ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2010

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October 15, 2010

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ANIMAL ABUSE

Trespassing: Animal Enclosures

Under current law, an individual who enters an animal enclosure could be charged under Penal Code Section 602(m), which creates a crime of trespass for "entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession."

However, this code section requires the prosecutor to prove intent to occupy the space. In *People v. Wilkinson*, 248 Cal. App. 2d Supp. 906, 56 Cal. Rptr. 261 (1967), the court held that "the transient overnight use of four 3 x 7 foot areas in a very large ranch for sleeping bags and campfire purposes was not the type of conduct which the Legislature intended to prevent by use of the word 'occupy'." The court further held, "Having in mind the legislative purpose in passing subdivision [(m)] of section 602, it is rather obvious that some degree of dispossession and permanency be intended."

Under this holding, the law requires more than a temporary stay as Penal Code Section 602(m) was intended to criminalize "squatting." It is unlikely that entrance into an animal enclosure would constitute occupation under the holding of *Wilkinson.*

> **AB 1675 (Hagman), Chapter 536,** creates an infraction or a misdemeanor for any person, other than an employee, to trespass into an animal enclosure at a zoo, circus or traveling animal exhibit.

BACKGROUND CHECKS

State Chief Information Officer: Criminal Histories

The State Chief Information Officer (SCIO) is engaged in an information technology infrastructure consolidation effort. As such, the SCIO should be allowed to conduct criminal background checks on employees, contractors, volunteers, venders, etc., who have access to confidential or sensitive information.

SB 1055 (Ashburn), Chapter 282, provides that the SCIO may conduct criminal background checks on employees, contractors, volunteers or vendors, as specified. Specifically, this new law:

- Provides that the SCIO may require fingerprint images and associated information from an employee, prospective employee, contractor, subcontractor, volunteer or vendor whose duties include working on data center, telecommunication, or network, operations, engineering, or security with access to confidential or sensitive information or data on the network or computing infrastructure.

- States that the fingerprint images and associated information gathered by the SCIO shall be forwarded to the Department of Justice (DOJ) for the purpose of obtaining information as to the existence and nature of a record of state and federal convictions and the existence and nature of the following:

    - A record of state and federal convictions and state and federal arrests for which the person is free on bail or on his own recognizance pending trial or appeal;

    - Being convicted of or pleading nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit if the crime is substantially related to the qualifications, functions, and/or duties of a person employed by the state; and,

    - Any conviction or arrest for which the person is free on bail or his or her own recognizance pending trial or appeal with a reasonable nexus to the information and/or data for which the employee shall have access.

- Provides that requests for federal criminal offender record information received by the DOJ shall be forwarded to the Federal Bureau of Investigation (FBI) by the DOJ.

- Provides that the DOJ may charge a fee and shall respond to the SCIO with the specified information requested.

- Provides that if an individual is rejected as a result of information contained in the DOJ or FBI criminal offender record information response, the individual shall receive a copy of the response record from the SCIO.

- Requires the SCIO to develop a written appeal for an individual determined ineligible for employment because of his or her DOJ or FBI criminal offender record, and requires that individuals not be found ineligible for employment until such an appeal process is in place.

- States that when considering background information, the SCIO shall take into consideration any evidence of rehabilitation, including participation in treatment programs, as well as the age and specifics of the offense.

BAIL

Bail

There is an ambiguity in existing law concerning the authority to increase bail above the local bail schedule without a hearing, based upon the declaration of a peace officer under penalty or perjury, that the amount of bail is insufficient to assure the defendant's appearance or protect the victim or victim's family. While Penal Code Section 1269c seems to clearly support the authority of the judge to act in this circumstance, the language of Penal Code Section 1270.1 prescribes a procedure for circumstances where bail is set higher or lower than the schedule, including a hearing and notice to the prosecuting and defense attorneys.

SB 1049 (Harman), Chapter 176, provides that a judge or magistrate may, with respect to a bailable felony offense or a misdemeanor offense of violating a domestic violence order, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, providing a sworn peace officer declares under penalty of perjury facts and circumstances to support his or her belief that the scheduled bail is insufficient to ensure the defendant's appearance, or to ensure the protection of a victim of domestic violence, notwithstanding other provisions of law that prohibit a defendant, arrested for specified offenses, from being released on bail in an amount that is more or less than scheduled bail until a hearing is held in open court.

CHILD ABUSE

Child Abuse Sentencing: Child Becoming Comatose or Suffering Paralysis

Current law does not take into consideration the consequences or the end result of an incident of child abuse when determining the sentence of a crime.

The punishment for the crime of felony child abuse under circumstances or conditions likely to produce great bodily injury (GBI) is two, four, or six years in prison. The penalty is the same even when the crime results in permanent injury or disability to a child. The penalty for assaulting a child under the age of eight which results in death is 25-years-to-life. The difference between these punishments ignores the reality that some child victims experience permanent injury or disability but do not perish.

> **AB 1280 (Villines), Chapter 300,** punishes any person who, having care or custody of a child under eight years of age, who assaults the child with force that to a reasonable person would be likely to produce GBI, resulting in the child becoming comatose due to brain injury or suffering paralysis of a permanent nature to state prison for 15-years-to-life. "Paralysis" is defined as a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.

Sex Offenders: Punishment: Parole

Current California law provides a complex structure of determinate sentence punishments for sex crimes. Successfully prosecuting a sex crime can be complex and difficult as well. Existing laws apply some limits on the movements of registered sex offenders. Most notably, as enacted by Jessica's law, current law provides it "is unlawful for any person for whom registration is required pursuant to the Sex Offender Registration Act to reside within 2,000 feet of any public or private school, or areas of a park where children regularly gather" and authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any person required to register as a sex offender.

> **AB 1844 (Fletcher), Chapter 219,** changes numerous statutes governing sex offenses and sex offenders, as well as other crimes. Specifically this new law:
>
> - Increases the punishment for various sex offenses, as specified.
>
> - Prohibits a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from his/her parole agent.
>
> - Requires lifetime parole for certain habitual sex offenders, and increases the length of parole, as specified, for all sex offenders.

- Requires the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and another that measures risk of future sexual violence to be administered as specified.

- Requires, with respect to persons convicted of specified sex offenses, the Department of Justice (DOJ) to make available to the public via DOJ's Web site, the static SARATSO score and information on risk level based on the SARATSO future violence tool.

- Imposes specified conditions of probation, including participation in an approved sex offender management program (SOMP), on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified.

- Requires participation in an approved SOMP, as a condition of parole, for specified persons released on parole.

- Changes the punishment for certain existing alternate felonies/misdemeanors that are not sex offenses.

Child Abuse Reporting: Multidisciplinary Personnel Teams

Due to budget cuts and the lack of staff, children who are victims of abuse and taken into protective custody cannot receive timely treatment for medical problems unless information is shared among verified members of the team investigating the abuse.

Existing law requires at least three team members convene before confidential information may be shared. Nurses, social workers and law officers state that valuable time is lost when responding to an emergency child abuse problem and trying to locate a third team member.

AB 2229 (Brownley), Chapter 464, revises and recasts provisions of law relating to multidisciplinary personnel teams (MDPT) engaged in the investigation of suspected child abuse or neglect.

- Reduces the size of a MDPT from three or more persons to two or more persons.

- Allow members of a MDPT to disclose and exchange information related to any incident of child abuse that would otherwise be confidential for a 30-day period following a report of suspected child abuse or neglect if good cause exists.

- Prohibits the disclosure and exchange of information to any person other than members of the MDPT, except as specified.

- Provides that the sharing of information shall be governed by a memorandum of understanding (MOU) among the participating service providers or provider agencies. The MOU shall specify the type of information that may be shared, and the process used to ensure confidentiality.

- States that every member of the MDPT who receives otherwise confidential information shall be under the same privacy and confidentiality obligations as the person disclosing the information, and information and records communicated shall be protected from discovery by all applicable statutory and common law protections.

- Clarifies that the sharing of information related to suspected child abuse shall be governed by protocols developed in each country that ensure that confidential information is not disclosed in violation of state or federal law.

- States that these provisions shall only remain in effect until January 1, 2014.

Child Abuse: Reporting

Under existing law, mandated child abuse reporters are required to make reports of suspected child abuse or neglect. These mandated reporters, such as school teachers, health care professionals and social workers, are therefore immune from liability as a result of providing the information to the investigating agency.

Penal Code Section 11166.05 authorizes, but does not require, a mandated reporter to report instances where a child is suspected of suffering serious emotional damage.

Due to the difference in language, a mandated reporter who cooperates with an investigator may be subject to discipline because the reports of emotional damage made pursuant to Penal Code Section 11166.05 are not categorized or referred to as child abuse reports.

In short, reporters of emotional damage are authorized to make reports, but not legally protected to share the reports with investigatory agencies

AB 2339 (Smyth), Chapter 95, provides that information relevant to a report made relating to a child suffering from serious emotional damage or in substantial risk thereof may be given to an investigating and licensing agency that is investigating known or suspected child abuse.

Commercially Sexually Exploited Minors

Under current law, when an adult has consensual sexual relations with a minor, the adult is subject to criminal prosecution; and as a matter of law, the minor is deemed too young to consent and is considered the victim. However, this is not the case when money is exchanged for sexual activity. In a case where an adult pays a minor in exchange for sexual activities, that minor is eligible for charges of prostitution.

This is an injustice in the many cases where minors are forcibly coerced and manipulated, often by an adult, into selling their bodies for the benefit of their pimps. Untold numbers of children fall victim to adults who sexually exploit them for commercial gain and who very often abuse these minors. Currently, exploited minors often go through the juvenile justice system with little opportunity for rehabilitation that is specific to their needs.

Following the collaborative diversion efforts which were created in Alameda County by AB 499 (Swanson), Chapter 359, Statutes of 2008, and set to be fully integrated in that county, the specialized needs of commercially sexually exploited minors in a manner which focuses on rehabilitation rather than criminalization should be addressed.

In California, it is a crime to recruit, pimp, or pander children for the purpose of prostitution. However, with the exception of the pilot program in Alameda County, California does not treat children involved in these acts of prostitution as victims. This pilot program should be expanded.

> **SB 1279 (Pavley), Chapter 116,** allows the County of Los Angeles to create a pilot project, contingent on local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

COMPUTER CRIME

Intellectual Property: Piracy

California remains the capital of the motion picture and television industry as well as a center for the recording and software industries. In terms of economic activity, television and movies generated a total of $42.2 billion, split almost equally between payroll expenditures and payments to vendors. Approximately 266,000 people were directly employed in the motion picture and television industry in California. When indirect employment resulting from the industry is factored in, the number of people working in California as a result of television and movies totals over 500,000.

Although piracy is a global problem, a recent study by the Los Angeles County Economic Development Corporation (LAEDC) notes that it affects the Los Angeles region disproportionately due to the concentration of the entertainment industry there. LAEDC estimates that in 2005 losses to the motion picture industry from piracy were $2.7 billion, the sound recording industry $851 million, and software publishing $355 million.

Not only is digital piracy a direct threat to the industry, but its effects is felt by state and local government in the form of lost tax revenues. According to the same LAEDC study, piracy affecting the entertainment industry just in Los Angeles cost nearly $134 million in state income taxes, $63.5 million in sales taxes, and $2 million in Los Angeles City business taxes.

Digital piracy reaches across California, affecting the Silicon Valley and its computer industry. According to the Business Software Alliance, in 2003 software piracy alone cost the California economy more than 13,000 jobs; $802 million in wages and salaries; over $1 billion in retail sales of business software applications; and roughly $239 million in total tax losses.

> **AB 819 (Calderon), Chapter 351,** doubles the current fines for crimes relating to intellectual property piracy.

Internet Impersonation

Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense; and upon conviction therefore, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed $1,000, or both that imprisonment and fine; or by imprisonment in the state prison, a fine not to exceed $10,000, or both that imprisonment and fine.

SB 1411 (Simitian), Chapter 335, creates a misdemeanor punishable by up to one year in the county jail, a fine of not more than $1,000 or by imprisonment and fine for any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening or defrauding another person.

CONTROLLED SUBSTANCES

Schedule of Controlled Substances: Apamorphine

Existing law classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance.

Apomorphine is classified as a Schedule II controlled substance, a classification that is generally defined by drugs that have an accepted medical value, present a high potential for abuse, and may lead to severe psychological or physical dependence if abused. Schedule II substances generally require more oversight due to the potential dangers associated with misuse of the substances. However, beyond its name, "apomorphine" has little relation to morphine and its properties. While morphine is appropriately classified as a Schedule II controlled substance, apomorphine does not meet the criteria set forth above and should be classified with other prescription drugs that do not pose such dangers.

> **AB 1414 (Hill), Chapter 76,** removes apomorphine from the California Controlled Substances Act, as specified.

Medical Marijuana: Location of Dispensaries

In November 1996, Californians voted in favor of Proposition 215, the "Compassionate Use Act". Pursuant to Health and Safety Code Section 11362.5, the Act ensured the right of patients to obtain and use marijuana in California to treat specified serious illnesses. Additionally, the Act protected physicians who appropriately recommended the use of marijuana to patients for medical purposes and exempted qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana.

In January 2010, the Los Angeles City Council passed an ordinance to regulate the collective cultivation of medical marijuana in order to ensure the health, safety and welfare of Los Angeles residents. Several cities, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana dispensaries within their city limits. As the number of medical marijuana dispensaries increase, more and more are opening closer to schools, parks, public libraries, child care facilities, and other places where children congregate.

> **AB 2650 (Buchanan), Chapter 603,** prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who

possesses, cultivates, or distributes medical marijuana, as specified, from being located within 600 feet of a school, public or private, K-12. Specifically, this new law:

- States the required 600-foot distance shall not prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment or provider.

- Expresses a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties including charter cities and charter counties shall be subject to the terms of this bill.

- Excludes from the 600-foot restriction K-12 private schools primarily conducted in private homes.

Marijuana: Possession

Under existing law, the penalty for possession of less than an ounce of marijuana is a fine of $100, with no jail time. Although the penalty is consistent with an infraction, possession of less than an ounce of marijuana is classified as a misdemeanor. This is unique as it is the only misdemeanor that is not punishable by any jail time.

Unintended consequences have resulted from this mischaracterization. As the number of misdemeanor marijuana possession arrests have risen in recent years (reaching 61,388 in 2008), the burden placed on courts by these low-level offenses is significant when resources are shrinking and caseloads are growing. Defendants may demand a jury trial – including the costs of jury selection, defense, and court time – for a penalty of only $100.

Given the comparatively light consequences of the punishment and the courts' limited resources, Judicial Council believes that costs associated with appointment of counsel and jury trials should be reserved for defendants who are facing loss of life, liberty, or property, not a fine of a $100. Keeping this misclassification in the Penal Code does not make sense in light of the fact that minor marijuana offenses can be expunged from a criminal record just two years after conviction.

SB 1449 (Leno), Chapter 708, reclassifies possession of not more that 28.5 grams of marijuana and possession of not more than 28.5 grams of marijuana while driving on roads or lands, as specified, as an infraction punishable by a fine of not more than $100.

CORRECTIONS

Sex Offenders: Punishment: Parole

Current California law provides a complex structure of determinate sentence punishments for sex crimes. Successfully prosecuting a sex crime can be complex and difficult as well. Existing laws apply some limits on the movements of registered sex offenders. Most notably, as enacted by Jessica's law, current law provides it "is unlawful for any person for whom registration is required pursuant to the Sex Offender Registration Act to reside within 2,000 feet of any public or private school, or areas of a park where children regularly gather" and authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any person required to register as a sex offender.

AB 1844 (Fletcher), Chapter 219, changes numerous statutes governing sex offenses and sex offenders, as well as other crimes. Specifically this new law:

- Increases the punishment for various sex offenses, as specified.
- Prohibits a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from his/her parole agent.
- Requires lifetime parole for certain habitual sex offenders, and increases the length of parole, as specified, for all sex offenders.
- Requires the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and another that measures risk of future sexual violence to be administered as specified.
- Requires, with respect to persons convicted of specified sex offenses, the Department of Justice (DOJ) to make available to the public via DOJ's Web site, the static SARATSO score and information on risk level based on the SARATSO future violence tool.
- Imposes specified conditions of probation, including participation in an approved sex offender management program (SOMP), on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified.
- Requires participation in an approved SOMP, as a condition of parole, for specified persons released on parole.
- Changes the punishment for certain existing alternate felonies/misdemeanors that are not sex offenses.

Corrections: Restitution Centers

Existing law authorizes the California Department of Corrections to operate restitution centers, where eligible and suitable non-violent state prison inmates are required to obtain and maintain employment while also paying direct victim restitution and other restitution fines and fees owed.

Offenders who gain tangible life skills which include vocational training and actual employment are much more likely to successfully reintegrate into communities and contribute to society. Restitution center participants often maintain the same employment upon being released from state custody, thus providing a more seamless transition into society.

