances when deciding to dismiss a petition. Specifically, this new law:

- Authorizes a juvenile case to be dismissed by a court that takes jurisdiction of the juvenile case through a transfer motion.
- States that mitigating circumstances greatly favoring dismissal of a juvenile petition, include, but are not limited to:
    - Satisfactory completion of probation;
    - Evidence indicating a sufficient degree of rehabilitation;
    - No endangerment to public safety; or
    - Evidence of mental illness, prior victimization, or childhood trauma that are connected to the present offense.
- Provides detailed definitions of the enumerated mitigating circumstances.

- Requires the court to orally state on the record the reasons for deciding to dismiss a petition.

- Requires the court, upon request by either party, to enter into the minutes the reasons for dismissing a petition, in cases where the proceedings are not being recorded or transcribed by a court reporter.

- States that the presumption is not applicable to individuals who have been convicted in a criminal court of a serious or violent felony, as specified.

- States that a court has authority to dismiss a petition at any time after a petition has been filed.

- Provides that a court can dismiss a petition regardless of whether it was sustained at trial, or by admission or plea agreement.

- States that a dismissal under this section does not constitute a sealing of records, as specified.

- States that a dismissal under this section does not relieve any obligation to pay unfulfilled victim restitution, as specified.

Custodial Interrogations

A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and that they are also more prone to falsely confessing to a crime they did not commit. (Luna, Juvenile False Confessions: *Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, https://scholars.law.unlv.edu/nlj/vol18/iss1/10/ [as of March 31, 2021].) Research suggests that "[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion." (*Id*. at p. 297, citing various scientific journals.) The context of custodial interrogation is believed to exacerbate these risks.

The U.S. Supreme Court has recognized the susceptibility of youth as well. In *J.D.B. v. North Carolina* (2011) 564 U.S. 261, the Court said: "A child's age is far 'more than a chronological fact.' It is a fact that 'generates commonsense conclusions about behavior and perception.' Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

"Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children 'generally are less mature and responsible than adults'; that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them'; that they 'are more vulnerable or susceptible to … outside pressures' than

adults; and so on. Addressing the specific context of police interrogation, we have observed that events that 'would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.' Describing no one child in particular, these observations restate what 'any parent knows'—indeed, what any person knows—about children generally." (*Id*. at p. 272, citations omitted.)

AB 2644 (Holden), Chapter 289, prohibits an officer from using threats, physical harm, deception, or psychologically manipulative interrogation tactics when questioning a person 17 years of age or younger about the commission of a felony or misdemeanor. Specifically, this new law:

- Prohibits the use of threats, physical harm, deception, or psychologically manipulative tactics by law enforcement during an interrogation of a young person who is 17 years of age or younger.

- States that these limitations do not apply to interrogations where the officer reasonably believed the information sought was necessary to protect life or property from imminent harm and the questions were limited to those reasonably necessary to obtain information related to that imminent threat.

- Defines the following terms for purposes of these provisions:

    - "Deception" includes, but is not limited, to "the knowing communication of false facts about evidence, misrepresenting the accuracy of the fact, or false statements regarding leniency."

    - "Psychologically manipulative interrogation tactics" include but are not limited to:

        - Maximization and minimization and other interrogation practices that rely on a presumption of guilt or deceit, as specified;

        - Making direct or indirect promises of leniency, such as indicating the person will be released if they cooperate; and

        - Employing the "false" or "forced" choice strategy, where the person is encouraged to select one of two options, both incriminatory, but one is characterized as morally excusable.

- States that these provisions do not prohibit the use of a lie detector test as long as it is voluntary and not obtained through threats, physical harm, deception, or psychologically manipulative interrogation tactics, and the officer does not suggest that the lie detector results are admissible in court or misrepresent the lie detector results to the person.

- Provides that the limitations on interrogation in this bill do not become operative until July 1, 2024.

- Provides that within two hours of a minor being takin into custody at a juvenile hall or any other place of confinement, the probation officer must immediately notify the public defender.

- Provides that the "custodial interrogation" shall be defined the same as in Penal Code Section 859.5.

Juveniles: Electronic Monitoring

Minors are entitled to have their maximum period of confinement reduced by any predispositional time spent in physical confinement. (*In re Eric J*. (1979) 25 Cal.3d 522, 533; *In re Stephon L*. (2010) 181 Cal.App.4th 1227.) Time spent in "physical confinement," defined as "placement in a juvenile hall, ranch, camp, forestry camp, or secure juvenile home pursuant to section 730, or in any institution operated by the Youth Authority" (Welf. & Inst. Code, § 726, subd. (c)), qualifies as credit against the maximum period of confinement. (*In re Harm R*. (1979) 88 Cal.App.3d 438, 441-445.) Time spent in a nonsecure placement does not count. (*Id*. at p. 442.) Home detention, even spent in an electronic monitoring program at the minor's residence, does not qualify for custody credit. (*In re Lorenzo L*. (2008) 163 Cal.App.4th 1076, 1080.)

In contrast, adult defendants receive custody credits for time served on electronic monitoring (Pen. Code, § 2900.5) Additionally, both pretrial and post-sentence adult defendants who have served time under electronic monitoring home detention are eligible to earn conduct credits. (Pen. Code, § 4019.)

Arguably, juveniles subject to pre-adjudication and post-adjudication electronic monitoring are similarly situated to adult criminal defendants because both categories of individuals are subjected to similarly restrictive home detention conditions and both are avoiding spending time in local custody. (*People v. Gerson* (2002) 74 Cal.App.5th 561, 584.) And yet, under existing law they are treated differently.

AB 2658 (Bauer-Kahan), Chapter 796, awards custody credits off a ward's maximum time of confinement for time spent on electronic monitoring, and requires periodic reviews by the court to ensure that electronic monitoring is still appropriate. Specifically, this new law:

- Prohibits electronic monitoring devices from being used to converse with a minor or to eavesdrop or record any conversation.

- Provides that a minor is entitled to have one day credited against the minor's maximum term of confinement for each day, or fraction thereof, that the minor serves on electronic monitoring. Provides that this provision applies to custody credits earned beginning January 1, 2023.

- Requires the court, if electronic monitoring is imposed for a period greater than 30 days, to hold a hearing every 30 days to ensure that the minor does not remain on electronic monitoring for an unreasonable length of time.

- Requires the court to consider whether there are less restrictive conditions of release that would achieve the rehabilitative purpose of the juvenile court when determining whether a length of time is unreasonable.

- Requires the court to order removal of the electronic monitor or modify the terms of the electronic monitoring order to achieve the less restrictive alternative if less restrictive conditions of release are warranted.

- Defines "minor" to mean a person under the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 602.

- Defines "electronic monitoring" to mean technology used to identify, track, record, or otherwise monitor a minor's location or movement through electronic means.

- Requires the Department of Justice (DOJ) to collect data regarding the use of electronic monitoring of juveniles.

- Requires the DOJ's annual juvenile justice report to include all of the following information for each minor:

    - The total number of days in a calendar year that the minor was subject to electronic monitoring;

    - The total number of days in a calendar year that the minor was detained in juvenile hall for a violation of a term of the minor's electronic monitoring contract not amounting to a new violation of law;

    - The reason the minor was placed or reinstated on electronic monitoring: a new violation of law; a violation of a court order not amounting to a new violation of law; or a violation of a term of the minor's electronic monitoring contract that did not constitute a new violation or law or a violation of a court order, and;

    - The reason a minor on electronic monitoring was detained in juvenile hall: a new violation of law, a violation of a court order not amounting to a new violation of law, or a violation of a term of the minor's electronic monitoring contract that did not constitute a new violation of law or a violation of a court order.

- Requires the above information that is required to be collected to be cross-referenced with information about the age, gender, ethnicity, and offense of the minors subject to these court actions.

- Requires the DOJ's annual juvenile justice report to include data pertaining to the use of electronic monitoring beginning with the report due on July 1, 2026, for the preceding calendar year.

MANDATED REPORTERS

Crimes: Mandated Reporters

Under current law, a mandated reporter must report known or reasonably suspected "general neglect." This is defined as the "negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred."

Reporting a family for not having what a child needs to thrive essentially amounts to reporting a family for being poor. Reporting parents, for example, for not pursuing dental care for their child makes little sense because child welfare services are now tied up with chasing up that report, instead of providing the needed services and dealing with the real problem.

AB 2085 (Holden), Chapter 770, redefines "general neglect" for purposes of the Child Abuse and Neglect Reporting Act (CANRA) by excluding a person's economic disadvantage. Specifically, this new law:

- States that for purposes of CANRA, "general neglect" does not include a parent's economic disadvantage.
- Specifies that while, as defined, "general neglect" requires no injury to the child have occurred, the child must be at substantial risk of suffering serious physical harm or illness.
- Makes clarifying changes to reflect that the term "suspected" abuse or neglect means "reasonably suspected," as currently defined.

Mandated Reporters: Statute of Limitations

Existing law requires mandated reporters to report known or suspected child abuse and neglect so that an investigation can take place. However, if a mandated reporter fails to protect a child by failing to report, and one-year passes, the law is no longer enforceable. The problem with this approach is that several cases have occurred where a child has been the victim of physical abuse or neglect and a mandated reporter was made aware of this, but for a variety of reasons, did not report this abuse to authorities. This lapse in time, sometimes months or years, makes prosecuting the perpetrator difficult due to lost evidence, and exposes the vulnerable child to an egregious situation of becoming an ongoing victim of preventable physical abuse or neglect.

AB 2274 (B. Rubio), Chapter 587, extends the statute of limitations for the failure of a mandated reporter to report suspected child abuse or neglect not involving sexual abuse to within one year of the discovery of the offense, but in no case later than four years after the commission of the offense.

Background Checks: Youth Service Organizations

Business & Professions Code section 18975, subdivision (c) requires a youth service organization to develop and implement child abuse prevention policies, including, requiring to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children. However, some non-profit organizations raise concerns that this requirement directly conflicts with the successful one-to-one mentoring model that has been the hallmark of nonprofit organizations like Big Brothers Big Sisters. They argue it turns one-to-one mentoring into three-to-one mentoring, and threatens a system that has been heralded for generations for improving the lives of millions of young people.

> **AB 2669 (Nazarian), Chapter 261**, exempts an organization that provides one-to-one mentoring to youth from the requirement that youth service organizations implement a policy requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with children, but only if that organization has implemented policies to ensure comprehensive screening of volunteers, and training and regular contact with both volunteers and parents or guardians.

MENTAL HEALTH

Jails: Discharge Plans

With a severe shortage of inpatient care for people with mental illness, and the country's inability to meet the growing demand for mental health services, the United States has found itself in a new public health emergency. A report conducted by California Health Policy Strategies, analyzed data from the Board of State and Community Corrections (BSCC) Jail Profile Survey (JPS). Researchers found that in 2009, in California alone, there was an average of approximately 15,500 open mental health cases reported by the counties on a monthly basis. In 2019, the same average jumped to about 22,000. This represents a 42% increase in the number of active mental health cases reported by the counties on a monthly basis. Additionally, the proportion of incarcerated individuals in California jails with an open mental health case rose from 19% in 2009 to 31% in 2019. Between 2009 and 2019, the number of incarcerated individuals decreased while the number of incarcerated individuals with an open mental health case increased. Data regarding psychotropic medication prescriptions shows a similar trend.

Upon release from jail, many people lack access to services and, too often, become enmeshed in a cycle of costly justice system involvement. The days and weeks following community reentry are a time of heightened vulnerability.

AB 2023 (Bennett), Chapter 327, entitles a person incarcerated in, or recently released from, a county jail to have access to up to three free phone calls in the county jail to plan for a safe and successful release. Specifically, this new law:

- Requires the sheriff to make the release standards, release processes, and release schedules of the county jail available to a person following the determination to release that person.

- Requires the release standards to include the list of enumerated rights and the timeframe for the expedient release of a person following the determination to release that person.

- Requires a person incarcerated in, or recently released from, a county jail to have access to up to three free phone calls from a phone in the county jail to plan for a safe and successful release.

- Provides that the rights established above apply to any person being released from a county jail, including, but not limited to, a person who has completed a sentence served, has been ordered by the court to be released, has been released on the person's own recognizance, has been released because the charges have been dismissed by the court, is acquitted by a jury, is cited and released on a misdemeanor charge, has posted bail, has complied with pretrial release conditions, or has had the charges dropped by the prosecutor.

Incarcerated Persons: Health Records

The Mentally Disordered Offender (MDO) law requires mental health evaluations of certain incarcerated persons by California Department of Corrections and Rehabilitation (CDCR) psychologists prior to release on parole to aid in determining if the person should be released into the community or needs additional treatment from the Department of State Hospitals (DSH). The MDO law is designed to confine a mentally ill person who is about to be released on parole when it is deemed that they have a mental illness that contributed to the commission of a violent crime. Rather than release the person to the community, CDCR paroles the person to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period.

With respect to evaluations for MDO commitments, existing law requires a practicing psychiatrist or psychologist from DSH and CDCR be afforded prompt and unimpeded access to the person and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

AB 2526 (Cooper), Chapter 968, requires the transfer of mental health records when an incarcerated person is transferred from or between CDCR, the DSH, and county agencies. Specifically, this new law:

- Provides that mental health records may be disclosed by a county correctional facility, county medical facility, state correctional facility, or state hospital, as specified.

