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LEGISLATIVE SUMMARY 2011

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AMINAL ABUSE

Animal Abuse Penalties

Currently, a court has the discretion to prohibit ownership, possession, caring for, or residing with an animal as a part of the probation terms for misdemeanor and felony animal abuse convictions. However, current law does not permit a post-conviction, animal-ownership injunction for convicted persons not granted probation.

Additionally, current law provides that the owner of an animal is liable for the costs of caring for and treating the animal when law enforcement officers have seized the animal under exigent circumstances, but the owner's liability does not extend to scenarios involving seizures pursuant to search warrants.

AB 1117 (Smyth), Chapter 553, makes changes to penalties in animal abuse and neglect cases as well as in animal-seizure proceedings. Specifically, this new law:

- Specifies that the owner of an animal seized pursuant to a search warrant shall be liable for the costs of caring for and treating the animal and that these costs will be a lien on the animal which must be paid before the animal is returned.

- Specifies that the owner of an animal seized pursuant to a search warrant shall be liable for the costs of seizing the animal.

- Provides that an animal seized pursuant to a warrant shall not be returned to the owner until it is determined that the animal is physically fit or until it is shown that the owner can and will provide necessary care.

- Allows the court to order, as a condition of probation, that the probationer be prohibited from owning, possessing, caring for, or residing with animals, and requires the probationer to deliver the animals to be put up for adoption.

- Requires the court, in the event of acquittal or dismissal of the case, to release any seized animals to the defendant upon showing proof of ownership.

- Clarifies that the court may order a person convicted of specified sections relating to animal cruelty to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or to provide proof to the court that he or she no longer has possession, care or control of any animal.

- Provides that any person convicted of a misdemeanor violation of specified sections relating to animal cruelty and who, within five years of conviction, owns, possesses, maintain, has custody of, resides with or cares for any animal is guilty of a public offense, punishable by a fine of $1,000.

- Provides that any person convicted of a felony violation of specified sections relating to animal cruelty and who, within 10 years of the conviction owns, possesses, maintains, has custody of, resides with or cares for any animal is guilty of a public offense, punishable by a fine of $1,000.

- Creates an exception for the animal-ownership injunction for livestock owners who can establish that the restriction would result in substantial or undue economic hardship to the defendant's livelihood and that the defendant has the ability to properly care for all livestock in his or her possession.

- Allows a convicted person to petition the court for a reduction to the duration of the prohibition by showing that he or she does not present a danger to animals, has the ability to properly care for all animals in his or her possession, and has successfully completed all court-ordered classes and counseling.

- Gives a court discretion, in the event the length of the mandatory ownership prohibition is reduced, to order that the defendant comply with reasonable and unannounced inspections by animal control or law enforcement.

Animal Cruelty: Cockfighting

Under current law, it a misdemeanor, punishable by a fine not exceeding $100 or by imprisonment in the county jail for not more than 25 days, for any minor under the age of 16 years to visit or attend any prizefight, cockfight or place where any prizefight or cockfight is advertised and for any owner, lessee or proprietor of any place where any prizefight or cockfight is advertised to admit any minor or to sell or five to any such minor a ticket to a place where a prizefight or cockfight is advertised to take place.

Since January 2008, there have been more than 100 major cockfighting raids in 35 California counties involving more than 20,000 live or dead birds. In February alone, there were nine raids in nine different counties, from Tehama in the north to San Diego in the south and coastal and rural counties in between. County supervisors in Placer and Napa Counties, with the additional support of the editors of the San Diego Union Tribune, the Los Angeles Times, and the Bakersfield Californian, have specifically requested state action to strengthen cockfighting laws.

> **SB 425 (Calderon), Chapter 562,** increases fines for various animal fighting offenses and applies existing forfeiture proceedings for dog fighting to cockfighting.

Animal Neglect

Existing law states that every person who overdrives, overloads, overworks, denies sustenance tortures, torments, deprives of drink, cruelly beats, or mutilates an animal is guilty of a crime punishable by imprisonment in a county jail for up to six months, or by imprisonment in the state

prison for 16 months, 2 or 3 years, and by a fine of not more than $20,000. The misdemeanor punishment of up to six months in the county jail for this offense is inconsistent with the misdemeanor penalties for other forms of animal abuse.

SB 917 (Lieu), Chapter 131, increases the misdemeanor penalty for animal neglect in order to conform it to other provisions of law relating to animal abuse, and makes it a crime to sell a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. Specifically, this new law:

- Increases the misdemeanor penalty from not more than six months to not more than 12 months in the county jail for every person who overloads, overworks, denies sustenance, cruelly beats, mutilates, or cruelly kills any animal, and whoever having custody of an animal, either as owner or otherwise, subjects an animal to needless suffering or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide an animal with proper food, drink, or shelter or proper protection from the weather.

- Makes it unlawful for any person to willfully sell, or give away as part of a commercial transaction, a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk, or to display or offer for sale, or to display or offer to give away, a live animal if the transaction is to occur on a street, highway, public right-of-way, parking lot, carnival, or boardwalk, and makes a first offense an infraction punishable by a fine not to exceed $250, unless a violation causes an animal to suffer or be injured in which case the offense shall be punishable as a misdemeanor, and makes a second or subsequent offense punishable as a misdemeanor.

- Provides that a misdemeanor violation of the above provision shall be punishable by a fine not to exceed $1,000 per violation, and the court shall weigh the gravity of the violation in setting the fine. A notice describing the charge and the penalty for a violation may be issued by any peace officer, animal control officer, or humane officer, as specified.

- Provides that the prohibition against live animal sales at specified locations shall not apply to the following:

  - Events held by 4-H Clubs, Junior Farmers Clubs, or Future Farmers Clubs;

  - California Exposition and State Fair, district agricultural association fairs, or county fairs;

  - Stockyards regulated under federal law;

  - Specified livestock for sale at public sales;

- Live animal markets regulated under state law;

- A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group, as specified;

- The sale of fish or shellfish, live or dead, from a fishing vessel, at a pier or wharf, or at a farmer's market by any licensed commercial fisherman to the public for human consumption; and,

- A cat show, dog show, or bird show providing that all of the following circumstances exist:

  - The show is validly permitted by the city or county in which the show is held;

  - Each and every participant in the show complies with all federal, state, and local animal welfare control laws;

  - The participant has written documentation of the payment of a fee for the entry of his or her cat, dog, or bird in the show;

  - The sale of a cat, dog, or bird on the premises and within the confines of the show; and,

  - The show is a competitive event where the cats, dogs or birds are exhibited and judged by an established standard or set of ideals established for each breed or species.

- Provides that nothing in this prohibition against live animal sales shall be construed in any way to limit or affect the enforcement of any other law that protects animals, or the rights of consumers, as specified, or authorizes any act or omission that violates other local, state, or federal law relating to animal cruelty.

BAIL

Bail: Extradition

Existing law provides that where a person charged with a crime must be returned to California for trial, the district attorney shall apply to the Governor for extradition. The application shall include the crime charged and the state and specific location where the person is located. Where a person convicted of a crime in California has escaped, or violated the terms of bail, probation or parole, the district attorney or other specified official shall apply to the Governor for extradition.

Bail permits a defendant to be released from actual custody into the constructive custody of a surety on a bond given to procure the defendant's release. The amount of bail must be specified in a court order or on the arrest warrant. Before conviction, bail is a matter of right unless the offense is punishable by death, or a public safety exception is established.

> **SB 291 (Vargas), Chapter 67,** requires that when a defendant is extradited back to the State of California, a judge shall issue bail in the amount of $100,000, in addition to any bail already issued for the underlying original offense.

CHILD ABUSE

Prostitution: Minors

Existing law defines "unlawful sexual intercourse" as an act of sexual intercourse accomplished with a person under the age of 18 years. Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Any person who engages in lewd conduct - any sexually motivated touching or a defined sex act - with a child under the age of 14 is guilty of a felony, punishable by a prison term of three, six or eight years. Where the offense involves force or coercion, the prison term is five, eight, or ten years. Any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Persons who solicit, or who agree to engage in, an act of prostitution, or any person who engages in an act of prostitution, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to six months, a fine of up to $1,000, or both.

The average age of a child entering the sex industry is 12 years old, with some cases involving children as young as four years old. Annually, over 300,000 minors are captive victims of traffickers and the customers engaging in these illicit activities keep the industry alive.

> **AB 12 (Swanson), Chapter 75,** provides that any person convicted of soliciting or engaging in an act of prostitution, where the person involved in the solicitation or the act was under 18 years of age, shall be ordered by the court, in addition to pay an additional fine not to exceed $25,000. Additionally, this new law specifies that, upon appropriation by the Legislature, the fine shall be available to fund programs and services for commercially sexually exploited minors in the counties where the offenses are committed.

Child Abuse Central Index

Several court decisions collectively state that the Child Abuse Central Index (CACI), which is maintained by the Department of Justice (DOJ), is unconstitutional because it does not notice all people of their inclusion in the CACI, offer a due process hearing, or give people listed in the CACI with unsubstantiated cases of abuse or neglect a procedure to have their names removed from the database. Not only does this create a problem for the individuals improperly listed, but the more false information is included in the CACI, the less useful the CACI becomes as an effective tool for protecting children from abuse.

AB 717 (Ammiano), Chapter 468, amends existing provisions of law relating to the CACI by only including substantiated reports, and removing inconclusive and unfounded reports from the index. Specifically, this new law:

- Provides that only information from substantiated reports be included in the CACI, and that inconclusive and unfounded reports are to be removed from the list.

- Requires the removal of a CACI listing for any person who has reached the age of 100.

- Provides that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion.

- Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report.

- Required the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report.

- Require agencies, including police departments and sheriff's departments, to retain child abuse or neglect investigative reports that result or resulted in a report filed with the DOJ for the same period of time that the information is required to be maintained on the CACI.

- Provides that on and after January 1, 2012, law enforcement shall no longer forward a written report to the DOJ of any investigated cases of known or suspected child abuse or severe.

<u>Commercially Sexually Exploited Minors</u>

Existing law permits the Alameda County District Attorney's Office to develop a comprehensive system response that directs commercially sexually exploited children away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these children. The pilot project is set to sunset in 2012.

AB 799 (Swanson), Chapter 51, extends the repeal date to January 1, 2017 of a provision in existing law that authorizes the Alameda County District Attorney to create a pilot project, contingent upon local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

CONTROLLED SUBSTANCES

Controlled Substances: Synthetic Stimulants

Existing law prohibits the sale, possession, dispensing, distributing, or giving specified controlled substances and their analogues. Because of the complex chemical nature of synthetic stimulants, law enforcement is not always aware if the chemical in question falls under the prohibitions in California law.

> **AB 486 (Hueso), Chapter 656,** prohibits the sale, dispensing, distribution, administration, or giving or attempting to sell, dispense, furnish, administer or give, or possession for sale specified synthetic stimulants or specified synthetic stimulant derivatives. This new law also states that "synthetic stimulants" include any material, compound, mixture or preparation which contains naphthylpyrovalerone or cathinone and has a stimulant effect on the central nervous system unless specifically excepted or contained within a pharmaceutical product approved by the Unites States Food and Drug Administration, and specifies that a violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding $1,000, or by fine and imprisonment.

Medical Marijuana

Existing law allows seriously ill Californians to have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

Recently, there has been an increase in lawsuits challenging the authority of local governments to regulate land use, zoning, business licensure, and use permit conditions as they affect the operations of what are commonly referred to as "dispensaries" or "pot clubs." The suits focus on the discrepancy between Article XI, Section 7 of the California Constitution which states, "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" and the language in Proposition 215 of 1996 and the Medical Marijuana Program (MMP), which constitute the parameters of medical marijuana cooperative or collective regulation and, therefore preclude local governments from enforcing any additional requirements.

> **AB 1300 (Blumenfield), Chapter 196,** allows local governments to regulate marijuana cooperatives and collectives. Specifically, this new law allows cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective; and to allow the civil or criminal enforcement of those local ordinances; and to enact other laws consistent with the MMP.

Controlled Substance Utilization Review and Evaluation System

Due to the rise in prescription drug abuse, prescription drug history information is maintained in the California Controlled Substance Utilization Review and Evaluation System (CURES). Under current law, California doctors and pharmacies are required to report to the Department of Justice (DOJ), within seven days, every Schedule II, III, and IV prescription that is written or filled.

In 2009, the DOJ launched its automated Prescription Drug Monitoring Program (PDMP). The program allows licensed health care practitioners eligible to prescribe controlled substances access to patient controlled substance prescription information in real-time, 24 hours per day at the point of care. Prescribers and pharmacists can now make informed decisions about patient care and detect patients who may be abusing controlled substances by obtaining multiple prescriptions from various practitioners.

While the automated PDMP is a valuable investigative, preventative, and educational tool for law enforcement, regulatory boards, and health care providers, current efforts at maintaining privacy and control of CURES data are inadequate to protect confidential patient information and deter misuse of confidential CURES data.

The DOJ also manages the California Security Prescription Printer Program and has sole responsibility to approve "security prescription printer" applications. While the DOJ has established guidelines for the security of prescription forms, current law lacks safeguards against the theft and fraudulent use of prescription pads. The DOJ has seen an increase in criminal enterprises, from gangs to organized crime, involved in prescription fraud.

SB 360 (DeSaulnier), Chapter 418, updates the CURES to reflect the new PDMP and authorizes the DOJ to initiate administrative enforcement actions to prevent the misuse of confidential information collected through the CURES program. This new law also provides additional requirements and sanctions for security prescription printers and their employees who have direct contact with, or access to, controlled-substance prescription-drug forms. Specifically, this new law:

- Expands the requirements imposed on security-printer applicants to print prescription forms for controlled substance prescriptions to include the names and addresses of any individual owner, partner, corporate officer, manager, agent, representative, employee or subcontractor with direct access to, management of, or control over controlled substance prescription forms; a signed statement regarding any prior criminal convictions for these parties, and fingerprints for the same.

- Clarifies that the fee assessed by the DOJ to process the application of a security printer shall be sufficient to cover inspections of security printers in addition to the other costs specified by statutes.

- Requires that controlled substance forms shall be provided in person only to established customers.

- Requires a security printer to obtain the customer's photo identification and log the information.

- Limits the mailing of controlled substance only to an address verified by the Drug Enforcement Agency or Medical Board of California.

- Requires a security printer to report the theft or loss of controlled substance prescription forms to the DOJ within 24 hours of its occurrence.

- Requires the DOJ to impose sanctions on security printers who violate applicable statutes and regulations, including failure to comply with guidelines, failure to take reasonably precautions to prevent dishonest or illegal actions with regard to the access and control of security prescription forms, and the theft or fraudulent use of a prescriber's identity to obtain forms.

- Specifies that the sanctions for a violation of applicable statutes and regulations are a fine of up to $1,000 for a first violation, a fine of up to $2,500 for a second or subsequent violation; disciplinary proceedings for suspension or revocation of security printer status for third or subsequent violations.

- Modifies the PDMP to include the following features:

    - Allows any practitioner licensed to prescribe controlled substances of Schedules II-IV or any pharmacist to apply to participate in the PDMP, as specified; and,

    - Gives the program participant Internet access to view the electronic history of controlled substances dispensed to an individual under his or her case based on data contained in CURES.

- Provides that a PDMP application may be denied, or a subscriber suspended from the program for material falsification of an application, failure to maintain effective controls for access to the patient activity report, a suspended or revoked DEA registration, an arrest for a drug offense, or accessing information for any reason other than patient care.

- Requires an authorized subscriber to notify the DOJ within 10 days of any changes to the subscriber account.

- Allows, until July 12, 2012, a health care practitioner or pharmacist to make a written request for controlled substance history information about a person under the care of the practitioner or pharmacist, in order to provide sufficient time for subscribers to apply for access to PDMP.

- Authorizes the DOJ to audit the PDMP system and its users.

- Authorizes the DOJ to establish regulations for a system to issue citations for unauthorized use of the CURES data by subscribers with PDMP access, and provides for orders or abatement, fines of up to $2,500 per violation, and a hearing process if a subscriber is in violation of the CURES-PDMP statutes or corresponding regulations.

- Requires citations issued by the DOJ to be in writing, to particularly describe the violation including a specific citation to the statute or regulation violated, and to notify the subscriber of the opportunities to request a hearing and/or an informal conference, and the deadlines for requesting them.

- Provides that the failure of a subscriber to pay a fine within 30 days, or to comply with an abatement order within the time subscribed, may result in disciplinary action unless the citation is being appeal.

- Provides that any administrative fines collected shall be deposited in the CURES Program Special Fund.

- Specifies that the sanctions authorized pursuant to this new law shall be separate and in addition to any other administrative, civil or criminal remedies, but that a criminal action may not be initiated for a specific offense if a citation has been issued for that matter, and that if a criminal action has been filed, a citation cannot be issued for the same offense. Notwithstanding this provision, nothing shall prevent the DOJ from prosecuting a suspension or revocation of a subscriber.

- Requires an affected PMDP prescriber to immediately report the theft or loss of controlled substance prescription forms to the DOJ, and specifies the reporting shall be done no later than three days after the discovery of the theft of loss.

<u>Controlled Substances: Synthetic Cannabinoid Compounds</u>

Existing law prohibits the possession of specified controlled substances and controlled substance analogues. However, retailers sell "fake pot" or synthetic marijuana as "plant food" or "herbal incense." Buyers can purchase synthetic marijuana at tobacco shops, gas stations, convenience stores, online, and from other retailers.

SB 420 (Hernández), Chapter 420, prohibits the sale of any synthetic cannabinoid compound. Specifically, this new law:

- States that any person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, give a synthetic cannabinoid compound or synthetic cannabinoid compound derivative, is guilty of a misdemeanor punishable by imprisonment in a county jail for up to six months, a fine not to exceed $1000, or both imprisonment and a fine.

- States that possession for sale, except as authorized by law, of any synthetic cannabinoid compound or synthetic cannabinoid compound derivative, shall be punished by imprisonment in a county jail for not more than six months, by a fine not to exceed $1000, or both imprisonment and a fine.

- States that "synthetic cannabinoid compound" refers to any of the following:

  - 1-pentyl-3-(1-naphthoyl)indole (JWH-018);

  - 1-butyl-3-(1-naphthoyl)indole (JWH-073);

  - 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

  - 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); or,

  - 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexy]-phenol (cannabicyclohexanol; CP-47, 497 C8 homologue).

Dextromethorphan: Sale to Minors Prohibited

Dextromethorphan is a cough suppressant commonly found in over-the-counter cold medications and was developed as a cough suppressant that would be less addictive and have fewer side effects than the narcotic codeine. Since the drug is available over-the-counter, without a prescription, it is easy for minors to obtain.

Ingesting too much cold medicine can be just as hazardous as drinking too much alcohol. The California Poison Control System reports that telephone consultations provided for patients ages 6 to 17 regarding abuse of dextromethorphan increased from 24 in 1999 to 228 in 2010, an increase of 850 percent. When used in the doses recommended on cough syrup and tablet packaging, it is a very effective cough suppressant. When taken at much higher doses, however, dextromethorphan causes hallucinations, loss of motor control, and dissociative "out-of-body" sensations similar to PCP and ketamine. At high doses, dextromethorphan is also a central nervous system depressant.

SB 514 (Simitian), Chapter 199, prohibits any person, corporation, or retail distributor from knowingly supplying, delivering, or giving possession of a drug, material, compound, mixture, preparation or substance containing any quantity of dextromethorphan to a person under the age of 18 without a prescription. Specifically, this new law:

- States that unauthorized sales shall be an infraction, punishable by a fine not to exceed $250.

- States that it shall be prima facie evidence of a violation of this section if the person, corporation, or retail distributor making the sale does not require and obtain bona fide evidence of majority and identity from the purchases, unless from the purchaser's

outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

- States that proof that a person, corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bone fide evidence of majority and identity, shall be a defense to any criminal prosecution under this section.

- States that "bone fide evidence of majority and identity" is defined as a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including but not limited to a driver's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

- States that notwithstanding any other provision of this section, a retail clerk who fails to require and obtain proof of age from the purchaser is not guilty of an infraction, as specified or subject to any civil penalties, unless he or she is a willful participant in an ongoing criminal conspiracy to violate this section.

- Requires, if feasible, any person, corporation, or retail distributor that sells or makes available product containing dextromethorphan, as specified, without a prescription, to use a cash register that is equipped with an age-verification feature to monitor age-restricted items. The cash register shall be programmed to direct the retail clerk making the sale to request bona fide evidence of majority and identity before a product containing dextromethorphan may be purchased.

CORRECTIONS

Inmates: Parole Release Notification

Existing law requires the California Department of Corrections and Rehabilitation (CDCR) to notify a county 45 days prior to a prisoner being released on parole. The county then has 15 days to submit comments and express safety concerns regarding the placement of the parolee. Earlier this year, Lauren Herzog, a felon suspected of killing up to 22 people, was released on short notice to Lassen County, prompting public outcry and protests throughout the small community.

> **AB 44 (Logue), Chapter 355**, extends from 45 to 60 days the period in which CDCR must notify the sheriff, chief of police, or both, and the district attorney of the scheduled release date of an inmate who has been convicted of a "violent" felony.

Juvenile Inmates: Medical Program

Federal law suspends Medi-Cal benefits for minors who are inmates of a state or local juvenile detention facility or camp. Many minors taken into custody are from low-income families and would generally be eligible for Medi-Cal benefits.   Therefore, when a minor is in custody and is in need of medical services, the county is responsible for those costs.

There is a federal option that would permit Medi-Cal benefits if a minor is admitted to a hospital for treatment and is away from the detention facility for more than 24-hours; however, counties are unable to use this option unless established in state statute.

> **AB 396 (Mitchell), Chapter 394,** allows counties and the California Department of Corrections and Rehabilitation (CDCR) to obtain federal matching funds to provide reimbursement for the medical treatment of juvenile inmates who are hospitalized outside of a detention facility for more than 24 hours. Specifically, this new law:

- Requires the Department of Health Care Services (DHCS) to develop a process, in consultation with the counties and the Division of Juvenile Facilities (DJF) of CDCR, to allow the counties and DJF to obtain federal funds for inpatient hospital and psychiatric services provided to juvenile detainees, and requires the DHCS to seek any federal approvals necessary to implement these provisions.

- Clarifies that this new law does not limit the authority of DHCS to suspend or terminate Medi-Cal eligibility except during such times that the juvenile inmate is receiving acute inpatient hospitals or psychiatric services.

- Provides that counties electing to participate in the process shall agree to pay the nonfederal share of the administrative costs incurred by the DHCS, as well as the nonfederal share of expenditures for acute inpatient hospital and psychiatric services provides to eligible juvenile inmates.

- Requires that the federal financial participation associated with services provided pursuant to the process be paid to the participating counties and the CDCR.

- Allows the DHCS to recoup funds from a county in the event a federal audit subsequently determines the money received was disallowed. The amount to be recouped includes the amount of the disallowance and any applicable interest.

- Limits implementation of the provisions of this new law only to the extent that existing levels of federal financial participation are not otherwise jeopardized.

- Provides that if any final judicial decision or a determination by the administrator of the federal Centers of Medicare and Medicaid Services deems any part of the law to be invalid, then those provisions shall have no force or effect.

Inmates: Hospitals: Reimbursement Costs

Existing law allows mentally disordered offenders (MDOs) treated by the Department of Mental Health at a state institution, such as Atascadero State Hospital, during their three-year probation period to challenge their continued treatment and commitment in a court. These trials take place in the superior court of the county that hosts the state institution where he or she is housed. As a result, San Luis Obispo and San Bernardino Counties bear the cost of over 90 percent of these trials as those counties house two primary facilities for MDOs. In late 2010, the State Controller abruptly ceased processing MDO trial reimbursements and notified the counties that it could no longer reimburse for MDO trial-related costs because the Controller was not explicitly authorized to do so under Penal Code 4750.

> **AB 1016 (Achadjian), Chapter 660,** entitles a city, county, or superior court to reimbursement from the California Department of Corrections and Rehabilitation for the reasonable and necessary costs connected with state prisoners and any non-treatment costs.

Inmates: Involuntary Administration of Psychotropic Medications

Existing law specifies that an inmate of the California Department of Corrections and Rehabilitation (CDCR) who is prescribed psychotropic medications by his or her treating psychiatrist, but does not consent to the administration of these drugs, may be administered psychotropic medications if the requirements of the *Keyhea* injunction are met. The injunction states:

- Psychotropic medication may be administered to an inmate without his or her informed consent on an emergency basis for no more than 72 hours. An emergency is defined as "a sudden marked change in the prisoner's condition so that action is immediately necessary for the preservation of life of the prevention of serious bodily harm to the patient or others, and it is impracticable to first obtain consent."

- If psychotropic medications are to be administered involuntarily for more than 72 hours, but less than 24 days, written notice of certification must be served on the inmate and his or her counsel within five days of commencement of involuntary medication. The certification must be signed by two people, consisting of the chief psychiatrist or the person in charge of psychiatric care at the facility, and a physician or psychologist who participated in the evaluation of the inmate. Certification consists of a showing of:

  - Professional staff of the facility where the inmate is incarcerated has analyzed the inmate's condition and has found that the inmate is as a result of mental disorder, gravely disabled and incompetent to refuse medication, or a danger to others, or a danger to self; and,

  - The inmate has been advised of the need for, but has not been willing to accept medication on a voluntary basis.