> **AB 2218 (Fuentes), Chapter 463**, provides that an inmate who commits a crime involving a direct victim shall receive priority placement in a restitution center, and makes an inmate eligible for placement in a restitution center if the inmate does not have a criminal history of a conviction for the sale of drugs within the last five years or for an offense requiring registration as a sex offender, or a serious felony, or a violent felony, and the defendant did not receive a sentence of more than 60 months for the current offense(s). In addition, the defendant must pose no unacceptable risk to the community and must be employable.

Undocumented Foreign Nationals: Incarceration

Under existing law, the State Criminal Alien Assistance Program (SCAAP), which is part of the Immigration and Nationality Act (INA), requires the Federal Government to reimburse state and local governments for costs associated with incarcerating undocumented foreign nationals. The Federal Government's failure to compensate California for these costs has severely exacerbated prison problems related to funding and overcrowding.

For the last reporting period, the State of California received just over $118 million for 32,806 eligible inmates - roughly $3,600 per inmate - when the Legislative Analyst's Office estimates that the annual cost of incarcerating an inmate in a state prison is actually $51,670.

Counties and cities fare even worse. For the last reporting period, they received just under $44 million in reimbursement for 66,386 eligible inmates - which equates to $659 per inmate.

Immigration policy and controlling the nation's borders are clear – they are the fundamental responsibilities of the Federal Government. The Federal Government has repeatedly failed to discharge its obligations and, as a consequence, high-impact states such as California face extraordinary costs associated with incarcerating these inmates.

ACR 140 (Adams), Resolution Chapter 49, urges the Governor to demand that the federal Bureau of Justice Assistance reimburse the State of California for all costs of incarcerating undocumented foreign aliens.

Inmates: Incentive Credits

Under current law, state prison and county jail inmates can earn sentence credits in the same manner. Incidental to one of the prison reforms in SBx3 18 (Ducheny), Chapter 28, Statutes of 2009-10 Third Extraordinary Session, were changes to credits for jail inmates. For many years, a county jail inmate could earn enough credits to reduce his or her jail sentence by up to one-third. SBx3 18 increased these jail credits to make those credits consistent with the credit rules for state prison inmates.

After SBx3 18 went into effect, it was discovered that its jail credit changes would have the unintended effect of undercutting the community corrections effort launched in 2009. Part of that community corrections model involves judges using county jail time as an intermediate sanction short of prison. By reducing available jail time, judges could be faced with an inadequate custodial alternative to state prison.

SB 76 (Senate Committee on Public Safety), Chapter 426, reduces good-time/work-time credits from one-half to one-third for persons convicted of misdemeanors while confined in a county jail.

Parental Rights: Inmate Participation

Providing prisoners with the option of participating in parental rights hearings by video-conference improves their access to the judicial process and to rehabilitation programs. The use of this technology also increases the information available to the court and decreases continuances, security risks, and the costs associated with transporting incarcerated parents to the hearings. Removing the barriers to participation in dependency hearings promotes family reunification and decreases the number of children in the child welfare system.

SB 962 (Liu), Chapter 482, allows for the use of video or teleconference technology in order for prisoners to participate in judicial proceedings involving their parental rights or a dependency petition for their child. Specifically, this new law:

- Provides that a prisoner who is a parent of a child involved in a dependency hearing and who has either waived his or her right to physical presence at the hearing, or has not been ordered before the court may, at the court's discretion, in order to facilitate the parent's participation, be given the opportunity to participate in the hearing by videoconference if that technology is available

and if that participation otherwise complies with the law. If video conferencing is not available, teleconferencing may be utilized to facilitate parental participation.

- States that because of the significance of dependency court hearings for parental rights and children's long-term care, physical attendance by the parent at the hearing is preferred to participation by videoconference or teleconference, and provides that these provisions should not be construed as to limit a prisoner's right to physically attend judicial proceedings and does not authorize the use of videoconference or teleconference to replace in-person family visits with prisoners.

- States legislative intent to maintain internal job placement opportunities and preserve earned privileges for prisoners, and prevent the removal of prisoner subject to this new law from court-ordered courses as a result of their participation in the proceedings described.

- Authorizes the California Department of Corrections and Rehabilitation (CDCR) to accept donated materials in order to implement a program at a prison to be determined by the CDCR to facilitate the participation of incarcerated parents in dependency court hearings regarding their children.

- Makes the implementation of this program contingent upon the receipt of sufficient donations of material and services by CDCR.

Office of the Inspector General: Investigations

In the original legislation creating the Office of the Inspector General (OIG), the Peace Officer Bill of Rights (POBOR) was referenced requiring the OIG to follow the provisions of POBOR. However, the original drafters left out the enforcement section of POBOR rendering the requirement of the OIG to comply with POBOR meaningless without any penalty for failure to follow the law. In a recent court case, the judge noted that while the OIG was required to comply with POBOR, there was no legal remedy for a violation as the penalty section was omitted. The court further indicated that the OIG should have followed POBOR.

SB 1032 (Wright), Chapter 484, provides that the enforcement provisions of POBOR that make it unlawful for any public safety department to deny any public safety officer the rights and protections guaranteed to him or her concerning interrogations and investigations apply to the OIG.

Sex Offender: Assessments

Under current law when a parolee is transferred from another state or by the Federal Government to California, the parolee is not required to undergo the same risk assessment that all sex offenders convicted in California must undergo. This loophole

was brought to light by the arrest of Phillip Garrido, who allegedly kidnapped and held Jaycee Duggard captive for 18 years. When Garrido's parole supervision was transferred to the California Department of Corrections and Rehabilitation (CDCR) from Nevada, he did not receive any type of risk assessment. If Garrido had undergone a risk assessment, which was finally performed after his arrest, his parole agent would have known that he was at a high-risk of re-offending and the agent would have been able to treat Garrido accordingly, which would have included placing Garrido on a high-risk sex offender caseload. Unfortunately, because of this loophole, Garrido was able to continue holding Duggard captive while under CDCR's supervision for over 10 years.

Additionally, CDCR is required to evaluate specified classes of inmates to determine if the inmate is a Sexually Violent Predator or Mentally Disordered Offender. If he or she is found to be such, he or she is eligible for additional treatment, services or civil commitment. This evaluation must occur before release; but in case of good cause, the inmate may be held up to 45 days past his or her release date for purposes of evaluation. There is no definition of "good cause".

> **SB 1201 (DeSaulnier), Chapter 710,** requires the CDCR to assess every person on parole transferred from another jurisdiction who has been convicted of an offense that if committed or attempted in California would require him or her to register as a sex offender. The evaluation must be completed within 60 days of determination by the Department of Justice that the person is required to register as a sex offender. Additionally, good cause for purposes of holding an inmate beyond his or her release date for purposes of evaluation is specifically defined.

Alternative Custody Program

While over one-half of male prisoners were incarcerated for violent crimes, just 30 percent of female prisoners were convicted of violent crimes. In fact, female inmates are more likely to be victims of violent crimes than to be the perpetrators. Four in 10 were physically or sexually abused before the age of 18. Given this, it is not surprising that over two-thirds of women are classified as low risk (Level I or II) by the prison classification system. However, often women are held in more secure environments than their custody classifications would warrant. According to California Department of Corrections and Rehabilitation's (CDCR) estimates, approximately 4,500 low-level women offenders currently incarcerated could be eligible for placement in secure, community-based programs without risking community safety.

Incarcerated women are not the only individuals negatively impacted by incarceration; families and communities are adversely affected. Approximately, 67 percent of incarcerated women are mothers, many of them single parents. The National Council on Crime and Delinquency estimates that in 2005 approximately 19,000 children had mothers who were incarcerated in California's state facilities. Most of California's incarcerated mothers are the primary caregivers of dependent children and hope to return home. While the vast majority of children of incarcerated men continue to live with their

mothers, children of incarcerated women are more likely to live with other relatives or in foster care.

Visitation policies and the distance to prisons make it difficult for children to visit. Seventy-nine percent of incarcerated mothers in California never receive a visit during their incarceration. Separating a mother from her child has a substantial impact on a child's future. Children of inmates are much more likely than their peers to become incarcerated. Research suggests that mothers who are able to maintain a relationship with their children are less likely to return to prison.

Alternative custody assignments, such as electronic monitoring, are a significant hindrance to further criminal activity; however, unlike prison, electronic monitoring permits prisoners to interact with their families, communities, and employment. Electronic monitoring provides the potential for rehabilitation within the community, whereas incarceration reinforces negative interactions in prison and jail, weaken ties to society, and often increases the likelihood of reoffending.

> **SB 1266 (Liu), Chapter 644,** authorizes CDCR's Secretary to create alternative custody programs for specified inmates, including female inmates, pregnant inmates, or inmates who were the primary caregiver immediately prior to incarceration. Inmates must not have committed a serious or violent felony, been required to register as a sex offender, have been determined to pose a high risk to commit a violent offense by a validated risk assessment tool, or have a history of escape within the last 10 years in order to be eligible for this program.

Parole: Medical Parole: Permanently Medically Incapacitated Inmates

The total California Department of Corrections and Rehabilitation (CDCR) budget for incarcerating the state's prisoners rose to $9.6 billion in 2009. This spending has increased at an average rate of eight percent each year. One of the biggest increases in CDCR spending can be attributed to the rising costs for providing constitutionally mandated inmate medical care. In 2005-06, total spending on inmate health care was $1.2 billion or about 16 percent of CDCR's total budget. In 2008-09, total spending on inmate health care was $2.5 billion or about 26 percent of CDCR's total budget. These figures do not include the custody costs of transporting inmates to and from their health care appointments.

> **SB 1399 (Leno), Chapter 405,** provides that, except as specified, any prisoner who the head physician for the institution where the prisoner is located determines, as provided, is permanently medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical

parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Specifically this new law:

- Specifies that those provisions would not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute.

- Provides that these provisions shall not be construed to alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008: Marsy's Law.

- Requires CDCR to, among other things, seek to enter into memoranda of understanding with the Social Security Administration and the California Department of Health Care Services, in addition to certain other entities, to facilitate prerelease agreements to help inmates initiate benefits claims, as specified.

- Requires CDCR to reimburse county public hospitals on a quarterly basis for the nonfederal share of Medi-Cal costs incurred by the county for individuals who have been granted medical parole and the county costs for providing health care services not allowable under Medi-Cal but required by the state to be furnished to eligible persons who have been granted medical parole, including public guardianship health care services.

- Requires CDCR to provide, or provide reimbursement for, services associated with public guardianship of medical parolees, as specified.

COURT HEARINGS

Grand Juries: County of San Bernardino

A grand jury investigates civil and criminal matters in proceedings closed to the public. A civil grand jury investigates the operation, management, and fiscal affairs of the county and the cities in the county. A criminal grand jury has constitutional authority to indict a suspect after finding probable clause that he or she committed an offense.

AB 1906 (Cook), Chapter 87, authorizes the Presiding Judge of the Superior Court of the County of San Bernardino, or the judge appointed by the presiding judge to supervise the grand jury, to impanel an additional civil grand jury, for a term to be determined by the presiding or supervising judge, in accordance with specified procedures. Specifically, this new law:

- States that, notwithstanding specified existing law, in the County of San Bernardino the presiding judge of the superior court, or the judge appointed by the presiding judge to supervise the grand jury, may, upon the request of the Attorney General or the district attorney or upon his or her own motion, order and direct the impanelment of an additional civil grand jury pursuant to this section.

- States that the presiding judge or the judge appointed by the presiding judge to supervise the civil grand jury shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as civil grand jurors. When a sufficient number of competent persons have been selected, they shall constitute an additional civil grand jury.

- Provides that any additional civil grand jury that is impaneled pursuant to this section may serve for a term as determined by the presiding judge or the judge appointed by the presiding judge to supervise the civil grand jury, but may be discharged at any time within the set term by order of the presiding judge or the judge appointed by the presiding judge to supervise the grand jury. In no event shall more than one additional grand jury be impaneled pursuant to this section at the same time.

- Provides that whenever an additional civil grand jury is impaneled pursuant to this section, they may inquire into matters of oversight, conduct investigations, and may issue reports and make recommendations except for any matters that the regular grand jury is inquiring into at the time of its impanelment. Any additional civil grand jury impaneled pursuant to this section shall not have jurisdiction to issue indictments.

- States legislative intent that in the County of San Bernardino all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors within the county, and that they have an obligation to serve when summoned for that purpose. All persons selected for an additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population that is eligible for jury service in the county.

Juveniles: Competency

Existing law prohibits a person from being tried, adjudged, or punished while that person is mentally incompetent. A defendant is "mentally incompetent", as specified, if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

While case law suggests that courts may rely on adult competency provisions in the absence of a juvenile statute on competency to stand trial, adult competency statutes do not address the nuanced application of "developmental immaturity" outlined in case law relevant to determination of competency in juveniles. Developmental immaturity simply means the minor is too young to understand the proceedings or effectively assist counsel. Moreover, evaluation of children requires a professional expertise on child development and the use of assessment instruments unique to evaluations of children in order to identify a mental disorder or developmental disability. For obvious reasons, adult statutes fail to address such standard of practice for juveniles. Codification of a juvenile statute for competency to stand trial is necessary to address a void in the statute that unambiguously provides guidance on the rule of law for competency in delinquency proceedings.

AB 2212 (Fuentes), Chapter 671, provides that during the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding or lacks a rational, as well as factual, understanding of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

Sentencing

SB 40 (Romero), Chapter 3, Statutes of 2007, corrected a constitutional flaw in California's sentencing law. In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial as the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. [*Cunningham vs. California* (2007) 549 U.S. 270.] The Supreme Court suggested that this problem could be corrected by either providing for a

jury trial on the sentencing issue or by giving judges discretion to impose a higher term without additional findings of fact. SB 40 corrected the constitutional problem by giving judges the discretion to impose a minimum, medium or maximum term, without additional findings of fact. At the time SB 40 passed, it was contemplated that the Legislature would study California's sentencing law and either make SB 40 permanent or develop another approach that also meets the constitutional requirements as expressed by the United States Supreme Court. The sunset dates should be extended for SB 40 and SB 150 (Wright), Chapter 171, Statutes of 2009, in order to allow the Legislature to study this issue.

AB 2263 (Yamada), Chapter 256, extends the sunset date to January 1, 2012 for provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40, SB 150 and *Cunningham vs. California* (2007) 549 US 270 and makes other conforming changes.

Juveniles: Status Offenders

In the mid 1950's, a number of federal public safety and juvenile interest entities worked together to create the Interstate Compact on Juveniles (ICJ), with the purpose of creating a system whereby status offenders across state lines could be returned to their families. In 1982, the Federal Government passed the Juvenile Justice and Delinquency Prevention Act as a means to fund ICJ activities. By 1986, the ICJ was adopted by all 50 states, the District of Columbia, the Virgin Islands, and Guam.

In 2008, an audit by the Federal Government's Office of Juvenile Justice and Delinquency Prevention found that California was out of compliance with its regulations because California stated that an out-of-state status offender could be held in custody for up to 72 hours. This statement was out of compliance with federal funding guidelines; those guidelines state a status offender should be held for no more than 24 hours except if being held pursuant to the ICJ.

AB 2350 (Hill), Chapter 96, provides that all juveniles held as status offenders may only be held for 24 hours with the exception of those out-of-state runaways being held pursuant to the ICJ. Specifically, this new law:

- Eliminates the provision of existing law which states that status offenders may be held up to 24 hours after having been taken into custody in order to locate the minor's parent or guardian as soon as possible and to arrange the return of the minor to his or her parent or guardian, whose parent or guardian is a resident outside of California wherein the minor was taken into custody, except that the period may be extended to no more than 72 hours when the return of the minor cannot reasonably be accomplished within 24 hours due to

the distance of the parents or guardian from the county of custody, difficulty in locating the parents or guardian, or difficulty in locating resources necessary to provide for the return of the minor.

- Clarifies those minors who are out-of-state runaways being held pursuant to the ICJ.

Infractions: Dismissal of Charges

A criminal record can be an impediment to any person seeking a job. Existing law partially addresses this issue by permitting a person convicted of a non-vehicular misdemeanor and who has maintained a perfectly clean record for at least one year to petition the court to have the conviction removed from his or her record. However, existing law does not permit a person convicted of a non-vehicular infraction to clear his or her record in the same way, even though such a conviction will appear in a criminal history background check; some infractions– such as disturbing the peace, fighting in public, attempt to purchase alcohol by a minor, and driving without a license - can appear serious enough to prevent the individual from obtaining a job.

AB 2582 (Adams), Chapter 99, authorizes the court to expunge a former conviction for a non-vehicular infraction. Specifically, this new law:

- Provides that a court can determine that a defendant convicted of a non-vehicular infraction should be granted expungement relief after the lapse of one year from the date of pronouncement of the judgment.