- Requires, when jurisdiction of an inmate is transferred from or between CDCR, DSH, and county agencies caring for incarcerated persons, that these agencies disclose, by electronic transmission when possible, mental health records for any transferred incarcerated person who received mental health services while in the custody of the transferring facility.

- Requires the mental health records to be disclosed at the time of transfer or within seven days of the transfer of custody, except as specified.

- Provides that all transmissions made pursuant to the provisions of this bill comply with the Confidentiality of Medical Information Act, the Information Practices Act of 1977, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal Health Information Technology for Economic and Clinical Health Act (HITECH), and the corresponding implementing federal regulations.

Prisons: California Rehabilitation Oversight Board

The California Rehabilitation Oversight Board (C-ROB) was created via AB 900 (Solorio), Chapter 7, Statutes of 2007, and is housed within the Office of the Inspector General. C-ROB is a multidisciplinary board that examines the mental health, substance abuse, and educational and employment programs provided by CDCR to incarcerated individuals and individuals on parole.

C-ROB's annual report includes findings concerning the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in offender rehabilitation services, and levels of offender participation and success in the programs. In addition, C-ROB makes recommendations to the Governor and the Legislature with respect to modifications, additions, and eliminations of offender rehabilitation and treatment programs.

Homelessness and incarceration are often correlative. Individuals without stable housing are at greater risk of criminal justice system involvement, particularly those with mental health issues, veterans, and youth. Individuals with past incarceration face significant barriers to exiting homelessness due to stigmatization. Nationally, formerly incarcerated people are almost 10 times more likely to be homeless than then general public, and 70% of people experiencing homelessness have a history of incarceration. As a result, individuals on parole are seven times more likely to recidivate when homeless than when housed, a problem even more acute when those individuals have serious mental health needs. According to CDCR, in most cases, parole agents are not required to make sure people are housed, although they may voluntarily refer some people to long-term housing programs.

> **SB 903 (Hertzberg), Chapter 821**, requires C-ROB to examine the efforts of CDCR to address the housing needs of formerly incarcerated individuals, including those with serious mental health needs, and to include specified data on homelessness in its annual report.

Mental Health Diversion: Eligibility

The Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. One of the Committee's recommendations is to strengthen the mental health diversion law. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program. According to the report:

> "While there is limited data on the use of mental health diversion, it appears that the law could be used much more frequently. For example, Los Angeles County has only diverted a few hundred people using the law. Yet an estimated 61% of people in the Los Angeles County jail system's mental health population were found to be appropriate for release into a community-based

diversion program, according to a recent study by the RAND Corporation.

To increase the use of mental health diversion in appropriate cases, the procedural process for obtaining diversion could be simplified by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.

This modification of the mental health diversion statute would harmonize the law with other more specialized mental health diversion statutes that do not require showing such a connection, including Penal Code sections 1170.9 (post-conviction probation and mental health treatment for veterans) and 1001.80 (military pre-trial diversion program). And research into the related area of drug courts has shown that "tight eligibility requirements" are the most important reason that drug courts have not contributed to a meaningful drop in incarceration."

(*Annual Report and Recommendations 2021*, p. 17, fn. omitted <http://www.clrc.ca.gov/CRPC.html#:~:text=The%20Committee%20on%20Revision%20of%20the%20Penal%20Code%20has%20released,California's%20mental%20health%20diversion%20law.> [as of Jun. 23, 2022].)

SB 1223 (Becker), Chapter 735, makes changes to mental health diversion eligibility and suitability provisions. Specifically, this new law:

- Changes the criteria for a court to be required to consider mental health diversion by:
    - Providing that a defendant must be diagnosed with a mental health disorder within five years, as specified, in order to be eligible for mental health diversion; and
    - Creating a presumption that a mental health disorder was a significant factor in the commission of an offense unless there is clear and convincing evidence that the mental disorder did not cause the offense to be committed.
- Authorizes a court to consider an outlined treatment plan that deals with the defendant's mental disorder when deciding whether the defendant poses an unreasonable risk of danger to society.
- States that an offense may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor.
- States that if the defendant is referred to a county mental health agency and the agency declares it is unable to provide services to the defendant, the declaration is not

evidence that the defendant is unsuitable for diversion.

- Defines a “qualified mental health expert” to include a psychiatrist, psychologist, or other specified person with the requisite knowledge and training which would qualify them as an expert.

PEACE OFFICERS

Peace Officers: Hate-Related Activity

Numerous statutory requirements mandate that peace officers be free from bias based on race, gender, nationality, religion, disability, or sexual orientation that may adversely affect their ability to perform their duties. Despite these requirements, there have been numerous allegations and findings regarding law enforcement involvement and cooperation with racist individuals and organizations. In April 2022, the California State Auditor released a report entitled, "Law Enforcement Departments Have Not Adequately Guarded against Biased Conduct," which presented the findings of an audit of five law enforcement departments throughout the state.

As part of the audit, the State Auditor reviewed a selection of five internal investigations at each department, reviewed the public social media accounts of approximately 450 officers, and examined agency responses to incidents and allegations of biased conduct. The audit resulted in the following findings:

> "We identified some officers at each of the five law enforcement departments we reviewed […] who had engaged in biased conduct."
>
> "Of the about 450 officers who had public social media accounts, 17 officers had posted biased statements or content. The posts we identified either promoted negative stereotypes or contained deliberately hateful and derogatory speech directed at groups of people."
>
> "We also reviewed selected internal investigations and public social media accounts to determine whether any officers were members of hate groups. […] Although we did not identify evidence that any officers were members of hate groups, six officers posted content suggesting that they support groups with problematic principles or activities."
>
> "We found that each of the local departments had not appropriately addressed indications of bias when they occurred," and that local departments' investigations of biased conduct "relied heavily on the officers' denials that bias influenced their actions, without considering whether an officer's conduct created the reasonable appearance of bias."

The audit concluded that, as a result of the deficiencies in the departments' investigative practices, "they are at higher risk for failing to identify instances when their officers engage in biased conduct and failing to take action to prevent those officers from engaging in biased conduct in the future." Further, the report suggested that "greater statewide oversight could increase law enforcement departments' adoption of best practices for addressing bias," and makes several related recommendations.

> **AB 655 (Kalra), Chapter 854,** requires public agencies employing peace officers to investigate current and prospective peace officers regarding engagement in hate groups,

participation in hate group activities, or public expressions of hate, as specified. Specifically, this new law:

- Provides that certain findings of those investigations would constitute grounds for denial or termination of employment as a peace officer.

- Requires the Department of Justice to promulgate guidelines as to the investigation and adjudication of complaints that a peace officer has engaged in defined hate-related activity.

- Requires a public agency to make available for public inspection the record of a sustained investigation, with redactions as necessary.

Law Enforcement Agency Policies: Carrying of Equipment

The act of mistaking a firearm for a taser is known as "weapon confusion," which, according to experts, is a well-known phenomenon in policing. Weapons confusion can occur for a variety of reasons, including how an officer was trained, how their equipment is situated on their duty belt, and the pressure they feel during dangerous and chaotic situations. Though instances of weapon confusion are uncommon – a New York Times investigation identified 15 weapon confusion incidents over the past 20 years – they can have deadly consequences.

Tasers are generally worn or carried by police officers in one of three configurations. A "strong-side" configuration has the taser placed on the same side of the officer's body as the officer's handgun (their dominant side), and would be drawn with the officer's dominant hand. A "weak-side" configuration has the taser placed on the opposite side of the officer's body as the handgun (their non-dominant side) and drawn by the officer's non-dominant hand. A "cross-draw" configuration has the taser placed on the non-dominant side of the body, but with the handle facing the dominant side so the officer can reach across their body and draw the taser with their dominant hand. A fourth and far less common configuration has the taser placed in a separate hip or chest holster, either below or above the duty belt, respectively.

Existing California law does not include any requirement that a taser be holstered according to one of the configurations described above.

AB 1406 (Lackey), Chapter 945, requires peace officers to holster an electroshock device, such as a taser or stun gun, on the side of the body opposite the side that the officer's primary firearm is holstered. Specifically, this new law:

- Provides that any law enforcement agency that authorizes peace officers to carry an electroshock device shall prohibit that device from being holstered or otherwise carried on the same lateral side of the officer's body as the officer's primary firearm is holstered or otherwise carried.

- Defines an “electroshock device” as a taser, stun gun, or similar weapon that is designed to temporarily incapacitate a person through the controlled delivery of an electric shock, and is designed to be held in a manner similar to a pistol and operated using a finger trigger.

- Defines “law enforcement agency” as any agency or department of the state, or any political subdivision thereof, that employs any peace officer, as specified.

Peace Officers: Minimum Standards: Bias Evaluation

AB 846 (Burke) Chapter 322, Statutes of 2020, amended Government Code section 1031 by adding a bias requirement for the evaluations of peace officers. AB 846, which took effect on January 1, 2021, required that peace officers be found to be free from any physical, emotional, or mental 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.

The following year, Governor Newsom approved AB 1096 (L. Rivas), Chapter 296, Statutes of 2021. AB 1096 eliminated the term “alien” from all relevant state codes and instead replaced it with more appropriate terminology, including from Government Code section 1031. The intent of the Legislature in enacting AB 1096 was to make only nonsubstantive changes that remove the dehumanizing term “alien” from all California code sections; nothing in AB 1096 shall be interpreted to make any substantive change to existing law.

AB 1096, which was introduced in the Legislature on February 18, 2021, was mistakenly based on the old version of Government Code section 1031, given that the changes from AB 846 had just gone into effect on January 1, 2021. Therefore, AB 1096 inadvertently reverted Government Code section 1031 back to the pre-AB 846 version, and unintentionally eliminated the bias requirement added by AB 846 in 2020.

> **AB 2229 (L. Rivas), Chapter 959**, addresses the inadvertent removal of statutory bias language by re-adding the same, identical language that was passed by AB 846, thereby reenacting the requirement that peace officers be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of their powers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

Peace Officers: Deputy Sheriffs

Penal Code section 830.1 subdivision (c), custodial deputy sheriffs classification, is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code sections 831 and 831.5 are not peace officers, whereas a section 830.1 subdivision (c) custodial deputy sheriff is a peace officer, “who is employed to perform duties exclusively or initially relating to custodial assignments.” (Pen. Code, § 830.1, subd. (c).) One of the most significant differences between the section 830.1

subdivision (c) custodial deputy sheriffs and section 831 and 831.5 custodial officers is that as "peace officers" the section 830.1, subdivision (c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights. (See Gov. Code, § 3301 et seq.)

The Merced County Sheriff's Office and local police departments continue to have difficulty filling deputy sheriff and police officer vacancies. More than 30 other counties have already been added to Penal Code Section 830.1, subdivision (c), authorizing counties to utilize its correctional officers as peace officers under certain circumstances. The flexibility authorized under Penal Code Section 830.1, subdivision (c) would assist Merced County to relieve significant local law enforcement staffing shortages.

> **AB 2735 (Gray), Chapter 416**, adds the County of Merced to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the performance of duties related to their employment.

Traffic Stops: Notification by Peace Officers

Under federal law, officers generally have wide latitude to initiate a traffic stop regardless of the officer's motivation in making the stop. Under the Fourth Amendment, the decision to stop an automobile is reasonable if the officer has probable cause to believe that a traffic violation has occurred. (*Whren v. United States* (1996) 517 U.S. 806, 810.) A "pretext stop" occurs when an officer stops a vehicle for a traffic violation in order to investigate a more serious offense for which the officer lacks probable cause. Officers stop drivers for low-level offenses such as tinted windows, broken taillights, license plates improperly affixed to vehicles, obstructed windshields or objects hanging from a rearview mirror. Research shows that there is significant racial bias both as to who gets stopped and the outcomes of those stops, including the officer's use of a weapon. (https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/.) Confrontations can begin and escalate when people are not told the reason the officer has stopped them.

> **AB 2773 (Holden), Chapter 805**, requires, beginning January 1, 2024, a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. Specifically, this new law:
>
> - Requires, beginning January 1, 2024, a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

- Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

- Requires each state and local agency to include in its annual report to the Attorney General of data on stops to include the reason given to the person stopped.

- Requires the Department of Motor Vehicles to include information regarding the duty of a peace officer to state the reason for the stop in the handbook at the earliest opportunity when the handbook is revised or reprinted.

Law Enforcement Interactions with Developmentally Disabled Persons

According to the National Alliance on Mental Health and the federal Centers for Disease Control, approximately 53 million adults in the United States experienced mental illness in 2020, and 61 million American adults live with some type of disability. Of these individuals, a significant proportion struggles with a disability or mental illness that has regular and serious impacts on their daily lives. Although these individuals are no more likely to engage in criminal behavior than other adults, their disability or mental illness can lead to dramatically different interactions with law enforcement.