- Within 10 days of the commencement of involuntary medication, the inmate is entitled to a certification review hearing. This hearing must have the following characteristics:

  - The inmate has the right to be present at the certification review hearing, the right to assistance by an attorney or advocate, to present evidence on his or her behalf, to question persons presenting evidence in support of the certification decision, to make reasonable requests for the attendance of facility employees who have knowledge of or participated in the certification decision;

  - The hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, or a licensed clinical social worker. Licensed psychologists, licensed clinical social workers, and registered nurses who serve as certification review hearing officers shall have had a minimum of five years' experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the public defender, and the district attorney of the county in which the facility is located. No employee of the California Department of Corrections may serve as a certification review hearing officer;

  - The evidence in support of certification shall be presented by a person designated by the superintendent or warden of the facility;

  - The person conducting the hearing must be informed if the inmate has received medication within 24 hours of the hearing, and of the probable effects of the medication; and,

- The hearing officer will determine if there is probable cause that the inmate suffers a mental disorder and is either gravely disabled and incompetent to refuse medication or is a danger to others or a danger to self.

- If the hearing officer determines there is probable cause to continue to involuntarily medicate the inmate, the inmate is entitled to review by an administrative law judge (ALJ). The hearing must have the following characteristics:

  - The inmate has the right to be present, the right to assistance by an attorney or advocate, to present evidence on his or her behalf, to question persons presenting evidence, to make reasonable requests for the attendance of facility employees who have knowledge of or participated in the certification decision, and the inmate's counsel must have access to all health records and all documents and files relied upon to certify the inmate for involuntary medication;

  - The ALJ is to determine by clear and convincing evidence that:

    - The inmate is as a result of mental disorder, gravely disabled and incompetent to refuse medication; or,

    - The inmate is, as a result of mental disorder, a danger to others or danger to self.

- The determination of involuntary medication expires in 180 days if the inmate is a danger to self or others, or one year if the inmate is found to be gravely disabled.

- States that the judicial hearing for the authorization of involuntary administration of psychotropic medication must be conducted by an administrative law judge, and may be conducted at the facility where the inmate is located, at the direction of CDCR.

These requirements were largely copied from the requirements when civilly committing a non-inmate when he or she is gravely disabled or a danger to self or others, and not well-suited to a prison environment.

AB 1114 (Lowenthal), Chapter 665, modifies the procedure for the involuntary administration of psychotropic medications. Specifically, this new law:

- States that if a psychiatrist determines than an inmate should be treated with a psychotropic medication, but the inmate does not consent, the inmate may be treated on a nonemergency basis only if all the following conditions have been met:

  - A psychiatrist has determined that the inmate has a serious mental disorder;

  - A psychiatrist has determined that as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychotropic medications, or is a danger to himself or herself or others;

- A psychiatrist has prescribed one or more psychotropic medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the inmate;

- The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychotropic medications and refuses or is unable to consent to the administration of the medication;

- The inmate is provided counsel at least 21 days before the hearing;

- The hearing shall be held not more than 30 days after the filing of the notice with the Office of Administrative Hearings, unless counsel for the inmate agrees to extend the date of the hearing;

- The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing. The written notice must include the following:

  - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication; and,

  - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment.

- An ALJ determines by clear and convincing evidence that the inmate has a mental disorder; that as a result of that illness, the inmate is gravely disabled and lacks the capacity to consent or refuse treatment with psychotropic medications or is danger to self or others is not medicated; that there is no less intrusive alternative to involuntary medication; and that the medication is in the inmate's best medical interest; and,

- The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmates' mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as a result of a mental disorder.

- States that nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency.

- States that an emergency exists when there is a sudden and marked change in the inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and if it is impractical, due to the seriousness of the emergency, to first obtain informed consent.

- States that if psychotropic medication is administered in an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administer for only as long as the emergency exists.

- States that if psychotropic medication is administered to an inmate in an emergency, CDCR will serve the inmate and counsel written notice within 72 hours of commencing medication, unless the inmate gives informed consent to continue the medication or the psychiatrist determines that the psychotropic medication is not necessary and the administration of the medication is discontinued. If written notice is given, it must include the following:

  - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication; and,

  - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment.

- Requires that if psychotropic medication is being administered to an inmate in an emergency a hearing before an ALJ must commence within 21 days of the filing of the service of the notice, unless counsel for an inmate agrees to a longer period of time. The involuntary medication may continue if:

  - An ALJ determines by clear and convincing evidence that the inmate has a mental disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment with psychotropic medications or is danger to self or others is not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest; and,

  - The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmates' mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate

is a danger to self or others, or is gravely disabled and incompetent to refuse medication as a result of a mental disorder.

- States that the determination made by the ALJ to involuntarily medicate the inmate is valid for one year from the date of determination, regardless of whether the inmate subsequently gave his or her informed consent to the medication.

- States that the involuntary medication of an inmate, either on an emergency or nonemergency basis, must discontinue one year from the date of determination, unless the inmate gives her or her informed consent or the following occurs:

  - CDCR files notice with the Office of Administrative Hearings and serves written notice on the inmate and his or her counsel. The written notice must include the following:

    - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication;

    - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment; and,

    - Specify the request is for a renewal of an involuntary medication order.

  - The request for the renewal hearing must be filed and serves no later than 21 days prior to the expiration of the current order authorizing involuntary medication;

  - An ALJ determines by clear and convincing evidence that but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

- States that renewal orders are valid one year from the date of the hearing

- States that an inmate is entitled to one motion for reconsideration following the determination that he or she may be involuntarily medicated and may seek a new hearing to present new evidence upon a showing of good cause. Additionally, the inmate must be informed of this right in writing.

Juvenile Offenders: Tattoo Removal

Current law provides for the California Tattoo Removal Program, which required the California Department of Corrections and Rehabilitation (CDCR), California Youth Authority (CYA), which is now defunct and succeeded by the Division of Juvenile Facilities (DJF), to purchase two medical laser devices for the removal of tattoos from eligible participants who are at-risk youth, ex-offenders, and current or former gang members. The act of removing a tattoo enables an individual to leave his or her past behind them, while also eliminating potential obstacles to employment. This program has been pivotal in helping move individuals out of the gang life to help them become productive members of society. Since 2003, the California Tattoo Removal Program has lacked adequate funding, although it continues to serve a modest number of juvenile offenders.

AB 1122 (John A. Pérez), Chapter 661, establishes the California Voluntary Tattoo Removal Program, administered by the California Emergency Management Agency (CalEMA) which will provide competitive grants to grantees to serve both Northern and Southern California. Specifically, this new law:

- States that the program is designed to serve individuals between 14 and 24 years of age, who are in the custody of the CDCR or county probation departments, who are on parole or probation, or who are in a community-based organization serving at-risk youth.

- Allows CDCR, DJF, county probation departments, community-based organizations, and relevant service providers may apply for the grants authorized by this new law.

- Limits the funds appropriated for this program to federal funds.

- Requires tattoo removals to be performed by licensed clinicians who, to the extent feasible, provide their services at a discounted rate, or free of charge.

- Mandates grantees of the competitive grants to serve individuals who have gang-related tattoos that are visible in a professional environment and who are recommended for the program by CDCR representatives, parole agents, county probation officers, community-based organizations, or service providers.

- States that in order to be eligible for participation in the program, individuals must meet any of the following criteria:

  - Are actively pursuing secondary or postsecondary education;

  - Are seeking employment or participating in workforce training programs;

  - Are scheduled for an upcoming job interview or job placement; and,

- Are participating in a community or public service activity.

- Limits use of the funding by grantees to the following:
  - The removal of gang-related tattoos;
  - Maintenance or repair of tattoo removal medical devices; and,
  - Contracting with licensed private providers to offer the tattoo removal service.

- Authorizes grantees to seek additional federal or private funding to supplement funding received through the program.

- Establishes a sunset date of January 1, 2017.

Prisons: Wireless Communication Devices

Smuggled cell phones into the California prison system are a growing and dangerous problem. Inmates with access to cell phones may order murders, organize escapes, facilitate drug deals, control street gangs, and terrorize victims of crime. In 2006, the number of phones confiscated from state prisons was 261; in 2010, the number of phones confiscated reached 11,000; in 2011, the number of confiscated phones is expected to exceed 13,000. Under current law, it is not a crime to smuggle a cellphone into a state prison. Once a cellphone is brought into the prison, there is currently no technology in place to prevent phone calls or text messages from being placed using these smuggled cellphones.

SB 26 (Padilla), Chapter 500, provides that a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the Department of Corrections and Rehabilitation (CDCR) any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, subscriber identity module (SIM) cards and memory storage devices, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, or a fine not to exceed $5,000 for each device, or both. Specifically, this new law:

- Provides that a person who is visiting an inmate or ward under the jurisdiction of CDCR who is found to be in possession of a cellular telephone, wireless communication device, or any component thereof, as specified, upon being searched or subjected to a metal detector, shall be subject to having that device confiscated and returned the same day the person visits the inmate or ward, except as specified.

- States that if, upon investigation, it is determined that no prosecution will take place, the cellular telephone or other wireless communication device or any component thereof shall be returned to the owner at the owner's expense.

- Requires notice of the confiscation provisions to be posted in all areas where visitors are searched prior to visitation with an inmate or ward in the custody of CDCR.

- Provides that any inmate who is found to be in possession of a wireless communication device shall be subject to time credit denial or loss of up to 90 days.

- States that a person who brings, without authorization, a wireless communication device within the secure perimeter of any prison or institution housing offenders under the jurisdiction of CDCR is deemed to have given his or her consent to CDCR using available technology to prevent that wireless device from sending or receiving telephone calls or other forms of electronic communication. Notice of this provision shall be posted at all public entry gates of the prison.

- Requires CDCR to obtain a search warrant before accessing any data or communications that have been captured using available technology from unauthorized use of a wireless communication device.

- Prohibits CDCR from capturing data or communications or accessing data or communications that have been captured using available technology from an authorized wireless communication device, except as already authorized under existing law.

- States that if the available technology to prevent wireless communications from sending and receiving telephone calls or other forms of electronic communication extends beyond the secure perimeter of the prison or institution, the CDCR shall take all reasonable actions to correct the problem.

- Provides that any contractor or employee of a contractor or CDCR who knowingly and willfully, without authorization, obtains, discloses, or uses confidential information in violation of the above provisions shall be subject to an administrative fine or civil penalty not to exceed $5,000 for a first violation, or $10,000 for a second violation, or $25,000 for a third or subsequent violation.

- Provides that California shall require, until January 1, 2018, as part of the contract for the Inmate Ward Telephone System that the total cost for intrastate and interstate calls be equal to or less than the total costs of a call established in the contract in effect on September 1, 2011. Other than the conversation minute charges and prepaid account setup fees, there shall be no additional charges of any type, including administrative fees, call-setup fees, detail billing fees, hard copy billing fees, or any other fees.

Battery: Security Officers and Custody Assistants

Under existing law, when a battery is committed against the person of a custodial officer, firefighter, emergency medical technician (EMT), physician or nurse providing emergency care, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of

his or her duties, and the person committing the offense knows or reasonably should know that the victim is a custodial officer, firefighter, EMT, physician or nurse providing emergency care, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer, the battery is punishable by up to one year in the county jail, by a fine of up to $2,000, or by both a fine and imprisonment.

In past years, the Legislature in has added several other categories of public safety personnel to this Penal Code Section to recognize the risks faced by these employees and to increase punishment against offenders. Security officers and custody assistants should be treated the same as other public safety personnel.

SB 406 (Lieu), Chapter 250, increases the penalty for a battery committed against a security officer or a custody assistant engaged in the performance of his or her duties when the person committing the offense knows or reasonably should know that the victim is a security officer or custody assistant engaged in the performance of his or her duties. Specifically, this new law:

- Makes a battery committed against the person of a security officer or custody assistant in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a search and engaged in the performance of his or her duties the offense shall be punished by a fine not exceeding $2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Defines a "custody assistant" as any person who assists peace officer personnel in maintaining order and security in detention facilities, as specified, and who is employed by a law enforcement agency of any city, county, or city and county or who performs those duties as a volunteer.

- Defines a "security officer" as any person who provides security at locations or facilities owned, operated, controlled, or administered by a county, city or municipality, and who is employed by a law enforcement agency of any city, county, or city and county.

Prison-Made Goods: Non-Profit Organizations

The California Prison Industry Authority (PIA) is a state-operated organization that was created by the Legislature to provide productive work assignments for inmates in California's adult correctional institutions. The PIA provides work assignments for approximately 5,900 inmates and operates over 60 service, manufacturing, and agricultural industries at 22 prisons throughout California. The PIA is self-supporting and does not receive an annual appropriation from the Legislature. The PIA's revenue comes from the sale of its products and services to governmental organizations.

The PIA offers goods and services, including, but not limited to, office furniture, clothing, food products, shoes, printing services, signs, binders, eye wear, gloves, license plates, cell

equipment. In a majority of these categories, PIA is able to provide goods and services at a rate that is more affordable than private vendors. Under current law, only government organizations may purchase goods or services from the PIA. Nonprofit organizations, which are heavily reliant on grant money, government subsidies, and the generosity of individuals and corporations to fund their philanthropic endeavors, are unable to purchase goods and services through the PIA. The scarcity of funding sources and limited resources significantly limits both the scope and effectiveness of the nonprofit organizations' activities.

SB 608 (DeSaulnier), Chapter 307, authorizes the PIA to offer their goods and services for sale to nonprofit organizations. Specifically, this new law requires the nonprofit organization to meet all of the following conditions:

- The nonprofit organization is located in California and is exempt from taxation under specified federal tax laws.

- The nonprofit organization has entered into a memorandum of understanding with a local education agency, which is defined as a school district, county office of education, state special school, or charter school.

- The products and services are provided to public school students at no cost to students or their families.

Corrections: Victim Notification

Existing law requires the California Department of Corrections and Rehabilitation (CDCR) to send a notice to a victim or witness who has requested notification that a person convicted of a violent felony is scheduled to be released. However, notification to victims and other individuals who have requested notification is made by way of regular postal mail. Electronic notification would ensure that victims and witnesses are provided pertinent information in a quick and expeditious manner.

SB 852 (Harman), Chapter 364, authorizes a crime victim or witness to request the option of being notified buy CDCR of an offender's custody status by electronic mail, if that method is available, and makes other conforming changes.

Juvenile Offenders: Medical Care

Current law requires the consent of a parent or legal guardian for many medical procedures, including drawing blood or administering immunizations or other medications. State regulation Juvenile Title 15 requires detained minors to have a health assessment within 96 hours of being taken into custody, which include holidays and weekends. The required health evaluation includes, at a minimum: (1) a health and mental health history, (2) a physical examination, including laboratory and diagnostic testing, and (3) the necessary immunizations based on current public health guidelines. There are times when the parent or legal guardian cannot be found and, therefore, the medical staff at the detention facilities cannot complete the medical examination. Regulations require that, absent parental consent, the probation officer must seek

an order from the court. Obtaining a court order takes approximately 72 hours and the county is often out of compliance because the medical exam is not completed within the required 96-hour timeframe.

Minors detained in juvenile facilities often have undetected health and mental health problems. Physicians at the juvenile facilities are unable to determine the condition of the juvenile detainee without a complete physical examination. If the probation department is forced to seek a court order for medical treatment, a separate order must be sought for each examination or medical procedure. This creates an unnecessary and costly burden for both the court and the facility, but - more importantly - it puts the minor's health at risk, as well as the other juvenile detainees and staff at the detention facility. If care is delayed because consent could not be obtained, the child's medical condition could worsen, which could put the child in the emergency room (ER), thus aggravating already overcrowded ERs and increasing the cost of medical care.

SB 913 (Pavley), Chapter 256, provides probation officers with the statutory authority to order a medical exam that complies with regulations adopted by the Corrections Standards Authority for a minor that has been taken into temporary custody. Specifically, this new law:

- States that if the minor is retained in custody by the probation officer and prior to the detention hearing, the probation officer may authorize medical or dental treatment or care based on the written recommendation of the examining physician and considered necessary for the health of the minor.

- Mandates the probation officer to make a reasonable effort to notify and to obtain the consent of the parent, guardian, or person standing in loco parentis for the minor; and if the parent, guardian, or person standing in loco parentis objects, the treatment or care shall be given only upon order of the court in the exercise of its discretion.

- Requires the probation officer to document the efforts made to notify and obtain parental consent and enter this information into the case file for the minor.

- States that if it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the person, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize the medical, surgical, dental, or other remedial care for the person by licensed practitioners, as may from time to time appear necessary.

- Adds to existing provisions of law that defines "emergency situation" to also include known conditions or illnesses that, during any period of secure detention of the minor by the probation officer, require immediate laboratory testing, medication, or treatment to prevent and imminent and severe or life-threatening risk to the health of the minor.

- Provides that nothing in this new law shall be construed to interfere with a minor's right to authorize or refuse medical, surgical, dental, or other care when the minor's consent for care is sufficient or specifically required pursuant to existing law, or to interfere with a minor's right to refuse, verbally or in writing, nonemergency medical and mental health care.

COURT HEARINGS

Restitution: Asset Seizure

Existing law provides that any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than $100,000 shall be punished, upon conviction two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which she or she has been convicted, by an additional term of imprisonment in state prison, as specified. This enhancement is the "aggravated white collar crime enhancement."

The aggravated white collar enhancement is only imposed once in a single criminal proceeding. Pattern of related felony conduct is defined as engaging in at least two felonies that have the same or similar purpose, result, principals, victims, methods of commission, or are otherwise interrelated by distinguishing characteristic and are not isolated events. Two or more related felonies are defined as felonies committed against two or more separate victims or against the same victim on two or more separate occasions.

A victim of a single fraud-related case is not addressed by existing law. For instance, when a defendant steals $100,001 total from two victims in separate incidents, the defendant could have his or her assets and property frozen and ultimately liquidated to cover the costs of restitution and fines if convicted. However, the same defendant's assets would remain untouched if he or she was only charged with a single felony involving the same dollar amount and a single victim.

> **AB 364 (Butler), Chapter 182,** provides for the preservation of assets and property by the court of any person charged with a single act of fraud or embezzlement if that conduct involves the taking of $100,000 or more.

Defendants: Involuntary Antipsychotic Medication

Existing law allows a defendant who is found to be mentally incompetent to stand trial and does not consent to the administration of antipsychotic medications to be medicated involuntarily if prescribed by the defendant's treating psychiatrist and:

- The defendant lacks capacity to make decisions regarding antipsychotic medication; the defendant's mental disorder requires medical treatment with antipsychotic medication; and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her

condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

- The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

- The defendant is charged with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

Currently, when a defendant withdraws his or her consent to be medicated, a new court order for medication may take weeks and sometimes months. For most patients, the lack of medication causes further deterioration of their mental diseases making it harder to restore defendants to competency - sometimes to the point where they may never be restored to competency. Additionally, patients who are not only a danger to themselves, but a danger to others, compromise the recovery of other patients and create a very dangerous environment putting the lives of all patients and staff at risk.

AB 366 (Allen), Chapter 654, modifies the process by which individuals who are declared incompetent to stand trial can be involuntarily medicated. Specifically, this new law:

- Requires that when a defendant is found to be mentally incompetent to stand trial, the court shall also determine if the defendant lacks capacity to make decisions regarding antipsychotic medications.

    - If the court finds that the defendant has capacity to make decisions regarding antipsychotic medications, and if the defendant, with advice of his or her counsel, consents to the medication, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent.

- If the court finds that the defendant has capacity to make decisions regarding antipsychotic medications, and the defendant does not consent, or the court determines that the defendant does not have capacity to make decisions regarding antipsychotic medication, the court shall hear and determine if the defendant is not medicated with antipsychotic medications, it is probable that the defendant will cause harm to his or her physical or mental health, the defendant is a danger to others, or the defendant is charged with a violent felony, as specified. If the court finds any of the above to be true, the court shall issue an involuntary medication order to be included in the commitment order.

- States that if a defendant who consented to antipsychotic medications revokes his or her consent, and the treating psychiatrist determines that antipsychotic medications have become medically necessary and appropriate, and it is probable that the defendant will cause harm to his or her physical or mental health or the defendant is a danger to others, the psychiatrist shall certify that the above conditions exist.

- States that if a defendant whose commitment order did not include an involuntary medication order, and the treating psychiatrist determines that antipsychotic medications have become medically necessary and appropriate, and it is probable that the defendant will cause harm to his or her physical or mental health or the defendant is a danger to others, the psychiatrist shall certify that the above conditions exist. Before making the certification, the psychiatrist shall attempt to obtain informed consent from the defendant.

- States that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary, and the defendant either revokes his or her consent, or whose commitment papers did not include an involuntary medication order, antipsychotic medications may be administered to the defendant for not more than 21 days.

  - Within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge (ALJ) to be conducted at the facility where the defendant is being treated. The hearing shall have the following characteristics:

    - The treating psychiatrist shall present the case for certification;

    - The defendant shall be represented by an attorney or a patient's rights advocate; and,

    - The attorney or patient's right advocate shall be appointed no later than one day prior to hearing to review the defendant's rights, discuss the process, answer questions or concerns regarding the hearing or the involuntary medication, assist the defendant in preparing for the hearing and advocating

for his or her interests at the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject.

- o The defendant is entitled to the following rights at the hearing:

    - To be given timely access to his or her records;

    - To be present at the hearing, unless the defendant waives that right;

    - To present evidence at the hearing;

    - To question person presenting evidence supporting involuntary medication;

    - To make reasonable requests for attendance of witnesses on the defendant's behalf; and,

    - To a hearing conducted in an impartial and informal manner.

- o States that if the ALJ determines that the defendant meets the criteria for involuntary medication, as specified, the antipsychotic medication may continue to be administered to the defendant for the remainder of the 21 day certification period.

- o States that if the ALJ determines that the defendant does not meet the criteria for involuntary medication, the antipsychotic medication may not be administered.

- Specifies that an order for involuntary medication is valid for no more than one year.

- Requires that the court review the involuntary medication order after six months to determine if the circumstances requiring involuntary medication remain. At the hearing, the court shall consider the reports of the treating psychiatrist and the defendant's patients' rights advocate or attorney, and may require testimony from the treating psychiatrist or the defendant's patients' rights advocate or attorney, if necessary. At the hearing, the court may continue the order for involuntary medication for up to another six months, vacate the order, or make any other appropriate order.

- Requires the treating facility, where the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, to include in the reports made at six-month intervals concerning the defendant's progress toward regaining competency a consideration of the issue of involuntary medication. Each report shall include, but not limited to the following:

  - Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication;
  - If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to his or her mental or physical health if not treated with antipsychotic medication;
  - Whether or not the defendant presents a danger to others if he or she is not treated with antipsychotic medications;
  - Whether the defendant has a mental illness for which medications is the only effective treatment;
  - Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel;
  - Whether there are any effective alternatives to medication;
  - How quickly the medication is likely to bring the defendant to competency;
  - Whether the treatment plan included methods other than medication to restore the defendant to competency; and,
  - A statement, if applicable, that no medication is likely to restore the defendant to competency.

- Requires the court, after reviewing the reports, the determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medications still exist, and do one of the following:
  - If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant will remain in effect;
  - If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary medication, the order for involuntary administration of antipsychotic medications shall be vacated; or,
  - If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for involuntary administration of antipsychotic medication shall be issued.

- Specifies that a defendant may file a petition for a habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program

to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

Transit Fare Evasion

Current law allows a number of transit agencies in California to create transit courts. These courts allow local transit agencies to process citations on their individual systems rather than having these citations processed through the typical court process.

The Los Angeles County Metropolitan Transportation Authority (LACMTA) has been working with the Los Angeles County Sheriff's Department in the implementation of its system. LACMTA has identified that a two-tiered system would be best for Los Angeles. Under this system, LACMTA's Transit Court would process the majority of minor citations and the regular judicial process would still be available for more serious violations such as chronic violators and those with additional criminal issues. Current law does not clearly authorize a two-tiered process.

> **AB 426 (Lowenthal), Chapter 100,** permits the LACMTA and the Southern California Regional Rail Authority to create ordinances that allow a violation to be processed administratively and specifies that penalties must be deposited in the respective transit authority's fund instead of the county general fund. These provisions will not apply to minors.

Victim Impact Statement

Under current California law, a victim must submit a victim impact statement in writing to the court before sentencing, which allows the court to review the statement to ensure that the statement complies with state law and gives defendants the chance to review the statement in accordance with their right to refute materials used against them at trial.

When the victim impact statement is submitted in writing to the court, the statement becomes a public document, meaning that the media is able to request and gain access to the statement. This has led to situations where the victim impact statement is published in the newspaper before the victim has the opportunity to read it in court, which can diminish the power of the statement when read in court and undermines the rights of the victim.