- Requires that a petition for dismissal of an infraction be by written declaration, except upon a showing of compelling need and that the prosecuting attorney be given 15-days' notice of the petition. It will be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

Parental Rights: Inmate Participation

Providing prisoners with the option of participating in parental rights hearings by video-conference improves their access to the judicial process and to rehabilitation programs. The use of this technology also increases the information available to the court and decreases continuances, security risks, and the costs associated with transporting incarcerated parents to the hearings. Removing the barriers to participation in dependency hearings promotes family reunification and decreases the number of children in the child welfare system.

SB 962 (Liu), Chapter 482, allows for the use of video or teleconference technology in order for prisoners to participate in judicial proceedings involving their parental rights or a dependency petition for their child. Specifically, this new law:

- Provides that a prisoner who is a parent of a child involved in a dependency hearing and who has either waived his or her right to physical presence at the hearing, or has not been ordered before the court may, at the court's discretion, in order to facilitate the parent's participation, be given the opportunity to participate in the hearing by videoconference if that technology is available and if that participation otherwise complies with the law. If video conferencing is not available, teleconferencing may be utilized to facilitate parental participation.

- States that because of the significance of dependency court hearings for parental rights and children's long-term care, physical attendance by the parent at the hearing is preferred to participation by videoconference or teleconference, and provides that these provisions should not be construed as to limit a prisoner's right to physically attend judicial proceedings and does not authorize the use of videoconference or teleconference to replace in-person family visits with prisoners.

- States legislative intent to maintain internal job placement opportunities and preserve earned privileges for prisoners, and prevent the removal of prisoner subject to this new law from court-ordered courses as a result of their participation in the proceedings described.

- Authorizes the California Department of Corrections and Rehabilitation (CDCR) to accept donated materials in order to implement a program at a prison to be determined by the CDCR to facilitate the participation of incarcerated parents in dependency court hearings regarding their children.

- Makes the implementation of this program contingent upon the receipt of sufficient donations of material and services by CDCR.

Bail

There is an ambiguity in existing law concerning the authority to increase bail above the local bail schedule without a hearing, based upon the declaration of a peace officer under penalty or perjury, that the amount of bail is insufficient to assure the defendant's appearance or protect the victim or victim's family. While Penal Code Section 1269c seems to clearly support the authority of the judge to act in this circumstance, the

language of Penal Code Section 1270.1 prescribes a procedure for circumstances where bail is set higher or lower than the schedule, including a hearing and notice to the prosecuting and defense attorneys.

> **SB 1049 (Harman), Chapter 176,** provides that a judge or magistrate may, with respect to a bailable felony offense or a misdemeanor offense of violating a domestic violence order, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, providing a sworn peace officer declares under penalty of perjury facts and circumstances to support his or her belief that the scheduled bail is insufficient to ensure the defendant's appearance, or to ensure the protection of a victim of domestic violence, notwithstanding other provisions of law that prohibit a defendant, arrested for specified offenses, from being released on bail in an amount that is more or less that scheduled bail until a hearing is held in open court.

Criminal Investigations: Interception of Communications

In general, California law prohibits wiretapping. However, a judge may grant a wiretap if, after reviewing a law enforcement agency's application, he or she makes specified findings. These findings include that law enforcement exhaust all normal investigative procedures and fail prior to applying for a wire intercept.

Prior to the enactment of Penal Code Section 629.50 *et seq.*, wiretapping statutes did not permit the interception of oral or electronic communications and permitted wiretapping only during the investigation of specified offenses involving controlled substances. The Legislature enacted Penal Code Section 629.50 *et seq.* in 1995 "in order to expand California wiretap law to conform with federal law" as it existed at the time.

> **SB 1428 (Pavley), Chapter 707,** amends the existing wiretap provisions to include the interception of modern types of contemporaneous two-way electronic communications. Specifically, this new law:
>
> - Provides that the superior court can make an order authorizing the interception of wire or electronic communications and makes conforming changes in other sections to reference "electronic communications" instead of "electronic digital pager or electronic cellular communications."
>
> - Defines "electronic communication" as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include any of the following:
>
> - Any wire communication as defined in the section;
>
> - Any communication made through a tone-only paging device;

- Any communications from a tracking device; and,

- Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

- Defines "tracking device" as an electronic or mechanical device that permits the tracking of the movement of a person or object.

- Defines "aural transfer" as a transfer containing the human voice at any point between and including the point of origin and the point of reception.

- Provides that the court may grant oral approval for an emergency interception of wire or electronic communication without an order as specified. Approval for an oral interception shall be conditioned upon filing with the court, prior to midnight of the second full court day after approval, a written application for an order. Approval of the ex parte order shall be conditioned upon filing with the judge prior to midnight of the second full court day after the oral approval.

- Clarifies that no order shall authorize interception of any wire or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days, commencing on the day of the initial interception, or 10 days after the issuance of the order, whichever comes first.

- Provides that written reports outlining the achievements of the wiretap shall be given to the judge who issues the wiretap every 10 days instead of every six days.

- Permits disclosure of the wiretap to comply with provisions in existing law relating to notifications to defendants.

- Permits disclosure of the contents of a wiretap to any judge within the State of California.

CRIME PREVENTION

Missing Persons: Reports

Every year, an estimated 800,000 children are reported missing, more than 105,000 in California alone - more than 2,000 children each day. A large proportion of those children are abducted by non-family members under suspicious or unknown circumstances. California's laws and processes for missing persons should be changed to reflect new 21st century technology.

> **AB 34 (Nava), Chapter 225,** requires the Violent Crime Information Center (VCIC) to make accessible to the National Missing and Unidentified Persons System (NMUPS) specific information that is contained in law enforcement reports regarding missing or unidentified persons authorized for dissemination and as determined appropriate by VCIC to the NMUPS to assist in the search for the missing person or persons.

Deadly Weapons: Reports of Prohibited Persons

Existing law prohibits the purchase, receipt, possession, or control of firearms for a period of five years by persons who have been admitted to a mental health facility on the basis of their being a threat to themselves or others or as a result of being certified for intensive treatment.

Current procedures allow mental health facilities to submit this information to the Department of Justice (DOJ) by mail, requiring manual entry of data into the background check database. In order to address the volume of records that must be transferred to the DOJ, facilities often delay sending the required information. Delayed reporting can have a negative impact on public safety.

> **AB 302 (Beall), Chapter 344,** requires that by July 1, 2012, specified mental health facilities shall report to the DOJ exclusively by electronic means when a person is admitted to that facility either because that person was found to be a danger to themselves or others, or was certified for intensive treatment for a mental disorder.

Driving under the Influence: License Revocation

According to the National Highway Traffic Safety Administration (NHTSA), fatally injured drivers with blood alcohol concentration (BAC) of 0.08 percent (for example, a 170-pound man drinking three drinks in one hour would have a 0.08 percent BAC) or greater were nine times as likely to have a prior driving-under-the-influence (DUI) conviction compared to fatally injured sober drivers. NHTSA further reports that the risk of a driver who has one or more DUI convictions becoming involved in a fatal crash is about 1.4 times the risk of a driver with no DUI convictions. About one-third of drivers

arrested or convicted of DUI are repeat offenders. Thus, it is clear that repeat DUI offenders present a special concern to public safety.

AB 1601 (Hill), Chapter 301, permits a court to order a 10-year revocation of a driver's license for a person convicted of three or more separate DUI offenses. Specifically, this new law:

- Provides that a court may order a 10-year revocation of the driver's license of a person who has three or more prior DUI convictions.

- Provides that the court shall consider all of the following when ordering the 10-year revocation:

    - The person's level of remorse for the acts;

    - The period of time that has elapsed since the person's previous convictions;

    - The person's BAC at the time of the violation;

    - The person's participation in an alcohol treatment program;

    - The person's risk to traffic or public safety; and,

    - The person's ability to install a certified ignition interlock device (IID) in each motor vehicle she owns or operates.

- Provides that upon receipt of a duly certified abstract of record showing the court has ordered a 10-year revocation of a driver's license, the Department of Motor Vehicles (DMV) shall revoke the person's driver's license for 10 years.

- Provides that five years from the date of the last DUI conviction, a person whose license was revoked may apply to the DMV to have his or her driving privilege reinstated provided that the person agrees to have an IID installed for two years following the reinstatement.

- Provides that DMV shall reinstate the driver's license if the person satisfies all of the following conditions:

    - The person was not convicted of any drug-or alcohol-related offenses, under state law, during the driver's license revocation period;

    - The person successfully completed a licensed DUI program; and,

- The person was not convicted of driving on a suspended license during the revocation period.

- Requires the DMV to immediately terminate the restriction issued, as specified, and immediately revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the IID, who has the IID removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the IID's maintenance or calibration. The privilege shall remain revoked for the remaining period of the original revocation and until all reinstatement requirements are met.

Malicious Mischief on Airport Property: Transportation Services

Due to a an exemption created in 1973, officers of the San Francisco Police Department (SFPD) cannot enforce laws prohibiting unauthorized limousine drivers from illegally soliciting business on the grounds of San Francisco International Airport (SFO). SFO is owned and operated by the City and County of San Francisco and SFPD officers patrol SFO. However, the airport is located in San Mateo County. Consequently, SFPD officers cannot arrest the drivers at the airport or impound their vehicles based on SFPD police powers because those powers do not extend to San Mateo County, the location of SFO.

Unauthorized limousine drivers take business away from legitimate drivers, they endanger passengers because they do not have to undergo criminal background checks, and their vehicles are not inspected by the appropriate authorities.

AB 1885 (Hill), Chapter 584, removes the exemption currently given to charter-party carrier limousines licensed by the California Public Utilities Commission (PUC) to enter or remain on airport property owned by a city, county, or city and county but located in another county, to offer transportation services, on or from the airport property, without the express written consent of the governing board of the airport property, or its duly authorized representative. Any charter party carrier licensed by the PUC at an airport operating under a prearranged basis, as specified in the PUC, shall not constitute the sale, peddling or offering of goods, merchandise property or services.

Body Armor

Under current law, any person convicted of a violent felony is prohibited from owning or possessing body armor. Body armor is defined as "those parts of a complete armor that provide ballistic resistance to the penetration of the test ammunition for which a complete armor is certified." A similar statute also prohibits wearing a "body vest" in the commission or attempted commission of a violent offense. By contrast, that statute defines a body vest as "any bullet-resistant material intended to provide ballistic and trauma protection for the wearer."

SB 408 (Padilla), Chapter 21, deletes the existing definition of "body armor" and instead defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the armor" for purposes of the prohibition on possession of body armor by persons convicted of a violent felony.

Human Trafficking: Property Seizure

Human trafficking involves the recruitment, transportation, or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, there are an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80 percent are women and girls and up to 50 percent are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. Most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees.

SB 677 (Yee), Chapter 625, provides that, upon a person being convicted of human trafficking, if real property was used to facilitate the offense, that property could be found to be a public nuisance and the remedies applicable under the nuisance or "Red Light Abatement" statutes, as specified, shall apply. Those remedies include closing the property for one year and a civil fine of up to $25,000.

Criminal Investigations: Interception of Communications

In general, California law prohibits wiretapping. However, a judge may grant a wiretap if, after reviewing a law enforcement agency's application, he or she makes specified findings. These findings include that law enforcement exhaust all normal investigative procedures and fail prior to applying for a wire intercept.

Prior to the enactment of Penal Code Section 629.50 *et seq.*, wiretapping statutes did not permit the interception of oral or electronic communications and permitted wiretapping only during the investigation of specified offenses involving controlled substances. The Legislature enacted Penal Code Section 629.50 *et seq*. in 1995 "in order to expand California wiretap law to conform with federal law" as it existed at the time.

SB 1428 (Pavley), Chapter 707, amends the existing wiretap provisions to include the interception of modern types of contemporaneous two-way electronic communications. Specifically, this new law:

- Provides that the superior court can make an order authorizing the interception of wire or electronic communications and makes conforming changes in other

sections to reference "electronic communications" instead of "electronic digital pager or electronic cellular communications."

- Defines "electronic communication" as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include any of the following:
    - Any wire communication as defined in the section;
    - Any communication made through a tone-only paging device;
    - Any communications from a tracking device; and,
    - Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.
- Defines "tracking device" as an electronic or mechanical device that permits the tracking of the movement of a person or object.
- Defines "aural transfer" as a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- Provides that the court may grant oral approval for an emergency interception of wire or electronic communication without an order as specified. Approval for an oral interception shall be conditioned upon filing with the court, prior to midnight of the second full court day after approval, a written application for an order. Approval of the ex parte order shall be conditioned upon filing with the judge prior to midnight of the second full court day after the oral approval.
- Clarifies that no order shall authorize interception of any wire or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days, commencing on the day of the initial interception, or 10 days after the issuance of the order, whichever comes first.
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- Permits disclosure of the wiretap to comply with provisions in existing law relating to notifications to defendants.
- Permits disclosure of the contents of a wiretap to any judge within the State of California.

CRIME VICTIMS

Missing Persons: Reports

Every year, an estimated 800,000 children are reported missing, more than 105,000 in California alone and equates to more than 2,000 children each day. A large proportion of those children are abducted by non-family members under suspicious or unknown circumstances. California's laws and processes for missing persons should be changed to reflect new 21st century technology.

AB 34 (Nava), Chapter 225, requires the Violent Crime Information Center (VCIC) to make accessible to the National Missing and Unidentified Persons System (NMUPS) specific information that is contained in law enforcement reports regarding missing or unidentified persons authorized for dissemination and as determined appropriate by VCIC to the NMUPS to assist in the search for the missing person or persons.

Child Abuse Reporting: Multidisciplinary Personnel Teams

Due to budget cuts and the lack of staff, children who are victims of abuse and taken into protective custody cannot receive timely treatment for medical problems unless information is shared among verified members of the team investigating the abuse.

Existing law requires at least three team members convene before confidential information may be shared. Nurses, social workers and law officers state that valuable time is lost when responding to an emergency child abuse problem and trying to locate a third team member.

AB 2229 (Brownley), Chapter 464, revises and recasts provisions of law relating to multidisciplinary personnel teams (MDPT) engaged in the investigation of suspected child abuse or neglect.

- Reduces the size of a MDPT from three or more persons to two or more persons.

- Allow members of a MDPT to disclose and exchange information related to any incident of child abuse that would otherwise be confidential for a 30-day period following a report of suspected child abuse or neglect if good cause exists.

- Prohibits the disclosure and exchange of information to any person other than members of the MDPT, except as specified.

- Provides that the sharing of information shall be governed by a memorandum of understanding (MOU) among the participating service providers or

provider agencies. The MOU shall specify the type of information that may be shared, and the process used to ensure confidentiality.

- States that every member of the MDPT who receives otherwise confidential information shall be under the same privacy and confidentiality obligations as the person disclosing the information, and information and records communicated shall be protected from discovery by all applicable statutory and common law protections.

- Clarifies that the sharing of information related to suspected child abuse shall be governed by protocols developed in each country that ensure that confidential information is not disclosed in violation of state or federal law.

- States that these provisions shall only remain in effect until January 1, 2014.

CRIMINAL JUSTICE PROGRAMS

Domestic Violence Probationer: Minimum Payment

Since 2003, domestic violence offenders on probation have been required to pay a minimum fine of $400 unless the court found that he or she was unable to pay. However, in 2009 no legislation was enacted to extend the sunset; as a result, the fine was reduced to $200.

While the state and local governments struggle to rebound from the economic recession and meet their existing obligations, it is premature to reduce this source of domestic violence funding. The fee collected from perpetrators will provide victims who escape abusive relationships with the opportunity to access programs and services that help guide them to a new start.

Domestic violence programs provide victims with a support system that assures them it is acceptable to abandon an abusive relationship for the sake of themselves and their children. It is important to decrease domestic violence, especially in the presence of children who can grow up to continue with the cycle.

> **AB 2011 (Arambula), Chapter 132,** restores the $400 minimum fine imposed on persons granted probation for a domestic violence offense and allocates two-thirds of the funds to local domestic violence special funds and one-third to the state.

Gang Injunction Violations: Contempt of Court

Many communities would like to measure the effectiveness of gang injunctions but are often presented with a lack of accurate, reportable information.

Penal Code Section 166(a)(4) prohibits violation of any court order, which includes domestic-related court order, domestic violence court order, business-related court orders arising from civil lawsuits, civil "keep-away" orders arising from neighbor disputes, violations of Family Court orders to provide support, and violations of any number of court orders and injunctions. Violations of gang injunctions are also included.

When there is a Penal Code Section 166(a)(4) conviction, the court clerk enters the fact of the conviction and the conviction then becomes part of the defendant's criminal history; what is not reported is the type of court order violated.

When reviewing a defendant's rap sheet, a filing deputy does not know if the conviction relates to a Family Court order or because the defendant's behavior violated the terms of a lawfully issued gang injunction.

Creating a separate code section for violating a gang injunction would also allow the community to help track the effectiveness of gang injunctions in their community, and

will allow law enforcement to accurately answer questions about the number of gang injunction violation arrests and prosecutions.