Recently, as police officers and agencies across the country have come under greater public scrutiny, so too has their role as first responders to incidents involving people with disabilities or mental illness. In 2020, it was estimated that around 20% of law enforcement agencies' calls for service were to respond to incidents involving someone experiencing a mental health or substance abuse crisis. Yet despite the frequency of these interactions, a staggering number of them have deadly consequences. A database of police shootings published by The Washington Post shows that Americans with mental illnesses make up nearly a quarter of those killed by police officers.

In California, 224 of the 1,040 people shot and killed by police since 2015 had a mental illness. For example, in 2019, Kenneth French, a non-verbal and mentally disabled man from Corona, was shot and killed by an off-duty police officer inside a Costco Wholesale store.

SB 882 (Eggman), Chapter 889, requires peace officers to indicate whether a person had a perceived developmental disability and other specified information in monthly use-of-force reports. Specifically, this new law:

- Requires peace officers to indicate whether a person had a perceived developmental disability in monthly use-of-force reports to the Department of Justice (DOJ).

- Provides that peace officers must also include in their report:

    - Reason for the contact;

- Reason for using force;
- Description of injuries;
- Whether medical aid was rendered; and,
- Any signs of developmental disabilities, substance use, or erratic behavior.

- Creates within the DOJ, and upon legislative appropriation, the "Advisory Council on Improving Interactions between People with Intellectual and Development Disabilities and Law Enforcement" for the purpose of:
  - Evaluating existing training for peace officers as related to the intellectually and developmentally disable community;
  - Evaluating existing training for peace officers as related to those with mental health disorders;
  - Identifying gaps in training for intellectually and developmentally disabled people, as well as those with mental health disorders; and,
  - Making recommendations annually to the Legislature for improving outcomes of interactions, including submitting a report 24 months after convening in July 1, 2023.
- Requires the advisory council be chosen by the Governor, Senate Rules Committee, or Speaker of the Assembly, and be composed of individuals from several different representative groups.
- Requires the DOJ to provide a staff member to coordinate and assist with the advisory council's recommendations.
- Contains a sunset clause terminating the advisory council on July 1, 2026.

Public Employment: Peace Officer Citizenship

To be appointed as a peace officer in California, a person must be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship. Citizenship status must be conferred within three years of applying for citizenship. (Gov. Code, § 1031 & 1031.5.)

The peace officer citizenship requirement is an archaic requirement that is not inclusive or representative of the diverse population of people that make up our great state. In recent years, California has created numerous opportunities for anyone to apply for a myriad of careers. Many undocumented residents can pay in-state tuition at the University of California, California State

University, and community colleges. Many can be issued drivers licenses. They are eligible to serve as lawyers, practice medicine as physicians or nurses, and are eligible to receive professional licenses from the 43 CA Boards and Bureaus under the Department of Consumer Affairs. However, there is one profession that remains out of reach for undocumented immigrants in California - serving as peace officers in the cities and communities where undocumented residents live.

SB 960 (Skinner), Chapter 825, eliminates the requirement that a person be a United States citizen or a permanent resident in order to become a peace officer and instead requires that the person be legally authorized to work in the United States per federal law. Specifically, this new law:

- Repeals the requirement that a person be a United States citizen or a permanent resident who has applied for citizenship in order to be a peace officer.

- Repeals the requirement that a person be a United States citizen in order to be a member of the California Highway Patrol.

- Requires a person applying to be a peace officer to be legally authorized to work in the United States pursuant to specified federal law.

- Repeals the requirement that a person who is a permanent resident who has applied to be a peace officer diligently cooperate with the United States Citizenship and Immigration Services in processing their citizenship application.

POST-CONVICTION RELIEF

Cannabis Crimes: Resentencing

The passage of Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), in 2016, legalized specified personal use and cultivation of marijuana for adults 21 years of age or older and reduced criminal penalties for specified marijuana-related offenses. Proposition 64 also created a process whereby individuals could petition for the reduction, dismissal, and sealing of their prior cannabis convictions for acts that now are legal under state law. However, the process was vastly underutilized because individuals with prior convictions were not aware it existed.

Following Proposition 64, California passed AB 1793 (Rob Bonta), Chapter 993, Statutes of 2018, which provided for automatic sealing of cannabis criminal records for old offenses that are no longer illegal. However, AB 1793 was implemented inconsistently across the state. While some counties were proactive in implementing the bill, others were not, and the statute lacked certain deadlines to ensure completion of the process. According to data from the Judicial Council, there is wide variance in county compliance with the law, which has resulted in many Californians not receiving the relief for which they are eligible.

AB 1706 (Mia Bonta), Chapter 387, requires the court to resentence, redesignate, or dismiss specified cannabis-related convictions. Specifically, this new law:

- Provides that if the prosecution did not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation of the conviction on or before July 1, 2020, the conviction shall be deemed unchallenged, recalled, dismissed, and redesignated, as applicable, and the court shall issue an order recalling or dismissing the sentencing, dismissing and sealing, or redesignating the conviction in each case no later than March 1, 2023.

- Requires the court, on or before March 1, 2023, to update its records and report all convictions that have been recalled, dismissed, redesignated, or sealed to the Department of Justice (DOJ) for adjustment of the state summary criminal history information database.

- Requires DOJ, on or before July 1, 2023, to ensure that all of the records in the state summary criminal history information database that have been recalled, dismissed, sealed or redesignated have been updated and ensure that inaccurate state summary criminal history is not disseminated.

- Provides that for those individuals whose state summary criminal history information was disseminated by DOJ as part of a statutorily authorized background check in the 30 days prior to an update based on this bill's provisions, DOJ shall provide a subsequent notice to the requesting entity provided that the entity is still entitled to

receive the state summary criminal history information.

- Requires DOJ to conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized pursuant to existing law so that individuals that may be impacted by this process are informed of the process, to request their criminal history information to verify the updates or how to contact the courts, prosecution or public defenders' offices to assist in verifying the updates.

- States that a cannabis-related conviction, arrest, or other proceeding that has been ordered sealed is deemed never to have occurred and the person may reply accordingly to an inquiry about the events.

- Requires, beginning March 1, 2023 and until June 1, 2024, DOJ, in consultation with Judicial Council, to submit quarterly joint progress reports to the Legislature that includes specified information.

Criminal Law: Certificates of Rehabilitation

A Certificate of Rehabilitation (COR) is a court order declaring that a person convicted of a crime is now rehabilitated. A successful petition for a COR provides a number of benefits: it can enhance a felon's potential for licensing consideration by a state board; serve as an official document to demonstrate a person's rehabilitation to enhance employment possibilities; and it serves as an application for a full pardon, complete with a recommendation for such from the issuing court.

Under existing law, individuals who were not sentenced to prison or county jail, but instead given a probationary sentence, must obtain a dismissal of the accusatory pleading prior to filing a petition for a COR. However, petitioners who served a state prison or county jail sentence are not required to obtain a dismissal of their accusatory pleading.

AB 1924 (Gipson), Chapter 766, allows a person convicted of a felony, other than a registrable sex offense, to file a petition for a COR without certain requirements including, among other requirements, the dismissal of the accusatory pleading and that the person has not been incarcerated since the dismissal. Specifically, this new law:

- Eliminates the requirement that the accusatory pleading be dismissed prior to filing a petition for rehabilitation, unless the person was convicted of a misdemeanor violation of any sex offense specified in Penal Code section 290, or a felony violation of any sex offense specified in Penal Code section 290 who is granted probation.

- Eliminates the requirement that the person not have been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, unless the person was convicted of a misdemeanor violation of

any sex offense specified in Penal Code section 290, or a felony violation of any sex offense specified in Penal Code section 290 who is granted probation.

Criminal Procedure

Existing law provides post-conviction relief to human trafficking, intimate partner violence, and sexual violence victims by vacating nonviolent arrests, charges, and convictions that were a direct result of the human trafficking, intimate partner violence, or sexual violence. The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers.

Under federal law, a vacated conviction remains valid for purposes of federal immigration laws where there is no "legal defect in the conviction." No effect is given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. A state order setting aside a conviction is invalid for immigration purposes if it is not based on any showing of innocence or on any suggestion that the conviction had been improperly obtained. (*United States v. Campbell* (1999) 167 F.3d 94.) Thus, if a court vacates a non-citizen's conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes and can still form the basis for adverse immigration consequences. Otherwise stated, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the individual no longer has a "conviction" under federal law; if, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the conviction remains for immigration purposes.

Vacatur under California law is based on a substantive defect: because the arrest or conviction was a direct result of human trafficking, intimate partner violence, and/or sexual violence, the defendant had a lack of criminal intent, a necessary element of the crime, and the arrest or conviction should never have occurred given the defendant's status as the victim. However, current statutory language failed to explicitly specify that the vacatur relief is based on a substantive defect that legally invalidates the conviction. Accordingly, under federal immigration law, the conviction remains for immigration purposes, despite the fact that it has been erased under state law. As such, the current statutory language inadvertently created a two-tiered system whereby citizens who obtain a vacatur are entitled to complete relief from the collateral consequences of their convictions, while non-citizen victims continue to face collateral immigration consequences of their convictions.

AB 2169 (Gipson), Chapter 776, clarifies that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense and that the conviction is invalid due to legal defect. Specifically, this new law:

- States that a court may vacate the conviction and arrest if it finds that the arrest or conviction was a direct result of being a victim of human trafficking, intimate partner violence, or sexual violence.

- Removes the requirement that a court must find that the victim was engaged in a good faith effort to distance themselves from the human trafficking scheme or the perpetrator of the harm and that the vacatur relief be in the best interest of the petitioner.

- Requires an order of vacatur to set forth a finding that the petitioner lacked the requisite intent to commit the offense and to set aside the arrest and finding of guilt as invalid due to a legal defect at the time of the arrest or conviction.

Incarcerated Person's Competence

The Supreme Court has ruled that it is unconstitutional to execute someone who is mentally incompetent. (*Ford v. Wainwright* (1986) 477 U.S. 399). Despite this prohibition, persons who are permanently incompetent and thus cannot be executed have spent years on California's death row. According to the Committee on Revision of the Penal Code, as of November 2021, at least six persons on death row may be permanently incompetent. That number is likely to grow as the death row population ages.

AB 2657 (Stone), Chapter 795, changes the procedure for determining whether an incarcerated person under judgment of death, whose execution date has been set, is incompetent to be executed, and establishes a procedure for an incarcerated person whose sentence of death has been affirmed on direct appeal, any time prior to the setting of their execution date, to petition a court for relief from a sentence of death on the grounds that they are permanently incompetent to be executed. Specifically, this new law:

- Requires the warden to serve a copy of the report on the incarcerated person's competence to be executed to the Attorney General, to the district attorney of the county in which the person was sentenced, and to the Governor, in addition to counsel for the incarcerated person as required under existing law.

- Requires the warden to notify, in addition to the district attorney of the county in which the incarcerated person was sentenced, the Attorney General and the incarcerated person's counsel if, after an execution date has been set, there is good reason to believe that an incarcerated person under judgment of death has become incompetent to be executed.

- Requires defense counsel, if they have reason to believe that the incarcerated person is incompetent to be executed, to file in superior court a petition that identifies the conviction and judgment, alleges that the incarcerated person is believed to be incompetent to be executed, and asks that the question of the incarcerated person's competence to be executed be inquired into.

- Requires the Attorney General to file such a petition if counsel for the incarcerated person does not file one, or if the incarcerated person does not have counsel and the warden has notified the district attorney and the Attorney General that there is reason to believe that the incarcerated person is incompetent to be executed.

- Requires the court, during the course of the proceedings, to consider whether the petitioner is permanently incompetent to be executed, as specified, and provides that the execution may not proceed until the inquiry is complete.

- Provides that an incarcerated person whose judgment and sentence of death has been affirmed on direct appeal may file, at any time prior to the setting of an execution date, a petition, verified and supported by the declaration of a qualified expert, alleging their permanent incompetence to be executed.

- Provides that a renewed petition must identify, with specificity, a change in the incarcerated person's diagnosis or prognosis or change in the law that arose after the determination of the prior request that supports the renewed petition.

- Defines "incompetent to be executed" as the inability, "due to mental illness or disorder…to rationally understand either the punishment the incarcerated person is about to suffer or why the incarcerated person is to suffer it."

- Defines "permanent incompetence to be executed" to mean:

    - The incarcerated person is presently incompetent to be executed; and,

    - The nature of the mental illness or disorder giving rise to incompetence is such that the incarcerated person's competence to be executed is unlikely to ever be restored.

- Requires a court to hold a hearing, as specified, if there is reason to believe the incarcerated person is presently incompetent to be executed or there is reason to believe the incarcerated person is permanently incompetent to be executed.

- Provides that, when an incarcerated person proffers an expert opinion that they are incompetent to be executed, another expert's opinion that concludes otherwise is an insufficient basis to deny a hearing.

- Authorizes an attorney acting on behalf of the incarcerated person who suspects that the person may be incompetent to be executed to obtain an order from the superior court from which the incarcerated person's conviction and sentence arises directing the California Department of Corrections and Rehabilitation to release the incarcerated person's medical and psychiatric records to the attorney or the attorney's representative for use, as specified.

- Requires the court to issue a statement explaining the legal and factual basis for a decision on a petition alleging an incarcerated person's permanent incompetence to be execute, as specified.