> **AB 886 (Cook), Chapter 77,** prohibits a court from releasing statements from a crime victim, as specified, to the public prior to being heard in court.

Inmates: Involuntary Administration of Psychotropic Medications

Existing law specifies that an inmate of the California Department of Corrections and Rehabilitation (CDCR) who is prescribed psychotropic medications by his or her treating psychiatrist, but does not consent to the administration of these drugs, may be administered psychotropic medications if the requirements of the *Keyhea* injunction are met. The injunction states:

- Psychotropic medication may be administered to an inmate without his or her informed consent on an emergency basis for no more than 72 hours. An emergency is defined as "a sudden marked change in the prisoner's condition so that action is immediately necessary for the preservation of life of the prevention of serious bodily harm to the patient or others, and it is impracticable to first obtain consent."

- If psychotropic medications are to be administered involuntarily for more than 72 hours, but less than 24 days, written notice of certification must be served on the inmate and his or her counsel within five days of commencement of involuntary medication. The certification must be signed by two people, consisting of the chief psychiatrist or the person in charge of psychiatric care at the facility, and a physician or psychologist who participated in the evaluation of the inmate. Certification consists of a showing of:

  - Professional staff of the facility where the inmate is incarcerated has analyzed the inmate's condition and has found that the inmate is as a result of mental disorder, gravely disabled and incompetent to refuse medication, or a danger to others, or a danger to self; and,

  - The inmate has been advised of the need for, but has not been willing to accept medication on a voluntary basis.

- Within 10 days of the commencement of involuntary medication, the inmate is entitled to a certification review hearing. This hearing must have the following characteristics:

  - The inmate has the right to be present at the certification review hearing, the right to assistance by an attorney or advocate, to present evidence on his or her behalf, to question persons presenting evidence in support of the certification decision, to make reasonable requests for the attendance of facility employees who have knowledge of or participated in the certification decision;

  - The hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, or a licensed clinical social worker. Licensed psychologists, licensed clinical social workers, and registered nurses who serve as certification review hearing officers shall have had a minimum of five-years' experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the public defender, and the district attorney of the county in which the facility is located. No employee of the California Department of Corrections may serve as a certification review hearing officer;

  - The evidence in support of certification shall be presented by a person designated by the superintendent or warden of the facility;

- The person conducting the hearing must be informed if the inmate has received medication within 24 hours of the hearing, and of the probable effects of the medication; and,

- The hearing officer will determine if there is probable cause that the inmate suffers a mental disorder and is either gravely disabled and incompetent to refuse medication or is a danger to others or a danger to self.

- If the hearing officer determines there is probable cause to continue to involuntarily medicate the inmate, the inmate is entitled to review by an administrative law judge (ALJ). The hearing must have the following characteristics:

  - The inmate has the right to be present, the right to assistance by an attorney or advocate, to present evidence on his or her behalf, to question persons presenting evidence, to make reasonable requests for the attendance of facility employees who have knowledge of or participated in the certification decision, and the inmate's counsel must have access to all health records and all documents and files relied upon to certify the inmate for involuntary medication;

  - The ALJ is to determine by clear and convincing evidence that:

    - The inmate is as a result of mental disorder, gravely disabled and incompetent to refuse medication; or

    - The inmate is, as a result of mental disorder, a danger to others or danger to self.

- The determination of involuntary medication expires in 180 days if the inmate is a danger to self or others, or one year if the inmate is found to be gravely disabled.

- States that the judicial hearing for the authorization of involuntary administration of psychotropic medication must be conducted by an administrative law judge, and may be conducted at the facility where the inmate is located, at the direction of CDCR.

These requirements were largely copied from the requirements when civilly committing a non-inmate when he or she is gravely disabled or a danger to self or others, and not well-suited to a prison environment.

AB 1114 (Lowenthal), Chapter 665, modifies the procedure for the involuntary administration of psychotropic medications. Specifically, this new law:

- States that if a psychiatrist determines than an inmate should be treated with a psychotropic medication, but the inmate does not consent, the inmate may be treated on a nonemergency basis only if all the following conditions have been met:

  - A psychiatrist has determined that the inmate has a serious mental disorder;

- A psychiatrist has determined that as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychotropic medications, or is a danger to himself or herself or others;

- A psychiatrist has prescribed one or more psychotropic medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the inmate;

- The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychotropic medications and refuses or is unable to consent to the administration of the medication;

- The inmate is provided counsel at least 21 days before the hearing;

- The hearing shall be held not more than 30 days after the filing of the notice with the Office of Administrative Hearings, unless counsel for the inmate agrees to extend the date of the hearing;

- The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing. The written notice must include the following:

  - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication; and,

  - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment.

- An ALJ determines by clear and convincing evidence that the inmate has a mental disorder; that as a result of that illness, the inmate is gravely disabled and lacks the capacity to consent or refuse treatment with psychotropic medications or is danger to self or others is not medicated; that there is no less intrusive alternative to involuntary medication; and that the medication is in the inmate's best medical interest; and,

- The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmates' mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate

is a danger to self or others, or is gravely disabled and incompetent to refuse medication as a result of a mental disorder.

- States that nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency.

- States that an emergency exists when there is a sudden and marked change in the inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and if it is impractical, due to the seriousness of the emergency, to first obtain informed consent.

- States that if psychotropic medication is administered in an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administer for only as long as the emergency exists.

- States that if psychotropic medication is administered to an inmate in an emergency, CDCR will serve the inmate and counsel written notice within 72 hours of commencing medication, unless the inmate gives informed consent to continue the medication or the psychiatrist determines that the psychotropic medication is not necessary and the administration of the medication is discontinued. If written notice is given, it must include the following:

  - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication; and,

  - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment.

- Requires that if psychotropic medication is being administered to an inmate in an emergency a hearing before an ALJ must commence within 21 days of the filing of the service of the notice, unless counsel for an inmate agrees to a longer period of time. The involuntary medication may continue if:

  - An ALJ determines by clear and convincing evidence that the inmate has a mental disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment with psychotropic medications or is danger to self or others is not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest; and,

- The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmates' mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as a result of a mental disorder.

- States that the determination made by the ALJ to involuntarily medicate the inmate is valid for one year from the date of determination, regardless of whether the inmate subsequently gave his or her informed consent to the medication.

- States that the involuntary medication of an inmate, either on an emergency or nonemergency basis, must discontinue one year from the date of determination, unless the inmate gives her or her informed consent or the following occurs:

  - CDCR files notice with the Office of Administrative Hearings and serves written notice on the inmate and his or her counsel. The written notice must include the following:

    - Set forth the diagnosis, the factual basis for the diagnosis, the basis upon which psychotropic medication is recommended, the expected benefits of the medication, any potential side effects and risks to the inmate from the medication, and any alternatives to treatment with the medication;

    - Advise the inmate of the right to be present at the hearing, the right to be represented by counsel at all stages of the proceedings, the right to present evidence, and the right to cross-examine witnesses. Counsel of the inmate shall have access to all medical records and files of the inmates, but shall not have access to the confidential section of the inmate's central file which contains materials unrelated to the medical treatment; and,

    - Specify the request is for a renewal of an involuntary medication order.

  - The request for the renewal hearing must be filed and serves no later than 21 days prior to the expiration of the current order authorizing involuntary medication;

  - An ALJ determines by clear and convincing evidence that. but for the medication, the inmate would revert to the behavior that was the basis for the prior order authorizing involuntary medication, coupled with evidence that the inmate lacks insight regarding his or her need for the medication, such that it is unlikely that the inmate would be able to manage his or her own medication and treatment regimen. No new acts need be alleged or proven.

- States that renewal orders are valid one year from the date of the hearing

- States that an inmate is entitled to one motion for reconsideration following the determination that he or she may be involuntarily medicated and may seek a new

hearing to present new evidence upon a showing of good cause. Additionally, the inmate must be informed of this right in writing.

Expungement Standards

California's expungement process is currently inconsistent. Penal Code section 1203.4, which applies to cases in which the judge sentences a person to probation, allows a court to exercise its discretion to dismiss a conviction "in the interests of justice." However, there is no parallel provision in Penal Code section 1203.4a, which applies to misdemeanor cases where a judge did not order probation.

A criminal record can be an impediment to a person seeking a job. Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In today's economic climate, some job seekers find they are unable to obtain a new job because of a conviction that occurred many years ago. Some of these job seekers are unable to get low-level misdemeanor convictions expunged from their records due to the inconsistency in the expungement process.

AB 1384 (Bradford), Chapter 284, allows a court, in its discretion and in the interest of justice, to grant expungement relief to a defendant who has been convicted of an infraction or a misdemeanor but not granted probation. Specifically, this new law:

- Provides that to be eligible for expungement relief, the defendant has fully complied with and performed the sentence of the court, is not then serving a sentence for any other offense, and is not charged with any crime.

- Makes expungement unavailable for misdemeanor convictions of lewd acts committed upon a dependent person by a caretaker, or upon a child 15 years of age or younger when the perpetrator is 10 years older than the child.

- Specifies that an expungement will not permit a person to own or possess a firearm, or to hold public office if the person is prohibited from holding public office as a result of the conviction.

Wiretaps: Authorization

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances. The provisions governing wiretap authorizations sunset on January 1, 2012.

The continuation of the California State Wiretap Statute, which includes both telephone and electronic communication technologies, will permit law enforcement to continue wiretap investigations under specified circumstances with judicial approval. California and federal law enforcement agencies and multi-agency task forces have used the law with great success since its

enactment in 1989 to solve the most serious and difficult crimes, such as organized crime and drug trafficking, while maintaining an emphasis on the protection of individual privacy.

> **SB 61 (Pavley), Chapter 663**, extends the sunset date until January 1, 2015 on provisions of California law which authorize the AG, chief deputy AG, chief assistant AG, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances.

<u>Sentencing</u>

In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial because the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. [*Cunningham v. 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 the judge discretion to impose the higher term without additional findings of fact.

SB 40 (Romero), Chapter 40, Statutes of 2007, corrected the constitutional problem by giving judges the discretion to impose a minimum, medium or maximum term, without additional finding of fact. SB 40's approached was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. SB 150 (Wright), Chapter 171, Statutes of 2009, extended this constitutional fix to sentence enhancements.

The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. [SB 1701 (Romero), Chapter 416, Statutes of 2008.] SB 150 also included a sunset provision that corresponded to the date upon which the provisions of SB 40 would expire. In 2010, the Legislature extended the sunset provisions on both SB 40 and SB 150 from their current sunset date of January 1, 2011, to January 1, 2012. [AB 2263 (Yamada), Chapter 256, Statutes of 2010.]

> **SB 576 (Calderon), Chapter 361,** extends the sunset date from January 1, 2012, to January 1, 2014 for provisions of law providing that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40 (Romero), Chapter 40, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009; and *Cunningham vs. California* (2007) 549 U.S. 270.

<u>Evidence: Testimony of In-Custody Informants</u>

Informants, who are themselves in custody or facing criminal prosecution, are allowed to provide testimony in a criminal trial without any other evidence that independently connects the defendant with the commission of the offense. Often times, in-custody inmates volunteer information against a defendant in a criminal trial in the hope that they will be rewarded with reduced charges, better confinement, or another form of leniency.

Current law requires testimony of an accomplice to be corroborated prior to its admission as evidence in a criminal trial. The rationale for this requirement is the fear that an accomplice may be motivated to falsify his or her testimony in hope of securing leniency for him or her. This same rationale applies to the motivations of in-custody informant to testify in a criminal trial. Studies have shown that testimony of in-custody informants potentially presents even greater risks of unreliability than the testimony of accomplices, and yet there is currently no requirement of corroboration for in-custody informants as there is for accomplice testimony. Instead, current law requires, upon the request of a party, that the judge instruct the jury in any case in which an in-custody informant testifies that the testimony should be viewed with caution and close scrutiny and the jury should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. However, even with these jury instructions, once the judge and jury are presented with this testimony, it has a lasting prejudicial effect against the defendant. The use of such unreliable testimony of in-custody informants in criminal trials have led to wrongful convictions and will continue to result in injustice without proper safeguards.

SB 687 (Leno), Chapter 153, places the same corroboration requirement on the use of in-custody informant testimony in a criminal trial as are currently in place for testimony of accomplices. Specifically, this new law:

- Provides that a judge or jury may not enter a judgment of conviction upon a defendant, find a special circumstance true, or use a fact in aggravation based solely on the uncorroborated testimony of an in-custody informant, as defined.

- States that corroboration is not sufficient if it merely shows the commission of the offense or the special circumstance or the circumstance in aggravation.

- States that corroboration shall not be provided by the testimony of another in-custody informant unless the party calling the in-custody informant as a witness establishes by a preponderance of evidence that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony.

<u>Domestic Violence Protective Orders</u>

In domestic violence cases, the court is required to consider issuing a protective an order which remains valid during the pendency of the criminal proceedings. However, a criminal protective order expires when the proceedings are completed.

When domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. In addition, in stalking cases or those involving willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child, the court may issue a protective order regardless of whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

In all other domestic violence crimes that are non-probation and result in jail or prison time, victims are left without any such protection once the criminal case has terminated. The only recourse for the victim is to attempt to get a new order in the family court, which can be time-consuming and difficult – jeopardizing the victim's safety until and unless protections are put in place.

> **SB 723 (Pavley), Chapter 155,** allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving "domestic violence" regardless of the sentence imposed.

<u>Prosecution for Failure to Register as a Sex Offender</u>

Existing law provides that a transient sex offender can be prosecuted in any jurisdiction in which he or she is physically present for a failure to register within 30 days.

No such provision exists for the initial failure to register upon release from custody for either a transient sex offender or a sex offender who moves into a residence but never registers or who absconds after initial registration. Nor does existing law provide for the issuance of a warrant in any particular jurisdiction when an offender who has never registered in any California jurisdiction absconds after release from custody.

> **SB 756 (Price), Chapter 363,** clarifies jurisdiction for prosecuting sex-offender registrants who fail to comply with registration requirements upon release from custody. Specifically, this new law:

- Provides that if a person required to register as a sex offender fails to do so after release from incarceration, the prosecutor in the jurisdiction where the person was to be paroled or placed on probation may request an arrest warrant for the person, and is authorized to prosecute that person for failure to register.

- Provides that if a person subject to registration is released from custody but not on parole or probation at the time of release, the district attorney in the following applicable jurisdictions shall have the authority to prosecute that person:

    - If the person was previously registered, in the jurisdiction in which the person last registered.

    - If there is no prior registration, but the person indicated on the Department of Justice notice of sex offender registration requirement form where he or she expected to reside, in the jurisdiction where he or she expected to reside.

    - Alternatively, in the jurisdiction where the offense subjecting the person to registration was committed.

CRIME PREVENTION

Child Abuse Central Index

Several court decisions collectively state that the Child Abuse Central Index (CACI), which is maintained by the Department of Justice (DOJ), is unconstitutional because it does not notice all people of their inclusion in the CACI, offer a due process hearing, or give people listed in the CACI with unsubstantiated cases of abuse or neglect a procedure to have their names removed from the database. Not only does this create a problem for the individuals improperly listed, but the more false information is included in the CACI, the less useful the CACI becomes as an effective tool for protecting children from abuse.

AB 717 (Ammiano), Chapter 468, amends existing provisions of law relating to the CACI by only including substantiated reports, and removing inconclusive and unfounded reports from the index. Specifically, this new law:

- Provides that only information from substantiated reports be included in the CACI, and that inconclusive and unfounded reports are to be removed from the list.
- Requires the removal of a CACI listing for any person who has reached the age of 100.
- Provides that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion.
- Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report.
- Required the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report.
- Require agencies, including police departments and sheriff's departments, to retain child abuse or neglect investigative reports that result or resulted in a report filed with the DOJ for the same period of time that the information is required to be maintained on the CACI.
- Provides that on and after January 1, 2012, law enforcement shall no longer forward a written report to the DOJ of any investigated cases of known or suspected child abuse or severe.

Manufactured Optical Disks Piracy

Existing law requires any person who manufactures optical discs for commerce shall permanently mark each disc with a mark that identifies the manufacturer and the state in which the disc was made or mark the disc with a unique identifying code that will allow law enforcement to determine the manufacturer and the state of origin. This identifying mark or code shall be affixed by a permanent method and shall be visible without magnification or special devices. This requirement is intended to allow law enforcement to track pirated copies of movies, music, and other material distributed by optical disk.

Manufacturers of illegally pirated materials have circumvented the purpose of the identification laws by simply not marking the illegally pressed disks. The crime of illegal mass reproduction of music and movies is a serious problem in California. In 2010 alone, more than 820,000 illegal discs were seized by law enforcement authorities in California. In a 2007 report, the Los Angeles Economic Development Corporation estimated the economic losses in Los Angeles County to all industries exceed $5 billion annually. Music and movie losses make up more than half of that number. The result of pirating is a loss of nearly $500 million tax dollars per year to state and local governments.

SB 550 (Padilla), Chapter 421, authorizes law enforcement officers to perform inspections of commercial optical disc manufacturers to verify compliance with optical disc identification law, as specified, without providing prior notice of the inspection, or obtaining a warrant. Specifically, the new law:

- States that inspection shall be conducted by officers whose primary responsibilities include investigation of high-technology crime or intellectual property piracy.

- States that inspection shall take place during regular business hours and shall be limited to areas of the premises where manufacturing equipment is located and where optical discs and production parts are manufactured and stored.

- States that the scope of the inspection shall be restricted to the physical review of items and collection of information necessary to verify compliance with optical disc identification law, as specified.

- Specifies that the officer conducting the inspection shall have the authority to do all of the following:

  - Take an inventory of all manufacturing equipment, including the identification mark or unique identifying code that any piece of equipment has been modified to apply;

  - Review any optical disc, manufacturing equipment, optical disc mold, or production part;

- Review any record, book, or document maintained, as specified, kept in any format, electronic or otherwise, relating to the business concerned;

- Inspect, remove, and detain for the purpose of examination for a long as reasonably necessary any optical disc, production part, or record, book, or document maintained, as specified;

- Seize any optical disc or production party manufactured in violation of this chapter; and,

- Obtain and remove four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits any person from evading, obstructing, or refusing any inspection requested or being carried out by a law enforcement officer to determine compliance with optical disc identification law, as specified.

- Requires that any manufacturer and the employees, servants, or agents of the manufacturer, cooperate during the course of the inspection by promptly doing the following:

  - Providing and explaining any record, book, or document required to be maintained, as specified;

  - Pointing out and providing access to all optical discs, manufacturing equipment, optical disc molds, and production parts and demonstrating to the satisfaction of the officer that they include or have been adapted to apply the required identification mark or unique identifying code; and,

  - Providing and permanently surrendering four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits a person who manufactures optical discs for commercial purposes from possessing, owning, controlling, or operating manufacturing equipment or any optical disc mold unless it has been adapted to apply the appropriate identification mark or unique identifying code.

- Prohibits a person who manufactures optical discs for commercial purposes from making, possessing, or adapting any optical disc mold for the purpose of applying a forged, false, or deceptive identification mark or identifying code.

- States that any manufacturing equipment, optical disc mold, or production part found on the premises of a commercial manufacturer shall for the purposes of this chapter, be deemed to be in the possession of the manufacturer.

- Defines "commercial purposes" as the manufacture of at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others.

- Defines a "manufacturer" as a person who replicates the physical optical disc or produces the master used in any optical disc replication process. This definition does not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

- Defines "manufacturing equipment" as any machine, equipment, or device, including mastering equipment, used for the manufacture of optical discs or production parts.

- Defines "mastering equipment" as any machine, equipment, or device used for the mastering of optical discs or production parts consisting of a signal processor and laser beam recorder or any other recorder, used to record data onto the glass or polymer master disc from which production parts are produced, or to record data directly onto a production part.

- Defines "optical disc" as a disc capable of being read by a laser or other light source on which data is stored in digital form, including, but not limited to, discs known as "CDs," "DVDs," or related mastering source materials. This definition does not include blank optical discs.

- Defines "production part" as the item usually referred to as a stamper that embodies data in a digital form and is capable of being used to mold optical discs, and includes any other item, usually referred to as a master, father or mother, embodying data from which a stamper may be produced by means of an electroplating process.

- Defines "professional organization" as an organization whose membership consists wholly or substantially of intellectual property rights owners, and which is mandated by those members to enforce their rights against counterfeiting and piracy.

- States that any manufacturer of optical discs found to be in violation of this section is guilty of a misdemeanor and shall be subject to a fine of not less than $500 and not more than $25,000 for a first offense, and shall be subject to a fine of not less than $5,000 and not more than $250,000 for a second or subsequent offense.

- Requires every manufacturer of optical discs for commercial purposes to keep full and accurate records of its manufacturing equipment, and shall make them available to law enforcement. The records shall include current inventory of manufacturing equipment, and every purchase, lease, sale, disposal, or other transaction relating to any manufacturing equipment, specifying the make, model, and serial number of the equipment, the identification mark or unique identifying code which the equipment has been adapted to apply, the date and nature of each transaction, and the full name and address of the party with whom the transaction was entered into.

- Requires every person who manufactures optical discs for commercial purposes shall keep all of the following for a period of note less than five years from the date of production:
    - One sample of each optical disc title manufactured by it;
    - One copy in retrievable form of the content of each production part manufactured by it; and,
    - The name and physical address of the customer, or if the order was placed by an intermediary, the name and physical address of the actual customer who originated the order.

Firearms: Background Check

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. The record of applicant information must be transmitted to the DOJ in Sacramento by electronic transfer on the date of the application to purchase. The original of each record of electronic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, DOJ employee designated by the Attorney General, or agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. Existing law further requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the California Department of Mental Health, pursuant to Welfare and Institutions Code Section 8104, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction, because the purchaser had previously purchased a handgun within the last 30 days, or because the purchaser had received inpatient treatment for a mental health disorder, as specified.

Enforcement of existing firearms laws are a critical component of California’s responsibility to ensure public safety. Tens of thousands of gun owners bought their weapons legally; but under current law, those gun owners should no longer have those weapons due to subsequent mental health or criminal issues. In fact, every day, the list of armed prohibited persons in California increases by about 15 to 20 people. As of Mach 22, 2011, the Bureau of Firearms identified 18,377 individuals with a prior felony conviction or mental health disorder that disqualified them from possessing more than 36,000 firearms.

SB 819 (Leno), Chapter 743, provides that the DOJ may use dealer record of sale funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession, as well as the sale, purchase, loan, or transfer, of firearms, as specified.

Large Capacity Ammunition Feeding Devices

The proposed Large Capacity Feeding Device Act (H.R. 308 introduced by United States Representative Carolyn McCarthy and S. 32 introduced by United States Senator Frank Lautenberg) would ban large capacity magazines for guns and rifles.

Large capacity magazines are not necessary for hunting or self-defense. Standard hunting rifles are usually equipped with no more than a five-round magazine and a standard pistol magazine holds six to ten rounds. Large capacity magazines enable shooters to injure or kill many people quickly before reloading. A well trained shooter armed with a semi-automatic pistol and large capacity magazines can fire at a rate of more than six rounds per second or about 30 rounds every five seconds. Large capacity ammunition magazines have been used in numerous mass shootings, including in Tucson on January 8, 2011; Virginia Tech on April 16, 2007; Fort Hood on November 5, 2009; Columbine High School on April 20, 1999; San Francisco at 101 California Street on July 1, 1993; and the Long Island Railroad on December 7, 1993. In total, 91 people died and 114 were injured in these attacks.

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, more commonly known as the Federal Assault Weapons Ban. This Act included a ban on large capacity magazines. However, in 2004 Congress failed to renew the Act, which ended the ban on large magazines. Currently, California bans the manufacture, sale, and use of large capacity magazines, as well as five other states, and the District of Columbia. However, a ban at the federal level is necessary to ensure these magazines do not come from other states.

SJR 7 (Padilla), Chapter 63, memorializes the Legislature's support of the proposed federal Large Capacity Ammunition Feeding Device Act and urges the President and the Congress of the United States to enact the Large Capacity Ammunition Feeding Device Act.

CRIMINAL JUSTICE PROGRAMS

County Penalties: Forensic Laboratories

Proposition 69, enacted in 2004, created a fund to help offset the costs incurred by regulations on the collection and processing of DNA samples. Proposition 69 stipulates that for every $10 of criminal fines collected an additional $1 should be levied; these revenues are used at the state and local level to help pay for the collection and processing of DNA samples. A portion of the revenue is earmarked for counties to reimburse them for the costs related to DNA collection, analysis, tracking and processing.

Currently, local law enforcement agencies have forensic DNA work performed by either through a county-funded public crime laboratory or through the Department of Justice's Bureau of Forensic Services laboratories, which service a majority of the Northern California counties. Upon resolution of a county board of supervisors, a county without a public crime laboratory should be able to use excess Proposition 69 funds to secure expedited DNA analysis from a DOJ lab servicing that county.

> **AB 434 (Logue), Chapter 195,** allows funds remaining in a county's DNA Identification Fund to reimburse a regional state crime laboratory for costs associated with the analysis and comparison of crime scene DNA with forensic identification samples.