AB 2632 (Davis), Chapter 677, designates a violation of a specific gang injunction subsection as a separate and distinct contempt of court to allow statistical tracking of gang injunction violations.

Elder and Dependent Person Abuse: Reports

Crimes against people with disabilities are widespread. Law enforcement and the public can improve prevention, investigation, prosecution, and even the reporting of these crimes.

SB 110 (Liu), Chapter 617, requires the Commission on Peace Officers Standards and Training (POST) to consult with the Bureau of Medi-Cal Fraud and Elder Abuse and other subject matter experts when producing new or updated training materials related investigating abuse of elder or dependent persons. Specifically, this new law:

- Requires any new or updated training materials, as specified, to include:
    - The jurisdiction and responsibility of law enforcement agencies pursuant to amended Penal Code provisions;
    - The fact that the protected classes of “dependent persons” as defined in provisions of the law relating to child molestation and “dependent adults” as defined in provisions relating to elder abuse include many persons with disabilities, regardless of the fact most of these persons actually live independently; and,
    - Other relevant information and laws.
- Renames "interagency elder death teams" as "elder and dependent adult death review teams" and expands the authority of those teams to include dependent adult abuse and neglect, as specified.
- Includes in the definition of "evidence that the person is at risk", for purposes of tracking in the Violent Crime Information Center, that the person missing has a mental impairment.
- Requires POST and the Bureau of Medi-Cal Fraud and Elder Abuse to consult with each other and with other subject matter experts when producing new or updated training materials related to ender and dependent adult abuse, as specified.

- Includes the Bureau of Medi-Cal Fraud and Elder Abuse in the agencies that are responsible for the investigation of suspected abuse of elder or dependent persons in long-term care facilities.

- Provides that adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request provided, however, that law enforcement agencies shall retain exclusive responsibility for criminal investigations, any provision of law to the contrary notwithstanding.

- Provides that local law enforcement agencies and state law enforcement agencies with the appropriate jurisdiction have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities.

- States that when POST offers or provides new or updated training materials, as specified, POST may also inform the law enforcement agencies of other relevant training materials that may be available.

- Adds to the Comprehensive Statewide Domestic Violence Assistance Program membership at least one person recommended by the federally recognized state domestic violence coalition.

- Includes other representatives of the disability community on the Training of Sexual Assault Investigators Advisory Committee.

- States that the Commission on the Status of Women (Commission) shall appoint the expert on crimes against persons with disabilities or other representatives of the disability community after consulting the state protection and advocacy agency, as specified and appointment shall take effect upon the occurrence of the first vacancy for a member appointed by the Commission, other than the member who represents a rape crisis center or the member who is a medical professional on or after January 1, 2011.

- Makes other technical changes to include the phrase "dependent adult" or "persons with disabilities".

Emergency Alert System: Law Enforcement Officers

The Emergency Alert System (EAS) has greatly expanded the search for perpetrators of select crimes and gained assistance from the general public in tracking down kidnap victims or lost individuals with mental or physical disabilities who have gone astray and need to be found for their own safety.

Alerts are issued to the public warning of serious situations that need instant attention (abducted children needing rescue, etc.). These alerts benefit on-duty law enforcement when a giant "posse" of the general public join in a search as they travel on highways and back roads.

If a law enforcement officer has been killed, suffers serious bodily injury, or is assaulted with a deadly weapon and the suspect has fled the scene, issuing an emergency alert would ensure a cost-effective way to bring together the necessary resources to assist in quickly locating the killer.

SB 839 (Runner), Chapter 311, requires the California Highway Patrol (CHP), at the request of an authorized person at a law enforcement agency, to activate the EAS and issue a "blue alert" if the following conditions are met:

- A law enforcement officer has been killed, suffers serious bodily injury, or is assaulted with a deadly weapon and the suspect has fled the scene of the offense;

- The law enforcement agency investigating the offense has determined that the suspect poses an imminent threat to the public or other law enforcement personnel;

- A detailed description of the suspect's vehicle or license plate is available for broadcast;

- Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect; and,

- The CHP has been designated to use the federally authorized EAS for the issuance of blue alerts.

Forensic Conditional Release Program

While current law provides significant oversight over licensed facilities, there is little, if any, oversight regulating unlicensed facilities. Under current law, counties are prohibited from informing local law enforcement when Forensic Conditional Release Program (CONREP) participants are within their jurisdiction. Allowing local law enforcement to be notified of an unlicensed facility will enable them to more quickly assess situations, thereby limiting potential harm to themselves, the community, and the individual.

Recently in Upland, California, an unlicensed facility housed seven CONREP residents at one time. One resident apparently stabbed his fellow CONREP housemate to death. The suspect had a 12-hour head start to flee authorities before one of the housemates found the victim’s body in the garage. The CONREP home in which the murder took place shared a fence with a local elementary school.

SB 1265 (Dutton), Chapter 50, authorizes CONREP, while providing out-patient services to judicially committed persons released into the community, to inform local law enforcement agencies of the names and addresses of persons participating in the CONREP program in the agencies' jurisdiction.

Alternative Custody Program

While over one-half of male prisoners were incarcerated for violent crimes, just 30 percent of female prisoners were convicted of violent crimes. In fact, female inmates are more likely to be victims of violent crimes than to be the perpetrators. Four in 10 were physically or sexually abused before the age of 18. Given this, it is not surprising that over two-thirds of women are classified as low risk (Level I or II) by the prison classification system. However, often women are held in more secure environments than their custody classifications would warrant. According to California Department of Corrections and Rehabilitation's (CDCR) estimates, approximately 4,500 low-level women offenders currently incarcerated could be eligible for placement in secure, community-based programs without risking community safety.

Incarcerated women are not the only individuals negatively impacted by incarceration; families and communities are adversely affected. Approximately, 67 percent of incarcerated women are mothers, many of them single parents. The National Council on Crime and Delinquency estimates that in 2005 approximately 19,000 children had mothers who were incarcerated in California's state facilities. Most of California's incarcerated mothers are the primary caregivers of dependent children and hope to return home. While the vast majority of children of incarcerated men continue to live with their mothers, children of incarcerated women are more likely to live with other relatives or in foster care.

Visitation policies and the distance to prisons make it difficult for children to visit. Seventy-nine percent of incarcerated mothers in California never receive a visit during their incarceration. Separating a mother from her child has a substantial impact on a child's future. Children of inmates are much more likely than their peers to become incarcerated. Research suggests that mothers who are able to maintain a relationship with their children are less likely to return to prison.

Alternative custody assignments, such as electronic monitoring, are a significant hindrance to further criminal activity; however, unlike prison, electronic monitoring permits prisoners to interact with their families, communities, and employment. Electronic monitoring provides the potential for rehabilitation within the community, whereas incarceration reinforces negative interactions in prison and jail, weakens ties to society, and often increases the likelihood of reoffending.

SB 1266 (Liu), Chapter 644, authorizes CDCR's Secretary to create alternative custody programs for specified inmates, including female inmates, pregnant inmates, or inmates who were the primary caregiver immediately prior to incarceration. Inmates must not have committed a serious or violent felony, been

required to register as a sex offender, have been determined to pose a high risk to commit a violent offense by a validated risk assessment tool, or have a history of escape within the last 10 years in order to be eligible for this program.

Commercially Sexually Exploited Minors

Under current law, when an adult has consensual sexual relations with a minor, the adult is subject to criminal prosecution; and as a matter of law, the minor is deemed too young to consent and is considered the victim. However, this is not the case when money is exchanged for sexual activity. In a case where an adult pays a minor in exchange for sexual activities, that minor is eligible for charges of prostitution.

This is an injustice in the many cases where minors are forcibly coerced and manipulated, often by an adult, into selling their bodies for the benefit of their pimps. Untold numbers of children fall victim to adults who sexually exploit them for commercial gain and who very often abuse these minors. Currently, exploited minors often go through the juvenile justice system with little opportunity for rehabilitation that is specific to their needs.

Following the collaborative diversion efforts which were created in Alameda County by AB 499 (Swanson), Chapter 359, Statutes of 2008, and set to be fully integrated in that county, the specialized needs of commercially sexually exploited minors in a manner which focuses on rehabilitation rather than criminalization should be addressed.

In California, it is a crime to recruit, pimp, or pander children for the purpose of prostitution. However, with the exception of the pilot program in Alameda County, California does not treat children involved in these acts of prostitution as victims. This pilot program should be expanded.

SB 1279 (Pavley), Chapter 116, allows the County of Los Angeles to create a pilot project, contingent on local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

CRIMINAL OFFENSES

Intellectual Property: Piracy

California remains the capital of the motion picture and television industry as well as a center for the recording and software industries. In terms of economic activity, television and movies generated a total of $42.2 billion, split almost equally between payroll expenditures and payments to vendors. Approximately 266,000 people were directly employed in the motion picture and television industry in California. When indirect employment resulting from the industry is factored in, the number of people working in California as a result of television and movies totals over 500,000.

Although piracy is a global problem, a recent study by the Los Angeles County Economic Development Corporation (LAEDC) notes that it affects the Los Angeles region disproportionately due to the concentration of the entertainment industry there. LAEDC estimates that in 2005 losses to the motion picture industry from piracy were $2.7 billion, the sound recording industry $851 million, and software publishing $355 million.

Not only is digital piracy a direct threat to the industry, but its effects is felt by state and local government in the form of lost tax revenues. According to the same LAEDC study, piracy affecting the entertainment industry just in Los Angeles cost nearly $134 million in state income taxes, $63.5 million in sales taxes, and $2 million in Los Angeles City business taxes.

Digital piracy reaches across California, affecting the Silicon Valley and its computer industry. According to the Business Software Alliance, in 2003 software piracy alone cost the California economy more than 13,000 jobs; $802 million in wages and salaries; over $1 billion in retail sales of business software applications; and roughly $239 million in total tax losses.

> **AB 819 (Calderon), Chapter 351,** doubles the current fines for crimes relating to intellectual property piracy.

Child Abuse Sentencing: Child Becoming Comatose or Suffering Paralysis

Current law does not take into consideration the consequences or the end result of an incident of child abuse when determining the sentence of a crime.

The punishment for the crime of felony child abuse under circumstances or conditions likely to produce great bodily injury (GBI) is two, four, or six years in prison. The penalty is the same even when the crime results in permanent injury or disability to a child. The penalty for assaulting a child under the age of eight which results in death is 25-years-to-life. The difference between these punishments ignores the reality that some child victims experience permanent injury or disability but do not perish.

AB 1280 (Villines), Chapter 300, punishes any person who, having care or custody of a child under eight years of age, who assaults the child with force that to a reasonable person would be likely to produce GBI, resulting in the child becoming comatose due to brain injury or suffering paralysis of a permanent nature to state prison for 15-years-to-life. "Paralysis" is defined as a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.

Trespassing: Animal Enclosures

Under current law, an individual who enters an animal enclosure could be charged under Penal Code Section 602(m), which creates a crime of trespass for "entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession."

However, this code section requires the prosecutor to prove intent to occupy the space. In *People v. Wilkinson*, 248 Cal. App. 2d Supp. 906, 56 Cal. Rptr. 261 (1967), the court held that "the transient overnight use of four 3 x 7 foot areas in a very large ranch for sleeping bags and campfire purposes was not the type of conduct which the Legislature intended to prevent by use of the word 'occupy'." The court further held, "Having in mind the legislative purpose in passing subdivision [(m)] of section 602, it is rather obvious that some degree of dispossession and permanency be intended."

Under this holding, the law requires more than a temporary stay as Penal Code Section 602(m) was intended to criminalize "squatting." It is unlikely that entrance into an animal enclosure would constitute occupation under the holding of *Wilkinson.*

AB 1675 (Hagman), Chapter 536, creates an infraction or a misdemeanor for any person, other than an employee, to trespass into an animal enclosure at a zoo, circus or traveling animal exhibit.

Illegal Rentals: Penalties

California has a record number of foreclosures and more and more families are struggling to keep a roof over their heads. As more families look at rental options, housing-related crimes have increased. Scam artists, hoping to prey on potential renters, pose as landlords or as owners of a property and post attractive rental listings of abandoned homes on the Internet. An unsuspecting renter meets with the imposter, is handed keys, and is asked to pay large cash deposit, completely unaware that he or she is about to become a victim of real estate fraud. Bank agents, realtors, or the true property owner later arrive at the residence and the renter is forced to leave the property, possibly losing thousands of dollars of savings. Under current law, individuals posing as landlords are only guilty of a misdemeanor, punishable by a fine of no more than $1,000 and/or six months of jail time.

AB 1800 (Ma), Chapter 580, increases the penalty for the unlawful rental of a residential dwelling from six months in the county jail, a fine of not more than $1,000, or by both imprisonment and fine to up to one year in the county jail, a fine of not more than $2,500, or by both imprisonment and fine.

Motorcycle Theft

Motorcycle theft is easily committed using simple devices. Motorcycle thieves are able to use a "pigtail" device quickly by simply cutting a few wires and inserting the device into the ignition. There is no legitimate reason to be in possession of an ignition bypass device and, in fact, even authorized motorcycle mechanics cannot purchase an ignition bypass device.

AB 1848 (Garrick), Chapter 120, makes it a misdemeanor to possess any device designed to bypass the factory-installed ignition of a motorcycle or to possess specified tools with the intent to unlawfully take or drive or to facilitate the unlawful taking of a motorcycle. Specifically, this new law:

- Provides that every person who possesses, gives, or lends any device designed to bypass the factory-installed ignition of a motorcycle in order to start the engine of a motorcycle without a manufacturer's key, or who possesses, gives or lends any motorcycle ignition or part thereof, with the intent to unlawfully take or drive, or to facilitate the taking or driving of, a motorcycle without the consent of the owner is guilty of a misdemeanor punishable by up to six months in the county jail, by a fine not to exceed $1,000, or both.

- Provides that every person who possesses, gives, or lends items of hardware, including, but not limited to, bolt cutters, electrical tape, wire strippers, or Allen wrenches, with the intent to unlawfully take or drive, or to facilitate the taking or driving of, a motorcycle without the consent of the owner is guilty of a misdemeanor punishable by up to six months in the county jail, by a fine not to exceed $1,000, or both.

Transit: Public Transit Facilities

In the aftermath of the terrorist attacks on September 11, 2001, California made several changes to the Penal Code to address gaps in state law that deal with possessing certain weapons at airports and seaports. Over time, these laws were expanded to include certain public buildings and other facilities, but public transit facilities were not included at that time.

The Los Angeles County Sheriff's Department and other law enforcement agencies that provide public safety services to public transit agencies have expressed significant concerns over the safety of California's public transit systems. Current law does not

provide for adequate protection from illegal weapons and dangerous or illegal behaviors on public transit systems.

First, there is no state law that prohibits an individual who is carrying certain weapons from accessing a public transit system. More and more law enforcement agencies are encountering people entering public transit facilities who are armed with dangerous weapons.

Second, numerous employees of the Los Angeles County Metropolitan Transportation Authority (MTA) have criticized the inadequate penalties for crimes committed on buses and light rail. An example of this is that under current law, possession of an "explosive" or "flammable liquid" is only an infraction. Similarly, the MTA bus drivers have complained that passengers often disturb other passengers and drivers or willfully destroy public transit vehicle equipment, which is only an infraction.

Third, the current fare evasion schedule (Penal Code Section 640) should be increased. In San Francisco, the Bay Area Rapid Transit and the San Francisco Municipal Railway report losses of over $17 million a year in fare evasion. The MTA reports over $5 million lost in fare evasion despite citing over 45,000 people a year for fare evasion.

> **AB 2324 (J. Perez), Chapter 675,** establishes "sterile areas" within public transit facilities and prohibits possession of specified items within those areas, expands the crime of trespass to include unauthorized entry into a public transit facility, creates a new crime of intentionally avoiding security screening at a public transit facility, and increases penalties for specified acts of misconduct committed on or in a facility or vehicle of a public transportation system.

Grand Theft: Property Value Threshold

Existing law sets the minimum threshold for grand theft at $400. Grand theft was established as a crime in 1867 for crimes involving more than $50. That figure was first adjusted in 1923 to set the threshold at $200 and adjusted again in 1982 to set the threshold at $400. If those figures were adjusted for inflation, the 1923 threshold would be $2,534 and the 1982 threshold would be $870.

> **AB 2372 (Ammiano), Chapter 693,** increases the threshold amount that constitutes grand theft from $400 to $950.

Weapons: State Capitol

Existing law makes it a crime for any person, with the exception of peace officers, to bring a loaded firearm into, or possess a loaded firearm within, the State Capitol. Existing law does not prohibit the possession of other dangerous or deadly weapons within the State Capitol. There are 75,000 to 80,000 visitors per month to the Capitol. In order to provide the California Highway Patrol and the Legislature's Sergeants-at-Arms

with the proper tools to deal with the safety of visitors and Capitol employees, the law should be updated to more closely mirror the law relating to the possession of weapons in other state buildings.