- Provides that the prosecution bears the burden of proving by a preponderance of the evidence that the incarcerated person is competent to be executed.

- Provides that a decision denying or granting the petition will be subject to review through a petition for a writ of mandate by either party.

Expert Witnesses: Writ of Habeas Corpus

According to the National Registry of Exonerations, which tracks both DNA and non-DNA based exonerations, false or misleading forensic evidence was a contributing factor in 24% of all wrongful convictions nationally. This includes convictions based on forensic evidence that is unreliable or invalid and expert testimony that is misleading. It also includes mistakes made by practitioners and in some cases misconduct by forensic analysts. In some cases, scientific testimony that was generally accepted at the time of a conviction has since been undermined by new scientific advancements in disciplines. (https://innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/.)

SB 467 (Wiener), Chapter 982, permits a person to bring a habeas writ where a significant dispute has developed regarding expert medical, scientific, or forensic testimony that would have more likely than not changed the outcome of their trial, and expands the definition of false evidence for the purpose of a habeas writ. Specifically, this new law:

- Allows a person to file a writ of habeas corpus where a significant dispute has emerged or developed in their favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome of their trial.

- Specifies that the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

- Provides that the "significant dispute" may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

- States that a "significant dispute" can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a

medical, scientific, or forensic expert based their testimony.

- Provides that in assessing whether a dispute is significant, the court shall give great weight to evidence that:
    - A consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony; or,
    - There is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.
- States that the significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.
- Requires the court to issue an order to show cause why relief should not be granted if the petitioner makes a prima facie showing that they are entitled to relief.
- Provides that to obtain relief, the person must make the required showing by a preponderance of the evidence.
- Expands the definition of "false evidence" to include the opinions of experts that are undermined by the state of scientific knowledge.

Criminal Records: Relief

Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

The refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have been involved in criminal activity seek to come clean and refocus their lives on productive, non-criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady income and excluded from the dignity and social inclusion that a job confers, people with criminal histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019, which established a procedure by which persons who had been arrested or convicted under certain conditions could have certain convictions dismissed, arrest records sealed, and have such information be withheld from disclosure, all without having to file a petition with the court. The purpose of AB 1076 was to remove barriers to housing and employment for recently convicted and arrested individuals in order to foster their successful reintegration into the community.

AB 200 (Budget Committee), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023 and included a change to allow for the dissemination of convictions for which relief was granted to the Commission on Teacher Credentialing.

SB 731 (Durazo), Chapter 814, expands automatic arrest record and conviction relief to additional felony offenses, and expands discretionary expungement relief to include felonies where the defendant was sentenced to state prison, rather than just realigned felonies. Specifically, this new law:

- Expands automatic arrest record relief to include arrests for felonies punishable by state prison, as specified, effective July 1, 2023, and subject to an appropriation in the annual Budget Act.

- Expands automatic conviction relief to include felonies committed after January 1, 2005, where the defendant was not granted probation and did not complete probation without revocation. Excludes serious and violent felonies, and felonies requiring sex registration, effective July 1, 2023, and subject to an appropriation in the annual Budget Act.

- Expands discretionary expungement relief to include felonies where the defendant was sentenced to state prison, rather than just realigned felonies, as specified.

- Precludes conviction record relief for a defendant sentenced to state prison for a registerable sex offense.

- Provides that specified drug possession offenses that are more than five years old for which expungement relief is granted shall not be presented to the Committee on Teaching Credentials.

- Provides that a person shall not be denied a teaching credential solely on the basis that they have been convicted of a specified drug possession offense if that conviction

is more than five years old and has been expunged, as specified.

- Provides that conviction record relief does not affect the authority to receive or take adverse action based on criminal history information for purposes of teacher credentialing or employment in public education, as specified.

- Requires the Department of Justice (DOJ) to provide every conviction rendered against an applicant, retroactive to 2020, regardless of relief granted to: the Commission on Teaching Credentialing, school districts, county offices of education, charter schools, private schools, state special schools for the blind and deaf, or any other entity required to have a background check because of a contract with any of those entities.

- Prohibits disclosure by DOJ of criminal history information relating to a conviction of specified drug possession offenses when the conviction is more than five years old and record conviction relief was granted to the Commission on Teaching Credentialing, school districts, county offices of education, and specified schools.

Sentencing: Members of Military: Trauma

As enacted, Penal Code section 1170.91 required the court, starting January 1, 2015, to consider a defendant's status as a veteran suffering from post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other forms mental illness as a result of military service as a factor in favor of granting probation and as a mitigating factor when choosing between the lower, middle, or upper term.

Subsequently, AB 865 (Levine), Chapter 523, Statutes of 2018, made Penal Code section 1170.91 retroactive by authorizing a court to resentence any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems including PTSD, TBI, and sexual trauma as a result of their military service.

However, even though Penal Code section 1170.91 was in effect starting January 1, 2015, some defendants may not have benefitted from the change in law either because some were unaware of the change or because evidence of the service-related trauma was not available or was unknown at the time of sentencing. A recent case illustrated the application of the statute and how a defendant who belatedly discovers their service-related trauma after sentencing is precluded from its resentencing provisions. (*People v. Valliant* (2020) 55 Cal.App.5th 903.) The court wondered if the Legislature intended or foresaw the application of the law in this way, and invited the Legislature to revisit the issue and provide statutory relief if it believed it appropriate to do so. (*Id*. at p. 912.)

SB 1209 (Eggman), Chapter 721, expands the ability of defendants who suffered from military related trauma to petition for recall and resentencing regardless of whether the sentence was imposed prior to January 1, 2015 or whether the defendant was sentenced to

an indeterminate (life) sentence, but exempts persons who have been convicted of specified violent offenses (super strikes) and registerable sex offenses. Specifically, this new law:

- Authorizes a defendant who suffered military related trauma to file a petition for recall of a sentence and resentencing without regard to when the defendant was sentenced, thereby deleting the requirement that the person have been sentenced prior to January 1, 2015.

- Specifies that if the person satisfies the resentencing criteria, the court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

    - Reduce the defendant's term of imprisonment by modifying the sentence; or

    - Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the case was originally prosecuted by the Department of Justice.

- Expands the existing resentencing provision to apply to persons sentenced to indeterminate sentences.

- Specifies special considerations of military service-related trauma in sentencing and resentencing do not apply to a person who has a prior conviction for an offense requiring sex offender registration or for a “super strike” offense.

State Summary Criminal History Information: In Home Supportive Services

Existing law authorizes a court to allow a defendant sentenced to county jail for a realigned felony to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty, if they have met specified criteria. If discretionary relief is granted, the court dismisses the accusation or information against the defendant and releases them from all penalties and disabilities resulting from the conviction, except as specified. (Pen. Code, § 1202.41.)

In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 1076 established a procedure in which persons who had been arrested or convicted under certain conditions could have certain convictions dismissed, arrest records sealed, and have such information withheld from disclosure, all without having to file a petition with the court. (Pen. Code, § 1203.425.) The purpose of AB 1076 was to remove barriers to housing and employment for recently convicted and arrested individuals in order to foster their successful reintegration into the community. AB 200 (Budget Committee), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for

which relief was granted to January 1, 2023.

SB 1260 (Durazo), Chapter 842, specifies that discretionary and automatic conviction record relief do not make a person eligible to provide or receive payment for providing in-home supportive services or "waiver personal care services" if they are otherwise ineligible under state or federal law or regulation. Specifically, this new law:

- Specifies that discretionary and automatic conviction record relief does not make a person eligible to provide or receive payment for providing in-home supportive services or "waiver personal care services" if they are otherwise ineligible under state or federal law or regulation.

- Requires a record relief order to state, and the defendant to be advised, that relief does not relieve the defendant of the obligation to disclose the conviction in response to any direct question in an application for enrollment as a provider of in-home supportive services and "waiver of personal care services," as specified.

PROBATION/MANDATORY SUPERVISION

Probation and Mandatory Supervision: Flash Incarceration

Under current law, if a person violates the conditions of their probation, the probation department can offer them an option to admit to the violation and serve flash incarceration rather than typical probation violation proceedings which can result in the person serving up to 180 days in custody. Flash incarceration is a tool that may potentially help deter future violations of court-ordered probation by imposing a length of detention of one to ten days in county jail. Intermediate sanctions, like flash incarceration, results in shorter disruptions from work, home, or programing than those caused by longer-term formal revocations. The authority to use flash incarceration is set to expire on January 1, 2023.

> **AB 1744 (Levine), Chapter 756**, extends authorization for the use of flash incarceration for individuals on probation or mandatory supervision until January 1, 2028.

Prisons: California Rehabilitation Oversight Board

The California Rehabilitation Oversight Board (C-ROB) was created via AB 900 (Solorio), Chapter 7, Statutes of 2007, and is housed within the Office of the Inspector General. C-ROB is a multidisciplinary board that examines the mental health, substance abuse, and educational and employment programs provided by CDCR to incarcerated individuals and individuals on parole.

C-ROB's annual report includes findings concerning the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in offender rehabilitation services, and levels of offender participation and success in the programs. In addition, C-ROB makes recommendations to the Governor and the Legislature with respect to modifications, additions, and eliminations of offender rehabilitation and treatment programs.

Homelessness and incarceration are often correlative. Individuals without stable housing are at greater risk of criminal justice system involvement, particularly those with mental health issues, veterans, and youth. Individuals with past incarceration face significant barriers to exiting homelessness due to stigmatization. Nationally, formerly incarcerated people are almost 10 times more likely to be homeless than then general public, and 70% of people experiencing homelessness have a history of incarceration. As a result, individuals on parole are seven times more likely to recidivate when homeless than when housed, a problem even more acute when those individuals have serious mental health needs. According to CDCR, in most cases, parole agents are not required to make sure people are housed, although they may voluntarily refer some people to long-term housing programs.

> **SB 903 (Hertzberg), Chapter 821**, requires C-ROB to examine the efforts of CDCR to address the housing needs of formerly incarcerated individuals, including those with serious mental health needs, and to include specified data on homelessness in its annual report.

Corrections: County of Release

Less than 15% of individuals released from prison are picked up by family or friends. Most must use their release money to pay for clothing, transportation home, housing, or other essentials. These obstacles compound for minority populations and people of color.

Currently, when someone completes their prison sentence, they return to the county of last legal residence, barring any release restrictions relating to public safety. A person's parole is usually restricted to that same county as well, with very few options for relocation.

SB 990 (Hueso), Chapter 826, requires that a person being released from state prison on parole be released, transferred, or permitted to travel to a county where they have an educational, vocational, outpatient treatment, or housing opportunity, as specified, unless there is evidence that the person would present a threat to public safety. Specifically, this new law:

- Amends the factors the California Department of Corrections (CDCR) must consider when deciding to return a person to a county or city other than the last county or city of legal residence to specify that the educational or vocational program that is located in another county be a program chosen by the incarcerated person, and requires CDCR to also consider the existence of a housing option in another county, including with a relative or acceptance into a transitional housing program of choice.

- Requires that a person incarcerated in state prison, who is being released on parole, be released to the county in the location of a post-secondary educational or vocational training program of the incarcerated person's choice, or of a work offer, the incarcerated person's family, outpatient treatment, or housing, absent evidence that a parole transfer would present a threat to public safety.

- Requires CDCR to complete the parole transfer process prior to release and ensure the person is released from prison directly to the county where the post-secondary educational or vocational training program, the work offer, the person's family, outpatient treatment, or housing is located.

- Requires a person on parole be granted a permit to travel outside the county of commitment to a location where the person has post-secondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment opportunity, or inpatient or outpatient treatment, unless there is evidence that travel outside of the county of supervision would present a threat to public safety.

- Requires a person on parole to be granted approval of an application to transfer residency and parole to another county where the person has a verified existence of post-secondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment

opportunity, or inpatient or outpatient treatment.

- States that the aforementioned requirements regarding parole release and transfer do not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole, as specified.

- Revises the requirement that the paroling authority give "serious consideration" to releasing a joint venture program participant to the county where the joint venture program employer is located if that employer intends to employ the person upon release, and instead requires the paroling authority to release the person to the county where the joint venture program employer is located.

- Authorizes probation to extend the aforementioned provisions regarding release, transfer, and travel to individuals released from state prison on PRCS, and states a legislative intent strongly encouraging probation to do so.

- Delays implementation of these provisions until January 1, 2024.

RESTRAINING ORDERS

Family Justice Centers: Restraining Orders

Family justice centers are a one-stop center offering services for individuals and families experiencing domestic violence, sexual assault, child abuse, elder and dependent adult abuse, and human trafficking. The centers bring public and private partners together under one roof to provide wrap-around services. The intent behind family justice centers is that victims will no longer have to travel to multiple locations, tell their story repeatedly, or fill out multiple forms. Moreover, neither cooperation with law enforcement nor involvement in the criminal justice process is required in order to access service providers at the facility. Family justice centers provide a myriad of services, such as counseling, legal services, emergency shelter, and assistance with restraining orders.

> **AB 2137 (Maienschein), Chapter 20**, requires family justice centers to provide clients with educational materials relating to gun violence restraining orders, domestic violence restraining orders, and other legal avenues of protection for victims and their families, if appropriate.