Firearms: Long Guns

Existing law provides that no person shall sell, lease or transfer firearms unless he or she has been issued a state firearms dealer's license. A violation is a misdemeanor, punishable by up to one year in county jail. Exemptions to this provision include commercial transactions among licensed wholesalers, importers, and manufacturers. Handguns are centrally registered with the Department of Justice (DOJ) as part of this process.

A violation of these handgun provisions is an alternate felony/misdemeanor, punishable by up to one year in the county jail or by imprisonment in the state prison for 16 months, two or three years. The alternate felony misdemeanor provisions charged as felonies are offenses which presumptively mandate a state prison sentence. The DOJ may charge the dealer for a number of costs, such as a dealer record of sale.

Existing law exempts from the requirement (that sales, loans and transfers of firearms be conducted through a dealer or local law enforcement agency) transactions with authorized peace officers, certain operation of law transactions, and intra-familial firearms transactions.

However, these exempt transactions are subject to handgun registration as a condition of exemption. On request, the DOJ will register transactions relating to handguns (indeed, all firearms) in the Automated Firearm System (AFTS) database for persons exempt from dealer processing or are otherwise exempt by statute from reporting processes.

Of the 26,682 guns used in crimes which were entered into the AFS database in 2009, 11,500 were long guns. DOJ sweeps to seize illegally possessed firearms have uncovered roughly equal numbers of illegal handguns (2,143) and long guns (2,019). In 2010, Californians purchased 260,573 long guns, significantly more than the 233,346 handguns acquired in the same time period. In 2006, 3,345 people died from firearm-related injuries in California and an additional 4,491 people were hospitalized for non-fatal gunshot wounds. Moreover, between 2005 and 2009, DOJ designated 84,123 firearms as crime guns in the AFS database. Law enforcement efforts to investigate and prosecute gun crimes are aided by the AFS database, which contains records of all handgun transfers. However, state law requires that records of long gun sales be destroyed by DOJ.

> **AB 809 (Feuer), Chapter 745,** applies the same regulations relating to the reporting and retention of records for handguns to long guns.

Sex Offenders: Sex Offender Management Board

Existing law establishes the Sex Offender Management Board, as specified. The Sex Offender Management Board is tasked to "address any issues, concerns, and problems related to the community management of adult sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization."

> **AB 813 (Fletcher), Chapter 357,** makes numerous (largely technical) changes to issues relating to the management of sex offenders. This new law also provides good faith immunity for Sex Offender Management Board members and certified sex offender management professionals, and allows the Board to conduct certain activities in closed session.

Misdemeanor Violations: Amnesty

Existing law requires counties to establish a one-time amnesty program for fines and bail for infractions related to the Vehicle Code (VC), with the exception of parking violations, specified reckless driving and driving-under-the-influence (DUI) offenses. The amnesty program allows an individual to pay a reduced amount which must be accepted by the court in full satisfaction of the delinquent fine or bail. The amnesty program was designed to provide relief to individuals who are financially unable to pay traffic bail or fines, thereby allowing courts and counties to resolve older delinquent cases and focus limited resources on collecting on more recent cases. Payment of a fine or bail under these amnesty programs will be accepted beginning January 1, 2012, and ending June 30, 2012.

With the economic downturn, there has been an increase of fines owed throughout California that are uncollectable due to defendants' inability to pay. The current amnesty program only applies to infractions. The narrow application of the current amnesty law will leave a vast majority of delinquent fines and bail uncollected. Adding specified misdemeanor VC violations to the current amnesty program would enhance the collection of debt and improve recovery efforts.

AB 1358 (Fuentes), Chapter 662, authorizes, in addition to and at the same time as the existing one-time amnesty program, the court and the county to jointly establish a one-time amnesty program that would allow a person to pay 50 percent of the total fine or bail for specified misdemeanor violations. Specifically, this new law:

- States that no criminal action shall be brought against a person for a delinquent fine or bail paid under the amnesty program.
- Provides that the payment due date for delinquent fines and bail eligible for the program must be on or before January 1, 2009.
- Prohibits the use of the amnesty program for parking violations and specified reckless driving and DUI offenses.
- Prohibits the use of the amnesty program by a person who has an outstanding misdemeanor or felony warrant within the county, except for misdemeanor warrants for Penal Code and VC violations related to failure to pay a fine or failure to appear in court added to a misdemeanor violation otherwise subject to amnesty.
- Prohibits the use of the amnesty program by any person who owes restitution to a victim on any case within the county.
- Requires each court or county implementing an amnesty program to file, not later than September 30, 2012, a written report with the Judicial Council that includes information about the number of cases resolved, the amount of money collected, and the operating costs of the amnesty program. On or before December 31, 2012, the Judicial Council shall submit a report to the Legislature summarizing the information provided by each court or county.

CRIMINAL OFFENSES

Prostitution: Minors

Existing law defines "unlawful sexual intercourse" as an act of sexual intercourse accomplished with a person under the age of 18 years. Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Any person who engages in lewd conduct - any sexually motivated touching or a defined sex act - with a child under the age of 14 is guilty of a felony, punishable by a prison term of three, six or eight years. Where the offense involves force or coercion, the prison term is five, eight, or ten years. Any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Persons who solicit, or who agree to engage in, an act of prostitution, or any person who engages in an act of prostitution, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to six months, a fine of up to $1,000, or both.

The average age of a child entering the sex industry is 12 years old, with some cases involving children as young as four years old. Annually, over 300,000 minors are captive victims of traffickers and the customers engaging in these illicit activities keep the industry alive.

> **AB 12 (Swanson), Chapter 75,** provides that any person convicted of soliciting or engaging in an act of prostitution, where the person involved in the solicitation or the act was under 18 years of age, shall be ordered by the court, in addition to pay an additional fine not to exceed $25,000. Additionally, this new law specifies that, upon appropriation by the Legislature, the fine shall be available to fund programs and services for commercially sexually exploited minors in the counties where the offenses are committed.

School Safety: Disruption Threatening Pupil's Immediate Physical Safety

Existing law punishes a person who comes onto school grounds or is on any street, sidewalk or public way adjacent to the school, without permission and where a person's presence interferes with the peaceful conduct of school activities. Penalties for trespass on school grounds range from six months in the county jail and/or a fine of $500 to minimum of 90 days in the county jail or up to six months in the county jail and/or a fine of $500 where the defendant has two priors for trespass.

California schools have the constitutional obligation to provide safe campuses to students and employees. If school administrators are unable to rely on Penal Code Section 626.8 to address

disruptions of schools that may result in physical harm to students, schools will lose an important tool in ensuring safe campuses.

> **AB 123 (Mendoza), Chapter 161,** expands an existing misdemeanor related to interference or disruption of school activities and punishable by up to six months in the county jail to include any person who willfully or knowingly creates a disruption with the intent to threaten the immediate physical safety of K-8 pupils arriving at, attending, or leaving school.

"Open Carry" Prohibition

The absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public and alarming unsuspecting individuals, which causes problems for law enforcement.

Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

In these situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of open carry creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

Additionally, the increase in open carry calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California and prevents them from protecting the public in other ways.

> **AB 144 (Portantino), Chapter 725**, makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this new law:

- Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed $1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries and exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.

- Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed $1,000, or by that fine and imprisonment if the handgun and unexpended ammunition

capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.

- States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

- Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

- States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.

- States that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

- Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

    - The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;

    - The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;

    - The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;

    - The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;

    - The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;

    - The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;

- The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;

- The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;

- The open carrying of an unloaded handgun within a gun show;

- The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;

- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;

- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;

- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;

- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;

- The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice;

- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;

- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;

- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;

- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;

- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;

- The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,

- The open carrying of an unloaded handgun when all of the following conditions are satisfied:

  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;

  - The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;

  - The unloaded handgun is delivered by a licensed dealer;

  - The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,

  - The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

- Makes conforming and non-substantive technical changes.

California Stolen Valor Act

Existing law requires that an elected officer forfeit office upon conviction of a crime pursuant to the federal Stolen Valor Act. Additionally, it is a misdemeanor for a person to falsely claim or present himself or herself as a veteran or member of the Armed Forces with intent to defraud.

> **AB 167 (Cook), Chapter 69,** expands existing provisions related to forfeiture of elected office to additionally require that an elected officer, as specified, forfeit office upon conviction of a crime involving a false claim, with intent to defraud, that he or she is a veteran or a member of the Armed Forces of the United States. This section shall be called "California Stolen Valor Act."

Metal Theft: Fines

Metal theft has been well documented throughout California. In 2007, the New York Times reported: " 'This is the No. 1 crime affecting farmers and ranchers right now,' said Bill Yoshimoto, an assistant district attorney in the agriculturally rich Tulare County in the Central Valley.

" 'Virtually every farmer in the Central Valley has been hit,' Mr. Yoshimoto said. 'But some have been hit far beyond the value of the metal. For the farmer to replace the pump is anywhere between $3,000 to $10,000, and then there is downtime, and loss to crops.'

"Some sheriff's departments in agricultural counties have rural crime units that investigate metal crimes almost exclusively these days, setting up sting operations in recycling shops and tagging copper bait with electronic tracking devices.

"Metal theft from California farmers rose 400 percent in 2006 over the previous year, according to the Agricultural Crime Technology Information and Operations Network, a regional law enforcement group headed by Mr. Yoshimoto. The numbers this year are equally high. Through the end of June, there were nearly 1000 incidents of scrap metal theft on farms, causing more than $2 billion in losses, the group's figures show." [*Unusual Culprits Cripple Farms in California*, New York Times (July 1, 2007).]

> **AB 316 (Carter), Chapter 317,** creates a separate code section for grand theft of copper materials and adds a fine of up to $2,500 on to the existing penalties of up to one year in county jail or 16 months, two or three years in state prison, for theft of copper materials worth over $950.

Transit Fare Evasion

Current law allows a number of transit agencies in California to create transit courts. These courts allow local transit agencies to process citations on their individual systems rather than having these citations processed through the typical court process.

The Los Angeles County Metropolitan Transportation Authority (LACMTA) has been working with the Los Angeles County Sheriff's Department in the implementation of its system. LACMTA has identified that a two-tiered system would be best for Los Angeles. Under this system, LACMTA's Transit Court would process the majority of minor citations and the regular judicial process would still be available for more serious violations such as chronic violators and those with additional criminal issues. Current law does not clearly authorize a two-tiered process.

AB 426 (Lowenthal), Chapter 100, permits the LACMTA and the Southern California Regional Rail Authority to create ordinances that allow a violation to be processed administratively and specifies that penalties must be deposited in the respective transit authority's fund instead of the county general fund. These provisions will not apply to minors.

Controlled Substances: Synthetic Stimulants

Existing law prohibits the sale, possession, dispensing, distributing, or giving specified controlled substances and their analogues. Because of the complex chemical nature of synthetic stimulants, law enforcement is not always aware if the chemical in question falls under the prohibitions in California law.

AB 486 (Hueso), Chapter 656, prohibits the sale, dispensing, distribution, administration, or giving or attempting to sell, dispense, furnish, administer or give, or possession for sale specified synthetic stimulants or specified synthetic stimulant derivatives. This new law also states that "synthetic stimulants" include any material, compound, mixture or preparation which contains naphthylpyrovalerone or cathinone and has a stimulant effect on the central nervous system unless specifically excepted or contained within a pharmaceutical product approved by the Unites States Food and Drug Administration, and specifies that a violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding $1,000, or by fine and imprisonment.

Disorderly Conduct: "Peeping"

Invasion of privacy is an offense that can leave its victims with emotional impacts ranging from embarrassment and anger to feelings of loss of security in public places. People can fall prey to this type of offense while shopping at stores and changing in dressing rooms. Furthermore, given today's advances in technology, private images of victims can easily be posted and distributed on the Internet.

As invasive as this offense can be to its victims, the current penalties for violations of disorderly conduct do little to discourage repeat perpetrators from reoffending because they know little will be done to punish their offenses.

AB 665 (Torres), Chapter 658, increases the punishment for the crime of "peeping" with the naked eye or with the use of an instrumentality to a maximum of one year in the

county jail, a fine of up to $2,000, or both, when the victim of the crime is a minor, or the perpetrator is a repeat offender.

Crimes involving Hidden Recordings: Statute of Limitations

Existing law prohibits the use of a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape individuals where they would normally expect privacy. Examples of expected privacy areas would be bedrooms, bathrooms, locker rooms, dressing rooms or hotel rooms. Existing law provides for a one-year statute of limitations for a misdemeanor and three years for a felony. However, recent investigations have shown that evidence of a hidden recording may not be discovered until many years after the recording was taken as the defendant has taken precautions to hide the recording from the victim and law enforcement.

AB 708 (Knight), Chapter 211, adds crimes involving hidden recordings to the list of offenses for which the statute of limitations does not begin to run until discovery of the offense. Specifically, this new law provides that a criminal complaint may be filed within one year of the date of discovery of a hidden recording related to a violation of provisions prohibiting the use of concealed camcorders, motion picture cameras, or photographic cameras, to secretly videotape another, as specified.

Assault: Force Likely to Produce Great Bodily Injury

A defendant may be convicted of a Penal Code Section 245(a)(1) violation in a situation where a defendant commits an assault on a person with a deadly weapon or a situation in which a defendant commits an assault by any means of force likely to produce great bodily injury. Under California law, an assault with a deadly weapon can be treated more severely than an assault with force likely to produce great bodily injury. When filing a criminal case, the prosecutor reviews the defendant's criminal history to determine what priors or enhancements, if any, to allege. Databases which contain a person's prior arrest and conviction information typically list prior convictions by code section. Thus, the prosecutor will see "PC §245(a)(1)" on a defendant's criminal history and not know if it was an assault with a deadly weapon or an assault likely to produce great bodily injury. This situation causes problems with cases which could be settled at an early disposition hearing or prior to a preliminary hearing, but cannot because the true nature of the Penal Code Section 245(a)(1) conviction is not readily known.

AB 1026 (Knight), Chapter 183, recasts provisions of Penal Code Section 245(a)(1) by creating separate and distinct subdivisions for assault by any means of force likely to produce great bodily injury and assault with a deadly weapon.

Animal Abuse Penalties

Currently, a court has the discretion to prohibit ownership, possession, caring for, or residing with an animal as a part of the probation terms for misdemeanor and felony animal abuse convictions. However, current law does not permit a post-conviction, animal-ownership injunction for convicted persons not granted probation.

Additionally, current law provides that the owner of an animal is liable for the costs of caring for and treating the animal when law enforcement officers have seized the animal under exigent circumstances, but the owner's liability does not extend to scenarios involving seizures pursuant to search warrants.

AB 1117 (Smyth), Chapter 553, makes changes to penalties in animal abuse and neglect cases as well as in animal-seizure proceedings. Specifically, this new law:

- Specifies that the owner of an animal seized pursuant to a search warrant shall be liable for the costs of caring for and treating the animal and that these costs will be a lien on the animal which must be paid before the animal is returned.
- Specifies that the owner of an animal seized pursuant to a search warrant shall be liable for the costs of seizing the animal.
- Provides that an animal seized pursuant to a warrant shall not be returned to the owner until it is determined that the animal is physically fit or until it is shown that the owner can and will provide necessary care.
- Allows the court to order, as a condition of probation that the probationer be prohibited from owning, possessing, caring for, or residing with animals, and requires the probationer to deliver the animals to be put up for adoption.
- Requires the court, in the event of acquittal or dismissal of the case, to release any seized animals to the defendant upon showing proof of ownership.
- Clarifies that the court may order a person convicted of specified sections relating to animal cruelty to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or to provide proof to the court that he or she no longer has possession, care or control of any animal.
- Provides that any person convicted of a misdemeanor violation of specified sections relating to animal cruelty and who, within five years of conviction, owns, possesses, maintain, has custody of, resides with or cares for any animal is guilty of a public offense, punishable by a fine of $1,000.
- Provides that any person convicted of a felony violation of specified sections relating to animal cruelty and who, within 10 years of the conviction owns, possesses, maintains, has custody of, resides with or cares for any animal is guilty of a public offense, punishable by a fine of $1,000.
- Creates an exception for the animal-ownership injunction for livestock owners who can establish that the restriction would result in substantial or undue economic

hardship to the defendant's livelihood and that the defendant has the ability to properly care for all livestock in his or her possession.

- Allows a convicted person to petition the court for a reduction to the duration of the prohibition by showing that he or she does not present a danger to animals, has the ability to properly care for all animals in his or her possession, and has successfully completed all court-ordered classes and counseling.

- Gives a court discretion, in the event the length of the mandatory ownership prohibition is reduced, to order that the defendant comply with reasonable and unannounced inspections by animal control or law enforcement.

Prisons: Wireless Communication Devices

Smuggled cell phones into the California prison system are a growing and dangerous problem. Inmates with access to cell phones may order murders, organize escapes, facilitate drug deals, control street gangs, and terrorize victims of crime. In 2006, the number of phones confiscated from state prisons was 261; in 2010, the number of phones confiscated reached 11,000; in 2011, the number of confiscated phones is expected to exceed 13,000. Under current law, it is not a crime to smuggle a cellphone into a state prison. Once a cellphone is brought into the prison, there is currently no technology in place to prevent phone calls or text messages from being placed using these smuggled cellphones.

SB 26 (Padilla), Chapter 500, provides that a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the Department of Corrections and Rehabilitation (CDCR) any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, subscriber identity module (SIM) cards and memory storage devices, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, or a fine not to exceed $5,000 for each device, or both. Specifically, this new law:

- Provides that a person who is visiting an inmate or ward under the jurisdiction of CDCR who is found to be in possession of a cellular telephone, wireless communication device, or any component thereof, as specified, upon being searched or subjected to a metal detector, shall be subject to having that device confiscated and returned the same day the person visits the inmate or ward, except as specified.

- States that if, upon investigation, it is determined that no prosecution will take place, the cellular telephone or other wireless communication device or any component thereof shall be returned to the owner at the owner's expense.

- Requires notice of the confiscation provisions to be posted in all areas where visitors are searched prior to visitation with an inmate or ward in the custody of CDCR.

- Provides that any inmate who is found to be in possession of a wireless communication device shall be subject to time credit denial or loss of up to 90 days.

- States that a person who brings, without authorization, a wireless communication device within the secure perimeter of any prison or institution housing offenders under the jurisdiction of CDCR is deemed to have given his or her consent to CDCR using available technology to prevent that wireless device from sending or receiving telephone calls or other forms of electronic communication. Notice of this provision shall be posted at all public entry gates of the prison.

- Requires CDCR to obtain a search warrant before accessing any data or communications that have been captured using available technology from unauthorized use of a wireless communication device.

- Prohibits CDCR from capturing data or communications or accessing data or communications that have been captured using available technology from an authorized wireless communication device, except as already authorized under existing law.

- States that if the available technology to prevent wireless communications from sending and receiving telephone calls or other forms of electronic communication extends beyond the secure perimeter of the prison or institution, the CDCR shall take all reasonable actions to correct the problem.

- Provides that any contractor or employee of a contractor or CDCR who knowingly and willfully, without authorization, obtains, discloses, or uses confidential information in violation of the above provisions shall be subject to an administrative fine or civil penalty not to exceed $5,000 for a first violation, or $10,000 for a second violation, or $25,000 for a third or subsequent violation.

- Provides that California shall require, until January 1, 2018, as part of the contract for the Inmate Ward Telephone System that the total cost for intrastate and interstate calls be equal to or less than the total costs of a call established in the contract in effect on September 1, 2011. Other than the conversation minute charges and prepaid account setup fees, there shall be no additional charges of any type, including administrative fees, call-setup fees, detail billing fees, hard copy billing fees, or any other fees.

Fraud: Massage Therapy Certification

Increasingly, human trafficking victims are being forced to work in illegitimate massage parlors, providing sexual services under the guise of massage therapy. Traffickers bring in women from other countries and force them to work off the debt of being smuggled into the United States by working in massage parlors as prostitutes.

In order for a trafficking victim to work in a massage parlor, either a local police department permit or a certificate from the California Massage Therapy Council (CAMTC) is required. The CAMTC was established by the Legislature to certify massage therapists statewide. Police and the CAMTC require a transcript from an accredited massage school certifying that the student has received 500 hours of massage training, in English. Many victims speak little or no English and could not complete such training; traffickers do not want to wait six months for victims to complete training. Thus, the traffickers purchase falsified massage school transcripts. Under current law, it is not a crime to sell a counterfeit massage school transcript.

SB 285 (Correa), Chapter 149, provides that a person who knowingly issues a fraudulent massage therapy certificate, transcript, diploma, or other document is guilty of a misdemeanor and is subject to a fine of up to $2,500 per violation, up to a year of imprisonment or both.

Assault and Battery: Search and Rescue Teams

Existing law establishes the crimes of assault and battery against specified public safety officers, such as peace officers, firefighters, and emergency medical technicians, among others, in the performance of their duties. The offenses are punishable by imprisonment ion a county jail not to exceed one year, or by a fine not exceeding $2,000, or by both a fine and imprisonment. Search and rescue personnel are trained and organized by various governmental agencies to participate in disaster response, evacuation, and body recovery. In performing their duties, they are often put in harm's way, sacrificing their personal safety to provide public safety. Search and rescue personnel should be treated the same as other public safety officers.

SB 390 (LaMalfa), Chapter 249, increases the penalties for assault and battery committed against a search and rescue member engaged in the performance of his or her duties when the person committing the offense knows or reasonably should know that the victim is a search and rescue member engaged in the performance of his or her duties. Specifically, this new law:

- Provides that an assault is committed against a search and rescue member engaged in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a searched and rescue member engaged in the performance of his or her duties the assault is punishable by a fine not to exceed $2,000, by imprisonment in a county jail up to one year, or by both that fine and imprisonment.

- States that when a battery is committed against the person of a search and rescue member engaged in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a search and engaged in the performance of his or her duties the offense shall be punished by a fine not exceeding $2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Defines a "search and rescue member" as any person who is a member of an organized search and rescue team managed by a governmental agency.

Battery: Security Officers and Custody Assistants

Under existing law, when a battery is committed against the person of a custodial officer, firefighter, emergency medical technician (EMT), physician or nurse providing emergency care, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a custodial officer, firefighter, EMT, physician or nurse providing emergency care, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer, the battery is punishable by up to one year in the county jail, by a fine of up to $2,000, or by both a fine and imprisonment.

In past years, the Legislature in has added several other categories of public safety personnel to this Penal Code Section to recognize the risks faced by these employees and to increase punishment against offenders. Security officers and custody assistants should be treated the same as other public safety personnel.

> **SB 406 (Lieu), Chapter 250**, increases the penalty for a battery committed against a security officer or a custody assistant engaged in the performance of his or her duties when the person committing the offense knows or reasonably should know that the victim is a security officer or custody assistant engaged in the performance of his or her duties. Specifically, this new law:

- Makes a battery committed against the person of a security officer or custody assistant in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a search and engaged in the performance of his or her duties the offense shall be punished by a fine not exceeding $2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Defines a "custody assistant" as any person who assists peace officer personnel in maintaining order and security in detention facilities, as specified, and who is employed by a law enforcement agency of any city, county, or city and county or who performs those duties as a volunteer.

- Defines a "security officer" as any person who provides security at locations or facilities owned, operated, controlled, or administered by a county, city or municipality, and who is employed by a law enforcement agency of any city, county, or city and county.

Controlled Substances: Synthetic Cannabinoid Compounds

Existing law prohibits the possession of specified controlled substances and controlled substance analogues. However, retailers sell "fake pot" or synthetic marijuana as "plant food" or "herbal

incense." Buyers can purchase synthetic marijuana at tobacco shops, gas stations, convenience stores, online, and from other retailers.

SB 420 (Hernández), Chapter 420, prohibits the sale of any synthetic cannabinoid compound. Specifically, this new law:

- States that any person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, give a synthetic cannabinoid compound or synthetic cannabinoid compound derivative, is guilty of a misdemeanor punishable by imprisonment in a county jail for up to six months, a fine not to exceed $1000, or both imprisonment and a fine.

- States that possession for sale, except as authorized by law, of any synthetic cannabinoid compound or synthetic cannabinoid compound derivative, shall be punished by imprisonment in a county jail for not more than six months, by a fine not to exceed $1000, or both imprisonment and a fine.

- States that "synthetic cannabinoid compound" refers to any of the following:

  - 1-pentyl-3-(1-naphthoyl)indole (JWH-018);

  - 1-butyl-3-(1-naphthoyl)indole (JWH-073);

  - 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

  - 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); or,

  - 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexy]-phenol (cannabicyclohexanol; CP-47, 497 C8 homologue).

Animal Cruelty: Cockfighting

Under current law, it a misdemeanor, punishable by a fine not exceeding $100 or by imprisonment in the county jail for not more than 25 days, for any minor under the age of 16 years to visit or attend any prizefight, cockfight or place where any prizefight or cockfight is advertised and for any owner, lessee or proprietor of any place where any prizefight or cockfight is advertised to admit any minor or to sell or five to any such minor a ticket to a place where a prizefight or cockfight is advertised to take place.