AB 2668 (Galgiani), Chapter 699, prohibits a person from possessing or bringing specified weapons within the State Capitol, any legislative office, any hearing room, or the Legislative Office Building. Specifically, this new law:

- Provides that any person who brings or possessed, with the State Capitol, any legislative office, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing; the Legislative Office Building at 1020 "N" Street in the City of Sacramento; or upon the grounds of the State Capitol, bounded by 10th, "L", 15th, and "N" Streets in the City of Sacramento, any of the following, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not exceeding $1,000, or by both that fine and imprisonment, if the area is posted with a statement providing reasonable notice that prosecution may result from possession of any of these items:
    - Any firearm;
    - Any deadly weapon as described under existing law;
    - Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands;
    - Any unauthorized tear gas weapon;
    - Any stun gun as described under existing law;
    - Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, carbon dioxide pressure, or spring action, or any spot market gun or paint gun;
    - Any ammunition as defined under existing law; and,
    - Any explosive as defined under existing law.
- Exempts the following people from the aforementioned restriction:
    - A duly appointed peace officer as defined under existing law, a retired peace officer with authorization to carry concealed weapons as described under existing law, a full-time paid peace officer of another state or the Federal Government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in

making arrests or preserving the peace while he or she is actually engaged in assisting the officer;

- A person holding a valid license to carry the firearm pursuant to existing law, and who has permission granted by the Chief Sergeants at Arms of the State Assembly and State Senate to possess a concealed weapon upon the State Capitol, any legislative office, any hearing room, or the Legislative Office Building; and,

- A person who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon upon the premises.

Body Armor

Under current law, any person convicted of a violent felony is prohibited from owning or possessing body armor. Body armor is defined as "those parts of a complete armor that provide ballistic resistance to the penetration of the test ammunition for which a complete armor is certified." A similar statute also prohibits wearing a "body vest" in the commission or attempted commission of a violent offense. By contrast, that statute defines a body vest as "any bullet-resistant material intended to provide ballistic and trauma protection for the wearer."

SB 408 (Padilla), Chapter 21, deletes the existing definition of "body armor" and instead defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the armor" for purposes of the prohibition on possession of body armor by persons convicted of a violent felony.

Archeological Resources: Restitution

Existing law prohibits the knowing and willful excavation, removal, destruction, causing injury to, or defacement of specified archaeological resources from public lands, but has no provision for recovering the costs of recovery and restoration, and imposes minimal fines on the individual perpetrating the crime.

SB 1034 (Ducheny), Chapter 635, specifies that the excavation, removal, destruction, causing injury to, or defacement of specified historic or prehistoric ruins situated on public lands is a misdemeanor punishable by up to one year in county jail, a fine not exceeding $10,000, or both, and specifies the individual convicted of such a misdemeanor is required to make restitution for the value of any items destroyed or harmed and restoration of any public lands harmed. Additionally, property used to perpetrate the crime is subject to forfeiture.

Truancy

According to the California Dropout Research Project (CDRP) August 2009 statistics, "Over the last 10 years, the annual [dropout] rate has increased from 2.9% to 3.9%, while the four-year rate has increased from 11.7 percent to 15.3 percent." The report also documents that over the last 10 years, "The number of high school dropouts in California increased twice as fast as the number of graduates. And the number of high school seniors who neither graduated nor dropped out increased by more than 100 percent."

The CDRP report further states that "California experiences $46.4 billion in total economic losses from the 120,000 20-year-olds who never complete high school; this is the equivalent of 2.9% of the annual state gross product." In addition thereto, the average high school graduate earns $290,000 more over a lifetime than a high school dropout and pays $100,000 more in federal, state, and local taxes. Likewise, more than two-thirds of high school dropouts will use food stamps during their working lifetime and a high school graduate is 68 percent less likely to be on any welfare program.

> **SB 1317 (Leno), Chapter 647,** creates a misdemeanor when a parent or guardian of a pupil of six years of age or more who is in Kindergarten or any Grade 1 through 8 and subject to compulsory full-time education, whose child is a chronic truant and has failed to reasonably supervise and encourage the pupil's school attendance. A "chronic truant" is defined as any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for 10 percent or more of the school days in one school year, from the date of enrollment to the current date.

Grand Theft: Farm Crops

The value of stolen goods is generally calculated as the fair market value of property at the place and time the property is taken. The special grand theft values that apply to the theft of agricultural products are intended to apply to products taken from farms and through wholesale distribution. In particular, existing law specifically refers to the "wholesale value" of avocados and citrus fruits. The grand theft statute also refers to theft of "farm crops." Once avocados, citrus fruits, nuts and other food products are offered for sale at a retail establishment, there is no reason to distinguish these products from any other retail good. While it may be relatively easy to steal agricultural products from isolated rural fields, barns and storehouses, no such considerations apply to food products in grocery stores and other retail businesses.

> **SB 1338 (Harman), Chapter 694,** provides that in a grand theft prosecution, the value of specified agricultural products shall be determined as the wholesale value of the products on the day of the theft just as the value of citrus fruits and avocados are determined under existing law. Specifically, this new law provides that the value of other agricultural products (domestic fowls, avocados, olives,

citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops) shall also be determined as the wholesale value of the products on the day of the theft.

Internet Impersonation

Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense; and upon conviction therefore, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed $1,000, or both that imprisonment and fine; or by imprisonment in the state prison, a fine not to exceed $10,000, or both that imprisonment and fine.

SB 1411 (Simitian), Chapter 335, creates a misdemeanor punishable by up to one year in the county jail, a fine of not more than $1,000 or by imprisonment and fine for any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening or defrauding another person.

Marijuana: Possession

Under existing law, the penalty for possession of less than an ounce of marijuana is a fine of $100, with no jail time. Although the penalty is consistent with an infraction, possession of less than an ounce of marijuana is classified as a misdemeanor. This is unique as it is the only misdemeanor that is not punishable by any jail time.

Unintended consequences have resulted from this mischaracterization. As the number of misdemeanor marijuana possession arrests have risen in recent years (reaching 61,388 in 2008), the burden placed on courts by these low-level offenses is significant when resources are shrinking and caseloads are growing. Defendants may demand a jury trial – including the costs of jury selection, defense, and court time – for a penalty of only $100.

Given the comparatively light consequences of the punishment and the courts' limited resources, Judicial Council believes that costs associated with appointment of counsel and jury trials should be reserved for defendants who are facing loss of life, liberty, or property, not a fine of a $100. Keeping this misclassification in the Penal Code does not make sense in light of the fact that minor marijuana offenses can be expunged from a criminal record just two years after conviction.

SB 1449 (Leno), Chapter 708, reclassifies possession of not more that 28.5 grams of marijuana and possession of not more than 28.5 grams of marijuana while driving on roads or lands, as specified, as an infraction punishable by a fine of not more than $100.

DOMESTIC VIOLENCE

Domestic Violence Probationer: Minimum Payment

Since 2003, domestic violence offenders on probation have been required to pay a minimum fine of $400 unless the court found that he or she was unable to pay. However, in 2009 no legislation was enacted to extend the sunset; as a result, the fine was reduced to $200.

While the state and local governments struggle to rebound from the economic recession and meet their existing obligations, it is premature to reduce this source of domestic violence funding. The fee collected from perpetrators will provide victims who escape abusive relationships with the opportunity to access programs and services that help guide them to a new start.

Domestic violence programs provide victims with a support system that assures them it is acceptable to abandon an abusive relationship for the sake of themselves and their children. It is important to decrease domestic violence, especially in the presence of children who can grow up to continue with the cycle.

> **AB 2011 (Arambula), Chapter 132,** restores the $400 minimum fine imposed on persons granted probation for a domestic violence offense and allocates two-thirds of the funds to local domestic violence special funds and one-third to the state.

DRIVING UNDER THE INFLUENCE

Driving under the Influence: License Revocation

According to the National Highway Traffic Safety Administration (NHTSA), fatally injured drivers with blood alcohol concentration (BAC) of 0.08 percent (for example, a 170-pound man drinking three drinks in one hour would have a 0.08 percent BAC) or greater were nine times as likely to have a prior driving-under-the-influence (DUI) conviction compared to fatally injured sober drivers. NHTSA further reports that the risk of a driver who has one or more DUI convictions becoming involved in a fatal crash is about 1.4 times the risk of a driver with no DUI convictions. About one-third of drivers arrested or convicted of DUI are repeat offenders. Thus, it is clear that repeat DUI offenders present a special concern to public safety.

AB 1601 (Hill), Chapter 301, permits a court to order a 10-year revocation of a driver's license for a person convicted of three or more separate DUI offenses. Specifically, this new law:

- Provides that a court may order a 10-year revocation of the driver's license of a person who has three or more prior DUI convictions.
- Provides that the court shall consider all of the following when ordering the 10-year revocation:
    - The person's level of remorse for the acts;
    - The period of time that has elapsed since the person's previous convictions;
    - The person's BAC at the time of the violation;
    - The person's participation in an alcohol treatment program;
    - The person's risk to traffic or public safety; and,
    - The person's ability to install a certified ignition interlock device (IID) in each motor vehicle she owns or operates.
- Provides that upon receipt of a duly certified abstract of record showing the court has ordered a 10-year revocation of a driver's license, the Department of Motor Vehicles (DMV) shall revoke the person's driver's license for 10 years.
- Provides that five years from the date of the last DUI conviction, a person whose license was revoked may apply to the DMV to have his or her driving privilege reinstated provided that the person agrees to have an IID installed for

two years following the reinstatement.

- Provides that DMV shall reinstate the driver's license if the person satisfies all of the following conditions:
    - The person was not convicted of any drug-or alcohol-related offenses, under state law, during the driver's license revocation period;
    - The person successfully completed a licensed DUI program; and,
    - The person was not convicted of driving on a suspended license during the revocation period.
- Requires the DMV to immediately terminate the restriction issued, as specified, and immediately revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the IID, who has the IID removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the IID's maintenance or calibration. The privilege shall remain revoked for the remaining period of the original revocation and until all reinstatement requirements are met.

Driving Under the Influence: Ignition Interlock Devices

SB 598 (Huff), Chapter 193, Statutes of 2009, shortened the suspension period for a repeat driving under the influence (DUI) offender in order to obtain a restricted license if he or she installs an ignition interlock device (IDD) on his or her vehicle. Due to the confusing nature of the cross-over period between the administrative license suspension and the court license suspension, there were drafting errors that required the person to serve his or her entire 12-month Department of Motor Vehicles (DMV) suspension even if that suspension went beyond the post-conviction suspension time in SB 598. That error should be corrected by stating that the administrative suspension will end when the requirements of SB 598 are met.

SB 895 (Huff), Chapter 30, clarifies that the DMV license suspension resulting from a DUI offense shall terminate if the person has been convicted of the violation arising out of the same occurrence, is eligible for a restricted license upon the installation of an IID, and meets all other applicable conditions of a suspended license.

ELDER ABUSE

Elder and Dependent Person Abuse: Reports

Crimes against people with disabilities are widespread. Law enforcement and the public can improve prevention, investigation, prosecution, and even the reporting of these crimes.

SB 110 (Liu), Chapter 617, requires the Commission on Peace Officers Standards and Training (POST) to consult with the Bureau of Medi-Cal Fraud and Elder Abuse and other subject matter experts when producing new or updated training materials related investigating abuse of elder or dependent persons. Specifically, this new law:

- Requires any new or updated training materials, as specified, to include:
    - The jurisdiction and responsibility of law enforcement agencies pursuant to amended Penal Code provisions;
    - The fact that the protected classes of "dependent persons" as defined in provisions of the law relating to child molestation and "dependent adults" as defined in provisions relating to elder abuse include many persons with disabilities, regardless of the fact most of these persons actually live independently; and,
    - Other relevant information and laws.
- Renames "interagency elder death teams" as "elder and dependent adult death review teams" and expands the authority of those teams to include dependent adult abuse and neglect, as specified.
- Includes in the definition of "evidence that the person is at risk", for purposes of tracking in the Violent Crime Information Center, that the person missing has a mental impairment.
- Requires POST and the Bureau of Medi-Cal Fraud and Elder Abuse to consult with each other and with other subject matter experts when producing new or updated training materials related to ender and dependent adult abuse, as specified.
- Includes the Bureau of Medi-Cal Fraud and Elder Abuse in the agencies that are responsible for the investigation of suspected abuse of elder or dependent persons in long-term care facilities.
- Provides that adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to

investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request provided, however, that law enforcement agencies shall retain exclusive responsibility for criminal investigations, any provision of law to the contrary notwithstanding.

- Provides that local law enforcement agencies and state law enforcement agencies with the appropriate jurisdiction have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities.

- States that when POST offers or provides new or updated training materials, as specified, POST may also inform the law enforcement agencies of other relevant training materials that may be available.

- Adds to the Comprehensive Statewide Domestic Violence Assistance Program membership at least one person recommended by the federally recognized state domestic violence coalition.

- Includes other representatives of the disability community on the Training of Sexual Assault Investigators Advisory Committee.

- States that the Commission on the Status of Women (Commission) shall appoint the expert on crimes against persons with disabilities or other representatives of the disability community after consulting the state protection and advocacy agency, as specified and appointment shall take effect upon the occurrence of the first vacancy for a member appointed by the Commission, other than the member who represents a rape crisis center or the member who is a medical professional on or after January 1, 2011.

- Makes other technical changes to include the phrase "dependent adult" or "persons with disabilities".

EVIDENCE

Intercepted Communications: Hostage Taking and Barricading

Currently, when law enforcement officers respond to a barricaded suspect situation or a hostage situation, they are unable to lawfully deploy eavesdropping devices to listen in on the location. California Penal Code Section 632 makes it a crime to eavesdrop upon confidential communications by means of any electronic amplifying or recording device, in the absence of consent from all parties. There is no search warrant exception to this prohibition.

Suspects who barricade themselves or who take hostages pose a high level of risk to responding officers, hostages (when present), and the general public.

The use of eavesdropping devices is currently prohibited under state law but is allowed under federal law. Federal law allows states to implement their own laws so long as the state laws are at least as protective as federal law.

> **AB 2210 (Fuentes), Chapter 380,** provides that notwithstanding other prohibitions, and in accordance with federal law, a designated peace officer may use, or authorize the use of, an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication within a particular location in response to an emergency situation involving the taking of a hostage or hostages or barricading of a location if all of the following are satisfied:
>
> - The officer reasonably determines that an emergency situation exists involving the immediate danger of death or serious physical injury to any person within the meaning of Section 2518(7)(a)(i) of Title 18 of the United States Code.
>
> - The officer reasonably determines that the emergency situation requires that eavesdropping on oral communication occur immediately.
>
> - There are grounds upon which an order could be obtained pursuant to Section 2516(2) of Title 18 of the United States Code in regard to the offenses enumerated therein.

Warrants: Electronic Signature via Computer Server

Due to the unpredictable nature of crime, peace officers may need to obtain search warrants after normal business hours. Under existing law, affiants are expressly authorized to transmit a search warrant to a magistrate for review using fax or electronic mail. The affiant's signature on the search warrant affidavit may be in the form of a digital signature. However, once the magistrate has decided to issue the warrant, current

law does not authorize the magistrate to sign the warrant electronically. Instead, the magistrate must print out the warrant, affidavit, any attachments, and sign it with a pen.

Current requirements can make the process of approving, signing, and returning a warrant to the court a lengthy process that can be fraught with technical and hardware challenges in the middle of the night. These steps can be time consuming, and, in some cases, have a negative impact on public safety. These steps also require that magistrates assigned to after-hours search warrant duty be provided with printers, ink cartridges, and fax machines or scanners. Contemporary computer technology provides for a secure and expeditious alternative for the signing and transmission of warrants by both the affiant and magistrate.

> **AB 2505 (Strickland), Chapter 98,** deletes the requirement that the magistrate cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail or computer server and then faxed or scanned and emailed back. Instead, the magistrate could sign the warrant electronically and email it back. This new law also allows the use of a computer server rather than electronic mail for transmission of the warrant documents. Because existing law refers to both "electronic signatures" and "digital signatures," which are similar concepts with technical differences between them, this law authorizes either. Finally, this new law deletes the requirement that the magistrate return the printed documents to the court and requires only the "duplicate original" be returned to the court clerk by the officer.

JUDGES, JURORS AND WITNESSES

Grand Juries: County of San Bernardino

A grand jury investigates civil and criminal matters in proceedings closed to the public. A civil grand jury investigates the operation, management, and fiscal affairs of the county and the cities in the county. A criminal grand jury has constitutional authority to indict a suspect after finding probable clause that he or she committed an offense.

AB 1906 (Cook), Chapter 87, authorizes the Presiding Judge of the Superior Court of the County of San Bernardino, or the judge appointed by the presiding judge to supervise the grand jury, to impanel an additional civil grand jury, for a term to be determined by the presiding or supervising judge, in accordance with specified procedures. Specifically, this new law:

- States that, notwithstanding specified existing law, in the County of San Bernardino the presiding judge of the superior court, or the judge appointed by the presiding judge to supervise the grand jury, may, upon the request of the Attorney General or the district attorney or upon his or her own motion, order and direct the impanelment of an additional civil grand jury pursuant to this section.