Human Trafficking: Restraining Orders

As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

Specific to domestic violence and offenses requiring sex offender registration, the case file must be clearly marked so that the court is aware of their nature for purposes of considering a protective order. (Pen. Code, § 136.2(e)(1).) Commercial sexual exploitation of a minor was previously covered under the law, as it is an offense requiring sex offender registration. The court has the authority to issue pre- and post-conviction protective orders. (Pen. Code, § 136.2.)

> **SB 382 (Caballero), Chapter 87**, specifically enumerates commercial sexual exploitation of a minor as an offense which would allow a court to issue a pre- or post-conviction protective order. Specifically, this new law:
>
> - Reemphasizes that restraining orders issued in criminal cases involving trafficking of a minor for the purpose of a commercial sex act, take precedence over civil restraining orders that cover the same parties.
>
> - Requires a prosecutor to consider seeking a restraining order in all cases involving human trafficking.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Electronic Monitoring

The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison but suffer from a mental illness which causes them to be a danger to the safety of others. These individuals are referred to the Department of State Hospitals for treatment in a state hospital. An SVP who has successfully completed treatment and is to be conditionally released has been determined to no longer pose a danger if supervised and treated in the community. These individuals are heavily supervised. Liberty Healthcare is the conditional release supervision program, and law enforcement is part of the Community Safety Team established by Liberty Healthcare. Supervision and monitoring tools include 24-hour GPS monitoring. Though persons on conditional release are currently subject to GPS monitoring, this is not required by statute.

AB 1641 (Maienschein), Chapter 104, requires a person who is on conditional release or outpatient status after having been committed as an SVP to be monitored by GPS until they are unconditionally discharged.

Sexually Violent Predators

Under existing law, a sexually violent predator (SVP) conditionally released from the Department of State Hospitals (DSH) must be returned to the county of domicile before their incarceration unless the court finds there are "extraordinary circumstances" requiring the person to be placed elsewhere. "Extraordinary circumstances" is defined as any circumstances that would inordinately limit the DSH's ability to effect the SVP's conditional release in their county of domicile. The county of domicile is responsible for identifying a county agency or program to provide assistance and consultation in locating and securing housing for the SVP. The current process does not require the participation of any local officials in the placement of the released SVP.

SB 1034 (Atkins), Chapter 880, establishes a process for finding housing for an SVP who has been found to no longer be a danger and sets forth what a court must do in order to determine extraordinary circumstances exist so that an SVP cannot be placed in their county of domicile. Specifically, this new law:

- Provides that the counsel for the committed individual, the sheriff or the chief of police of the locality for placement, the county counsel, and the district attorney of the county of domicile, or their designees, shall provide assistance and consultation in securing housing.

- Provides that DSH shall convene a committee with the aforementioned participants for the purpose of obtaining relevant assistance and consultation information in order

secure suitable housing for the person to be conditionally released.

- Provides that a court may order a status conference to evaluate the DSH's progress in locating and securing housing and in obtaining relevant assistance and consultation information from the participants. The court may sanction any of the participants for failure to appear at the status conference unless they show good cause for their failure to appear.

- Clarifies that the aforementioned participants are not required to perform a housing site assessment.

- Provides that a court may make a finding of extraordinary circumstances only after the committed person's county of domicile has petitioned the court to make this finding.

- Provides that the court may grant the county of domicile's petition and make a finding of extraordinary circumstances only after all of the following have occurred:

    - The county of domicile has demonstrated to the court that the county of domicile has engaged in an exhaustive housing search with meaningful and robust participation from the parties in both committee conferences and status conferences. The county of domicile shall provide the court with declarations from the county of domicile and all the participants attesting to the exhaustive housing search;

    - The county of domicile has provided at least one alternative placement county for consideration and has notified the district attorney(s) of the alternative placement county or counties, and the DSH regarding the county of domicile's intention to petition for a finding of extraordinary circumstances. And if applicable, the county of domicile shall indicate how the committed person has a community connection to a proposed placement county;

    - The county of domicile has provided the declarations and community connection information to the DSH and to the district attorney of the proposed alternate placement county; and,

    - The DSH and the district attorney of a proposed alternate placement county have had an opportunity to be heard at a hearing, of which they receive at least 30 days' notice.

- States that if the court finds that extraordinary circumstances require the placement to occur outside the county of domicile, the court shall state its findings on the record and grounds supporting its findings.

- States that notwithstanding any other law, a court may order the placement of the SVP in an alternative placement county if there is a stipulation between the domicile county and the alternative placement county.

THEFT

Crimes: Theft: Animals

In *People v. Sadowski* (1984) 155 Cal.App.3d 332, the Court of Appeal upheld a defendant's conviction for grand theft of a cat noting that the general grand theft statute provides adequate notice of conduct that the taking of any personal property, which includes pets, is unlawful. A separate existing statute specifically declares dogs to be personal property, but does not reference other companion animals. (Pen. Code, § 491.)

AB 1290 (Lee), Chapter 546, clarifies that any person who steals, takes, or carries away a companion animal of another is guilty of theft. Specifically, this new law:

- Clarifies that stealing a companion animal of another is theft.
- Specifies that companion animals are personal property, their value to be ascertained in the same manner as other property, for the purposes of theft.
- Defines "companion animal" as an animal, including but not limited to, a dog or cat that a person keeps and provides care for as a household pet or otherwise for the purpose of companionship, emotional support, service, or protection. "Companion animal" excludes feral animals, including feral cats, as specified.

Theft: Jurisdiction

AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, among other things, created the crime of organized retail theft and expanded jurisdictional rules for theft offenses. AB 1065 had a sunset date of January 1, 2021. Last year, AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft through 2025, but the jurisdictional provisions of AB 1065 were specifically not included.

AB 1613 (Irwin), Chapter 949, expands the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to the underlying theft offenses. Specifically, this new law:

- States that the jurisdiction of a criminal action brought by the Attorney General for theft, organized retail theft, and receipt of stolen property includes the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was received, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense.
- Provides that when multiple offenses of theft, organized retail theft, or receipt of stolen property that all involve the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially

similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper venue for all of the offenses.

- Extends jurisdiction to all associated offenses connected together in their commission to the underlying theft offenses when prosecuted by the Attorney General.

Regional Property Crimes Task Force: Catalytic Converter Theft

A catalytic converter is a specialized metal component of a car's emissions system that reduces the amount of harmful pollution emitted through the tailpipe. This metal component is made of precious metals, including platinum, and can be sold to disreputable automotive repair shops or scrap metal vendors for hundreds of dollars. From start to finish, a catalytic converter can usually be removed from a vehicle in just a few minutes.

Local law enforcement agencies have become inundated with reports of stolen catalytic converters. In the county of Fresno, for example, reports of stolen catalytic converters have risen over 900 percent. The existing California Highway Patrol Retail Theft Task Force is well positioned to assist local law enforcement agencies to address this problem.

AB 1653 (Patterson), Chapter 105, adds theft of vehicle parts and accessories to the property crimes that the California Highway Patrol's Regional Property Crimes Task Force should prioritize.

Online Marketplaces: Theft Reporting

Property crime has increased in some parts of California. A Public Policy Institute of California analysis found that property crime rose an average of nearly 7% in Los Angeles, Oakland, San Diego, and San Francisco during the first 10 months of 2021. This increase has coincided with extensive media coverage of organized retail crime in California's largest cities. The California Retailers' Association (CRA) estimates that San Francisco and Oakland alone suffer $3.6 billion per year in losses from organized retail crime, although some question CRA's estimate.

Under current law, the California Highway Patrol (CHP) must coordinate with the Department of Justice to organize regional property crimes taskforces to help local law enforcement combat property crime. As part of its Organized Retail Theft Program, CHP developed an online reporting system for victims of organized retail crime. But CHP's reporting system does not provide a mechanism for people to report goods found online that they suspect have been stolen.

AB 1700 (Maienschein), Chapter 855, requires the Attorney General's website to contain a feature for the reporting of suspected stolen goods for sale on online marketplaces, and requires the Attorney General to provide information on suspected stolen goods to local law enforcement agencies and regional property crimes task forces. Specfically, this new law:

- Requires the Attorney General's website to contain a feature for the reporting of suspected stolen goods for sale on online marketplaces.

- Requires online marketplaces to display a link to the Attorney General's online reporting system on their platforms.

- Requires the link to be clearly, conspicuously, and reasonably designed to be seen by all users of the platform.

Retail Theft: Diversion

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services.

After the passage of Proposition 47, opponents of the measure argued that because shoplifting had to be charged as a misdemeanor unless the amount stolen exceeds $950, repeat offenders and those who work in concert with others in an organized retail theft ring were not being appropriately punished.

In 2017, the National Retail Federation (NRF) conducted the Organized Retail Crime Survey and found that organized retail theft continued to be pervasive within the industry. The survey stated that 95% of merchants reported having been a victim of coordinated theft, resulting in revenue losses estimated at $30 billion per year. NRF defined organized retail crime as theft/fraudulent activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain, often through subsequent online or offline sales. Organized retail crime typically involves a criminal enterprise that organizes multiple theft rings at a number of retail stores and employs a fencing operation to sell the illegally-obtained goods for financial gain. Organized retail crime can also simply involve the recruitment of others to steal on another's behalf. Despite the growing trend in various forms of "Organized Retail Crime," California had never adopted a Penal Code section making it a crime.

In response, AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft, alternatively punishable as a felony or misdemeanor (wobbler). Among other things, AB 1065 also established the CHP property crimes task force. AB 1065 included a sunset date of January 1, 2021. In a budget bill, the sunset date was extended to July 1, 2021. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-enacted the crime of organized retail theft and the property crimes task force with an urgency clause allowing these provisions to take effect immediately. These provisions will sunset on January 1, 2026.

AB 1065 contained various other provisions directed at reducing theft recidivism which have since sunsetted.

AB 2294 (Jones-Sawyer), Chapter 856, re-authorizes the prosecuting attorney's office or county probation department to create a diversion or deferred entry of judgment (DEJ)

program for persons who commit theft offenses, as modified; re-enacts various changes to existing laws related to arrest and bench warrants for theft-related offenses, as modified; and re-establishes a grant program to create demonstration projects to reduce recidivism to high-risk misdemeanor probationers. Specifically, this new law:

- States that a peace officer may take into custody a person who has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months or if there is probable cause to believe the person committed organized retail theft, as specified.

- States that a court may issue a bench warrant if a defendant has been cited or arrested for misdemeanor or felony theft from a store and has failed to appear in court in connection with that charge or those charges within the past six months.

- Authorizes a city attorney, district attorney, or county probation department to create a diversion or DEJ program for persons who commit a theft offense or repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department.

- Provides that if a county creates a diversion or DEJ program for individuals committing a theft offense or repeat theft offenses, on receipt of a case or at arraignment, the prosecuting attorney shall either refer the case to the county probation department to conduct a pre-filing investigation report to assess the appropriateness of program placement or, if the prosecuting attorney's office operates the program, determine if the case is one that is appropriate to be referred to the program.

- Specifies that in determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

    - Any pre-filing investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement;

    - If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity;

    - If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or DEJ program;

    - If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program; and,

- Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

- States that on referral of a case to the program, a notice shall be provided, or forwarded by mail, to the person alleged to have committed the offense with both of the following information:

  - The date by which the person must contact the diversion program or DEJ program in the manner designated by the supervising agency; and,

  - A statement of the penalty for the offense or offenses with which that person has been charged.

- States that the authority to create a diversion or DEJ program does not limit the power of the prosecuting attorney to prosecute a theft or repeat theft, except that the prosecuting attorney may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:

  - Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney; and,

  - Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by program.

- Requires the Board of State and Community Corrections (BSCC), upon appropriation, to award grants to four or more county superior courts or probation departments to create projects to reduce recidivism of high risk misdemeanor probationers.

- Specifies that the demonstration projects shall use risk assessments at sentencing when a misdemeanor conviction results in a term of probation to identify high-risk misdemeanants and to place these misdemeanants on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral or treatment needs to achieve rehabilitation and successful completion of probation. The formal probation program may include incentives such as shortening probation terms as probationers complete the individually tailored program or probation requirements.

- Requires the demonstration projects to evaluate the probation completion and recidivism rates for project participants and authorizes comparison to control groups to evaluate program efficacy.

- Requires BSCC to determine criteria for awarding the grants on a competitive basis that considers the ability of a county to conduct a formal misdemeanor probation project for high-risk misdemeanor probationers, including components that align with

evidence-based practices in reducing recidivism, including, but not limited to, risk and needs assessment, programming to help with drug or alcohol abuse, mental illness, or housing, and the support of the superior court if the application is from a county probation department.

- Provides that BSCC shall develop reporting requirements for each county receiving a grant to report the results of the demonstration project. The reports may include, but are not limited to, the use of risk assessment, the formal probation program components, the number of individuals who were placed on formal probation, the number of individuals who were placed on informal probation, and the number of individuals in each group who were subsequently convicted of a new offense.