Since January 2008, there have been more than 100 major cockfighting raids in 35 California counties involving more than 20,000 live or dead birds. In February alone, there were nine raids in nine different counties, from Tehama in the north to San Diego in the south and coastal and rural counties in between. County supervisors in Placer and Napa Counties, with the additional support of the editors of the San Diego Union Tribune, the Los Angeles Times, and the Bakersfield Californian, have specifically requested state action to strengthen cockfighting laws.

SB 425 (Calderon), Chapter 562, increases fines for various animal fighting offenses and applies existing forfeiture proceedings for dog fighting to cockfighting.

<u>Dextromethorphan: Sale to Minors Prohibited</u>

Dextromethorphan is a cough suppressant commonly found in over-the-counter cold medications and was developed as a cough suppressant that would be less addictive and have fewer side effects than the narcotic codeine. Since the drug is available over-the-counter, without a prescription, it is easy for minors to obtain.

Ingesting too much cold medicine can be just as hazardous as drinking too much alcohol. The California Poison Control System reports that telephone consultations provided for patients ages 6 to 17 regarding abuse of dextromethorphan increased from 24 in 1999 to 228 in 2010, an increase of 850 percent. When used in the doses recommended on cough syrup and tablet packaging, it is a very effective cough suppressant. When taken at much higher doses, however, dextromethorphan causes hallucinations, loss of motor control, and dissociative "out-of-body" sensations similar to PCP and ketamine. At high doses, dextromethorphan is also a central nervous system depressant.

SB 514 (Simitian), Chapter 199, prohibits any person, corporation, or retail distributor from knowingly supplying, delivering, or giving possession of a drug, material, compound, mixture, preparation or substance containing any quantity of dextromethorphan to a person under the age of 18 without a prescription. Specifically, this new law:

- States that unauthorized sales shall be an infraction, punishable by a fine not to exceed $250.

- States that it shall be prima facie evidence of a violation of this section if the person, corporation, or retail distributor making the sale does not require and obtain bona fide evidence of majority and identity from the purchases, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

- States that proof that a person, corporation, or retail distributor, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bone fide evidence of majority and identity, shall be a defense to any criminal prosecution under this section.

- States that "bone fide evidence of majority and identity" is defined as a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including but not limited to a driver's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

- States that notwithstanding any other provision of this section, a retail clerk who fails to require and obtain proof of age from the purchaser is not guilty of an infraction, as specified or subject to any civil penalties, unless he or she is a willful participant in an ongoing criminal conspiracy to violate this section.

- Requires, if feasible, any person, corporation, or retail distributor that sells or makes available product containing dextromethorphan, as specified, without a prescription, to use a cash register that is equipped with an age-verification feature to monitor age-restricted items. The cash register shall be programmed to direct the retail clerk making the sale to request bona fide evidence of majority and identity before a product containing dextromethorphan may be purchased.

Manufactured Optical Disks Piracy

Existing law requires any person who manufactures optical discs for commerce shall permanently mark each disc with a mark that identifies the manufacturer and the state in which the disc was made or mark the disc with a unique identifying code that will allow law enforcement to determine the manufacturer and the state of origin. This identifying mark or code shall be affixed by a permanent method and shall be visible without magnification or special devices. This requirement is intended to allow law enforcement to track pirated copies of movies, music, and other material distributed by optical disk.

Manufacturers of illegally pirated materials have circumvented the purpose of the identification laws by simply not marking the illegally pressed disks. The crime of illegal mass reproduction of music and movies is a serious problem in California. In 2010 alone, more than 820,000 illegal discs were seized by law enforcement authorities in California. In a 2007 report, the Los Angeles Economic Development Corporation estimated the economic losses in Los Angeles County to all industries exceed $5 billion annually. Music and movie losses make up more than half of that number. The result of pirating is a loss of nearly $500 million tax dollars per year to state and local governments.

SB 550 (Padilla), Chapter 421, authorizes law enforcement officers to perform inspections of commercial optical disc manufacturers to verify compliance with optical disc identification law, as specified, without providing prior notice of the inspection, or obtaining a warrant. Specifically, the new law:

- States that inspection shall be conducted by officers whose primary responsibilities include investigation of high-technology crime or intellectual property piracy.

- States that inspection shall take place during regular business hours and shall be limited to areas of the premises where manufacturing equipment is located and where optical discs and production parts are manufactured and stored.

- States that the scope of the inspection shall be restricted to the physical review of items and collection of information necessary to verify compliance with optical disc identification law, as specified.

- Specifies that the officer conducting the inspection shall have the authority to do all of the following:

  - Take an inventory of all manufacturing equipment, including the identification mark or unique identifying code that any piece of equipment has been modified to apply;

  - Review any optical disc, manufacturing equipment, optical disc mold, or production part;

  - Review any record, book, or document maintained, as specified, kept in any format, electronic or otherwise, relating to the business concerned;

  - Inspect, remove, and detain for the purpose of examination for a long as reasonably necessary any optical disc, production part, or record, book, or document maintained, as specified;

  - Seize any optical disc or production party manufactured in violation of this chapter; and,

  - Obtain and remove four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits any person from evading, obstructing, or refusing any inspection requested or being carried out by a law enforcement officer to determine compliance with optical disc identification law, as specified.

- Requires that any manufacturer and the employees, servants, or agents of the manufacturer, cooperate during the course of the inspection by promptly doing the following:

  - Providing and explaining any record, book, or document required to be maintained, as specified;

  - Pointing out and providing access to all optical discs, manufacturing equipment, optical disc molds, and production parts and demonstrating to the satisfaction of the officer that they include or have been adapted to apply the required identification mark or unique identifying code; and,

  - Providing and permanently surrendering four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits a person who manufactures optical discs for commercial purposes from possessing, owning, controlling, or operating manufacturing equipment or any optical disc mold unless it has been adapted to apply the appropriate identification mark or unique identifying code.

- Prohibits a person who manufactures optical discs for commercial purposes from making, possessing, or adapting any optical disc mold for the purpose of applying a forged, false, or deceptive identification mark or identifying code.

- States that any manufacturing equipment, optical disc mold, or production part found on the premises of a commercial manufacturer shall for the purposes of this chapter, be deemed to be in the possession of the manufacturer.

- Defines "commercial purposes" as the manufacture of at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others.

- Defines a "manufacturer" as a person who replicates the physical optical disc or produces the master used in any optical disc replication process. This definition does not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

- Defines "manufacturing equipment" as any machine, equipment, or device, including mastering equipment, used for the manufacture of optical discs or production parts.

- Defines "mastering equipment" as any machine, equipment, or device used for the mastering of optical discs or production parts consisting of a signal processor and laser beam recorder or any other recorder, used to record data onto the glass or polymer master disc from which production parts are produced, or to record data directly onto a production part.

- Defines "optical disc" as a disc capable of being read by a laser or other light source on which data is stored in digital form, including, but not limited to, discs known as "CDs," "DVDs," or related mastering source materials. This definition does not include blank optical discs.

- Defines "production part" as the item usually referred to as a stamper that embodies data in a digital form and is capable of being used to mold optical discs, and includes any other item, usually referred to as a master, father or mother, embodying data from which a stamper may be produced by means of an electroplating process.

- Defines "professional organization" as an organization whose membership consists wholly or substantially of intellectual property rights owners, and which is mandated by those members to enforce their rights against counterfeiting and piracy.

- States that any manufacturer of optical discs found to be in violation of this section is guilty of a misdemeanor and shall be subject to a fine of not less than $500 and not more than $25,000 for a first offense, and shall be subject to a fine of not less than $5,000 and not more than $250,000 for a second or subsequent offense.

- Requires every manufacturer of optical discs for commercial purposes to keep full and accurate records of its manufacturing equipment, and shall make them available to law enforcement. The records shall include current inventory of manufacturing equipment, and every purchase, lease, sale, disposal, or other transaction relating to any manufacturing equipment, specifying the make, model, and serial number of the equipment, the identification mark or unique identifying code which the equipment has been adapted to apply, the date and nature of each transaction, and the full name and address of the party with whom the transaction was entered into.

- Requires every person who manufactures optical discs for commercial purposes shall keep all of the following for a period of note less than five years from the date of production:

  - One sample of each optical disc title manufactured by it;

  - One copy in retrievable form of the content of each production part manufactured by it; and,

  - The name and physical address of the customer, or if the order was placed by an intermediary, the name and physical address of the actual customer who originated the order.

Prosecution for Failure to Register as a Sex Offender

Existing law provides that a transient sex offender can be prosecuted in any jurisdiction in which he or she is physically present for a failure to register within 30 days.

No such provision exists for the initial failure to register upon release from custody for either a transient sex offender or a sex offender who moves into a residence but never registers or who absconds after initial registration. Nor does existing law provide for the issuance of a warrant in any particular jurisdiction when an offender who has never registered in any California jurisdiction absconds after release from custody.

> **SB 756 (Price), Chapter 363,** clarifies jurisdiction for prosecuting sex-offender registrants who fail to comply with registration requirements upon release from custody. Specifically, this new law:

- Provides that if a person required to register as a sex offender fails to do so after release from incarceration, the prosecutor in the jurisdiction where the person was to be paroled or placed on probation may request an arrest warrant for the person, and is authorized to prosecute that person for failure to register.

- Provides that if a person subject to registration is released from custody but not on parole or probation at the time of release, the district attorney in the following applicable jurisdictions shall have the authority to prosecute that person:

  - If the person was previously registered, in the jurisdiction in which the person last registered.

  - If there is no prior registration, but the person indicated on the Department of Justice notice of sex offender registration requirement form where he or she expected to reside, in the jurisdiction where he or she expected to reside.

  - Alternatively, in the jurisdiction where the offense subjecting the person to registration was committed.

Animal Neglect

Existing law states that every person who overdrives, overloads, overworks, denies sustenance tortures, torments, deprives of drink, cruelly beats, or mutilates an animal is guilty of a crime punishable by imprisonment in a county jail for up to six months, or by imprisonment in the state prison for 16 months, 2 or 3 years, and by a fine of not more than $20,000. The misdemeanor punishment of up to six months in the county jail for this offense is inconsistent with the misdemeanor penalties for other forms of animal abuse.

SB 917 (Lieu), Chapter 131, increases the misdemeanor penalty for animal neglect in order to conform it to other provisions of law relating to animal abuse, and makes it a crime to sell a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. Specifically, this new law:

- Increases the misdemeanor penalty from not more than six months to not more than 12 months in the county jail for every person who overloads, overworks, denies sustenance, cruelly beats, mutilates, or cruelly kills any animal, and whoever having custody of an animal, either as owner or otherwise, subjects an animal to needless suffering or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide an animal with proper food, drink, or shelter or proper protection from the weather.

- Makes it unlawful for any person to willfully sell, or give away as part of a commercial transaction, a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk, or to display or offer for sale, or to display or offer to give away, a live animal if the transaction is to occur on a street, highway, public right-of-way, parking lot, carnival, or boardwalk, and makes a first offense an

infraction punishable by a fine not to exceed $250, unless a violation causes an animal to suffer or be injured in which case the offense shall be punishable as a misdemeanor, and makes a second or subsequent offense punishable as a misdemeanor.

- Provides that a misdemeanor violation of the above provision shall be punishable by a fine not to exceed $1,000 per violation, and the court shall weigh the gravity of the violation in setting the fine. A notice describing the charge and the penalty for a violation may be issued by any peace officer, animal control officer, or humane officer, as specified.

- Provides that the prohibition against live animal sales at specified locations shall not apply to the following:

  - Events held by 4-H Clubs, Junior Farmers Clubs, or Future Farmers Clubs;

  - California Exposition and State Fair, district agricultural association fairs, or county fairs;

  - Stockyards regulated under federal law;

  - Specified livestock for sale at public sales;

  - Live animal markets regulated under state law;

  - A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group, as specified;

  - The sale of fish or shellfish, live or dead, from a fishing vessel, at a pier or wharf, or at a farmer's market by any licensed commercial fisherman to the public for human consumption; and,

  - A cat show, dog show, or bird show providing that all of the following circumstances exist:

    - The show is validly permitted by the city or county in which the show is held;

    - Each and every participant in the show complies with all federal, state, and local animal welfare control laws;

    - The participant has written documentation of the payment of a fee for the entry of his or her cat, dog, or bird in the show;

    - The sale of a cat, dog, or bird on the premises and within the confines of the show; and,

    - The show is a competitive event where the cats, dogs or birds are exhibited and judged by an established standard or set of ideals established for each breed or species.

- Provides that nothing in this prohibition against live animal sales shall be construed in any way to limit or affect the enforcement of any other law that protects animals, or the rights of consumers, as specified, or authorizes any act or omission that violates other local, state, or federal law relating to animal cruelty.

DNA

County Penalties: Forensic Laboratories

Proposition 69, enacted in 2004, created a fund to help offset the costs incurred by regulations on the collection and processing of DNA samples. Proposition 69 stipulates that for every $10 of criminal fines collected an additional $1 should be levied; these revenues are used at the state and local level to help pay for the collection and processing of DNA samples. A portion of the revenue is earmarked for counties to reimburse them for the costs related to DNA collection, analysis, tracking and processing.

Currently, local law enforcement agencies have forensic DNA work performed by either through a county-funded public crime laboratory or through the Department of Justice's Bureau of Forensic Services laboratories, which service a majority of the Northern California counties. Upon resolution of a county board of supervisors, a county without a public crime laboratory should be able to use excess Proposition 69 funds to secure expedited DNA analysis from a DOJ lab servicing that county.

> **AB 434 (Logue), Chapter 195,** allows funds remaining in a county's DNA Identification Fund to reimburse a regional state crime laboratory for costs associated with the analysis and comparison of crime scene DNA with forensic identification samples.

Medical Examinations for Victims of Sexual Assault

The Violence Against Women Act (VAWA) was enacted in Congress in 1994 and reenacted in 2000 and 2005. VAWA was the first comprehensive legislative package that focused on violence against women and their children. VAWA created new legal tools and grant programs addressing domestic violence, sexual assault, stalking and related issues. Currently, California receives approximately $12.6 million annually from the Federal Government for VAWA; however, California has not codified the provisions of VAWA and is at risk of losing these federal funds.

There are many parts of California where the only way a victim can receive a forensic examination without having to pay for it is when a law enforcement agency requests and authorizes the forensic examination. In cases where a victim chooses not to cooperate with law enforcement and the law enforcement agency does not authorize the examination, the victim may not receive such an examination. Under current California law, victims of sexual assault do not have access to a fair and consistent practice for funding these forensic examinations.

> **SB 534 (Corbett), Chapter 360,** provides that victims of sexual assault are not required to participate in the criminal justice system in order to be provided with a forensic medical examination. Specifically, this new law:

- States that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the medical evidentiary examination portion of the

examination of the victim of a sexual assault shall be charged directly or indirectly to a victim of assault.

- Adds a provision to protocol relating to the medical treatment of victims of sexual assault to provide for the collection of other medical specimens.

- States that the cost of a medical evidentiary examination for a victim of a sexual assault shall be treated as a local cost and charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed, provided, however, that the local law enforcement agency may seek reimbursement for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system.

- States that the amount that may be charged by a qualified health care professional, hospital, or other emergency medical facility to perform the medical evidentiary examination portion of a medical examination of a victim of a sexual assault shall not exceed $300.

- Defines "qualified health care professional" as a physician, a surgeon, a nurse who works in consultation with a physician or surgeon or who conducts examinations in a general acute care hospital or in the office of a physician or surgeon, a nurse practitioner, or a physician's assistant, as defined by law.

- States that the California Emergency Management Agency (CalEMA) shall use the discretionary from federal grants awarded to the agency pursuant to the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program to cover the cost of the medical evidentiary examination portion of a medical examination of a sexual assault victim.

- Authorizes CalEMA to use grant funds to pay for medical evidentiary examinations until January 1, 2014.

- Mandates CalEMA to develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault, and consult with health care professionals and appropriate law enforcement agencies and obtain recommendations on the best means to disseminate the course of training on a statewide basis.

- Encourages CalEMA to designate that a course of training for qualified health care professionals, as defined, and states that CalEMA shall partner with other allied professional training courses, such as sexual assault investigator training administered by the Commission on Peace Officer Standards and Training, or sexual assault prosecutor training as administered by California District Attorneys Association or sexual assault advocate training as administered by California Coalition Against Sexual Assault.

DOMESTIC VIOLENCE

Trauma Condition: Strangulation

Existing law states that it is an alternate felony-misdemeanor for any person to willfully inflict corporal injury resulting in a traumatic condition upon any of the following persons: spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the offender's child. In many cases, the lack of physical evidence caused the criminal justice system to treat choking cases as minor incidents, much like a slap to the face where only redness might appear.

> **SB 430 (Kehoe), Chapter 129,** specifies that for purposes of felony domestic violence statute, "traumatic condition" includes an injury as a result of strangulation or suffocation. Specifically, this new law defines "strangulation" or "suffocation" as impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck and states that this act shall be known as the "Diana Gonzalez Strangulation Prevention Act of 2011."

Family Justice Centers

Family Justice Centers have been identified as a "best practice" by the United States Department of Justice and collaboration among public and private, non-profit agencies providing intervention and prevention services to address domestic violence, sexual assault, and other forms of abuse. While the composition of these centers vary by community, the general concept of providing all the services for victims under one roof has been identified as an effective approach to increase safety and offender accountability by avoiding the need for victims to travel from agency to agency, telling their story over and over in order to receive help.

There now are 15 such centers in California and 15 more in early stages of planning. The National Family Justice Center Alliance is the umbrella organization for Family Justice Centers in California and around the United States and gathers non-identifying, aggregate data from existing centers to document outcomes and impacts of this multi-disciplinary model. Currently, there are no statewide standards for the Family Justice Center model to ensure that victims receive the same level of service and privacy protections from each center.

> **SB 557 (Kehoe), Chapter 262,** authorizes the Cities of San Diego and Anaheim, and the Counties of Alameda and Sonoma, to establish a multiagency, multidisciplinary family justice center to assist victims of domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking. Specifically, this new law:

- Defines "family justice centers" as multiagency, multidisciplinary service centers where public and private agencies assign staff members on a full-time or part-time basis in order to provide services to victims of crime from one location in order to reduce the number of times victims must tell their story, reduce the number of places

victims must go for help, and increase access to services and support for victims and their children.

- Provides that staff members of family justice centers may be comprised of, but are not limited to, the following:
  - Law enforcement personnel;
  - Medical personnel;
  - District attorneys and city attorneys;
  - Victim-witness program personnel;
  - Domestic violence shelter service staff;
  - Community-based rape crisis, domestic violence, and human trafficking advocates;
  - Social service agency staff members;
  - Child welfare agency social workers;
  - County health department staff;
  - City or county welfare and public assistance workers;
  - Nonprofit agency counseling professionals;
  - Civil legal service providers;
  - Supervised volunteers from partner agencies; and,
  - Other professionals providing services.
- States that victims of crime shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a family justice center.
- States that victims of crime shall not be denied services on the grounds of criminal history.
- Provides that no criminal history search shall be conducted of a victim at a family justice center without the victim's written consent unless the criminal history search is pursuant to an active criminal investigation.

- Requires each family justice center to consult with community-based domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking agencies in partnership with survivors of violence and abuse and their advocates in the operations process of the family justice center, and shall establish procedures for the ongoing input, feedback, and evaluation of the family justice center by survivors of violence and abuse and community-based crime victim service providers and advocates.

- Mandates each family justice center to develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence or abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at a family justice center who participate in affiliated survivor-centered support or advocacy groups.

- Requires each family justice center to maintain an informed client consent policy that is in compliance with all state and federal laws protecting the confidentiality of the types of information and documents that may be in a victim's file, including, but not limited to, medical and legal records.

- Requires each family justice center to have a designated privacy officer to develop and oversee privacy policies and procedures consistent with state and federal privacy laws and the Fair Information Practice Principles.

- States that a victim shall not be required to sign a client consent form to share information in order to access services.

- Mandates each family justice center to inform the victim that information shared with staff members at a family justice center may, under certain circumstances, be shared with law enforcement professionals and requires each family justice center to obtain written acknowledgment that the victim has been informed of this policy.

- States that information obtained from victims in family justice centers shall be privileged and confidential to the extent it is protected from disclosure under existing California law, and nothing in this new law related to confidentiality and client-authorized information sharing is intended to change existing state law.

- States that a victim's consent to share information pursuant to the client consent policy shall not be construed as a waiver of confidentiality or any privilege held by the victim or family justice center professionals.

- Mandates the National Family Justice Center Alliance to use private funds to contract with an independent organization to conduct an evaluation and prepare a report on the four pilot centers. The independent organization conducting the evaluation shall submit the report to the Office of Privacy Protection and the National Family Justice Center Alliance for review and comment, and then to the Assembly Committee on

Judiciary, the Senate Committee on Judiciary, the Assembly Committee on Public Safety, and the Senate Committee on Public Safety, no later than January 1, 2013.

- Requires the independent organization conducting the evaluation, in consultation with the four pilot centers, the National Family Justice Center Alliance, groups that advocate on behalf of victims, community-based crime victim service provider representatives, including one person recommended by the federally recognized state domestic violence coalition, privacy rights organizations, and other relevant stakeholders, to develop evaluation criteria, which shall include, but not be limited to, all of the following:

    - The number of clients served, number of children served, reasons for seeking services at the center, services utilized, and number of returning clients;

    - Filing, conviction, and dismissal rates for misdemeanor and felony criminal cases handled at the center;

    - Subjective and objective measurements of the impacts of collocated multiagency services for victims and their children related to safety, empowerment, and mental and emotional well-being, and comparison data from victims, if any, on their access to services outside the family justice center model;

    - Barriers, if any, to receiving needed services, including access to services based on immigration status, criminal history, or substance abuse/mental health issues, and potential ways to mitigate any identified hurdles to accessing needed services;

    - Whether privacy, immigration status, or other barriers prevented victims from utilizing a family justice center and, if so, recommendations to improve utilization rates;

    - Compliance by the four pilot centers, with the service delivery requirements set forth in this new law; and,

    - Recommended best practices and model protocols, if any.

- Requires the independent organization conducting the evaluation to gather the evaluation data from pre-services victim information, post-services exit interviews, victim focus groups, partner agency focus group data, and other evaluation criteria necessary to conduct their evaluation.

- States that the National Family Justice Center Alliance may include any recommendations for statewide legislation, best practices, and model policies and procedures in the comments submitted to the independent evaluation organization and the Legislature.

- Mandates each family justice center to maintain a formal training program with mandatory training for all staff members, volunteers, and agency professionals of not less than eight hours per year on subjects including, but not limited to, privileges and confidentiality, information sharing, risk assessment, safety planning, victim advocacy, and high-risk case response.

- Establishes a sunset date of January 1, 2014.

Domestic Violence Protective Orders

In domestic violence cases, the court is required to consider issuing a protective an order which remains valid during the pendency of the criminal proceedings. However, a criminal protective order expires when the proceedings are completed.

When domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. In addition, in stalking cases or those involving willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child, the court may issue a protective order regardless of whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

In all other domestic violence crimes that are non-probation and result in jail or prison time, victims are left without any such protection once the criminal case has terminated. The only recourse for the victim is to attempt to get a new order in the family court, which can be time-consuming and difficult – jeopardizing the victim's safety until and unless protections are put in place.

SB 723 (Pavley), Chapter 155, allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving "domestic violence" regardless of the sentence imposed.

DRIVING UNDER THE INFLUENCE

Reckless Driving: Restricted License Program

Existing law allows a person who has been convicted of specified driving under the influence (DUI) offenses and who has had his or her driving privilege suspended or revoked by the court to apply to the Department of Motor Vehicles for a restricted driver's license if specified conditions are met, including that the person has installed an ignition interlock device (IID). However, a person with a current conviction for alcohol-related reckless driving ("wet reckless") is not eligible to apply for a restricted license, even though a wet reckless is a lower offense than a DUI.

> **AB 520 (Ammiano), Chapter 657,** allows a person convicted of alcohol-related reckless driving to apply for a restricted license after a 90-day suspension if he or she installs an IID on his or her car and complies with all the other requirements, including proof of financial responsibility, payment of fees, and satisfactory participation in a driving-under-the-influence program. However, the new law limits restricted-license eligibility to persons having no more than two prior alcohol-related convictions within 10 years.

ELDER ABUSE

Elder Abuse: Fines

California's elder population is a vulnerable segment of society. In the last 10 years, there were 4,735 convictions for crimes against seniors. Elders and dependent adults, who are isolated and may not have family and friends to care for them, are often not equipped to protect themselves with regard to theft, embezzlement, forgery, fraud, identity theft and identity crimes. Considering the current economic environment in California, it is important to further protect dependent seniors.

> **AB 332 (Butler), Chapter 366,** provides that the penalties for a person who is not a caretaker shall be by a fine not exceeding $2,500 and or up to one year in county jail or by a fine up to $10,000 and/or two, three or four years in state prison when the amount is more than $950.