- States that the presiding judge or the judge appointed by the presiding judge to supervise the civil grand jury shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as civil grand jurors. When a sufficient number of competent persons have been selected, they shall constitute an additional civil grand jury.

- Provides that any additional civil grand jury that is impaneled pursuant to this section may serve for a term as determined by the presiding judge or the judge appointed by the presiding judge to supervise the civil grand jury, but may be discharged at any time within the set term by order of the presiding judge or the judge appointed by the presiding judge to supervise the grand jury. In no event shall more than one additional grand jury be impaneled pursuant to this section at the same time.

- Provides that whenever an additional civil grand jury is impaneled pursuant to this section, they may inquire into matters of oversight, conduct investigations, and may issue reports and make recommendations except for any matters that the regular grand jury is inquiring into at the time of its impanelment. Any additional civil grand jury impaneled pursuant to this section shall not have jurisdiction to issue indictments.

- States legislative intent that in the County of San Bernardino all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors within the county, and that they have an obligation to serve when summoned for that purpose. All persons selected for an additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population that is eligible for jury service in the county.

JUVENILES

Underage Drinkers: Immunity from Prosecution

Under existing law, a minor can be prosecuted for consuming, possessing or buying an alcoholic beverage. Fear of prosecution under these laws can prevent minors from seeking assistance for an alcohol-related medical emergencies suffered by themselves or others.

> **AB 1999 (Portantino), Chapter 245,** provides that a person under the age of 21 shall be immune from prosecution for possession or consumption of an alcoholic beverage where that person reports an alcohol-related medical emergency concerning him or herself or another person.

Juveniles: Competency

Existing law prohibits a person from being tried, adjudged, or punished while that person is mentally incompetent. A defendant is "mentally incompetent", as specified, if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

While case law suggests that courts may rely on adult competency provisions in the absence of a juvenile statute on competency to stand trial, adult competency statutes do not address the nuanced application of "developmental immaturity" outlined in case law relevant to determination of competency in juveniles. Developmental immaturity simply means the minor is too young to understand the proceedings or effectively assist counsel. Moreover, evaluation of children requires a professional expertise on child development and the use of assessment instruments unique to evaluations of children in order to identify a mental disorder or developmental disability. For obvious reasons, adult statutes fail to address such standard of practice for juveniles. Codification of a juvenile statute for competency to stand trial is necessary to address a void in the statute that unambiguously provides guidance on the rule of law for competency in delinquency proceedings.

> **AB 2212 (Fuentes), Chapter 671,** provides that during the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding or lacks a rational, as well as factual, understanding of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

Child Abuse: Reporting

Under existing law, mandated child abuse reporters are required to make reports of suspected child abuse or neglect. These mandated reporters, such as school teachers, health care professionals and social workers, are therefore immune from liability as a result of providing the information to the investigating agency.

Penal Code Section 11166.05 authorizes, but does not require, a mandated reporter to report instances where a child is suspected of suffering serious emotional damage.

Due to the difference in language, a mandated reporter who cooperates with an investigator may be subject to discipline because the reports of emotional damage made pursuant to Penal Code Section 11166.05 are not categorized or referred to as child abuse reports.

In short, reporters of emotional damage are authorized to make reports, but not legally protected to share the reports with investigatory agencies

> **AB 2339 (Smyth), Chapter 95,** provides that information relevant to a report made relating to a child suffering from serious emotional damage or in substantial risk thereof may be given to an investigating and licensing agency that is investigating known or suspected child abuse.

Juveniles: Status Offenders

In the mid 1950's, a number of federal public safety and juvenile interest entities worked together to create the Interstate Compact on Juveniles (ICJ), with the purpose of creating a system whereby status offenders across state lines could be returned to their families. In 1982, the Federal Government passed the Juvenile Justice and Delinquency Prevention Act as a means to fund ICJ activities. By 1986, the ICJ was adopted by all 50 states, the District of Columbia, the Virgin Islands, and Guam.

In 2008, an audit by the Federal Government's Office of Juvenile Justice and Delinquency Prevention found that California was out of compliance with its regulations because California stated that an out-of-state status offender could be held in custody for up to 72 hours. This statement was out of compliance with federal funding guidelines; those guidelines state a status offender should be held for no more than 24 hours except if being held pursuant to the ICJ.

> **AB 2350 (Hill), Chapter 96,** provides that all juveniles held as status offenders may only be held for 24 hours with the exception of those out-of-state runaways being held pursuant to the ICJ. Specifically, this new law:
>
> - Eliminates the provision of existing law which states that status offenders may be held up to 24 hours after having been taken into custody in order to locate the minor's parent or guardian as soon as possible and to arrange the return of

the minor to his or her parent or guardian, whose parent or guardian is a resident outside of California wherein the minor was taken into custody, except that the period may be extended to no more than 72 hours when the return of the minor cannot reasonably be accomplished within 24 hours due to the distance of the parents or guardian from the county of custody, difficulty in locating the parents or guardian, or difficulty in locating resources necessary to provide for the return of the minor.

- Clarifies those minors who are out-of-state runaways being held pursuant to the ICJ.

Truancy

According to the California Dropout Research Project (CDRP) August 2009 statistics, "Over the last 10 years, the annual [dropout] rate has increased from 2.9% to 3.9%, while the four-year rate has increased from 11.7 percent to 15.3 percent." The report also documents that over the last 10 years, "The number of high school dropouts in California increased twice as fast as the number of graduates. And the number of high school seniors who neither graduated nor dropped out increased by more than 100 percent."

The CDRP report further states that "California experiences $46.4 billion in total economic losses from the 120,000 20-year-olds who never complete high school; this is the equivalent of 2.9% of the annual state gross product." In addition thereto, the average high school graduate earns $290,000 more over a lifetime than a high school dropout and pays $100,000 more in federal, state, and local taxes. Likewise, more than two-thirds of high school dropouts will use food stamps during their working lifetime and a high school graduate is 68 percent less likely to be on any welfare program.

SB 1317 (Leno), Chapter 647, creates a misdemeanor when a parent or guardian of a pupil of six years of age or more who is in Kindergarten or any Grade 1 through 8 and subject to compulsory full-time education, whose child is a chronic truant and has failed to reasonably supervise and encourage the pupil's school attendance. A "chronic truant" is defined as any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for 10 percent or more of the school days in one school year, from the date of enrollment to the current date.

Juvenile Justice and Substance Abuse

Up to 80 percent of arrested juveniles are involved with alcohol and/or drug abuse. Without intervention and treatment, these juveniles are at a high risk for future crimes. By the time children reach a juvenile justice system, virtually every prevention and support system - family, neighborhoods, schools, health care - has failed. Juvenile offenders are likely to have been neglected and abused by parents; many have grown up in impoverished and dangerous neighborhoods; schools, teachers and administrators have been unable to engage them; they have either slipped through the cracks in the nation's

health system or providers have failed to diagnose and treat their problems; they are likely to be associating with other troubled peers; and they lack spiritual grounding.

Nationally, at least 30 percent of adults in prison for felony crimes were incarcerated as juveniles. California is missing an opportunity to rehabilitate children and prevent future crimes. Research shows that a high percentage of juvenile offenders could instead become productive citizens, responsible parents and taxpaying, law-abiding members of society if they could only receive the help they need.

Instead of spending more than $250,000 annually in California to incarcerate each juvenile offender, in appropriate cases California should rehabilitate court-involved juveniles through diversion to treatment programs and other appropriate services for a much lower public cost.

> **SCR 40 (Yee), Resolution Chapter 55,** as adopted, acknowledges the role that substance abuse plays in the lives of juvenile offenders and sets forth the rights of all juveniles in the juvenile justice system. In addition, this resolution urges all California facilities that house wards to adopt these rights into the regulations and common practices of that facility.

PEACE OFFICERS

Custodial Officers

Existing law provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers, as specified, do not have the right to carry or possess firearms in the performance of their duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant.

> **AB 1695 (Beall), Chapter 575,** allows the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to their duties performed at the Santa Clara Valley Medical Center.

Public Officials: Personal Information

In the past two years, Los Angeles law enforcement officers were killed at their homes. These deaths continue to serve as a reminder of how vulnerable public safety officials are, even while off-duty at their homes. Current law allows public safety officials to opt-out of having their personal information on the Internet; however, with the expansion of smart cellular phones (iphone, blackberry, droid, etc.) and their applications, personal information still remains available. Smart cellular phone applications should be added to the existing opt-out provisions under the Public Safety Officials Home Protection Act. Additionally, more peace officers should be added to the definition of "public safety officials" for the existing opt-out provisions.

> **AB 1813 (Lieu), Chapter 194,** expands the definition of "public safety official" to include any peace officer or public officer, as specified, in provisions of law related to removal of an official's home address or telephone number from public display on the Internet within 48 hours of the request and includes information provided to cellular telephone applications.

Emergency Alert System: Law Enforcement Officers

The Emergency Alert System (EAS) has greatly expanded the search for perpetrators of select crimes and gained assistance from the general public in tracking down kidnap victims or lost individuals with mental or physical disabilities who have gone astray and need to be found for their own safety.

Alerts are issued to the public warning of serious situations that need instant attention (abducted children needing rescue, etc.). These alerts benefit on-duty law enforcement when a giant "posse" of the general public join in a search as they travel on highways and back roads.

If a law enforcement officer has been killed, suffers serious bodily injury, or is assaulted with a deadly weapon and the suspect has fled the scene, issuing an emergency alert would ensure a cost-effective way to bring together the necessary resources to assist in quickly locating the killer.

SB 839 (Runner), Chapter 311, requires the California Highway Patrol (CHP), at the request of an authorized person at a law enforcement agency, to activate the EAS and issue a "blue alert" if the following conditions are met:

- A law enforcement officer has been killed, suffers serious bodily injury, or is assaulted with a deadly weapon and the suspect has fled the scene of the offense;

- The law enforcement agency investigating the offense has determined that the suspect poses an imminent threat to the public or other law enforcement personnel;

- A detailed description of the suspect's vehicle or license plate is available for broadcast;

- Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect; and,

- The CHP has been designated to use the federally authorized EAS for the issuance of blue alerts.

Office of the Inspector General: Investigations

In the original legislation creating the Office of the Inspector General (OIG), the Peace Officer Bill of Rights (POBOR) was referenced requiring the OIG to follow the provisions of POBOR. However, the original drafters left out the enforcement section of POBOR rendering the requirement of the OIG to comply with POBOR meaningless without any penalty for failure to follow the law. In a recent court case, the judge noted that while the OIG was required to comply with POBOR, there was no legal remedy for a violation as the penalty section was omitted. The court further indicated that the OIG should have followed POBOR.

SB 1032 (Wright), Chapter 484, provides that the enforcement provisions of POBOR that make it unlawful for any public safety department to deny any public safety officer the rights and protections guaranteed to him or her concerning interrogations and investigations apply to the OIG.

Animal Control Officers: Baton Training

Under existing law, an animal control officer may exercise the powers of arrest and the power to serve warrants if the officer has completed a training course approved by the Commission on Peace Officer Standards and Training (POST). An animal control officer may also carry a wooden club or baton if the officer has completed a course certified by the Department of Consumer Affairs (DCA).

The DCA is an agency designed to protect California consumers by ensuring a competent and fair marketplace. Requiring animal control officers to obtain training certified by the DCA creates confusion as the DCA has no established procedures for animal control officers to complete their training.

SB 1190 (Cedillo), Chapter 109, provides that animal control officers and illegal dumping enforcement officers must satisfactorily complete a course of training approved by POST, rather than a course certified by the DCA, in the carrying and use of any wooden club or baton, and authorizes the training institution to charge a fee covering the cost of training.

Peace Officer Training: Traumatic Brain Injury

The Center for Disease Control estimates that 5.3 million Americans have long-term or lifelong disabilities associated with traumatic brain injury (TBI), including 350,000 Californians. Approximately 50,000 people in the United States die every year from TBI. Three hundred thousand Iraq and Afghanistan war veterans are estimated to be afflicted with Post Traumatic Stress Disorder (PTSD). Current California law does not provide for peace officers who are emergency first responders to receive training on how to recognize and interact with persons suffering from TBI or PTSD.

SB 1296 (Correa), Chapter 490, provides for education of law enforcement in the areas of TBI and PTSD. Specifically, this new law:

- Requires Commission on Peace Officers Standards and Training (POST) to meet with the Department of Veterans Affairs (DVA) and community, local, or other state organizations and agencies that have expertise in the area of TBI and PTSD in order to assess the training needed by peace officers, who are first responders in emergency situations, on the topic of returning veterans or other persons suffering from TBI or PTSD.

- States that if POST determines that there is an unfulfilled need for training on TBI and PTSD, the Commission shall determine the training format that is both fiscally responsible and meets the training needs of the greatest number of officers.

- States that if POST determines that there is an unfulfilled need for training on TBI and PTSD, the Commission, upon the next regularly scheduled review of a training module relating to persons with disabilities, shall create and make

available on DVD and may distribute electronically, or provide by means of another form or method of training, a course on how to recognize and interact with returning veterans or other persons suffering from TBI or PTSD. This course shall be designed for, and made available to, peace officers who are first responders to emergency situations.

- Requires the training course to be developed by POST in consultation with DVA and appropriate community, local, or other state organizations and agencies that have expertise in the area of TBI and PTSD. POST would be required to make the course available to law enforcement agencies in California.

- Requires POST to distribute, as necessary, a training bulletin via the Internet to law enforcement agencies participating in POST's program on the topic of TBI and PTSD.

- Specifies that POST shall report to the Legislature, no later than June 30, 2012, on the extent to which peace officers are receiving adequate training in how to interact with persons suffering from TBI or PTSD.

- Provides that its requirement for submitting a report is inoperative on June 30, 2016, as specified.

- Requires that the report is to be submitted as a printed copy to both the Legislative Counsel and the Secretary of the Senate, and as an electronic copy to the Chief Clerk of the Assembly, and made available to the public in compliance with the Government Code, as specified.

RESTITUTION

Restitution Orders: Lien Procedures

Under current law, courts may issue income deduction orders when a defendant is ordered to pay restitution. Income deduction orders may be used to give notice to the defendant's employers or payers so that the agency responsible for the collection of restitution may garnish the wages of a defendant to pay restitution. Income deduction orders specify a series of procedural requirements to comply with due process. These procedural safeguards ensure due process to a defendant prior to the enforcement of an income deduction order to pay restitution.

AB 1847 (Furutani), Chapter 582, authorizes a court to grant a prosecutor with the authority to utilize lien procedures against a defendant.

- Provides for the following procedures for imposition of an income deduction order against a defendant:
    - Upon receiving notice that the defendant has failed to comply with the payment of restitution, the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.
    - Service of the order shall be made in compliance and in the manner prescribed for service upon parties in a civil action.
    - The defendant may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of the restitution owed or on the ground that the defendant has established good cause for nonpayment. The timely request for a hearing (within 15 days of notice) shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.
- Provides that a court may, upon the request of the prosecuting attorney, order that the prosecuting attorney be given authority to use lien procedures against a defendant, including, but not limited to, a writ of attachment of property.

- Authorizes a prosecuting attorney or a county probation office, if there is no agency in the county responsible for the collection of restitution, to carry out the functions and duties of such an agency specified for collection of restitution.

- Provides that neither a prosecutorial agency nor a prosecuting attorney shall be liable for an injury caused by an act or omission in exercising the authority granted by this new law, and a prosecuting attorney shall not make any collection against, or take any percentage of, the defendant's income or assets to reimburse the prosecuting attorney for administrative costs in carrying out any action authorized by this new law.

Archeological Resources: Restitution

Existing law prohibits the knowing and willful excavation, removal, destruction, causing injury to, or defacement of specified archaeological resources from public lands, but has no provision for recovering the costs of recovery and restoration, and imposes minimal fines on the individual perpetrating the crime.

SB 1034 (Ducheny), Chapter 635, specifies that the excavation, removal, destruction, causing injury to, or defacement of specified historic or prehistoric ruins situated on public lands is a misdemeanor punishable by up to one year in county jail, a fine not exceeding $10,000, or both, and specifies the individual convicted of such a misdemeanor is required to make restitution for the value of any items destroyed or harmed and restoration of any public lands harmed. Additionally, property used to perpetrate the crime is subject to forfeiture.