- Requires BSCC to prepare a report compiling the information received from each county receiving a grant, to be completed and distributed to the Legislature and county criminal justice officials two years after an appropriation by the Legislature.

- Establishes a sunset for these provisions of January 1, 2026.

Theft: Aggregation

Proposition 47, also known as the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for specified theft crimes valued at $950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders.

Under existing case law, repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (See *People v. Bailey* (1961) 55 Cal.2d 514, 518-519.) This is known as the *Bailey* rule. Aggregation is an important concept in theft offenses because if charges of theft are aggregated then the value of the contents stolen can also be aggregated. Aggregation can make the difference between a defendant being charged with multiple misdemeanor offenses (where the value of each item stolen is less than $950) and a felony charge, when the value of the items stolen can be added together to breach the $950 threshold.

AB 2356 (Rodriguez), Chapter 22, codifies the *Bailey* rule and specifies that if the value of property taken, or intended to be taken, exceeds $950 over the course of distinct but related acts, the value of the property taken, or intended to be taken, may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan.

VEHICLES/VESSELS/DRIVING

Vessels: Public Safety Activities

Existing law establishes a five-mile-per-hour speed limit for machine-propelled vessels which are operating within 100 feet of a person swimming or within 200 feet of a beach or swimming float. However, existing law also provides an exemption to the speed limit for vessels engaged in direct law enforcement activities or public safety activities if the vessels are displaying distinctive blue lights.

Lifeguards must use rescue watercrafts (e.g., jet skis) to patrol coastlines and quickly respond to lifesaving and other public safety incidents. Lifeguards often must operate in excess of five-mph when responding to a particular situation. Because a blue light cannot be affixed to rescue watercraft such as jet skis, lifeguards are technically out of compliance with state law when exceeding five-mph within 100 feet of a swimmer or 200 feet from the beach.

Additionally, in *Michael Ramesh Haytasingh, et al. v. City of San Diego, et al.* (2021) 66 Cal.App.5th 429, the court of appeal interpreted legislative intent and concluded that the general exclusion from the laws regulating vessels on water for a state and its subdivisions did not include the city, as cities are not connected political subdivisions of the state. The court invited the Legislature to clarify.

AB 1682 (Boerner Horvath), Chapter 203, exempts vessels, including personal watercraft, clearly identifiable as lifeguard rescue vessels engaged in public safety activities from the speed limit imposed on machine-propelled vessels operating in certain areas. Specifically, this new law:

- Clarifies that the exemption from the general provisions regulating the use of vessels on water, as it applies to a vessel whose owner is a "state or subdivision thereof," includes cities and counties.

- Exempts vessels, including personal water craft, clearly identifiable as lifeguard rescue vessels and vessels engaged in public safety activities from the five-mile-per-hour speed limit for vessel propelled machinery in specified beach, swimming, or boat landing areas, as well as from any locally imposed speed regulation, as specified.

- Exempts personal water craft, clearly identifiable as lifeguard rescue vessels or public safety vessels, from these speed limitations when operating within the surf zone.

- Specifies that exempted vessels must be operated in a reasonable and prudent manner, in accordance with existing law.

- Defines "clearly identifiable as a lifeguard rescue vessel" as meaning an authorized lifeguard water rescue vessel operated or owned by a public agency.

- Defines “public safety activities” as including public agency sanctioned patrolling, traffic control, assisting disabled vessels, salvage operations, firefighting, providing medical assistance, search and rescue, and training.

Driving Under the Influence

Presently, the Vehicle Code uses the term “accident” to describe a collision involving a person driving under the influence of alcohol and/or drugs. According to Merriam-Webster, “accident” means “an unforeseen and unplanned event or circumstance.” Whereas accidents are unpredictable, driving under the influence of alcohol or drugs greatly increase the likelihood of a crash. Thus, the AP Stylebook recommends replacing “accident” with “crash” “when negligence is claimed or proven,” noting that “accident…can be read by some as a term exonerating the person responsible.” Indeed, unlike “accident,” “crash” is a neutral term.

AB 2198 (V. Fong), Chapter 81, replaces the term “accident” with “crash” in the Vehicle Code when used to describe collisions involving one or more persons driving under the influence of alcohol or drugs, and removes provisions of the Youth Drunk Driver Visitation Program authorizing a court to require supervised visitation by defendant or ward at a chemical dependency hospital.

Vehicles: Driver Education

The Department of Motor Vehicles (DMV) publishes an annual handbook that provides a synopsis of existing law and rules of the road. The handbook provides a more accessible means for potential and current drivers to understand the rules of the road, and is used as the basis for a written exam when an applicant applies for a driver's license.

In 2018 the Legislature passed AB 2918 (Holden), Chapter 723, which required DMV to include in the handbook a section written by the civil rights section of the Department of Justice (DOJ) about a person's civil rights during a traffic stop and the legal rights of the drivers and passengers. The 2021 Handbook includes two pages on the subject.

Additionally, existing law requires that an adopted course of study for grades 7 through 12 must offer specified courses in various areas of study, including automobile driver education. An automobile driver education course must be designed to develop students’ knowledge of the Vehicle Code and other laws relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness, and consequences of traffic accidents, and the knowledge and attitudes necessary for the safe operation of motor vehicles.

AB 2537 (Gipson), Chapter 332, requires the DOJ, in conjunction with the DMV and the Commission on Peace Officer Standards and Training (POST), to develop and create a video demonstrating the proper conduct by a peace officer and an individual during a traffic stop. Specifically, this new law:

- Requires the DMV to post this video on its internet website.

- Requires the video to be viewed during driver school courses and during automobile driver education courses offered in grades 7 through 12.

- Requires the DMV to inform applicants for an original, renewal, or duplicate driver's license about the video.

- Requires the rules and regulations regarding the curriculum for drivers' education and driver training courses, as prescribed by the DMV Director, to include viewing the video.

Driving Privilege: Suspensions

Existing law allows driving without possession of a license to be punished as a misdemeanor, even though it is a technical violation and not connected to unsafe driving. Meanwhile, driving-related offenses that carry risk of serious harm to others, such as speeding or unsafe lane changes, can be punished as infractions. This distinction is significant: people convicted of misdemeanors can face jail time and significant fines, while infractions carry only fines and are not criminal convictions. These more serious sanctions are not only disproportionate with the severity of the offense but also fall disproportionately on low-income people.

Existing law also allows suspension of someone's license to drive solely because they failed to appear in court. This is a counter-productive and ineffective means of encouraging people to appear in court. License suspensions for failure to appear are correlated with high poverty rates and race, with the highest rates of suspensions in poorer neighborhoods with a high percentage of Black and Latino residents. As recognized by the Committee on Revision of the Penal Code, many low-income people face significant barriers to attending [court], including an inability to take time off work, lack of available transportation, lack of childcare, or lack of a reliable or permanent address where they can receive notice of the hearing. Furthermore, license suspensions have severe economic consequences, making it more difficult for people to keep and find jobs and continue their education. Suspending someone's license for failure to appear in court does not work to encourage court appearance and only drives low-income people deeper into poverty.

AB 2746 (Friedman), Chapter 800, lowers the penalties for driving without a license and eliminates the ability for a court to suspend a person's driver's license for failure to appear. Specifically, this new law:

- Provides that the first and second offense for driving without a license shall be an infraction with a $100 fine unless the person has prior, safety-related suspensions or revocations on their license.

- Provides that the Department of Motor Vehicles (DMV) shall not suspend a driver's license for a person failing to appear. Maintains suspensions issued prior to January

1, 2027, at which time any suspensions pending will be terminated and removed from a driver's' record.

- Repeals the requirement for courts to notify DMV of a violation of a written promise to appear or a lawfully granted continuance of their promise to appear in court.

- Delays implementation for DMV-related provisions until January 1, 2027.

Fatal Vehicular Accidents: Chemical Tests Results

Currently, 26 states (including Washington, D.C.) conduct drug screenings and/or confirmatory tests for drugs on fatally-injured drivers, and 21 of those states require reporting of the findings of such tests.

California does not require such screenings or tests. However, some local governments have voluntarily begun testing for drug content after fatal collisions. In 2021, for example, 54.5% of fatally injured drivers in Orange County had at least one substance in their system.

SB 925 (Bates), Chapter 223, requires coroners and medical examiners to test the body of a person killed in a motor vehicle accident for drugs as well as alcohol. Specifically, this new law:

- Requires the report detailing the medical findings resulting from the drug screening and confirmatory tests to include blood alcohol content and blood drug concentrations, when available.

- Requires a coroner or medical examiner to use hospital antemortem samples, if available, in place of postmortem samples if the decedent was hospitalized prior to death.

- Expands the testing requirement to apply to a person involved in a motor vehicle accident whose death occurs within 48 hours of the accident, rather than 24 hours.

- Requires a coroner or medical examiner to include in its report to the Department of the California Highway Patrol following the death of a person resulting from an accident involving a motor vehicle, chemical test results, including blood alcohol content and blood drug concentrations, when available.

- Applies to a county medical examiner the same requirements imposed on a county coroner related to the mandated chemical testing, and any subsequent reporting of testing results, of a person involved in a motor vehicle accident resulting in death.

Vehicles: Registration

Existing law requires most vehicles to clearly display proof of current registration by affixing a registration sticker, or "tab," to the rear license plate. (Veh. Code § 5204, subd. (a).) Existing law authorizes peace officers to enforce traffic and vehicle-related violations, and requires motorists to submit to lawful orders and inspections in furtherance of this enforcement. A routine traffic stop is justified if the police officer has a reasonable suspicion that the vehicle is unregistered.

Failure to display registration tabs on a vehicle is punishable as an infraction (Veh. Code, § 40000.1) but is also considered a "correctable" violation, or "fix-it ticket" (Veh. Code, § 40610, subd. (a)). This means that if a cited motorist shows proof of correction and pays a minor dismissal fee, the court will dismiss the charge.

Currently, officers are not required to check DMV records to confirm that a licensing or registration-related traffic violation has occurred prior to issuing a citation; an officer may issue a citation for a violation that is merely observed.

The DMV reissues thousands of registration stickers each year. Most of these are due to thefts, leaving innocent drivers exposed to citations and fines by the DMV and law enforcement.

SB 1359 (Hueso), Chapter 306, requires law enforcement to confirm that a vehicle does not have a current Department of Motor Vehicles (DMV) registration before issuing a citation for failure to display registration tabs, and prohibits the issuance of a citation for failure to display registration tabs when the vehicle's registration is current. Specifically, this new law:

- Provides that prior to issuing a citation for a violation of the requirement to display registration tabs, a law enforcement officer or person authorized to enforce parking laws and regulations must verify, using available DMV records, that no current registration exists for that vehicle.

- Provides that a citation for failure to comply with the registration tab display requirement shall not be issued against any vehicle that has a current registration on file with the DMV.

- Prohibits a person authorized to enforce parking laws and regulations from issuing a citation for failure to display registration tabs when that person does not have immediate access to DMV records.

Vehicular Manslaughter: Speeding and Reckless Driving

In 2020, the United States Department of Transportation's National Highway Traffic Safety Administration issued findings that showed while Americans drove far less in 2020 due to the pandemic, motor vehicle crashes resulting in fatalities increased 7.2% (approx. 39,000 fatalities) compared to 2019 (36,096 fatalities). Last year, traffic collisions killed 294 individuals in the City of Los Angeles, a 24-percent increase from 2020. Traffic accidents in Los Angeles involving serious injury to pedestrians were up by 45 percent, and serious injury to bicyclists was up by 34 percent from 2020. And according to the Department of the California Highway Patrol, in 2021, it responded to almost 6,000 street races and sideshows, issuing 2,500 citations statewide and making 87 arrests.

> **SB 1472 (Stern), Chapter 626,** provides that, for the purposes of vehicular manslaughter, "gross negligence" may include, based on the totality of the circumstances, participating in a sideshow, an exhibition of speed, or speeding over 100 miles per hour.

VICTIMS

Victim's Rights: Notice of Defendant's Release

Existing law requires the California Department of Corrections and Rehabilitation (CDCR) or the Board of Parole Hearings (BPH) to notify a victim or witness who has requested notification that a person convicted of a violent felony is scheduled to be released onto parole. (See Pen. Code, § 3058.8.) Section 3058.8 further requires notice of the community in which the person is scheduled to reside if it is in the county of residence of a witness, victim, or family member of a victim who has requested notification, or within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notification. Existing law also requires CDCR or BPH to provide updated information to the witness, victim, or next of kin if there is a change in the community where the person is to reside.

There is no entity tasked with providing that information to a victim when a person is placed on probation for domestic violence or stalking. Domestic violence advocates urge that victims of abuse and stalking should have the right to access this information that may pertain to their safety because knowing the address of their abuser will equip them with information that may help them assess their risk and, if necessary, take further action to protect themselves.

AB 547 (McCarty), Chapter 914, requires a county probation department, upon request, to notify a victim of domestic violence or stalking of the perpetrator's community of residence when the perpetrator is placed on, or being released on, probation. Specifically, this new law:

- Requires the county probation department to notify a victim of domestic violence or abuse, as defined, or a victim of stalking, as defined, of the perpetrator's current community of residence or proposed community of residence upon release, when the perpetrator, after conviction, is placed on or being released on probation and under the supervision of the county probation department.