Elder Abuse: Preservation of Assets

Existing law provides that where a defendant is convicted of two or more related felonies involving fraud or embezzlement and the pattern of conduct involves the taking or loss of more than $100,000, the defendant shall be punished by an "aggravated white collar crime enhancement" of specified prison enhancement term. The following applies to such cases:

- The enhancement imposed only once in a criminal proceeding.

- A "pattern of related felony conduct" is defined as engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated and are not isolated events. Two or more related felonies are felonies committed against two or more separate victims or against the same victim on two or more occasions.

- If the crimes involved taking or loss of more than $500,000, the additional prison term shall be two, three, or five years.

- If the crimes involved taking or loss of between $100,000 and 500,000, the additional prison term shall be one or two years, as specified.

Existing law also allows the prosecution in a case involving an aggravated white collar crime enhancement to obtain an order for the seizing and holding of the defendant's assets in order to prevent the defendant from hiding or dissipating the assets. A person who claims an interest in the protected property may file a claim concerning his or her interest in seized property, as specified. The court shall order a defendant subject to punishment under the white collar crime provisions to make full restitution to victims. The court can order the defendant to remain on probation for up to 10 years in order to ensure payment of restitution. The provisions for

protection of assets seized from defendants shall remain in effect through sentencing in order to satisfy fines and restitution orders.

> **AB 1293 (Blumenfield), Chapter 371,** provides for the preservation of assets and property by the court of any person charged with felony elder or dependent financial abuse if that conduct involves the taking or loss of $100,000 or more.

Family Justice Centers

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  - Law enforcement personnel;

  - Medical personnel;

  - District attorneys and city attorneys;

- Victim-witness program personnel;
- Domestic violence shelter service staff;
- Community-based rape crisis, domestic violence, and human trafficking advocates;
- Social service agency staff members;
- Child welfare agency social workers;
- County health department staff;
- City or county welfare and public assistance workers;
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- Supervised volunteers from partner agencies; and,
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- Establishes a sunset date of January 1, 2014.

EVIDENCE

Crimes involving Hidden Recordings: Statute of Limitations

Existing law prohibits the use of a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape individuals where they would normally expect privacy. Examples of expected privacy areas would be bedrooms, bathrooms, locker rooms, dressing rooms or hotel rooms. Existing law provides for a one-year statute of limitations for a misdemeanor and three years for a felony. However, recent investigations have shown that evidence of a hidden recording may not be discovered until many years after the recording was taken as the defendant has taken precautions to hide the recording from the victim and law enforcement.

> **AB 708 (Knight), Chapter 211,** adds crimes involving hidden recordings to the list of offenses for which the statute of limitations does not begin to run until discovery of the offense. Specifically, this new law provides that a criminal complaint may be filed within one year of the date of discovery of a hidden recording related to a violation of provisions prohibiting the use of concealed camcorders, motion picture cameras, or photographic cameras, to secretly videotape another, as specified.

Victim Impact Statement

Under current California law, a victim must submit a victim impact statement in writing to the court before sentencing, which allows the court to review the statement to ensure that the statement complies with state law and gives defendants the chance to review the statement in accordance with their right to refute materials used against them at trial.

When the victim impact statement is submitted in writing to the court, the statement becomes a public document, meaning that the media is able to request and gain access to the statement. This has led to situations where the victim impact statement is published in the newspaper before the victim has the opportunity to read it in court, which can diminish the power of the statement when read in court and undermines the rights of the victim.

> **AB 886 (Cook), Chapter 77,** prohibits a court from releasing statements from a crime victim, as specified, to the public prior to being heard in court.

Law Enforcement: Confidential Communications

A 1996 Attorney General Opinion concluded that Government Code Section 41803.5(b) grants a city attorney the power to overhear or record conversations; however, the absence of that language in Penal Code Section 633 has caused city prosecutors to refrain from overhearing or recording communications for fear of incurring civil liability.

> **AB 1010 (Furutani), Chapter 659,** provides that nothing in the laws prohibiting eavesdropping prevents city attorneys prosecuting on behalf of the people of the State of

California under Government Code Section 41803.5(b) or any person acting pursuant to the direction of those city attorneys acting within the scope of his or her authority from overhearing or recording any communication that they could lawfully overhear or record.

Wiretaps: Authorization

Existing law authorizes the Attorney General (AG), chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire, electronic digital pager, or electronic cellular telephone communications under specified circumstances. The provisions governing wiretap authorizations sunset on January 1, 2012.

The continuation of the California State Wiretap Statute, which includes both telephone and electronic communication technologies, will permit law enforcement to continue wiretap investigations under specified circumstances with judicial approval. California and federal law enforcement agencies and multi-agency task forces have used the law with great success since its enactment in 1989 to solve the most serious and difficult crimes, such as organized crime and drug trafficking, while maintaining an emphasis on the protection of individual privacy.

SB 61 (Pavley), Chapter 663, extends the sunset date until January 1, 2015 on provisions of California law which authorize the AG, chief deputy AG, chief assistant AG, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances.

Manufactured Optical Disks Piracy

Existing law requires any person who manufactures optical discs for commerce shall permanently mark each disc with a mark that identifies the manufacturer and the state in which the disc was made or mark the disc with a unique identifying code that will allow law enforcement to determine the manufacturer and the state of origin. This identifying mark or code shall be affixed by a permanent method and shall be visible without magnification or special devices. This requirement is intended to allow law enforcement to track pirated copies of movies, music, and other material distributed by optical disk.

Manufacturers of illegally pirated materials have circumvented the purpose of the identification laws by simply not marking the illegally pressed disks. The crime of illegal mass reproduction of music and movies is a serious problem in California. In 2010 alone, more than 820,000 illegal discs were seized by law enforcement authorities in California. In a 2007 report, the Los Angeles Economic Development Corporation estimated the economic losses in Los Angeles County to all industries exceed $5 billion annually. Music and movie losses make up more than half of that number. The result of pirating is a loss of nearly $500 million tax dollars per year to state and local governments.

SB 550 (Padilla), Chapter 421, authorizes law enforcement officers to perform inspections of commercial optical disc manufacturers to verify compliance with optical

disc identification law, as specified, without providing prior notice of the inspection, or obtaining a warrant. Specifically, the new law:

- States that inspection shall be conducted by officers whose primary responsibilities include investigation of high-technology crime or intellectual property piracy.

- States that inspection shall take place during regular business hours and shall be limited to areas of the premises where manufacturing equipment is located and where optical discs and production parts are manufactured and stored.

- States that the scope of the inspection shall be restricted to the physical review of items and collection of information necessary to verify compliance with optical disc identification law, as specified.

- Specifies that the officer conducting the inspection shall have the authority to do all of the following:

  - Take an inventory of all manufacturing equipment, including the identification mark or unique identifying code that any piece of equipment has been modified to apply;

  - Review any optical disc, manufacturing equipment, optical disc mold, or production part;

  - Review any record, book, or document maintained, as specified, kept in any format, electronic or otherwise, relating to the business concerned;

  - Inspect, remove, and detain for the purpose of examination for a long as reasonably necessary any optical disc, production part, or record, book, or document maintained, as specified;

  - Seize any optical disc or production party manufactured in violation of this chapter; and,

  - Obtain and remove four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits any person from evading, obstructing, or refusing any inspection requested or being carried out by a law enforcement officer to determine compliance with optical disc identification law, as specified.

- Requires that any manufacturer and the employees, servants, or agents of the manufacturer, cooperate during the course of the inspection by promptly doing the following:

- Providing and explaining any record, book, or document required to be maintained, as specified;

- Pointing out and providing access to all optical discs, manufacturing equipment, optical disc molds, and production parts and demonstrating to the satisfaction of the officer that they include or have been adapted to apply the required identification mark or unique identifying code; and,

- Providing and permanently surrendering four samples each of the optical discs molded by each mold that has been used or could be used to manufacture optical discs.

- Prohibits a person who manufactures optical discs for commercial purposes from possessing, owning, controlling, or operating manufacturing equipment or any optical disc mold unless it has been adapted to apply the appropriate identification mark or unique identifying code.

- Prohibits a person who manufactures optical discs for commercial purposes from making, possessing, or adapting any optical disc mold for the purpose of applying a forged, false, or deceptive identification mark or identifying code.

- States that any manufacturing equipment, optical disc mold, or production part found on the premises of a commercial manufacturer shall for the purposes of this chapter, be deemed to be in the possession of the manufacturer.

- Defines "commercial purposes" as the manufacture of at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others.

- Defines a "manufacturer" as a person who replicates the physical optical disc or produces the master used in any optical disc replication process. This definition does not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

- Defines "manufacturing equipment" as any machine, equipment, or device, including mastering equipment, used for the manufacture of optical discs or production parts.

- Defines "mastering equipment" as any machine, equipment, or device used for the mastering of optical discs or production parts consisting of a signal processor and laser beam recorder or any other recorder, used to record data onto the glass or polymer master disc from which production parts are produced, or to record data directly onto a production part.

- Defines "optical disc" as a disc capable of being read by a laser or other light source on which data is stored in digital form, including, but not limited to, discs known as

"CDs," "DVDs," or related mastering source materials. This definition does not include blank optical discs.

- Defines "production part" as the item usually referred to as a stamper that embodies data in a digital form and is capable of being used to mold optical discs, and includes any other item, usually referred to as a master, father or mother, embodying data from which a stamper may be produced by means of an electroplating process.

- Defines "professional organization" as an organization whose membership consists wholly or substantially of intellectual property rights owners, and which is mandated by those members to enforce their rights against counterfeiting and piracy.

- States that any manufacturer of optical discs found to be in violation of this section is guilty of a misdemeanor and shall be subject to a fine of not less than $500 and not more than $25,000 for a first offense, and shall be subject to a fine of not less than $5,000 and not more than $250,000 for a second or subsequent offense.

- Requires every manufacturer of optical discs for commercial purposes to keep full and accurate records of its manufacturing equipment, and shall make them available to law enforcement. The records shall include current inventory of manufacturing equipment, and every purchase, lease, sale, disposal, or other transaction relating to any manufacturing equipment, specifying the make, model, and serial number of the equipment, the identification mark or unique identifying code which the equipment has been adapted to apply, the date and nature of each transaction, and the full name and address of the party with whom the transaction was entered into.

- Requires every person who manufactures optical discs for commercial purposes shall keep all of the following for a period of note less than five years from the date of production:

  - One sample of each optical disc title manufactured by it;

  - One copy in retrievable form of the content of each production part manufactured by it; and,

  - The name and physical address of the customer, or if the order was placed by an intermediary, the name and physical address of the actual customer who originated the order.

<u>Evidence: Testimony of In-Custody Informants</u>

Informants, who are themselves in custody or facing criminal prosecution, are allowed to provide testimony in a criminal trial without any other evidence that independently connects the defendant with the commission of the offense. Often times, in-custody inmates volunteer

information against a defendant in a criminal trial in the hope that they will be rewarded with reduced charges, better confinement, or another form of leniency.

Current law requires testimony of an accomplice to be corroborated prior to its admission as evidence in a criminal trial. The rationale for this requirement is the fear that an accomplice may be motivated to falsify his or her testimony in hope of securing leniency for him or her. This same rationale applies to the motivations of in-custody informant to testify in a criminal trial. Studies have shown that testimony of in-custody informants potentially presents even greater risks of unreliability than the testimony of accomplices, and yet there is currently no requirement of corroboration for in-custody informants as there is for accomplice testimony. Instead, current law requires, upon the request of a party, that the judge instruct the jury in any case in which an in-custody informant testifies that the testimony should be viewed with caution and close scrutiny and the jury should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. However, even with these jury instructions, once the judge and jury are presented with this testimony, it has a lasting prejudicial effect against the defendant. The use of such unreliable testimony of in-custody informants in criminal trials have led to wrongful convictions and will continue to result in injustice without proper safeguards.

SB 687 (Leno), Chapter 153, places the same corroboration requirement on the use of in-custody informant testimony in a criminal trial as are currently in place for testimony of accomplices. Specifically, this new law:

- Provides that a judge or jury may not enter a judgment of conviction upon a defendant, find a special circumstance true, or use a fact in aggravation based solely on the uncorroborated testimony of an in-custody informant, as defined.

- States that corroboration is not sufficient if it merely shows the commission of the offense or the special circumstance or the circumstance in aggravation.

- States that corroboration shall not be provided by the testimony of another in-custody informant unless the party calling the in-custody informant as a witness establishes by a preponderance of evidence that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony.

FINES

Restitution Fine

The California Victim Compensation Program compensates victims of crime for financial losses and health-related costs incurred as a result of the crime. All money comes from restitution fines imposed on convicted defendants; nothing is paid out of the General Fund or revenues from taxes and fees. The amount of the fine varies in the court's discretion, ranging from a minimum of $200 to a maximum of $10,000 for felony offenses, and from $100 to $1,000 for misdemeanor offenses.

Since Fiscal Year 2004-05, payouts to victims or their families have been increasing faster than revenues and the program faces potential insolvency.

> **AB 898 (Alejo), Chapter 358,** increases the minimum restitution fine incrementally from $200 to $300 for a felony conviction and from $100 to $150 for a misdemeanor conviction. Specifically, for felony convictions the restitution fine is increased to $240 starting on January 1, 2012, $280 starting on January 1, 2013, and $300 starting on January 1, 2014. For misdemeanor convictions, the restitution fine is increased to $120 starting on January 1, 2012, $140 starting on January 1, 2013, and $150 starting on January 1, 2014.

Local Government: Fees and Penalties

Existing law authorizes counties to charge a variety of fees. In most cases, a board of supervisors can adjust fees to recover the cost of providing a good or service. However, some county fees are established by the State and the Legislature must act each time to change them. In 2009, SB 676 (Wolk), Chapter 606, increased or eliminated statutory limits on 11 different fees; many of these fees set by the Legislature had not been adjusted in decades. Fees set by statue generally lack provisions for cost-of-living adjustments, and the Legislature must regularly review these fees to ensure they accurately reflect actual costs.

The juvenile registration fee for public defender services has not been increased since 1996 even though SB 676 increased the adult public defender registration fee from $25 to $50.

The base vital records fees for birth and death certificates adjust periodically with the Consumer Price Index, but still fail to accurately reflect the cost of preparation.

The full cost of providing these services is typically subsidized by a county's general fund, which can affect other mandated county services.

> **AB 1053 (Gordon), Chapter 402,** increases the fees for various services provided by the county or court. Specifically, this new law:

- Increases the registration fee for use of public defender services by juveniles from a maximum fee of $25 to a maximum fee of $50.

- Incrementally increases the fee for birth and death certificates, imposing a net fee increase of $5 on January 1, 2012, and additional $2 fee increases on January 1, 2013, and January 1, 2014.

- Specifies that the issuing agency retains 85 percent of the base-fee revenues solely to support activities related to the issuance of certified copies of vital records, and transmits 15 percent of the fee to the State Registrar.

- Requires, after January 1, 2014, that the new statutory base fee must be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the Department of Public Health.

- Provides that the actual dollar fee or charge for birth and death certificates shall be rounded to the nearest whole dollar.

- Adds the business-license fee on state-licensed laboratories performing substance-abuse testing to the list of fees which are to be adjusted annually.

Misdemeanor Violations: Amnesty

Existing law requires counties to establish a one-time amnesty program for fines and bail for infractions related to the Vehicle Code (VC), with the exception of parking violations, specified reckless driving and driving-under-the-influence (DUI) offenses. The amnesty program allows an individual to pay a reduced amount which must be accepted by the court in full satisfaction of the delinquent fine or bail. The amnesty program was designed to provide relief to individuals who are financially unable to pay traffic bail or fines, thereby allowing courts and counties to resolve older delinquent cases and focus limited resources on collecting on more recent cases. Payment of a fine or bail under these amnesty programs will be accepted beginning January 1, 2012 and ending June 30, 2012.

With the economic downturn, there has been an increase of fines owed throughout California that are uncollectable due to defendants' inability to pay. The current amnesty program only applies to infractions. The narrow application of the current amnesty law will leave a vast majority of delinquent fines and bail uncollected. Adding specified misdemeanor VC violations to the current amnesty program would enhance the collection of debt and improve recovery efforts.

AB 1358 (Fuentes), Chapter 662, authorizes, in addition to and at the same time as the existing one-time amnesty program, the court and the county to jointly establish a one-time amnesty program that would allow a person to pay 50 percent of the total fine or bail for specified misdemeanor violations. Specifically, this new law:

- States that no criminal action shall be brought against a person for a delinquent fine or bail paid under the amnesty program.

- Provides that the payment due date for delinquent fines and bail eligible for the program must be on or before January 1, 2009.

- Prohibits the use of the amnesty program for parking violations and specified reckless driving and DUI offenses.

- Prohibits the use of the amnesty program by a person who has an outstanding misdemeanor or felony warrant within the county, except for misdemeanor warrants for Penal Code and VC violations related to failure to pay a fine or failure to appear in court added to a misdemeanor violation otherwise subject to amnesty.

- Prohibits the use of the amnesty program by any person who owes restitution to a victim on any case within the county.

- Requires each court or county implementing an amnesty program to file, not later than September 30, 2012, a written report with the Judicial Council that includes information about the number of cases resolved, the amount of money collected, and the operating costs of the amnesty program. On or before December 31, 2012, the Judicial Council shall submit a report to the Legislature summarizing the information provided by each court or county.

GANG PROGRAMS

Juveniles: Anti-Gang Parenting Classes

Existing law provides that a minor under the age of 18 years may be adjudged to be a ward of the court where he or she persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian; is beyond the control of that person; has violated any ordinance of any California city or county establishing a curfew based solely on age; or is habitually truant, as specified. A minor under the age of 18 years may be adjudged to be a ward of the court for violating "any law of this state or of the United States or any ordinance of any city or county of this state defining crime," as specified. When a minor is adjudged a ward of the court on the ground that he or she is delinquent, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. If a minor is found to be delinquent by reason of the commission of a gang-related offense, and the court finds that the minor is a first-time offender and orders that a parent or guardian retain custody of that minor, the court may order the parent or guardian to attend antigang violence parenting classes. The father, mother, spouse, or other person liable for the support of the minor, the estate of that person, and the estate of the minor shall be liable for the cost of these classes unless the court finds that the person or estate does not have the financial ability to pay.

According to the National Gang Center, "Juvenile delinquency is a precursor behavior to gang membership. Put otherwise, virtually all youths who join a gang [have] prior delinquency involvement." The Los Angeles Police Department cites examples of juvenile delinquency or risk factors as truancy, rebellious behavior, and violent behavior. According to California's official CalGang Database, there were 7,703 gangs and 223,828 gang members in California in 2008. Gang activity remains a problem in California.

> **AB 177 (Mendoza), Chapter 258,** expands the provisions authorizing a court to order a parent or guardian of any minor found to be delinquent by reason of a status or criminal offense to attend anti-gang violence parenting classes where the court finds that factors exist that may indicate gang involvement on the part of the minor, or may lead to future gang involvement. The provision no longer would be limited to minors found to have committed a gang-related offense.

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Interstate Compact for Juveniles

The Interstate Compact for Juveniles (ICJ) generally provides for specified matters concerning juveniles, especially with respect to overseeing, supervising, and coordinating the interstate movement of juveniles who have run away from home, or who are on probation or parole and who have absconded, escaped or run away from supervision and control. Each compacting state is responsible for the proper supervision or return of these juveniles. California is a compacting state. Current California law establishes a sunset date for the ICJ of January 1, 2012.

AB 220 (Solorio), Chapter 356, extends the January 1, 2012 sunset on the ICJ by two years to January 1, 2014.

Juvenile Inmates: Medical Program

Federal law suspends Medi-Cal benefits for minors who are inmates of a state or local juvenile detention facility or camp. Many minors taken into custody are from low-income families and would generally be eligible for Medi-Cal benefits. Therefore, when a minor is in custody and is in need of medical services, the county is responsible for those costs.

There is a federal option that would permit Medi-Cal benefits if a minor is admitted to a hospital for treatment and is away from the detention facility for more than 24-hours; however, counties are unable to use this option unless established in state statute.

AB 396 (Mitchell), Chapter 394, allows counties and the California Department of Corrections and Rehabilitation (CDCR) to obtain federal matching funds to provide reimbursement for the medical treatment of juvenile inmates who are hospitalized outside of a detention facility for more than 24 hours. Specifically, this new law:

- Requires the Department of Health Care Services (DHCS) to develop a process, in consultation with the counties and the Division of Juvenile Facilities (DJF) of CDCR, to allow the counties and DJF to obtain federal funds for inpatient hospital and psychiatric services provided to juvenile detainees, and requires the DHCS to seek any federal approvals necessary to implement these provisions.

- Clarifies that this new law does not limit the authority of DHCS to suspend or terminate Medi-Cal eligibility except during such times that the juvenile inmate is receiving acute inpatient hospitals or psychiatric services.

- Provides that counties electing to participate in the process shall agree to pay the nonfederal share of the administrative costs incurred by the DHCS, as well as the nonfederal share of expenditures for acute inpatient hospital and psychiatric services provides to eligible juvenile inmates.

- Requires that the federal financial participation associated with services provided pursuant to the process be paid to the participating counties and the CDCR.

- Allows the DHCS to recoup funds from a county in the event a federal audit subsequently determines the money received was disallowed. The amount to be recouped includes the amount of the disallowance and any applicable interest.

- Limits implementation of the provisions of this new law only to the extent that existing levels of federal financial participation are not otherwise jeopardized.

- Provides that if any final judicial decision or a determination by the administrator of the federal Centers of Medicare and Medicaid Services deems any part of the law to be invalid, then those provisions shall have no force or effect.

Transit Fare Evasion

Current law allows a number of transit agencies in California to create transit courts. These courts allow local transit agencies to process citations on their individual systems rather than having these citations processed through the typical court process.

The Los Angeles County Metropolitan Transportation Authority (LACMTA) has been working with the Los Angeles County Sheriff's Department in the implementation of its system. LACMTA has identified that a two-tiered system would be best for Los Angeles. Under this system, LACMTA's Transit Court would process the majority of minor citations and the regular judicial process would still be available for more serious violations such as chronic violators and those with additional criminal issues. Current law does not clearly authorize a two-tiered process.

> **AB 426 (Lowenthal), Chapter 100,** permits the LACMTA and the Southern California Regional Rail Authority to create ordinances that allow a violation to be processed administratively and specifies that penalties must be deposited in the respective transit authority's fund instead of the county general fund. These provisions will not apply to minors.

Commercially Sexually Exploited Minors

Existing law permits the Alameda County District Attorney's Office to develop a comprehensive system response that directs commercially sexually exploited children away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these children. The pilot project is set to sunset in 2012.

> **AB 799 (Swanson), Chapter 51,** extends the repeal date to January 1, 2017 of a provision in existing law that authorizes the Alameda County District Attorney to create a pilot project, contingent upon local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

Juvenile Offenders: Tattoo Removal

Current law provides for the California Tattoo Removal Program, which required the California Department of Corrections and Rehabilitation (CDCR), California Youth Authority (CYA), which is now defunct and succeeded by the Division of Juvenile Facilities (DJF), to purchase two medical laser devices for the removal of tattoos from eligible participants who are at-risk youth, ex-offenders, and current or former gang members. The act of removing a tattoo enables an individual to leave his or her past behind them, while also eliminating potential obstacles to employment. This program has been pivotal in helping move individuals out of the gang life to

help them become productive members of society. Since 2003, the California Tattoo Removal Program has lacked adequate funding, although it continues to serve a modest number of juvenile offenders.

AB 1122 (John A. Pérez), Chapter 661, establishes the California Voluntary Tattoo Removal Program, administered by the California Emergency Management Agency (CalEMA) which will provide competitive grants to grantees to serve both Northern and Southern California. Specifically, this new law:

- States that the program is designed to serve individuals between 14 and 24 years of age, who are in the custody of the CDCR or county probation departments, who are on parole or probation, or who are in a community-based organization serving at-risk youth.

- Allows CDCR, DJF, county probation departments, community-based organizations, and relevant service providers may apply for the grants authorized by this new law.

- Limits the funds appropriated for this program to federal funds.

- Requires tattoo removals to be performed by licensed clinicians who, to the extent feasible, provide their services at a discounted rate, or free of charge.

- Mandates grantees of the competitive grants to serve individuals who have gang-related tattoos that are visible in a professional environment and who are recommended for the program by CDCR representatives, parole agents, county probation officers, community-based organizations, or service providers.

- States that in order to be eligible for participation in the program, individuals must meet any of the following criteria:

    - Are actively pursuing secondary or postsecondary education;

    - Are seeking employment or participating in workforce training programs;

    - Are scheduled for an upcoming job interview or job placement; and,

    - Are participating in a community or public service activity.

- Limits use of the funding by grantees to the following:

    - The removal of gang-related tattoos;

    - Maintenance or repair of tattoo removal medical devices; and,

    - Contracting with licensed private providers to offer the tattoo removal service.

- Authorizes grantees to seek additional federal or private funding to supplement funding received through the program.