SENTENCING

Sentencing

SB 40 (Romero), Chapter 3, Statutes of 2007, corrected a constitutional flaw in California's sentencing law. In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial as the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. [*Cunningham vs. California* (2007) 549 U.S. 270.] The Supreme Court suggested that this problem could be corrected by either providing for a jury trial on the sentencing issue or by giving judges discretion to impose a higher term without additional findings of fact. SB 40 corrected the constitutional problem by giving judges the discretion to impose a minimum, medium or maximum term, without additional findings of fact. At the time SB 40 passed, it was contemplated that the Legislature would study California's sentencing law and either make SB 40 permanent or develop another approach that also meets the constitutional requirements as expressed by the United States Supreme Court. The sunset dates should be extended for SB 40 and SB 150 (Wright), Chapter 171, Statutes of 2009, in order to allow the Legislature to study this issue.

> **AB 2263 (Yamada), Chapter 256,** extends the sunset date to January 1, 2012 for provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40, SB 150 and *Cunningham vs. California* (2007) 549 US 270 and makes other conforming changes.

Inmates: Incentive Credits

Under current law, state prison and county jail inmates can earn sentence credits in the same manner. Incidental to one of the prison reforms in SBx3 18 (Ducheny), Chapter 28, Statutes of 2009-10 Third Extraordinary Session, were changes to credits for jail inmates. For many years, a county jail inmate could earn enough credits to reduce his or her jail sentence by up to one-third. SBx3 18 increased these jail credits to make those credits consistent with the credit rules for state prison inmates.

After SBx3 18 went into effect, it was discovered that its jail credit changes would have the unintended effect of undercutting the community corrections effort launched in 2009. Part of that community corrections model involves judges using county jail time as an intermediate sanction short of prison. By reducing available jail time, judges could be faced with an inadequate custodial alternative to state prison.

> **SB 76 (Senate Committee on Public Safety), Chapter 426,** reduces good-time/work-time credits from one-half to one-third for persons convicted of misdemeanors while confined in a county jail.

SEX OFFENSES

Sex Offenders: Punishment: Parole

Current California law provides a complex structure of determinate sentence punishments for sex crimes. Successfully prosecuting a sex crime can be complex and difficult as well. Existing laws apply some limits on the movements of registered sex offenders. Most notably, as enacted by Jessica's law, current law provides it "is unlawful for any person for whom registration is required pursuant to the Sex Offender Registration Act to reside within 2,000 feet of any public or private school, or areas of a park where children regularly gather" and authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any person required to register as a sex offender.

AB 1844 (Fletcher), Chapter 219, changes numerous statutes governing sex offenses and sex offenders, as well as other crimes. Specifically this new law:

- Increases the punishment for various sex offenses, as specified.
- Prohibits a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from his/her parole agent.
- Requires lifetime parole for certain habitual sex offenders, and increases the length of parole, as specified, for all sex offenders.
- Requires the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and another that measures risk of future sexual violence to be administered as specified.
- Requires, with respect to persons convicted of specified sex offenses, the Department of Justice (DOJ) to make available to the public via DOJ's Web site, the static SARATSO score and information on risk level based on the SARATSO future violence tool.
- Imposes specified conditions of probation, including participation in an approved sex offender management program (SOMP), on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified.
- Requires participation in an approved SOMP, as a condition of parole, for specified persons released on parole.
- Changes the punishment for certain existing alternate felonies/misdemeanors that are not sex offenses.

Human Trafficking: Property Seizure

Human trafficking involves the recruitment, transportation, or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, there are an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80 percent are women and girls and up to 50 percent are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. Most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees.

> **SB 677 (Yee), Chapter 625,** provides that, upon a person being convicted of human trafficking, if real property was used to facilitate the offense, that property could be found to be a public nuisance and the remedies applicable under the nuisance or "Red Light Abatement" statutes, as specified, shall apply. Those remedies include closing the property for one year and a civil fine of up to $25,000.

Sex Offender: Assessments

Under current law when a parolee is transferred from another state or by the Federal Government to California, the parolee is not required to undergo the same risk assessment that all sex offenders convicted in California must undergo. This loophole was brought to light by the arrest of Phillip Garrido, who allegedly kidnapped and held Jaycee Duggard captive for 18 years. When Garrido's parole supervision was transferred to the California Department of Corrections and Rehabilitation (CDCR) from Nevada, he did not receive any type of risk assessment. If Garrido had undergone a risk assessment, which was finally performed after his arrest, his parole agent would have known that he was at a high-risk of re-offending and the agent would have been able to treat Garrido accordingly, which would have included placing Garrido on a high-risk sex offender caseload. Unfortunately, because of this loophole, Garrido was able to continue holding Duggard captive while under CDCR's supervision for over 10 years.

Additionally, CDCR is required to evaluate specified classes of inmates to determine if the inmate is a Sexually Violent Predator or Mentally Disordered Offender. If he or she is found to be such, he or she is eligible for additional treatment, services or civil commitment. This evaluation must occur before release; but in case of good cause, the inmate may be held up to 45 days past his or her release date for purposes of evaluation. There is no definition of "good cause".

> **SB 1201 (DeSaulnier), Chapter 710,** requires the CDCR to assess every person on parole transferred from another jurisdiction who has been convicted of an

offense that if committed or attempted in California would require him or her to register as a sex offender. The evaluation must be completed within 60 days of determination by the Department of Justice that the person is required to register as a sex offender. Additionally, good cause for purposes of holding an inmate beyond his or her release date for purposes of evaluation is specifically defined.

SEXUALLY VIOLENT PREDATORS

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VEHICLES

Motorcycle Theft

Motorcycle theft is easily committed using simple devices. Motorcycle thieves are able to use a "pigtail" device quickly by simply cutting a few wires and inserting the device into the ignition. There is no legitimate reason to be in possession of an ignition bypass device and, in fact, even authorized motorcycle mechanics cannot purchase an ignition bypass device.

AB 1848 (Garrick), Chapter 120, makes it a misdemeanor to possess any device designed to bypass the factory-installed ignition of a motorcycle or to possess specified tools with the intent to unlawfully take or drive or to facilitate the unlawful taking of a motorcycle. Specifically, this new law:

- Provides that every person who possesses, gives, or lends any device designed to bypass the factory-installed ignition of a motorcycle in order to start the engine of a motorcycle without a manufacturer's key, or who possesses, gives or lends any motorcycle ignition or part thereof, with the intent to unlawfully take or drive, or to facilitate the taking or driving of, a motorcycle without the consent of the owner is guilty of a misdemeanor punishable by up to six months in the county jail, by a fine not to exceed $1,000, or both.

- Provides that every person who possesses, gives, or lends items of hardware, including, but not limited to, bolt cutters, electrical tape, wire strippers, or Allen wrenches, with the intent to unlawfully take or drive, or to facilitate the taking or driving of, a motorcycle without the consent of the owner is guilty of a misdemeanor punishable by up to six months in the county jail, by a fine not to exceed $1,000, or both.

Malicious Mischief on Airport Property: Transportation Services

Due to a an exemption created in 1973, officers of the San Francisco Police Department (SFPD) cannot enforce laws prohibiting unauthorized limousine drivers from illegally soliciting business on the grounds of San Francisco International Airport (SFO). SFO is owned and operated by the City and County of San Francisco and SFPD officers patrol SFO. However, the airport is located in San Mateo County. Consequently, SFPD officers cannot arrest the drivers at the airport or impound their vehicles based on SFPD police powers because those powers do not extend to San Mateo County, the location of SFO.

Unauthorized limousine drivers take business away from legitimate drivers, they endanger passengers because they do not have to undergo criminal background checks, and their vehicles are not inspected by the appropriate authorities.

AB 1885 (Hill), Chapter 584, removes the exemption currently given to charter-party carrier limousines licensed by the California Public Utilities Commission (PUC) to enter or remain on airport property owned by a city, county, or city and county but located in another county, to offer transportation services, on or from the airport property, without the express written consent of the governing board of the airport property, or its duly authorized representative. Any charter party carrier licensed by the PUC at an airport operating under a prearranged basis, as specified in the PUC, shall not constitute the sale, peddling or offering of goods, merchandise property or services.

Transit: Public Transit Facilities

In the aftermath of the terrorist attacks on September 11, 2001, California made several changes to the Penal Code to address gaps in state law that deal with possessing certain weapons at airports and seaports. Over time, these laws were expanded to include certain public buildings and other facilities, but public transit facilities were not included at that time.

The Los Angeles County Sheriff's Department and other law enforcement agencies that provide public safety services to public transit agencies have expressed significant concerns over the safety of California's public transit systems. Current law does not provide for adequate protection from illegal weapons and dangerous or illegal behaviors on public transit systems.

First, there is no state law that prohibits an individual who is carrying certain weapons from accessing a public transit system. More and more law enforcement agencies are encountering people entering public transit facilities who are armed with dangerous weapons.

Second, numerous employees of the Los Angeles County Metropolitan Transportation Authority (MTA) have criticized the inadequate penalties for crimes committed on buses and light rail. An example of this is that under current law, possession of an "explosive" or "flammable liquid" is only an infraction. Similarly, the MTA bus drivers have complained that passengers often disturb other passengers and drivers or willfully destroy public transit vehicle equipment, which is only an infraction.

Third, the current fare evasion schedule (Penal Code Section 640) should be increased. In San Francisco, the Bay Area Rapid Transit and the San Francisco Municipal Railway report losses of over $17 million a year in fare evasion. The MTA reports over $5 million lost in fare evasion despite citing over 45,000 people a year for fare evasion.

AB 2324 (J. Perez), Chapter 675, establishes “sterile areas” within public transit facilities and prohibits possession of specified items within those areas, expands the crime of trespass to include unauthorized entry into a public transit facility, creates a new crime of intentionally avoiding security screening at a public transit

facility, and increases penalties for specified acts of misconduct committed on or in a facility or vehicle of a public transportation system.

Driving Under the Influence: Ignition Interlock Devices

SB 598 (Huff), Chapter 193, Statutes of 2009, shortened the suspension period for a repeat driving under the influence (DUI) offender in order to obtain a restricted license if he or she installs an ignition interlock device (IDD) on his or her vehicle. Due to the confusing nature of the cross-over period between the administrative license suspension and the court license suspension, there were drafting errors that required the person to serve his or her entire 12-month Department of Motor Vehicles (DMV) suspension even if that suspension went beyond the post-conviction suspension time in SB 598. That error should be corrected by stating that the administrative suspension will end when the requirements of SB 598 are met.

SB 895 (Huff), Chapter 30, clarifies that the DMV license suspension resulting from a DUI offense shall terminate if the person has been convicted of the violation arising out of the same occurrence, is eligible for a restricted license upon the installation of an IID, and meets all other applicable conditions of a suspended license.

VICTIMS

Sex Offenders: Punishment: Parole

Current California law provides a complex structure of determinate sentence punishments for sex crimes. Successfully prosecuting a sex crime can be complex and difficult as well. Existing laws apply some limits on the movements of registered sex offenders. Most notably, as enacted by Jessica's law, current law provides it "is unlawful for any person for whom registration is required pursuant to the Sex Offender Registration Act to reside within 2,000 feet of any public or private school, or areas of a park where children regularly gather" and authorizes municipal jurisdictions to enact local ordinances that further restrict the residency of any person required to register as a sex offender.

AB 1844 (Fletcher), Chapter 219, changes numerous statutes governing sex offenses and sex offenders, as well as other crimes. Specifically this new law:

- Increases the punishment for various sex offenses, as specified.
- Prohibits a person on parole for specified sex offenses to enter any park where children regularly gather without express permission from his/her parole agent.
- Requires lifetime parole for certain habitual sex offenders, and increases the length of parole, as specified, for all sex offenders.
- Requires the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and another that measures risk of future sexual violence to be administered as specified.
- Requires, with respect to persons convicted of specified sex offenses, the Department of Justice (DOJ) to make available to the public via DOJ's Web site, the static SARATSO score and information on risk level based on the SARATSO future violence tool.
- Imposes specified conditions of probation, including participation in an approved sex offender management program (SOMP), on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified.
- Requires participation in an approved SOMP, as a condition of parole, for specified persons released on parole.
- Changes the punishment for certain existing alternate felonies/misdemeanors that are not sex offenses.

Restitution Orders: Lien Procedures

Under current law, courts may issue income deduction orders when a defendant is ordered to pay restitution. Income deduction orders may be used to give notice to the defendant's employers or payers so that the agency responsible for the collection of restitution may garnish the wages of a defendant to pay restitution. Income deduction orders specify a series of procedural requirements to comply with due process. These procedural safeguards ensure due process to a defendant prior to the enforcement of an income deduction order to pay restitution.

AB 1847 (Furutani), Chapter 582, authorizes a court to grant a prosecutor with the authority to utilize lien procedures against a defendant.

- Provides for the following procedures for imposition of an income deduction order against a defendant:
    - Upon receiving notice that the defendant has failed to comply with the payment of restitution, the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.
    - Service of the order shall be made in compliance and in the manner prescribed for service upon parties in a civil action.
    - The defendant may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of the restitution owed or on the ground that the defendant has established good cause for nonpayment. The timely request for a hearing (within 15 days of notice) shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.
- Provides that a court may, upon the request of the prosecuting attorney, order that the prosecuting attorney be given authority to use lien procedures against a defendant, including, but not limited to, a writ of attachment of property.
- Authorizes a prosecuting attorney or a county probation office, if there is no agency in the county responsible for the collection of restitution, to carry out the functions and duties of such an agency specified for collection of restitution.

- Provides that neither a prosecutorial agency nor a prosecuting attorney shall be liable for an injury caused by an act or omission in exercising the authority granted by this new law, and a prosecuting attorney shall not make any collection against, or take any percentage of, the defendant's income or assets to reimburse the prosecuting attorney for administrative costs in carrying out any action authorized by this new law.

Domestic Violence Probationer: Minimum Payment

Since 2003, domestic violence offenders on probation have been required to pay a minimum fine of $400 unless the court found that he or she was unable to pay. However, in 2009 no legislation was enacted to extend the sunset; as a result, the fine was reduced to $200.

While the state and local governments struggle to rebound from the economic recession and meet their existing obligations, it is premature to reduce this source of domestic violence funding. The fee collected from perpetrators will provide victims who escape abusive relationships with the opportunity to access programs and services that help guide them to a new start.

Domestic violence programs provide victims with a support system that assures them it is acceptable to abandon an abusive relationship for the sake of themselves and their children. It is important to decrease domestic violence, especially in the presence of children who can grow up to continue with the cycle.

AB 2011 (Arambula), Chapter 132, restores the $400 minimum fine imposed on persons granted probation for a domestic violence offense and allocates two-thirds of the funds to local domestic violence special funds and one-third to the state.

Corrections: Restitution Centers

Existing law authorizes the California Department of Corrections to operate restitution centers, where eligible and suitable non-violent state prison inmates are required to obtain and maintain employment while also paying direct victim restitution and other restitution fines and fees owed.

Offenders who gain tangible life skills which include vocational training and actual employment are much more likely to successfully reintegrate into communities and contribute to society. Restitution center participants often maintain the same employment upon being released from state custody, thus providing a more seamless transition into society.

AB 2218 (Fuentes), Chapter 463, provides that an inmate who commits a crime involving a direct victim shall receive priority placement in a restitution center, and makes an inmate eligible for placement in a restitution center if the inmate does not have a criminal history of a conviction for the sale of drugs within the last five years or for an offense requiring registration as a sex offender, or a

serious felony, or a violent felony, and the defendant did not receive a sentence of more than 60 months for the current offense(s). In addition, the defendant must pose no unacceptable risk to the community and must be employable.

Internet Impersonation

Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense; and upon conviction therefore, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed $1,000, or both that imprisonment and fine; or by imprisonment in the state prison, a fine not to exceed $10,000, or both that imprisonment and fine.

SB 1411 (Simitian), Chapter 335, creates a misdemeanor punishable by up to one year in the county jail, a fine of not more than $1,000 or by imprisonment and fine for any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening or defrauding another person.

WEAPONS

Deadly Weapons: Reports of Prohibited Persons

Existing law prohibits the purchase, receipt, possession, or control of firearms for a period of five years by persons who have been admitted to a mental health facility on the basis of their being a threat to themselves or others or as a result of being certified for intensive treatment.

Current procedures allow mental health facilities to submit this information to the Department of Justice (DOJ) by mail, requiring manual entry of data into the background check database. In order to address the volume of records that must be transferred to the DOJ, facilities often delay sending the required information. Delayed reporting can have a negative impact on public safety.

> **AB 302 (Beall), Chapter 344,** requires that by July 1, 2012, specified mental health facilities shall report to the DOJ exclusively by electronic means when a person is admitted to that facility either because that person was found to be a danger to themselves or others, or was certified for intensive treatment for a mental disorder.

Weapons: State Capitol

Existing law makes it a crime for any person, with the exception of peace officers, to bring a loaded firearm into, or possess a loaded firearm within, the State Capitol. Existing law does not prohibit the possession of other dangerous or deadly weapons within the State Capitol. There are 75,000 to 80,000 visitors per month to the Capitol. In order to provide the California Highway Patrol and the Legislature's Sergeants-at-Arms the proper tools to deal with the safety of visitors and Capitol employees, the law should be updated to more closely mirror the law relating to the possession of weapons in other state buildings.