- Requires the above notification to take place only if the victim has requested notification and has provided the probation department with a current address at which they may be notified.

- Requires the district attorney to advise every victim of domestic violence or abuse, or stalking, of their right to request and receive notification.

California Victim Compensation Board: Reimbursement for Mental Health Services

The Victim Compensation Program covers outpatient mental health treatment as necessary as a direct result of the qualifying crime. Victims are eligible for compensation if they were a California resident at the time of the crime or the crime occurred in California and the victim is not a resident. A victim can obtain services from different types of mental health providers,

including: licensed psychiatrists, licensed or registered psychologists, licensed clinical social workers, marriage family therapists, psychological assistants, licensed professional clinical counselors, peer counselors (only for rape crisis counseling), psychiatric mental-health nurses, clinical nurse specialists, and psychology associates. Under existing law, these mental health providers must be licensed in California, or properly supervised by a person who is licensed in California to provide those services. (See Gov. Code § 13957, subd. (a)(2)(D)(ii).)

CalVCB currently compensates for telehealth services which could arguably be used by victims who live out of state. According to the CalVCB website, "CalVCB typically allows up to five telehealth sessions per application. Once a claimant reaches five sessions, the treating mental health provider must request additional telehealth sessions by submitting a Telehealth Therapy Verification form. Providers must also submit a Treatment Plan…. Telehealth sessions do count against the claimant's current mental health session limit." (https://victims.ca.gov/for-service-providers/mental-health-service-providers/telehealth/) That being said, there can be downsides to receiving mental health care via telehealth. For example, a therapist might not be able to assess the client's body language. Additionally, a telehealth session with a distant provider may not be appropriate during a time of severe mental health crisis. There are also privacy concerns in that there is a danger that private information can become public if adequate security measures are not used by the therapist.

SB 877 (Eggman), Chapter 707, authorizes the CalVCB to reimburse for psychiatric or mental health counseling provided by a person who is licensed in the state in which the victim lives or who is supervised by a person who is licensed in the state in which the victim lives. Specifically, this new law:

- Removes the requirement that the person providing psychiatric, psychological or other mental health counseling-related services is licensed in California or is properly supervised by a person who is licensed in California.

Sexual Assault: Victim's Rights

California established the Sexual Assault Victims' Bill of Rights in 2003, (AB 898 (Chu), Chapter 537, Statutes of 2003). In passing that law, the Legislature found and declared that "[l]aw enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases." Upon the request of the survivor, law enforcement agencies investigating the sexual assault may inform the survivor of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, survivors have a right to be informed whether or not the assailant's DNA profile was developed from the rape kit evidence, whether or not that profile was uploaded to the DNA database and whether or not a hit resulted from the upload.

To that end, the Department of Justice was required to develop and establish a process, in consultation with law enforcement agencies and crime victims groups, that allows a survivor of sexual assault to track and receive updates privately, securely, and electronically regarding the status, location, and information regarding their sexual assault evidence kit in the department's SAFE-T database. (Pen. Code, § 680.1.)

SB 916 (Leyva), Chapter 709, entitles a sexual assault victim to access the SAFE-T database portal for information involving their own forensic evidence kit and the status of the kit. Specifically, this new law:

- Provides that a sexual assault victim has the right to access information about their own forensic evidence kit and the status of the kit via the SAFE-T database portal.
- States that the right to information about the status of the DNA testing of the rape kit evidence is no longer subject to sufficient resources to respond to such requests.
- Requires the addition of a clear statement on the card given to sexual assault victims that a sexual assault or domestic violence victim cannot be imprisoned or placed in custody for contempt for refusing to testify in the trial concerning the crime to which they were a victim.

Victims of Crime: Access to Information

Police investigations typically involve various entities including detectives, medical examiners, and morgues, and can involve multiple police departments. This complexity can lead to lack of communication between the agencies involved and consequently, create confusion, anxiety, and anger for families that are already traumatized due to the death of their family member.

One such example is the investigation of the death of Curtis Williamson. On March 26, 1997, Curtis and his cousin were reportedly involved in a fight at a parking lot near Mission Bay in San Diego. After the fight, Curtis and his cousin were chased into the bay, where they tried to swim to safety. Although his cousin was rescued by police, Curtis was later found dead, and investigators believe he drowned attempting to evade his pursuers. When police later contacted Patricia Ward, Curtis's mother, they told her that Curtis drowned accidentally because he could not swim. Ms. Ward found this dubious, as she had taught all of her children how to swim. Over the next several years, Ms. Ward worked to gather evidence regarding the circumstances of Curtis's death, while reportedly being stonewalled by law enforcement and county medical examiners. (https://justice4curtis.org/our-story/; https://www.10news.com/news/local-news/mom-of-murdered-teen-returns-to-san-diego-to-champion-curtis-law.) Though the medical examiner's office ultimately changed the manner of death to a homicide, to this day, no arrests have been made in connection with the murder. The incident prompted Ms. Ward to pursue what has been referred to as "Curtis's Law," a proposal that would allow families of murder victims under 18 to receive information from law enforcement regarding the underlying criminal investigation. After an online petition garnered over 77,000 signatures, a representative from the Florida Legislature introduced the measure in 2017, but the bill did not make it through the

legislative process. (https://www.actionnewsjax.com/news/local/proposed-curtis-law-would-give-families-of-murdered-children-information-about-their-childs-case/502708049/.) There has also been related legislation (HB 5349) introduced in Connecticut. HB 5349 generally requires the timely reporting by the police of a death to the next of kin. That bill was passed on May 10, 2022.

SB 1268 (Caballero), Chapter 227, requires law enforcement to provide specified information regarding the criminal investigation surrounding the death of a minor to the minor's immediate family, subject to certain limitations. Specifically, this new law:

- Provides that, in the event of a death of a minor being investigated by law enforcement, the law enforcement agency that initiates or bears the primary responsibility for the investigation shall provide the victim's parent or guardian with the following information, if and when the parent or guardian are located:
    - Contact information for each law enforcement agency involved in the investigation and the identification of the primary contact, if known, for the particular investigation at the involved law enforcement agency.
    - The case number referencing the investigation, if applicable.
    - A list of the personal effects found with the minor and contact information necessary to permit an immediate family member to collect the victim's personal effects. The list of victim's personal effects may be withheld from the immediate family if providing information about the personal effects would interfere with the investigation.
    - Information regarding the status of the investigation, at the discretion of the law enforcement agency.
- Provides that the above information shall be provided to the victim's immediate family in the event that a parent or guardian is not located.
- Specifies that law enforcement shall not be required to provide any information that would jeopardize or otherwise allow an individual to interfere with the ongoing investigation.
- Specifies that its provisions shall not be interpreted to require law enforcement to provide investigative records generated pursuant to their investigation for inspection by a victim's immediate family.
- Specifies that law enforcement is not required to provide more than one copy of the information above to the immediate family.

- Provides that law enforcement agencies providing information under this bill may require any family member receiving the information to confirm their identity through a certified declaration.

- Provides that any person knowingly or willingly making a false certification for a declaration pursuant to this bill shall be punishable by an infraction.

- Defines "immediate family" as the victim's spouse, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage or adoption.

MISCELLANEOUS

Drug Paraphernalia: Controlled Substance Testing.

Following the nationwide trend, opioid-related overdoses in California have risen dramatically over the last decade. According to the California Department of Public Health, in 2018 emergency room visits related to any opioid overdose totaled 8,832, and opioid related overdose deaths totaled 2,428. Two years later, those numbers had roughly doubled, with 16,537 emergency room visits related to opioid overdoses and 5,502 deaths related to opioid overdose in 2020. This increase in emergency room visits and fatal overdoses is largely attributable to fentanyl, a synthetic opioid used to treat severe pain. Between 2012 and 2018, fentanyl overdose deaths increased by more than 800%—from 82 to 786. In 2020, there were 3,946 deaths related to fentanyl overdoes. Overdose rates related to other controlled substances have increased as well. One way to confront these increases is to reform our 'drug paraphernalia' laws to not criminalize life-saving products and technologies, such as fentanyl testing strips.

> **AB 1598 (Davies), Chapter 201,** excludes from the definition of "drug paraphernalia" any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any analog of fentanyl, ketamine, or gamma hydroxybutyric acid.

San Francisco Bay Area Rapid Transit District: Policing Responsibilities

Specified transit districts, including BART, are authorized to issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. This authority applies to property, facilities, or vehicles of a transit district. In June 2020, BART, in partnership with the Santa Clara Valley Transportation Authority (VTA), extended service into Santa Clara County. The extension included two new stations - Milpitas and Berryessa/North San Jose. VTA was responsible for the design, engineering, and construction of the extension and maintains ownership of all facilities, equipment, and related infrastructure. The extension is managed through a comprehensive operations and maintenance agreement between BART and VTA, which includes policing responsibilities. BART Police patrol areas such as train cars, station platforms, and concourse areas.

AB 1337 (Lee), Chapter 534, Statutes of 2021, established authority of transit district entities to issue prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government. However, because both AB 1337 and SB 357 (Wiener), Chapter 86, Statutes of 2022, amended Section 99171 of the Public Utilities Code (PUC), double-jointing language was added to both providing that AB 1337 would become law only if both bills, among other things, were enacted and became effective on or before January 1, 2022. The Governor approved SB 357 on July 1, 2022, and as a result the amendments to the PUC section 99171 made by AB 1337 were not operative.

> **AB 1680 (Lee), Chapter 252,** prevents chaptering out of provisions of AB 1337 (Lee), Chapter 534, Statutes of 2021, regarding the authority of transit district entities to issue

prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government.

Emergency Services: Hit-And-Run Incidents: Yellow Alert

There are several alert systems currently in use in California. The first alert system developed was the "Amber Alert" authorizing law enforcement agencies to use the digital messaging on overhead roadway signs to assist in recovery efforts in child abduction cases. (AB 415 (Runner), Chapter 517, Statutes of 2002.) Following the success of the "Amber Alert" program, the "Blue Alert" and the "Silver Alert" notification systems were developed. The "Blue Alert" system provides for public notification when a law enforcement officer has been attacked. (SB 839 (Runner), Chapter 311, Statutes of 2010.) The "Silver Alert" notification system provides for public notification when a person 65-years-old or older is missing. (SB 1047 (Alquist), Chapter 651, Statutes of 2012.) The "Silver Alert" system was later broadened to include missing persons who are developmentally disabled or cognitively impaired. (SB 1127 (Torres) Chapter 440, Statutes of 2014.)

The original “Yellow Alert” was established by AB 8 (Gatto, Chapter 326, Statutes of 2015) and became effective on January 1, 2016. The “Yellow Alert” was available to local law enforcement agencies in assisting with hit-and-run accidents. However, the original legislation sunsetted.

AB 1732 (Patterson), Chapter 107, re-establishes the “Yellow Alert” system to aid in the apprehension of a suspect if a person has been killed in a hit-and-run incident. Specifically, this new law:

- Authorizes the California Highway Patrol (CHP) to activate a Yellow Alert within the geographic area upon request if it concurs with the requesting law enforcement agency that the following requirements are met:
    - A person has been killed due to a hit-and-run accident;
    - The suspect has fled the scene utilizing the state highway or is likely to be observed by the public on the state highway system;
    - The law enforcement agency has additional information concerning the suspect or the suspect’s vehicle, as specified; and,
    - Public dissemination of available information could either help avert further harm or accelerate the apprehension of the suspect.
- Requires CHP to track the number of Yellow Alert requests it receives and to create a report that includes an evaluation of the efficacy, the advantages, and disadvantages of the Yellow Alert system.

Bail Bonds: Fugitive Recovery Agents

Bail fugitive recovery agents, or bounty hunters, earn their living by tracking and apprehending individuals charged with a crime and out on bail who have failed to appear in court, also known as "bail fugitives." Bail agents licensed through the California Department of Insurance (CDI) often act as bounty hunters, but many bounty hunters are merely unlicensed individuals hired by a bail agent or company to recover bail fugitives on the licensee's behalf. California has regulated the bail bond industry since 1937, but not until 1999 did the state begin meaningfully regulating bounty hunters.

Existing law imposes various minimum standards on bounty hunters, including that they comply with limited education, notice, and conduct requirements. Specifically, bounty hunters must be at least 18 years of age, complete specified coursework, and not have any felony convictions, although no background check is required. Additionally, bounty hunters may not represent themselves as being law enforcement officers, and must notify local law enforcement no more than six hours before attempting to apprehend a bail fugitive. Under this framework, which does not require bounty hunters to be licensed, there is ample room for evading compliance, as CDI does not determine whether the minimum requirements are met before a bounty hunter becomes active. Enforcement generally occurs only after CDI has received a complaint about a specific bounty hunter.

AB 2043 (Jones-Sawyer), Chapter 768, prohibits a person from performing the activities of a bail fugitive recovery agent without a license, and requires an applicant for a bail fugitive recovery agent's license to file a surety bond, a policy of liability insurance, and a notice of appointment with the Insurance Commissioner (IC). Specifically, this new law:

- Prohibits a person from performing the activities of a bail fugitive recovery agent, or soliciting or negotiating to perform the activities of a bail fugitive recovery agent, unless properly licensed, as specified.