- Establishes a sunset date of January 1, 2017.

Juvenile Offenders: Medical Care

Current law requires the consent of a parent or legal guardian for many medical procedures, including drawing blood or administering immunizations or other medications. State regulation Juvenile Title 15 requires detained minors to have a health assessment within 96 hours of being taken into custody, which include holidays and weekends. The required health evaluation includes, at a minimum: (1) a health and mental health history, (2) a physical examination, including laboratory and diagnostic testing, and (3) the necessary immunizations based on current public health guidelines. There are times when the parent or legal guardian cannot be found and, therefore, the medical staff at the detention facilities cannot complete the medical examination. Regulations require that, absent parental consent, the probation officer must seek an order from the court. Obtaining a court order takes approximately 72 hours and the county is often out of compliance because the medical exam is not completed within the required 96-hour timeframe.

Minors detained in juvenile facilities often have undetected health and mental health problems. Physicians at the juvenile facilities are unable to determine the condition of the juvenile detainee without a complete physical examination. If the probation department is forced to seek a court order for medical treatment, a separate order must be sought for each examination or medical procedure. This creates an unnecessary and costly burden for both the court and the facility, but - more importantly - it puts the minor's health at risk, as well as the other juvenile detainees and staff at the detention facility. If care is delayed because consent could not be obtained, the child's medical condition could worsen, which could put the child in the emergency room (ER), thus aggravating already overcrowded ERs and increasing the cost of medical care.

SB 913 (Pavley), Chapter 256, provides probation officers with the statutory authority to order a medical exam that complies with regulations adopted by the Corrections Standards Authority for a minor that has been taken into temporary custody. Specifically, this new law:

- States that if the minor is retained in custody by the probation officer and prior to the detention hearing, the probation officer may authorize medical or dental treatment or care based on the written recommendation of the examining physician and considered necessary for the health of the minor.

- Mandates the probation officer to make a reasonable effort to notify and to obtain the consent of the parent, guardian, or person standing in loco parentis for the minor; and if the parent, guardian, or person standing in loco parentis objects, the treatment or care shall be given only upon order of the court in the exercise of its discretion.

- Requires the probation officer to document the efforts made to notify and obtain parental consent and enter this information into the case file for the minor.

- States that if it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the person, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize the medical, surgical, dental, or other remedial care for the person by licensed practitioners, as may from time to time appear necessary.

- Adds to existing provisions of law that defines "emergency situation" to also include known conditions or illnesses that, during any period of secure detention of the minor by the probation officer, require immediate laboratory testing, medication, or treatment to prevent and imminent and severe or life-threatening risk to the health of the minor.

- Provides that nothing in this new law shall be construed to interfere with a minor's right to authorize or refuse medical, surgical, dental, or other care when the minor's consent for care is sufficient or specifically required pursuant to existing law, or to interfere with a minor's right to refuse, verbally or in writing, nonemergency medical and mental health care.

RESTITUTION

Restitution: Asset Seizure

Existing law provides that any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than $100,000 shall be punished, upon conviction two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which she or she has been convicted, by an additional term of imprisonment in state prison, as specified. This enhancement is the "aggravated white collar crime enhancement."

The aggravated white collar enhancement is only imposed once in a single criminal proceeding. "Pattern of related felony conduct" is defined as engaging in at least two felonies that have the same or similar purpose, result, principals, victims, methods of commission, or are otherwise interrelated by distinguishing characteristic and are not isolated events. "Two or more related felonies" are defined as felonies committed against two or more separate victims or against the same victim on two or more separate occasions.

A victim of a single fraud-related case is not addressed by existing law. For instance, when a defendant steals $100,001 total from two victims in separate incidents, the defendant could have his or her assets and property frozen and ultimately liquidated to cover the costs of restitution and fines if convicted. However, the same defendant's assets would remain untouched if he or she was only charged with a single felony involving the same dollar amount and a single victim.

> **AB 364 (Butler), Chapter 182,** provides for the preservation of assets and property by the court of any person charged with a single act of fraud or embezzlement if that conduct involves the taking of $100,000 or more.

Restitution Fine

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January 1, 2014. For misdemeanor convictions, the restitution fine is increased to $120 starting on January 1, 2012, $140 starting on January 1, 2013, and $150 starting on January 1, 2014.

Elder Abuse: Preservation of Assets

Existing law provides that where a defendant is convicted of two or more related felonies involving fraud or embezzlement and the pattern of conduct involves the taking or loss of more than $100,000, the defendant shall be punished by an "aggravated white collar crime enhancement" of specified prison enhancement term. The following applies to such cases:

- The enhancement imposed only once in a criminal proceeding.

- A "pattern of related felony conduct" is defined as engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated and are not isolated events. "Two or more related felonies" are felonies committed against two or more separate victims or against the same victim on two or more occasions.

- If the crimes involved taking or loss of more than $500,000, the additional prison term shall be two, three, or five years.

- If the crimes involved taking or loss of between $100,000 and 500,000, the additional prison term shall be one or two years, as specified.

Existing law also allows the prosecution in a case involving an aggravated white collar crime enhancement to obtain an order for the seizing and holding of the defendant's assets in order to prevent the defendant from hiding or dissipating the assets. A person who claims an interest in the protected property may file a claim concerning his or her interest in seized property, as specified. The court shall order a defendant subject to punishment under the white collar crime provisions to make full restitution to victims. The court can order the defendant to remain on probation for up to 10 years in order to ensure payment of restitution. The provisions for protection of assets seized from defendants shall remain in effect through sentencing in order to satisfy fines and restitution orders.

> **AB 1293 (Blumenfield), Chapter 371,** provides for the preservation of assets and property by the court of any person charged with felony elder or dependent financial abuse if that conduct involves the taking or loss of $100,000 or more.

Identity Theft

It is common for victims of identity theft to suffer economic losses for years after the crime initially occurs. Victims' personal identifying information is often times distributed for use among many identity thieves. In cases where the initial crime is discovered, the victimization does not necessarily end. Victims must monitor and make corrections to their credit histories for years after the crime occurred. Current law requires the sentencing court to order restitution in

every case in which a victim has suffered economic loss as a result of the defendant's conduct. In cases of identity theft, current law does not specifically list the costs to monitor the credit report of, and the costs to repair the credit of, a victim of identity theft as an expense for purposes of restitution.

SB 208 (Alquist), Chapter 45, authorizes restitution for expenses to monitor an identity theft victim's credit report and for the costs to repair the victim's credit for a period of time reasonably necessary to make the victim whole.

SEX OFFENSES

Prostitution: Minors

Existing law defines "unlawful sexual intercourse" as an act of sexual intercourse accomplished with a person under the age of 18 years. Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Any person who engages in lewd conduct - any sexually motivated touching or a defined sex act - with a child under the age of 14 is guilty of a felony, punishable by a prison term of three, six or eight years. Where the offense involves force or coercion, the prison term is five, eight, or ten years. Any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to $1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up $10,000. Persons who solicit, or who agree to engage in, an act of prostitution, or any person who engages in an act of prostitution, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to six months, a fine of up to $1,000, or both.

The average age of a child entering the sex industry is 12 years old, with some cases involving children as young as four years old. Annually, over 300,000 minors are captive victims of traffickers and the customers engaging in these illicit activities keep the industry alive.

> **AB 12 (Swanson), Chapter 75,** provides that any person convicted of soliciting or engaging in an act of prostitution, where the person involved in the solicitation or the act was under 18 years of age, shall be ordered by the court, in addition to pay an additional fine not to exceed $25,000. Additionally, this new law specifies that, upon appropriation by the Legislature, the fine shall be available to fund programs and services for commercially sexually exploited minors in the counties where the offenses are committed.

Human Trafficking: Asset Forfeiture

Existing law includes human trafficking in the list of crimes for which a forfeiture of assets can be sought for criminal profiteering. Abduction or procurement by fraudulent inducement for prostitution is included in the list of crimes for which a forfeiture of assets can be sought for criminal profiteering.

Victims of human trafficking in the United States include U.S. citizens and residents trafficked within its borders. Much like the majority of other countries affected by human trafficking, the U.S. has a large internal or "domestic" component of human trafficking for the purposes of both sexual and labor exploitation. One of the largest forms of domestic sex trafficking in the U.S.

involves traffickers who coerce women and children to enter the commercial sex industry through the use of a variety of recruitment and control mechanisms in strip clubs, street-based prostitution, escort services, and brothels. Domestic sex traffickers, commonly referred to as "pimps," particularly target vulnerable youth (such as runaway and homeless youth) and reinforce the reality that the average age of entry into prostitution is 12 to 13 years old in the U.S. Recent cases have also demonstrated that labor trafficking of U.S. citizens occurs in locations such as restaurants, the agricultural industry, traveling carnivals, peddling/begging rings, and in traveling sales crews.

> **AB 90 (Swanson), Chapter 457:** (1) provides that any crime in which the defendant persuaded or induced a minor to engage in a commercial sex act can be the basis of criminal profiteering asset forfeiture; (2) provides that any crime in which the defendant coerced or forced a minor to engage in a commercial sex act can be the basis of criminal profiteering asset forfeiture; (3) defines a "commercial sex act" as sexual conduct for which anything of value is given or received by any person; and (4) provides that the proceeds of criminal asset forfeiture in such cases be used for programs to assist minors who are sexually exploited or the victims of human trafficking, as specified.

Disorderly Conduct: "Peeping"

Invasion of privacy is an offense that can leave its victims with emotional impacts ranging from embarrassment and anger to feelings of loss of security in public places. People can fall prey to this type of offense while shopping at stores and changing in dressing rooms. Furthermore, given today's advances in technology, private images of victims can easily be posted and distributed on the Internet.

As invasive as this offense can be to its victims, the current penalties for violations of disorderly conduct do little to discourage repeat perpetrators from reoffending because they know little will be done to punish their offenses.

> **AB 665 (Torres), Chapter 658,** increases the punishment for the crime of "peeping" with the naked eye or with the use of an instrumentality to a maximum of one year in the county jail, a fine of up to $2,000, or both, when the victim of the crime is a minor, or the perpetrator is a repeat offender.

Commercially Sexually Exploited Minors

Existing law permits the Alameda County District Attorney's Office to develop a comprehensive system response that directs commercially sexually exploited children away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these children. The pilot project is set to sunset in 2012.

> **AB 799 (Swanson), Chapter 51,** extends the repeal date to January 1, 2017 of a provision in existing law that authorizes the Alameda County District Attorney to create a pilot project, contingent upon local funding, for the purposes of developing a

comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

Medical Examinations for Victims of Sexual Assault

The Violence Against Women Act (VAWA) was enacted in Congress in 1994 and reenacted in 2000 and 2005. VAWA was the first comprehensive legislative package that focused on violence against women and their children. VAWA created new legal tools and grant programs addressing domestic violence, sexual assault, stalking and related issues. Currently, California receives approximately $12.6 million annually from the Federal Government for VAWA; however, California has not codified the provisions of VAWA and is at risk of losing these federal funds.

There are many parts of California where the only way a victim can receive a forensic examination without having to pay for it is when a law enforcement agency requests and authorizes the forensic examination. In cases where a victim chooses not to cooperate with law enforcement and the law enforcement agency does not authorize the examination, the victim may not receive such an examination. Under current California law, victims of sexual assault do not have access to a fair and consistent practice for funding these forensic examinations.

SB 534 (Corbett), Chapter 360, provides that victims of sexual assault are not required to participate in the criminal justice system in order to be provided with a forensic medical examination. Specifically, this new law:

- States that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the medical evidentiary examination portion of the examination of the victim of a sexual assault shall be charged directly or indirectly to a victim of assault.

- Adds a provision to protocol relating to the medical treatment of victims of sexual assault to provide for the collection of other medical specimens.

- States that the cost of a medical evidentiary examination for a victim of a sexual assault shall be treated as a local cost and charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed, provided, however, that the local law enforcement agency may seek reimbursement for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system.

- States that the amount that may be charged by a qualified health care professional, hospital, or other emergency medical facility to perform the medical evidentiary examination portion of a medical examination of a victim of a sexual assault shall not exceed $300.

- Defines "qualified health care professional" as a physician, a surgeon, a nurse who works in consultation with a physician or surgeon or who conducts examinations in a

general acute care hospital or in the office of a physician or surgeon, a nurse practitioner, or a physician's assistant, as defined by law.

- States that the California Emergency Management Agency (CalEMA) shall use the discretionary from federal grants awarded to the agency pursuant to the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program to cover the cost of the medical evidentiary examination portion of a medical examination of a sexual assault victim.

- Authorizes CalEMA to use grant funds to pay for medical evidentiary examinations until January 1, 2014.

- Mandates CalEMA to develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault, and consult with health care professionals and appropriate law enforcement agencies and obtain recommendations on the best means to disseminate the course of training on a statewide basis.

- Encourages CalEMA to designate that a course of training for qualified health care professionals, as defined, and states that CalEMA shall partner with other allied professional training courses, such as sexual assault investigator training administered by the Commission on Peace Officer Standards and Training, or sexual assault prosecutor training as administered by California District Attorneys Association or sexual assault advocate training as administered by California Coalition Against Sexual Assault.

Sex Offender Registration

In 2010, the Third District Court of Appeal held, in *In re Rodden* (2010) 186 Cal.App.4th 24, that the Department of Justice (DOJ) could only consider the least adjudicated elements of an out-of-state conviction in order to determine whether a sex offender is required to register in California. As a result, some out-of-state sex offenders are not required to register in California, even in instances where the same underlying facts – if proven in court - would have required registration in California. Since the *Rodden* opinion was issued on June 29, 2010, DOJ has had to terminate the registration of many sex offenders in order to comply with the decision.

SB 622 (Corbett), Chapter 362, modifies the standard for determining whether a person convicted of a sex offense in another jurisdiction is required to register as a sex offender in California. The new law allows DOJ to consider not only the elements of the offense, but also facts admitted by the defendant or found true by the trier of fact, or stipulated facts in the record of military proceedings, to determine whether an out-of-state prior sex offense triggers sex offender registration in California.

Prosecution for Failure to Register as a Sex Offender

Existing law provides that a transient sex offender can be prosecuted in any jurisdiction in which he or she is physically present for a failure to register within 30 days.

No such provision exists for the initial failure to register upon release from custody for either a transient sex offender or a sex offender who moves into a residence but never registers or who absconds after initial registration. Nor does existing law provide for the issuance of a warrant in any particular jurisdiction when an offender who has never registered in any California jurisdiction absconds after release from custody.

> **SB 756 (Price), Chapter 363,** clarifies jurisdiction for prosecuting sex-offender registrants who fail to comply with registration requirements upon release from custody. Specifically, this new law:

- Provides that if a person required to register as a sex offender fails to do so after release from incarceration, the prosecutor in the jurisdiction where the person was to be paroled or placed on probation may request an arrest warrant for the person, and is authorized to prosecute that person for failure to register.
- Provides that if a person subject to registration is released from custody but not on parole or probation at the time of release, the district attorney in the following applicable jurisdictions shall have the authority to prosecute that person:
  - If the person was previously registered, in the jurisdiction in which the person last registered.
  - If there is no prior registration, but the person indicated on the Department of Justice notice of sex offender registration requirement form where he or she expected to reside, in the jurisdiction where he or she expected to reside.
  - Alternatively, in the jurisdiction where the offense subjecting the person to registration was committed.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Parole

Existing law provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be a sexually violent predator (SVP) after the person has served his or her prison commitment. A SVP is an inmate "who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." Existing law provides that where the court finds probable cause that the person is a SVP, a formal trial upon proof beyond a reasonable doubt is held. If the state prevails, the SVP is committed to the Department of Mental Health for treatment for an indeterminate period of time. The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a SVP, at which time the period of parole, or any remaining portion thereof, shall begin. If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole.

Due to an inconsistency in the law, the parole time for this type of offender begins as soon as he or she is released from prison and continues while the offender is being assessed in the state hospital under full security – thus receiving overlapping supervision services. As a consequence, some offenders run out the clock on their three year court-ordered parole time and are released into the community with no supervision.

> **SB 179 (Pavley), Chapter 359,** tolls the period of parole for any person subject to a SVP proceeding upon a finding of probable cause rather than when the person is actually found to be a SVP.

VEHICLES

Reckless Driving: Restricted License Program

Existing law allows a person who has been convicted of specified driving under the influence (DUI) offenses and who has had his or her driving privilege suspended or revoked by the court to apply to the Department of Motor Vehicles for a restricted driver's license if specified conditions are met, including that the person has installed an ignition interlock device (IID). However, a person with a current conviction for alcohol-related reckless driving ("wet reckless") is not eligible to apply for a restricted license, even though a wet reckless is a lower offense than a DUI.

> **AB 520 (Ammiano), Chapter 657,** allows a person convicted of alcohol-related reckless driving to apply for a restricted license after a 90-day suspension if he or she installs an IID on his or her car and complies with all the other requirements, including proof of financial responsibility, payment of fees, and satisfactory participation in a driving-under-the-influence program. However, the new law limits restricted-license eligibility to persons having no more than two prior alcohol-related convictions within 10 years.

Misdemeanor Violations: Amnesty

Existing law requires counties to establish a one-time amnesty program for fines and bail for infractions related to the Vehicle Code (VC), with the exception of parking violations, specified reckless driving and driving-under-the-influence (DUI) offenses. The amnesty program allows an individual to pay a reduced amount which must be accepted by the court in full satisfaction of the delinquent fine or bail. The amnesty program was designed to provide relief to individuals who are financially unable to pay traffic bail or fines, thereby allowing courts and counties to resolve older delinquent cases and focus limited resources on collecting on more recent cases. Payment of a fine or bail under these amnesty programs will be accepted beginning January 1, 2012 and ending June 30, 2012.

With the economic downturn, there has been an increase of fines owed throughout California that are uncollectable due to defendants' inability to pay. The current amnesty program only applies to infractions. The narrow application of the current amnesty law will leave a vast majority of delinquent fines and bail uncollected. Adding specified misdemeanor VC violations to the current amnesty program would enhance the collection of debt and improve recovery efforts.

> **AB 1358 (Fuentes), Chapter 662,** authorizes, in addition to and at the same time as the existing one-time amnesty program, the court and the county to jointly establish a one-time amnesty program that would allow a person to pay 50 percent of the total fine or bail for specified misdemeanor violations. Specifically, this new law:

- States that no criminal action shall be brought against a person for a delinquent fine or bail paid under the amnesty program.

- Provides that the payment due date for delinquent fines and bail eligible for the program must be on or before January 1, 2009.

- Prohibits the use of the amnesty program for parking violations and specified reckless driving and DUI offenses.

- Prohibits the use of the amnesty program by a person who has an outstanding misdemeanor or felony warrant within the county, except for misdemeanor warrants for Penal Code and VC violations related to failure to pay a fine or failure to appear in court added to a misdemeanor violation otherwise subject to amnesty.

- Prohibits the use of the amnesty program by any person who owes restitution to a victim on any case within the county.

- Requires each court or county implementing an amnesty program to file, not later than September 30, 2012, a written report with the Judicial Council that includes information about the number of cases resolved, the amount of money collected, and the operating costs of the amnesty program. On or before December 31, 2012, the Judicial Council shall submit a report to the Legislature summarizing the information provided by each court or county.

VICTIMS

Pardons and Commutations

The California Constitution grants the Governor broad authority to grant reprieves, pardons, or commutations subject to statutory procedures. This long-standing authority to perform acts of clemency is a constitutional prerogative that provides important checks and balances. However, current statutory law governing procedures does not provide for notice to district attorneys or victims or an opportunity to be heard during the consideration of an application for commutation.

> **AB 648 (Block), Chapter 437**, requires that at least 10 days before the Governor acts upon any application for a commutation of sentence, the application must be served upon the district attorney in the county where the conviction was had, except when there is imminent danger of the death of a person convicted or imprisoned or when the term of imprisonment of the applicant is within 10 days of its expiration.

Crimes involving Hidden Recordings: Statute of Limitations

Existing law prohibits the use of a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape individuals where they would normally expect privacy. Examples of expected privacy areas would be bedrooms, bathrooms, locker rooms, dressing rooms or hotel rooms. Existing law provides for a one-year statute of limitations for a misdemeanor and three years for a felony. However, recent investigations have shown that evidence of a hidden recording may not be discovered until many years after the recording was taken as the defendant has taken precautions to hide the recording from the victim and law enforcement.

> **AB 708 (Knight), Chapter 211,** adds crimes involving hidden recordings to the list of offenses for which the statute of limitations does not begin to run until discovery of the offense. Specifically, this new law provides that a criminal complaint may be filed within one year of the date of discovery of a hidden recording related to a violation of provisions prohibiting the use of concealed camcorders, motion picture cameras, or photographic cameras, to secretly videotape another, as specified.

Commercially Sexually Exploited Minors

Existing law permits the Alameda County District Attorney's Office to develop a comprehensive system response that directs commercially sexually exploited children away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these children. The pilot project is set to sunset in 2012.

> **AB 799 (Swanson), Chapter 51,** extends the repeal date to January 1, 2017 of a provision in existing law that authorizes the Alameda County District Attorney to create a pilot project, contingent upon local funding, for the purposes of developing a

comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

Victim Impact Statement

Under current California law, a victim must submit a victim impact statement in writing to the court before sentencing, which allows the court to review the statement to ensure that the statement complies with state law and gives defendants the chance to review the statement in accordance with their right to refute materials used against them at trial.

When the victim impact statement is submitted in writing to the court, the statement becomes a public document, meaning that the media is able to request and gain access to the statement. This has led to situations where the victim impact statement is published in the newspaper before the victim has the opportunity to read it in court, which can diminish the power of the statement when read in court and undermines the rights of the victim.

AB 886 (Cook), Chapter 77, prohibits a court from releasing statements from a crime victim, as specified, to the public prior to being heard in court.

Restitution Fine

The California Victim Compensation Program compensates victims of crime for financial losses and health-related costs incurred as a result of the crime. All money comes from restitution fines imposed on convicted defendants; nothing is paid out of the General Fund or revenues from taxes and fees. The amount of the fine varies in the court's discretion, ranging from a minimum of $200 to a maximum of $10,000 for felony offenses, and from $100 to $1,000 for misdemeanor offenses.

Since Fiscal Year 2004-05, payouts to victims or their families have been increasing faster than revenues and the program faces potential insolvency.

AB 898 (Alejo), Chapter 358, increases the minimum restitution fine incrementally from $200 to $300 for a felony conviction and from $100 to $150 for a misdemeanor conviction. Specifically, for felony convictions the restitution fine is increased to $240 starting on January 1, 2012, $280 starting on January 1, 2013, and $300 starting on January 1, 2014. For misdemeanor convictions, the restitution fine is increased to $120 starting on January 1, 2012, $140 starting on January 1, 2013, and $150 starting on January 1, 2014.

Identity Theft

It is common for victims of identity theft to suffer economic losses for years after the crime initially occurs. Victims' personal identifying information is often times distributed for use among many identity thieves. In cases where the initial crime is discovered, the victimization does not necessarily end. Victims must monitor and make corrections to their credit histories for years after the crime occurred. Current law requires the sentencing court to order restitution in

every case in which a victim has suffered economic loss as a result of the defendant's conduct. In cases of identity theft, current law does not specifically list the costs to monitor the credit report of, and the costs to repair the credit of, a victim of identity theft as an expense for purposes of restitution.

> **SB 208 (Alquist), Chapter 45,** authorizes restitution for expenses to monitor an identity theft victim's credit report and for the costs to repair the victim's credit for a period of time reasonably necessary to make the victim whole.

Trauma Condition: Strangulation

Existing law states that it is an alternate felony-misdemeanor for any person to willfully inflict corporal injury resulting in a traumatic condition upon any of the following persons: spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the offender's child. In many cases, the lack of physical evidence caused the criminal justice system to treat choking cases as minor incidents, much like a slap to the face where only redness might appear.

> **SB 430 (Kehoe), Chapter 129,** specifies that for purposes of felony domestic violence statute, "traumatic condition" includes an injury as a result of strangulation or suffocation. Specifically, this new law defines "strangulation" or "suffocation" as impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck and states that this act shall be known as the "Diana Gonzalez Strangulation Prevention Act of 2011."

Medical Examinations for Victims of Sexual Assault

The Violence Against Women Act (VAWA) was enacted in Congress in 1994 and reenacted in 2000 and 2005. VAWA was the first comprehensive legislative package that focused on violence against women and their children. VAWA created new legal tools and grant programs addressing domestic violence, sexual assault, stalking and related issues. Currently, California receives approximately $12.6 million annually from the Federal Government for VAWA; however, California has not codified the provisions of VAWA and is at risk of losing these federal funds.

There are many parts of California where the only way a victim can receive a forensic examination without having to pay for it is when a law enforcement agency requests and authorizes the forensic examination. In cases where a victim chooses not to cooperate with law enforcement and the law enforcement agency does not authorize the examination, the victim may not receive such an examination. Under current California law, victims of sexual assault do not have access to a fair and consistent practice for funding these forensic examinations.