> **AB 2668 (Galgiani), Chapter 699,** prohibits a person from possessing or bringing specified weapons within the State Capitol, any legislative office, any hearing room, or the Legislative Office Building. Specifically, this new law:
>
> - Provides that any person who brings or possessed, with the State Capitol, any legislative office, or any hearing room in which any committee of the Senate or Assembly is conducting a hearing; the Legislative Office Building at 1020 "N" Street in the City of Sacramento; or upon the grounds of the State Capitol, bounded by 10th, "L", 15th, and "N" Streets in the City of Sacramento, any of the following, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not exceeding

$1,000, or by both that fine and imprisonment, if the area is posted with a statement providing reasonable notice that prosecution may result from possession of any of these items:

  - Any firearm;
  - Any deadly weapon as described under existing law;
  - Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands;
  - Any unauthorized tear gas weapon;
  - Any stun gun as described under existing law;
  - Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, carbon dioxide pressure, or spring action, or any spot market gun or paint gun;
  - Any ammunition as defined under existing law; and,
  - Any explosive as defined under existing law.

- Exempts the following people from the aforementioned restriction:
  - A duly appointed peace officer as defined under existing law, a retired peace officer with authorization to carry concealed weapons as described under existing law, a full-time paid peace officer of another state or the Federal Government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
  - A person holding a valid license to carry the firearm pursuant to existing law, and who has permission granted by the Chief Sergeants at Arms of the State Assembly and State Senate to possess a concealed weapon upon the State Capitol, any legislative office, any hearing room, or the Legislative Office Building; and,
  - A person who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon upon the premises.

Firearms: Deadly Weapons

The Legislature directed the Law Revision Commission to study, report on, and prepare recommended legislation regarding the revision of Penal Code portions relating to the control of deadly weapons. The general purpose of the study is to improve the organization and accessibility of deadly weapons statutes, without making any change to criminal liability under those statutes.

> **SB 1080 (Senate Committee on Public Safety), Chapter 711,** reorganizes, without substantive change, Penal Code provisions relating to deadly weapons.

Firearms: Deadly Weapons

The Legislature directed the Law Revision Commission to study, report on, and prepare recommended legislation regarding the revision of Penal Code provisions relating to the control of deadly weapons by July 1, 2009. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes without making any change to criminal liability under those statutes.

> **SB 1115 (Senate Committee on Public Safety), Chapter 178,** makes cross-referencing changes to Penal Code provisions relating to deadly weapons.

Animal Control Officers: Baton Training

Under existing law, an animal control officer may exercise the powers of arrest and the power to serve warrants if the officer has completed a training course approved by the Commission on Peace Officer Standards and Training (POST). An animal control officer may also carry a wooden club or baton if the officer has completed a course certified by the Department of Consumer Affairs (DCA).

The DCA is an agency designed to protect California consumers by ensuring a competent and fair marketplace. Requiring animal control officers to obtain training certified by the DCA creates confusion as the DCA has no established procedures for animal control officers to complete their training.

> **SB 1190 (Cedillo), Chapter 109,** provides that animal control officers and illegal dumping enforcement officers must satisfactorily complete a course of training approved by POST, rather than a course certified by the DCA, in the carrying and use of any wooden club or baton, and authorizes the training institution to charge a fee covering the cost of training.

MISCELLANEOUS

Medical Research: Causes and Cures for Homosexuality

In 1950, a special session of the Legislature was convened to address sex crimes. This First Extraordinary Session included several bills relating to sex offenders and sexual psychopaths. A bill was enacted which specifically required the Department of Mental Hygiene to "conduct . . . scientific research into the causes and cures of sexual deviation . . . and the causes and cures of homosexuality, and into methods of identifying potential sex offenders." This statute was last amended in 1977 to conform with the "Department of Mental Hygiene's" name change to the "Department of Mental Health" (DMH). However, the statute's requirement to find a cure for homosexuality was still left intact, four years after homosexuality was removed from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

> **AB 2199 (Lowenthal), Chapter 379,** repeals a provision of law requiring DMH, acting through the superintendent of the Langly Porter Clinic, to plan, conduct, and cause to be conducted scientific research into the causes and cures of homosexuality.

Intercepted Communications: Hostage Taking and Barricading

Currently, when law enforcement officers respond to a barricaded suspect situation or a hostage situation, they are unable to lawfully deploy eavesdropping devices to listen in on the location. California Penal Code Section 632 makes it a crime to eavesdrop upon confidential communications by means of any electronic amplifying or recording device, in the absence of consent from all parties. There is no search warrant exception to this prohibition.

Suspects who barricade themselves or who take hostages pose a high level of risk to responding officers, hostages (when present), and the general public.

The use of eavesdropping devices is currently prohibited under state law but is allowed under federal law. Federal law allows states to implement their own laws so long as the state laws are at least as protective as federal law.

> **AB 2210 (Fuentes), Chapter 380,** provides that notwithstanding other prohibitions, and in accordance with federal law, a designated peace officer may use, or authorize the use of, an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication within a particular location in response to an emergency situation involving the taking of a hostage or hostages or barricading of a location if all of the following are satisfied:

- The officer reasonably determines that an emergency situation exists involving the immediate danger of death or serious physical injury to any person within the meaning of Section 2518(7)(a)(i) of Title 18 of the United States Code.

- The officer reasonably determines that the emergency situation requires that eavesdropping on oral communication occur immediately.

- There are grounds upon which an order could be obtained pursuant to Section 2516(2) of Title 18 of the United States Code in regard to the offenses enumerated therein.

Child Abuse Reporting: Multidisciplinary Personnel Teams

Due to budget cuts and the lack of staff, children who are victims of abuse and taken into protective custody cannot receive timely treatment for medical problems unless information is shared among verified members of the team investigating the abuse.

Existing law requires at least three team members convene before confidential information may be shared. Nurses, social workers and law officers state that valuable time is lost when responding to an emergency child abuse problem and trying to locate a third team member.

AB 2229 (Brownley), Chapter 464, revises and recasts provisions of law relating to multidisciplinary personnel teams (MDPT) engaged in the investigation of suspected child abuse or neglect.

- Reduces the size of a MDPT from three or more persons to two or more persons.

- Allow members of a MDPT to disclose and exchange information related to any incident of child abuse that would otherwise be confidential for a 30-day period following a report of suspected child abuse or neglect if good cause exists.

- Prohibits the disclosure and exchange of information to any person other than members of the MDPT, except as specified.

- Provides that the sharing of information shall be governed by a memorandum of understanding (MOU) among the participating service providers or provider agencies. The MOU shall specify the type of information that may be shared, and the process used to ensure confidentiality.

- States that every member of the MDPT who receives otherwise confidential information shall be under the same privacy and confidentiality obligations as

the person disclosing the information, and information and records communicated shall be protected from discovery by all applicable statutory and common law protections.

- Clarifies that the sharing of information related to suspected child abuse shall be governed by protocols developed in each country that ensure that confidential information is not disclosed in violation of state or federal law.

- States that these provisions shall only remain in effect until January 1, 2014.

Warrants: Electronic Signature via Computer Server

Due to the unpredictable nature of crime, peace officers may need to obtain search warrants after normal business hours. Under existing law, affiants are expressly authorized to transmit a search warrant to a magistrate for review using fax or electronic mail. The affiant's signature on the search warrant affidavit may be in the form of a digital signature. However, once the magistrate has decided to issue the warrant, current law does not authorize the magistrate to sign the warrant electronically. Instead, the magistrate must print out the warrant, affidavit, any attachments, and sign it with a pen.

Current requirements can make the process of approving, signing, and returning a warrant to the court a lengthy process that can be fraught with technical and hardware challenges in the middle of the night. These steps can be time consuming, and, in some cases, have a negative impact on public safety. These steps also require that magistrates assigned to after-hours search warrant duty be provided with printers, ink cartridges, and fax machines or scanners. Contemporary computer technology provides for a secure and expeditious alternative for the signing and transmission of warrants by both the affiant and magistrate.

AB 2505 (Strickland), Chapter 98, deletes the requirement that the magistrate cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail or computer server and then faxed or scanned and emailed back. Instead, the magistrate could sign the warrant electronically and email it back. This new law also allows the use of a computer server rather than electronic mail for transmission of the warrant documents. Because existing law refers to both "electronic signatures" and "digital signatures," which are similar concepts with technical differences between them, this law authorizes either. Finally, this new law deletes the requirement that the magistrate return the printed documents to the court and requires only the "duplicate original" be returned to the court clerk by the officer.

Gang Injunction Violations: Contempt of Court

Many communities would like to measure the effectiveness of gang injunctions but are often presented with a lack of accurate, reportable information.

Penal Code Section 166(a)(4) prohibits violation of any court order, which includes domestic-related court order, domestic violence court order, business-related court orders arising from civil law suits, civil "keep-away" orders arising from neighbor disputes, violations of Family Court orders to provide support, and violations of any number of court orders and injunctions. Violations of gang injunctions are also included.

When there is a Penal Code Section 166(a)(4) conviction, the court clerk enters the fact of the conviction and the conviction then becomes part of the defendant's criminal history; what is not reported is the type of court order violated.

When reviewing a defendant's rap sheet, a filing deputy does not know if the conviction relates to a Family Court order or because the defendant's behavior violated the terms of a lawfully issued gang injunction.

Creating a separate code section for violating a gang injunction would also allow the community to help track the effectiveness of gang injunctions in their community, and will allow law enforcement to accurately answer questions about the number of gang injunction violation arrests and prosecutions.

> **AB 2632 (Davis), Chapter 677,** designates a violation of a specific gang injunction subsection as a separate and distinct contempt of court to allow statistical tracking of gang injunction violations.

Communicable Disease: Involuntary Testing

Current law allows a peace officer, firefighter, custodial officer, custody assistant, or a non-sworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, or emergency medical personnel who, while acting within the scope of his or her duties, is exposed to an arrestee's blood or bodily fluids to have an arrestee's blood tested, either voluntarily or by court order, for specified communicable diseases when exposed to an arrestee's bodily fluids while acting within the scope of his or her duties.

Fingerprint identification experts (FIEs) now collect fingerprints from suspected criminals in hospitals. However, because this is a new duty for FIEs, their classification does not have certain protections that other law enforcement personnel possess. Thus, if and when an FIE is exposed to blood through a needle stick and other sharp injuries, as well as through mucous membrane and skin exposures, he or she is not entitled to have an arrestee's blood tested, either voluntarily or by court order.

According to the National Institute for Occupational Safety and Health, exposures to blood and other body fluids occur across a wide variety of occupations. Health care workers, as well as emergency response and public safety personnel, can be exposed to blood through needle stick and other sharps injuries, as well as through mucous membrane and skin exposures. The pathogens of primary concern for the Centers for Disease Control and Prevention (CDC) and the National Institute for Occupational Safety

and Health are human immunodeficiency virus, hepatitis B virus, and hepatitis C virus. According to CDC recommendations, wounds and skin sites that have been in contact with blood or bodily fluids should be washed with soap and water, and mucous membranes should be flushed with water. Immediate evaluation must be performed by a health care professional. The evaluation should determine the type of exposure, infectious status of the source, and the susceptibility of the exposed person in order to determine the treatment course.

AB 2635 (Portantino), Chapter 688, adds non-sworn employees of a law enforcement agency whose job description includes the collection of fingerprints to the list of persons who, when exposed to an arrestee's bodily fluids, can have the arrestee's blood tested for communicable diseases.

Medical Marijuana: Location of Dispensaries

In November 1996, Californians voted in favor of Proposition 215, the "Compassionate Use Act". Pursuant to Health and Safety Code Section 11362.5, the Act ensured the right of patients to obtain and use marijuana in California to treat specified serious illnesses. Additionally, the Act protected physicians who appropriately recommended the use of marijuana to patients for medical purposes and exempted qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana.

In January 2010, the Los Angeles City Council passed an ordinance to regulate the collective cultivation of medical marijuana in order to ensure the health, safety and welfare of Los Angeles residents. Several cities, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana dispensaries within their city limits. As the number of medical marijuana dispensaries increase, more and more are opening closer to schools, parks, public libraries, child care facilities, and other places where children congregate.

AB 2650 (Buchanan), Chapter 603, prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana, as specified, from being located within 600 feet of a school, public or private, K-12. Specifically, this new law:

- States the required 600-foot distance shall not prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment or provider.

- Expresses a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments

to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties including charter cities and charter counties shall be subject to the terms of this bill.

- Excludes from the 600-foot restriction K-12 private schools primarily conducted in private homes.

Public Safety Omnibus Bill

Existing law often contains technical and non-substantive errors due to newly enacted legislation. These provisions must be updated in order to correct these deficiencies.

SB 1062 (Strickland), Chapter 709, makes technical and corrective changes to various code sections relating generally to criminal justice, as specified. Specifically, this new law:

- States that the provisions of existing law regarding the procurement of financial records by the government do not prohibit the production of real estate records upon the ex parte application of a peace officer engaged during the course of a felony fraud investigation.

- Repeals provisions establishing the Transitional State Courts Facilities Construction Fund, and deletes provisions providing for a reduction in court construction penalties for the amounts collected for transmission to that fund.

- Clarifies that there is an enhanced penalty for deriving support or maintenance from a prostitute ("pimping") who is 16 years of age or older, rather than over the age of 16.

- Clarifies that there is an enhanced penalty for procuring another person for the purpose of prostitution or for inducing another person to become a prostitute ("pandering") if that person is 16 years or age or over, rather than over the age of 16.

- Adds omitted cross-references to a recently enacted provision of law that allows an officer of a postsecondary educational institution where a student has suffered a credible threat of violence to seek a protective order.

- Clarifies that a probation department shall, prior to sentencing, perform a risk assessment on every eligible person, as defined, whether or not it prepares a probation report, as specified.

- Deletes a reference to the Department of Justice's (DOJ) "Sex Offender Tracking Program" and replaces that reference with the current "High Risk Sex Offender Program".

- Repeals a near duplicate version of the Community Corrections Performance Act and retains the act whose provisions include a victim representative on a local advisory panel created by the act.

- Makes a clarifying amendment to the Community Corrections Performance Act of 2009 related to the calculation of the formula to determine the state's avoided cost resulting from reduced probation revocations. The formula shall be based on the average felony probation population rather than a point in time population.

- Allows service of a subpoena to be effected when the person served acknowledges receipt of the subpoena to the sender by means of electronic mail or an online form acknowledging the receipt of the subpoena, and requires the sender to retain acknowledgment received by these methods until the court date for which the subpoena was issued or a later date if specified by the court.

- Replaces the outdated term "sexual habitual offender" with the term "high risk sex offender."

- Replaces the outdated title of DOJ's "Sexual Habitual Offender Program" with the title "High Risk Sex Offender Program", charged with identifying high-risk sex offenders and collecting risk assessment scores.

- Replaces the outmoded, non-evidence-based definition of a "sexual habitual offender" with the current definition of "high-risk sex offender" in conformance with the state's risk assessment scheme, as specified.

- Conforms existing law on the collection of information related to high-risk sex offenders by DOJ with the current statutory scheme regarding records used in risk assessments.

- Conforms existing law on profiling sex offenders to the current definition of "high-risk sex offenders" and clarifies that the DOJ may disseminate the profiles on high-risk sex offenders to law enforcement agencies via electronic means.

- Provides that any section of any other act enacted by the Legislature during the 2010 calendar year that takes effect on or before January 1, 2011 and that amends; amends and renumbers; adds, repeals and adds; or repeals a section that is amended; amended and renumbered; added, repealed and added; or repealed by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

- Makes purely technical corrections to various other code sections.

Firearms: Deadly Weapons

The Legislature directed the Law Revision Commission to study, report on, and prepare recommended legislation regarding the revision of Penal Code provisions relating to the control of deadly weapons by July 1, 2009. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes without making any change to criminal liability under those statutes.

> **SB 1115 (Senate Committee on Public Safety), Chapter 178,** makes cross-referencing changes to Penal Code provisions relating to deadly weapons.

Forensic Conditional Release Program

While current law provides significant oversight over licensed facilities, there is little, if any, oversight regulating unlicensed facilities. Under current law, counties are prohibited from informing local law enforcement when Forensic Conditional Release Program (CONREP) participants are within their jurisdiction. Allowing local law enforcement to be notified of an unlicensed facility will enable them to more quickly assess situations, thereby limiting potential harm to themselves, the community, and the individual.

Recently in Upland, California, an unlicensed facility housed seven CONREP residents at one time. One resident apparently stabbed his fellow CONREP housemate to death. The suspect had a 12-hour head start to flee authorities before one of the housemates found the victim's body in the garage. The CONREP home in which the murder took place shared a fence with a local elementary school.

> **SB 1265 (Dutton), Chapter 50**, authorizes CONREP, while providing out-patient services to judicially committed persons released into the community, to inform local law enforcement agencies of the names and addresses of persons participating in the CONREP program in the agencies' jurisdiction.