- Requires a bail fugitive recovery agent to file with the IC:

  - A bond having an admitted surety insurer as surety in the amount of $1,000; and

  - A policy of liability insurance that provides minimum limits of insurance of $1 million for any one loss or occurrence due to either bodily injury or death, or property damage, or both.

- Authorizes the IC to delay the implementation of the liability insurance requirement based on either the reasonable lack of availability or affordability, or both, of liability for bail fugitive recovery agents.

- Provides that bail agents, bail permittees, and bail solicitors who apply for a bail fugitive recovery agent license are exempt from the bail fugitive recovery agent filing, provided they have a current surety bond and liability insurance policy on file with the IC.

- Requires an applicant for a license to act as a bail fugitive recovery agent to file with the IC a notice of appointment executed by a surety insurer authorizing the applicant to act on behalf of, and pursuant to, the instructions of the appointing license holder.

- Provides that a bail fugitive recovery agent's appointment continues until termination of the bail fugitive recovery agent's license, the end of the license, as specified, or the filing of a notice of termination by the insurer or by the bail fugitive recovery agent.

- Provides that bail agents and bail permittees who apply for a bail fugitive recovery agent license are exempt from filing a notice of appointment executed by a surety insurer with the IC if:

    - The bail agent or bail permittee has one or more surety appointments on file with the IC; and,

    - The surety providing the appointments has authorized the bail agent or bail permittee to work under their authority as a bail fugitive recovery agent.

- Requires a bail fugitive recovery agent to disclose on their license application and renewal to CDI whether they are also a bail agent, permittee, or solicitor.

- Requires a bail fugitive recovery agent to carry an identification card issued by the IC.

- Provides that a bail fugitive recovery agent, and all bail licensees, shall not have been convicted of a felony unless the person is licensed, as specified.

- Requires an applicant to complete a minimum of 20 hours of classroom education on the duties and responsibilities of a bail licensee.

- Requires the IC to approve or disapprove applicants to provide education for licensure within 90 days, for an approval period of two years, and authorizes investigation of alleged violations of education providers.

- Requires an applicant to complete a 40-hour power of arrest course certified by the Commission on Peace Officer Standards and Training in order to be eligible to take the examination required to be licensed.

- Provides that the 40-hour power of arrest course requirement applies to bail fugitive recovery agents or to bails who hire, train, or designate assignments for bail fugitive recovery agents.

- Requires 12 hours of continuing education each two-year license term. Authorizes continuing education to be completed over the internet if the course has a written final exam, but exempts licensees from this requirement if the licensee submits

satisfactory proof to the IC that the licensee has been in good standing for 30 continuous years and is over 70 years of age.

- Adjusts various bail licenees' fees up approximately 10%.

- Requires the IC to publish and maintain a list of names of bail fugitive recovery agents' licenses on CDI's public website, together with their license numbers and any other appropriate information.

- Prohibits a person, other than a certified law enforcement officer, from apprehending, detaining, or arresting a bail fugitive unless that person is one of the following:

    - A bail, as specified, who is also a bail fugitive recovery agent;

    - A bail fugitive recovery agent; or,

    - A licensed private investigator, as specified, who is also a bail fugitive recovery agent.

- Provides that the prohibition on apprehending, detaining, or arresting a bail fugitive does not apply to a citizen's arrest, as specified, provided that no consideration is paid or allowed to any person effecting an arrest.

- Prohibits a person holding a bail license issued by another state from apprehending, detaining, or arresting bail fugitives in California.

Sentencing: Alternatives to Incarceration

The Committee on Revision of the Penal Code was established to study and recommend statutory reforms to the Penal Code relating to, among other things, alternatives to incarceration. In its 2021 Annual Report, the committee recommended "[a]dd[ing] a statement to the Penal Code that the disposition of any criminal case shall use the least restrictive means possible, including but not limited to diversion, restorative justice, probation, or incarceration." (<http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf) According to the committee, "California can safely reduce the number of people behind bars by modifying the Penal Code to explicitly encourage more restraint in the use of incarceration. While the Penal Code has numerous sections that require judges to impose incarceration, it contains few statements limiting or discouraging its use." By adding such a statement, the state "can reduce our state's reliance on incarceration while leaving judges with the option to incarcerate when necessary to protect public safety."

AB 2167 (Kalra), Chapter 775, declares it is the intent of the Legislature that the disposition of any criminal case use the least restrictive means possible, and requires the court presiding over a criminal matter to consider alternatives to incarceration. Specifically, this new law:

- Requires a court presiding over a criminal matter to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation.

- Provides that the court has the discretion to determine the appropriate sentence according to relevant statutes and the sentencing rules of the Judicial Council.

- Provides that it is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available.

Elections: Voter Registration

Existing law provides that a person cannot vote if they are serving a state or federal prison term for a felony. (*See* Calif. Const. Art. II, Sec. 4, ["[the] Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned for the conviction of a felony."]l *See also*, Elec. Code, § 2101, ["[a] person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election"].)

The Elections Code requires county and state elections officials to cancel a voter's registration if the person has lost the right to vote due to a felony conviction. Current practice is for the clerk of each superior court to provide information about a felony conviction to the Secretary of State and county election officials so that the election offices can properly remove persons from the voter roles as required by law.

SB 504 (Becker), Chapter 14, requires the Secretary of State (SOS) to provide county elections officials with identifying information for persons imprisoned for the conviction of a felony and persons on parole or otherwise released from imprisonment, as specified. Specifically, this new law:

- Requires the California Department of Corrections and Rehabilitation (CDCR) to provide to the SOS, on a weekly basis and in a format prescribed by the SOS, certain identifying information for all of the following persons:

    - Persons imprisoned for the conviction of a felony and under the jurisdiction of CDCR.

    - Persons on parole or persons released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR.

- Requires CDCR to provide the SOS with the personal identification information, including all of the following, for the persons listed above: all known first names; all known last names; all known middle names; all known name suffixes; last known address; date of birth; last four digits of such persons' social security number, if available; driver's license or state-issued identification number, if available.

- Requires the SOS, upon receipt of the information described above, to do the following:

    - Identify any registration record in the statewide voter database that contains personal identifying information that matches information pertaining to a person imprisoned for the conviction of a felony and under the jurisdiction of CDCR or on parole, as specified above.

    - For any matched records described above, provide to county elections officials within three days of receipt of the information from CDCR, the information pertaining to a person imprisoned for the conviction of a felony and under the jurisdiction of CDCR or a person on parole or released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR.

- Requires the county elections official, upon receipt of information from the SOS, to cancel the affidavit of registration of any person imprisoned for the conviction of a felony and under the jurisdiction of CDCR, or notify a person on parole or released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR, that their voting rights are restored and advise the person that if the person is otherwise entitled to register to vote, the person may register to vote.

- Provides that a county or county elections official is not liable for taking or failing to take the actions to cancel an affidavit of registration or notify a person of their restored right to vote when the county or county elections official have received erroneous information from the SOS or CDCR.

- Provides that if a person who is ineligible to vote receives a notice of eligibility and subsequently becomes registered or preregistered to vote, and votes or attempts to vote in an election held after the effective date of the person's registration or preregistration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote, unless that person willfully votes or attempts to vote knowing that the person is not entitled to vote.

School Safety: Homicidal Threats

According to the National Institute of Justice, available data shows that incidents of multiple-victim homicides occurring in schools started to decline in 1994, but have been increasing since 2009. The Center for Disease Control and Prevention specifically found that from 1994 to 2018, 95% of these multiple-victim school-associated youth homicides were caused by firearm related injuries. The U.S. Secret Service's National Threat Assessment Center, in its analysis of targeted school violence from 2008-2017, found that most attackers used firearms that were often acquired from home, experience negative home life factors, and exhibited concerning behavior.

SB 906 (Portantino), Chapter 144, requires specified school personnel to report to law enforcement threats or perceived threats of potential homicidal acts by students, prescribes law enforcement's required response to such threats, and requires the

California Department of Education (CDE) to develop model content. Specifically, this new law:

- Defines a "threat or perceived threat" as any conduct or writing by a student that creates a reasonable suspicion that the student is preparing to commit a homicidal act related to school or a school activity. Specifies that a threat could include possession, use, or depictions of firearms and associated materials, as well as warnings from other students, parents, or individuals.

- Requires law enforcement to keep records of such a report sent by a school official.

- Requires a local law enforcement agency or school site police officer to conduct an investigation and assessment of the threat or perceived threat, and to review the firearm registry maintained by the Department of Justice (DOJ).

- States that the investigation and threat assessment must include a search conducted at the school site, but only if the search is justified by a reasonable suspicion that it would produce evidence related to the threat or perceived threat.

- Requires the CDE, in consultation with relevant local educational agencies, civil rights groups, and the DOJ, to examine best practices to develop model content for local educational agencies to use by July 1, 2023.

- States that the model content issued by the CDE must, at a minimum, include informational material for parents of laws relating to safe storage of firearms and child access prevention.

- Requires, commencing with the 2023-24 school year, local educational agencies to send out annual notifications to parents or guardians of pupils in kindergarten and grades 1 to 12, containing information regarding laws on the safe storage of firearms and child access prevention.

- Provides local educational agencies serving pupils in kindergarten and grades 1 to 12, immunity from civil liability for any damages related to the abovementioned requirements.

State Public Defender: Grants

The Office of the State Public Defender's (OSPD) primary responsibilities are, among other things, to provide assistance and training to public defender offices, to counsel appointed representatives of indigent defendants, and to engage in related efforts for the purpose of improving the quality of indigent defense.

SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, mandated that OSPD provide assistance and training to county public defender offices, appointed private

counsel and counsel appointed to represent youth and adults, and engage in related efforts to improve indigent defense. OSPD subsequently created the Indigent Defense Improvement Division to effectuate that purpose.

SB 1117 (Becker), Chapter 615, authorizes the OSPD to administer and award grants to improve indigent defense services.

Intercepting Telephone Communications: Telephone Companies

Existing law generally makes it illegal for anyone to install a wiretap on a phone line or listen into a cellular phone call without both parties permission. There is an exception for a public utility for the purposes of constructing and maintaining the communications system.

The existing exemption from wiretapping for maintenance and operation purposes in the Penal Code is outdated because it doesn't encompass the full scope of the types of services telecommunication companies provide in the modern age, specifically Voice over Internet Protocol (VoIP) calling. As a result of this outdated definition, firms that provide telecommunications services by modern means find themselves subject to legal uncertainty for violation of a law that plainly intended to exempt the types of services they provide, if not the means by which they provide them, since the current technologies did not yet exist at the time the exemption was drafted. This bill simply recognizes that as technology changes, so too must our codes.

SB 1272 (Becker), Chapter 27, clarifies that the existing exemption from wiretapping for maintenance and operation purposes, applies to telephone companies as well as public utility companies. Specifically, this new law:

- Exempts telephone companies, when engaged in constructing, maintaining or operating communications services, from prohibitions on electronic surveillance, as specified.

- Defines a "telephone company" as:

    - Every corporation or person, owning, controlling, operating or managing any telephone line for compensation within this state; or

    - Any other person that provides residential or commercial telephone services to a subscriber, as specified

Public Safety Omnibus

Existing law often contains technical and non-substantive errors due to newly enacted legislation. These provisions need to be updated in order to correct those deficiencies.

SB 1493 (Committee on Public Safety), Chapter 707, makes technical and non-controversial changes to various code sections relating to criminal justice laws. Specifically, this new law:

- Amends the Evidence Code provision imposing certain limitations on the admissibility of evidence in rape cases, as well as other statutory provisions, to include a reference to the repealed statute on spousal rape to account for the possibility that criminal cases may still be prosecuted under the repealed statute based on crimes that were committed before its repeal.

- Changes references to "battered women's shelters" in multiple provisions of law to instead say "domestic violence shelter-based programs."

- Revises the accreditation standards for public officers or employees declared by law to be peace officers for high schools, colleges, and universities to include those holding a full membership in Cognia.

- Requires for data reported by law enforcement on whether an arrest was made, the information reported to include the offense for which the person was cited or booked, instead of the offense charged.

- Clarifies that in a misdemeanor case the court may, if the defendant is not in custody, proceed with the trial if the court finds the defendant has absented themselves voluntarily with full knowledge the trial is to be held or being held.

- Clarifies that an incarcerated individual who committed specified crimes is ineligible for expungement relief for those crimes despite having successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member.

- Permits the Department of Justice to furnish state summary criminal history information to the Governor when the Governor recommends to the Director of the Selective Service System applicants for appointment to the state's Selective Service System local boards.

- Eliminates the requirement that a juvenile petition may only be dismissed by the court in which a petition was originally filed and instead authorizes a judge of the juvenile court having jurisdiction over the petition, as specified, to dismiss the petition.

- Authorizes a judge of the juvenile court, when a youth is alleged to have committed an offense that could be punishable as a felony or as misdemeanor, to determine whether a case should proceed as a misdemeanor at any point in the adjudication of a petition.

- Makes other technical and clarifying changes.

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