> **SB 534 (Corbett), Chapter 360,** provides that victims of sexual assault are not required to participate in the criminal justice system in order to be provided with a forensic medical examination. Specifically, this new law:

- States that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the medical evidentiary examination portion of the examination of the victim of a sexual assault shall be charged directly or indirectly to a victim of assault.

- Adds a provision to protocol relating to the medical treatment of victims of sexual assault to provide for the collection of other medical specimens.

- States that the cost of a medical evidentiary examination for a victim of a sexual assault shall be treated as a local cost and charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed, provided, however, that the local law enforcement agency may seek reimbursement for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system.

- States that the amount that may be charged by a qualified health care professional, hospital, or other emergency medical facility to perform the medical evidentiary examination portion of a medical examination of a victim of a sexual assault shall not exceed $300.

- Defines "qualified health care professional" as a physician, a surgeon, a nurse who works in consultation with a physician or surgeon or who conducts examinations in a general acute care hospital or in the office of a physician or surgeon, a nurse practitioner, or a physician's assistant, as defined by law.

- States that the California Emergency Management Agency (CalEMA) shall use the discretionary from federal grants awarded to the agency pursuant to the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program to cover the cost of the medical evidentiary examination portion of a medical examination of a sexual assault victim.

- Authorizes CalEMA to use grant funds to pay for medical evidentiary examinations until January 1, 2014.

- Mandates CalEMA to develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault, and consult with health care professionals and appropriate law enforcement agencies and obtain recommendations on the best means to disseminate the course of training on a statewide basis.

- Encourages CalEMA to designate that a course of training for qualified health care professionals, as defined, and states that CalEMA shall partner with other allied professional training courses, such as sexual assault investigator training administered by the Commission on Peace Officer Standards and Training, or sexual assault

prosecutor training as administered by California District Attorneys Association or sexual assault advocate training as administered by California Coalition Against Sexual Assault.

Family Justice Centers

Family Justice Centers have been identified as a "best practice" by the United States Department of Justice and collaboration among public and private, non-profit agencies providing intervention and prevention services to address domestic violence, sexual assault, and other forms of abuse. While the composition of these centers vary by community, the general concept of providing all the services for victims under one roof has been identified as an effective approach to increase safety and offender accountability by avoiding the need for victims to travel from agency to agency, telling their story over and over in order to receive help.

There now are 15 such centers in California and 15 more in early stages of planning. The National Family Justice Center Alliance is the umbrella organization for Family Justice Centers in California and around the United States and gathers non-identifying, aggregate data from existing centers to document outcomes and impacts of this multi-disciplinary model. Currently, there are no statewide standards for the Family Justice Center model to ensure that victims receive the same level of service and privacy protections from each center.

SB 557 (Kehoe), Chapter 262, authorizes the Cities of San Diego and Anaheim, and the Counties of Alameda and Sonoma, to establish a multiagency, multidisciplinary family justice center to assist victims of domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking. Specifically, this new law:

- Defines "family justice centers" as multiagency, multidisciplinary service centers where public and private agencies assign staff members on a full-time or part-time basis in order to provide services to victims of crime from one location in order to reduce the number of times victims must tell their story, reduce the number of places victims must go for help, and increase access to services and support for victims and their children.

- Provides that staff members of family justice centers may be comprised of, but are not limited to, the following:

  - Law enforcement personnel;

  - Medical personnel;

  - District attorneys and city attorneys;

  - Victim-witness program personnel;

- Domestic violence shelter service staff;
- Community-based rape crisis, domestic violence, and human trafficking advocates;
- Social service agency staff members;
- Child welfare agency social workers;
- County health department staff;
- City or county welfare and public assistance workers;
- Nonprofit agency counseling professionals;
- Civil legal service providers;
- Supervised volunteers from partner agencies; and,
- Other professionals providing services.

- States that victims of crime shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or other services at a family justice center.

- States that victims of crime shall not be denied services on the grounds of criminal history.

- Provides that no criminal history search shall be conducted of a victim at a family justice center without the victim's written consent unless the criminal history search is pursuant to an active criminal investigation.

- Requires each family justice center to consult with community-based domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking agencies in partnership with survivors of violence and abuse and their advocates in the operations process of the family justice center, and shall establish procedures for the ongoing input, feedback, and evaluation of the family justice center by survivors of violence and abuse and community-based crime victim service providers and advocates.

- Mandates each family justice center to develop policies and procedures, in collaboration with local community-based crime victim service providers and local survivors of violence or abuse, to ensure coordinated services are provided to victims and to enhance the safety of victims and professionals at a family justice center who participate in affiliated survivor-centered support or advocacy groups.

- Requires each family justice center to maintain an informed client consent policy that is in compliance with all state and federal laws protecting the confidentiality of the types of information and documents that may be in a victim's file, including, but not limited to, medical and legal records.

- Requires each family justice center to have a designated privacy officer to develop and oversee privacy policies and procedures consistent with state and federal privacy laws and the Fair Information Practice Principles.

- States that a victim shall not be required to sign a client consent form to share information in order to access services.

- Mandates each family justice center to inform the victim that information shared with staff members at a family justice center may, under certain circumstances, be shared with law enforcement professionals and requires each family justice center to obtain written acknowledgment that the victim has been informed of this policy.

- States that information obtained from victims in family justice centers shall be privileged and confidential to the extent it is protected from disclosure under existing California law, and nothing in this new law related to confidentiality and client-authorized information sharing is intended to change existing state law.

- States that a victim's consent to share information pursuant to the client consent policy shall not be construed as a waiver of confidentiality or any privilege held by the victim or family justice center professionals.

- Mandates the National Family Justice Center Alliance to use private funds to contract with an independent organization to conduct an evaluation and prepare a report on the four pilot centers. The independent organization conducting the evaluation shall submit the report to the Office of Privacy Protection and the National Family Justice Center Alliance for review and comment, and then to the Assembly Committee on Judiciary, the Senate Committee on Judiciary, the Assembly Committee on Public Safety, and the Senate Committee on Public Safety, no later than January 1, 2013.

- Requires the independent organization conducting the evaluation, in consultation with the four pilot centers, the National Family Justice Center Alliance, groups that advocate on behalf of victims, community-based crime victim service provider representatives, including one person recommended by the federally recognized state domestic violence coalition, privacy rights organizations, and other relevant stakeholders, to develop evaluation criteria, which shall include, but not be limited to, all of the following:

    - The number of clients served, number of children served, reasons for seeking services at the center, services utilized, and number of returning clients;

    - Filing, conviction, and dismissal rates for misdemeanor and felony criminal cases handled at the center;

    - Subjective and objective measurements of the impacts of collocated multiagency services for victims and their children related to safety, empowerment, and mental and emotional well-being, and comparison data from victims, if any, on their access to services outside the family justice center model;

    - Barriers, if any, to receiving needed services, including access to services based on immigration status, criminal history, or substance abuse/mental health issues, and potential ways to mitigate any identified hurdles to accessing needed services;

    - Whether privacy, immigration status, or other barriers prevented victims from utilizing a family justice center and, if so, recommendations to improve utilization rates;

    - Compliance by the four pilot centers, with the service delivery requirements set forth in this new law; and,

    - Recommended best practices and model protocols, if any.

- Requires the independent organization conducting the evaluation to gather the evaluation data from pre-services victim information, post-services exit interviews, victim focus groups, partner agency focus group data, and other evaluation criteria necessary to conduct their evaluation.

- States that the National Family Justice Center Alliance may include any recommendations for statewide legislation, best practices, and model policies and procedures in the comments submitted to the independent evaluation organization and the Legislature.

- Mandates each family justice center to maintain a formal training program with mandatory training for all staff members, volunteers, and agency professionals of not less than eight hours per year on subjects including, but not limited to, privileges and confidentiality, information sharing, risk assessment, safety planning, victim advocacy, and high-risk case response.

- Establishes a sunset date of January 1, 2014.

Corrections: Victim Notification

Existing law requires the California Department of Corrections and Rehabilitation (CDCR) to send a notice to a victim or witness who has requested notification that a person convicted of a violent felony is scheduled to be released. However, notification to victims and other individuals who have requested notification is made by way of regular postal mail. Electronic notification

would ensure that victims and witnesses are provided pertinent information in a quick and expeditious manner.

SB 852 (Harman), Chapter 364, authorizes a crime victim or witness to request the option of being notified buy CDCR of an offender's custody status by electronic mail, if that method is available, and makes other conforming changes.

WEAPONS

"Open Carry" Prohibition

The absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public and alarming unsuspecting individuals, which causes problems for law enforcement.

Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

In these situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of open carry creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

Additionally, the increase in open carry calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California and prevents them from protecting the public in other ways.

AB 144 (Portantino), Chapter 725, makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this new law:

- Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed $1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries and exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.

- Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed $1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.

- States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

- Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission

punishable in different ways by different provisions of law shall not be punished under more than one provision.

- States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.

- States that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

- Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

  - The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;

  - The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;

  - The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;

  - The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;

  - The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;

  - The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;

  - The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;

  - The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt

organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;

- The open carrying of an unloaded handgun within a gun show;

- The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;

- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;

- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;

- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;

- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;

- The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice;

- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;

- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;

- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;

- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;

- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;

- The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,

- The open carrying of an unloaded handgun when all of the following conditions are satisfied:

  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;

  - The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;

  - The unloaded handgun is delivered by a licensed dealer;

  - The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,

  - The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

- Makes conforming and non-substantive technical changes.

Firearms: Long Guns

Existing law provides that no person shall sell, lease or transfer firearms unless he or she has been issued a state firearms dealer's license. A violation is a misdemeanor, punishable by up to one year in county jail. Exemptions to this provision include commercial transactions among licensed wholesalers, importers, and manufacturers. Handguns are centrally registered with the Department of Justice (DOJ) as part of this process.

A violation of these handgun provisions is an alternate felony/misdemeanor, punishable by up to one year in the county jail or by imprisonment in the state prison for 16 months, two or three years. The alternate felony misdemeanor provisions charged as felonies are offenses which presumptively mandate a state prison sentence. The DOJ may charge the dealer for a number of costs, such as a dealer record of sale.

Existing law exempts from the requirement (that sales, loans and transfers of firearms be conducted through a dealer or local law enforcement agency) transactions with authorized peace officers, certain operation of law transactions, and intra-familial firearms transactions.

However, these exempt transactions are subject to handgun registration as a condition of exemption. On request, the DOJ will register transactions relating to handguns (indeed, all firearms) in the Automated Firearm System (AFTS) database for persons exempt from dealer processing or are otherwise exempt by statute from reporting processes.

Of the 26,682 guns used in crimes which were entered into the AFS database in 2009, 11,500 were long guns. DOJ sweeps to seize illegally possessed firearms have uncovered roughly equal numbers of illegal handguns (2,143) and long guns (2,019). In 2010, Californians purchased 260,573 long guns, significantly more than the 233,346 handguns acquired in the same time period. In 2006, 3,345 people died from firearm-related injuries in California and an additional 4,491 people were hospitalized for non-fatal gunshot wounds. Moreover, between 2005 and 2009, DOJ designated 84,123 firearms as crime guns in the AFS database. Law enforcement efforts to investigate and prosecute gun crimes are aided by the AFS database, which contains records of all handgun transfers. However, state law requires that records of long gun sales be destroyed by DOJ.

> **AB 809 (Feuer), Chapter 745,** applies the same regulations relating to the reporting and retention of records for handguns to long guns.

Reorganization of Deadly Weapons Statutes

In 2010, the Legislature enacted legislation reorganizing statutes governing the control of deadly weapons in a user-friendly manner in a new Part 6 of the Penal Code, without changing any substantive effect. That legislation was recommended by the Law Review Commission, and is scheduled to become operative on January 1, 2011.

Before the statutory reorganization becomes operative, a clean-up bill needs to be enacted in order to implement minor revisions that became necessary as the result of other bills being enacted and other technical revisions requested by the Office of Legislative Counsel. Enactment of clean-up legislation will help prevent confusion and ease the transition to the new statutory scheme.

> **AB 1402 (Committee on Public Safety), Chapter 285**, makes non-substantive minor changes to the various deadly weapons provisions that have been reorganized and renumbered by the enactment of SB 1080 (Committee on Public Safety), Chapter 711, Statutes of 2010."

Concealed Weapons Permits

Existing law states that when a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff may issue a license to that person

upon proof of all of the following: (1) the applicant is of good moral character, (2) good cause exists for issuance of the license, (3) the applicant is a resident of the county or a city within the county, or the applicant's principal place of employment or business is in the county or a city within the county, and (4) the applicant spends a substantial period of time in that place of employment or business. The applicant has completed a course of training, as specified. The sheriff may issue this license in either of the following formats: (1) a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person; (2) where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person; or (3) the police chief of a city or city and county may also issue such licenses, according to the same criteria, to residents of that city.

Existing law also provides that, for new concealed weapon license applicants, the course of training for issuance of a license, as specified, may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. In addition, the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception. For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this section in order for that person to renew a license issued pursuant to this article.

Applicants for licenses to carry concealed handguns in California are being treated inconsistently within licensing agencies and between licensing agencies. As an example, some licensing agencies are requiring applicants to obtain liability insurance as a condition of issuance of a license. Liability insurance is not required under existing law and should not be required to obtain a license. In addition, some licensing authorities require applicants to pay a firearms training fee and complete a firearms training course before the authority considers approving or disapproving an applicant for good cause. A good-cause determination should be made by the authority before an applicant is required to pay for and complete training. An applicant denied a license for good cause should not be required to pay for, or complete, a firearms training course.

> **SB 610 (Wright), Chapter 741,** modifies conditions for the issuance of a concealed weapons (CCW) permit as follows: (1) this new law specifies that applicants are not required to pay for any training courses prior to a determination of good cause being made for a CCW permit; (2) this new law also states that no applicants for CCW permits must obtain liability insurance as a condition of the license; (3) the licensing authority is required provide written notification of the determination of good cause to the applicant, as specified; and, (4) the licensing authority must provide the specific reason for the denial of the application for a CCW permit.

Firearms: Background Check

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. The record of applicant information must be transmitted to the DOJ in Sacramento by electronic transfer on the date of the application to purchase. The original of each record of electronic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, DOJ employee designated by the Attorney General, or agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. Existing law further requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the California Department of Mental Health, pursuant to Welfare and Institutions Code Section 8104, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction, because the purchaser had previously purchased a handgun within the last 30 days, or because the purchaser had received inpatient treatment for a mental health disorder, as specified.

Enforcement of existing firearms laws are a critical component of California's responsibility to ensure public safety. Tens of thousands of gun owners bought their weapons legally; but under current law, those gun owners should no longer have those weapons due to subsequent mental health or criminal issues. In fact, every day, the list of armed prohibited persons in California increases by about 15 to 20 people. As of Mach 22, 2011, the Bureau of Firearms identified 18,377 individuals with a prior felony conviction or mental health disorder that disqualified them from possessing more than 36,000 firearms.

> **SB 819 (Leno), Chapter 743,** provides that the DOJ may use dealer record of sale funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession, as well as the sale, purchase, loan, or transfer, of firearms, as specified.

Large Capacity Ammunition Feeding Devices

The proposed Large Capacity Feeding Device Act (H.R. 308 introduced by United States Representative Carolyn McCarthy and S. 32 introduced by United States Senator Frank Lautenberg) would ban large-capacity magazines for guns and rifles.

Large capacity magazines are not necessary for hunting or self-defense. Standard hunting rifles are usually equipped with no more than a five-round magazine and a standard pistol magazine holds six to ten rounds. Large capacity magazines enable shooters to injure or kill many people quickly before reloading. A well-trained shooter armed with a semi-automatic pistol and large capacity magazines can fire at a rate of more than six rounds per second or about 30 rounds

every five seconds. Large capacity ammunition magazines have been used in numerous mass shootings, including in Tucson on January 8, 2011; Virginia Tech on April 16, 2007; Fort Hood on November 5, 2009; Columbine High School on April 20, 1999; San Francisco at 101 California Street on July 1, 1993; and the Long Island Railroad on December 7, 1993. In total, 91 people died and 114 were injured in these attacks.

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, more commonly known as the Federal Assault Weapons Ban. This Act included a ban on large capacity magazines. However, in 2004 Congress failed to renew the Act, which ended the ban on large magazines. Currently, California bans the manufacture, sale, and use of large capacity magazines, as well as five other states, and the District of Columbia. However, a ban at the federal level is necessary to ensure these magazines do not come from other states.

SJR 7 (Padilla), Chapter 63, memorializes the Legislature's support of the proposed federal Large Capacity Ammunition Feeding Device Act and urges the President and the Congress of the United States to enact the Large Capacity Ammunition Feeding Device Act.

MISCELLANEOUS

School Safety: Disruption Threatening Pupil's Immediate Physical Safety

Existing law punishes a person who comes onto school grounds or is on any street, sidewalk or public way adjacent to the school, without permission and where a person's presence interferes with the peaceful conduct of school activities. Penalties for trespass on school grounds range from six months in the county jail and/or a fine of $500 to minimum of 90 days in the county jail or up to six months in the county jail and/or a fine of $500 where the defendant has two priors for trespass.

California schools have the constitutional obligation to provide safe campuses to students and employees. If school administrators are unable to rely on Penal Code Section 626.8 to address disruptions of schools that may result in physical harm to students, schools will lose an important tool in ensuring safe campuses.

> **AB 123 (Mendoza), Chapter 161,** expands an existing misdemeanor related to interference or disruption of school activities and punishable by up to six months in the county jail to include any person who willfully or knowingly creates a disruption with the intent to threaten the immediate physical safety of K-8 pupils arriving at, attending, or leaving school.

California Stolen Valor Act

Existing law requires that an elected officer forfeit office upon conviction of a crime pursuant to the federal Stolen Valor Act. Additionally, it is a misdemeanor for a person to falsely claim or present himself or herself as a veteran or member of the Armed Forces with intent to defraud.

> **AB 167 (Cook), Chapter 69,** expands existing provisions related to forfeiture of elected office to additionally require that an elected officer, as specified, forfeit office upon conviction of a crime involving a false claim, with intent to defraud, that he or she is a veteran or a member of the Armed Forces of the United States. This section shall be called "California Stolen Valor Act."

Interstate Compact for Juveniles

The Interstate Compact for Juveniles (ICJ) generally provides for specified matters concerning juveniles, especially with respect to overseeing, supervising, and coordinating the interstate movement of juveniles who have run away from home, or who are on probation or parole and who have absconded, escaped or run away from supervision and control. Each compacting state is responsible for the proper supervision or return of these juveniles. California is a compacting state. Current California law establishes a sunset date for the ICJ of January 1, 2012.

AB 220 (Solorio), Chapter 356, extends the January 1, 2012 sunset on the ICJ by two years to January 1, 2014.

Defendants: Involuntary Antipsychotic Medication

Existing law allows a defendant who is found to be mentally incompetent to stand trial and does not consent to the administration of antipsychotic medications to be medicated involuntarily if prescribed by the defendant's treating psychiatrist and:

- The defendant lacks capacity to make decisions regarding antipsychotic medication; the defendant's mental disorder requires medical treatment with antipsychotic medication; and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

- The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

- The People have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

Currently, when a defendant withdraws his or her consent to be medicated, a new court order for medication may take weeks and sometimes months. For most patients, the lack of medication causes further deterioration of their mental diseases making it harder to restore defendants to competency - sometimes to the point where they may never be restored to competency. Additionally, patients who are not only a danger to themselves, but a danger to others, compromise the recovery of other patients and create a very dangerous environment putting the lives of all patients and staff at risk.

AB 366 (Allen), Chapter 654, modifies the process by which individuals who are declared incompetent to stand trial can be involuntarily medicated. Specifically, this new law:

- Requires that when a defendant is found to be mentally incompetent to stand trial, the court shall also determine if the defendant lacks capacity to make decisions regarding antipsychotic medications.

    - If the court finds that the defendant has capacity to make decisions regarding antipsychotic medications, and if the defendant, with advice of his or her counsel, consents to the medication, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent.

    - If the court finds that the defendant has capacity to make decisions regarding antipsychotic medications, and the defendant does not consent, or the court determines that the defendant does not have capacity to make decisions regarding antipsychotic medication, the court shall hear and determine if the defendant is not medicated with antipsychotic medications, it is probable that the defendant will cause harm to his or her physical or mental health, the defendant is a danger to others, or the defendant is charged with a violent felony, as specified. If the court finds any of the above to be true, the court shall issue an involuntary medication order to be included in the commitment order.

- States that if a defendant who consented to antipsychotic medications revokes his or her consent, and the treating psychiatrist determines that antipsychotic medications have become medically necessary and appropriate, and it is probable that the defendant will cause harm to his or her physical or mental health or the defendant is a danger to others, the psychiatrist shall certify that the above conditions exist.

- States that if a defendant whose commitment order did not include an involuntary medication order, and the treating psychiatrist determines that antipsychotic medications have become medically necessary and appropriate, and it is probable that the defendant will cause harm to his or her physical or mental health or the defendant is a danger to others, the psychiatrist shall certify that the above conditions exist. Before making the certification, the psychiatrist shall attempt to obtain informed consent from the defendant.

- States that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary, and the defendant either revokes his or her consent, or whose commitment papers did not include an involuntary medication order, antipsychotic medications may be administered to the defendant for not more than 21 days.

- Within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge (ALJ) to be conducted at the facility where the defendant is being treated. The hearing shall have the following characteristics:

  - The treating psychiatrist shall present the case for certification;

  - The defendant shall be represented by an attorney or a patient's rights advocate; and,

  - The attorney or patient's right advocate shall be appointed no later than one day prior to hearing to review the defendant's rights, discuss the process, answer questions or concerns regarding the hearing or the involuntary medication, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject.

- The defendant is entitled to the following rights at the hearing:

  - To be given timely access to his or her records;

  - To be present at the hearing, unless the defendant waives that right;

  - To present evidence at the hearing;

  - To question person presenting evidence supporting involuntary medication;

  - To make reasonable requests for attendance of witnesses on the defendant's behalf; and,

  - To a hearing conducted in an impartial and informal manner.

- States that if the ALJ determines that the defendant meets the criteria for involuntary medication, as specified, the antipsychotic medication may continue to be administered to the defendant for the remainder of the 21 day certification period.

- States that if the ALJ determines that the defendant does not meet the criteria for involuntary medication, the antipsychotic medication may not be administered.

- Specifies that an order for involuntary medication is valid for no more than one year.

- Requires that the court review the involuntary medication order after six months to determine if the circumstances requiring involuntary medication remain. At the hearing, the court shall consider the reports of the treating psychiatrist and the

defendant's patients' rights advocate or attorney, and may require testimony from the treating psychiatrist or the defendant's patients' rights advocate or attorney, if necessary. At the hearing, the court may continue the order for involuntary medication for up to another six months, vacate the order, or make any other appropriate order.

- Requires the treating facility, where the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, to include in the reports made at six-month intervals concerning the defendant's progress toward regaining competency a consideration of the issue of involuntary medication. Each report shall include, but not limited to the following:

  - Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication;

  - If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to his or her mental or physical health if not treated with antipsychotic medication;

  - Whether or not the defendant presents a danger to others if he or she is not treated with antipsychotic medications;

  - Whether the defendant has a mental illness for which medications is the only effective treatment;

  - Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel;

  - Whether there are any effective alternatives to medication;

  - How quickly the medication is likely to bring the defendant to competency;

  - Whether the treatment plan included methods other than medication to restore the defendant to competency; and,

  - A statement, if applicable, that no medication is likely to restore the defendant to competency.

- Requires the court, after reviewing the reports, the determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medications still exist, and do one of the following:

  - If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the

defendant will remain in effect;

- o If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary medication, the order for involuntary administration of antipsychotic medications shall be vacated; or,

- o If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for involuntary administration of antipsychotic medication shall be issued.

- Specifies that a defendant may file a petition for a habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

Pardons and Commutations

The California Constitution grants the Governor broad authority to grant reprieves, pardons, or commutations subject to statutory procedures. This long-standing authority to perform acts of clemency is a constitutional prerogative that provides important checks and balances. However, current statutory law governing procedures does not provide for notice to district attorneys or victims or an opportunity to be heard during the consideration of an application for commutation.

AB 648 (Block), Chapter 437, requires that at least 10 days before the Governor acts upon any application for a commutation of sentence, the application must be served upon the district attorney in the county where the conviction was had, except when there is imminent danger of the death of a person convicted or imprisoned or when the term of imprisonment of the applicant is within 10 days of its expiration.

Law Enforcement: Confidential Communications

A 1996 Attorney General Opinion concluded that Government Code Section 41803.5(b) grants a city attorney the power to overhear or record conversations; however, the absence of that language in Penal Code Section 633 has caused city prosecutors to refrain from overhearing or recording communications for fear of incurring civil liability.

AB 1010 (Furutani), Chapter 659, provides that nothing in the laws prohibiting eavesdropping prevents city attorneys prosecuting on behalf of the people of the State of California under Government Code Section 41803.5(b) or any person acting pursuant to the direction of those city attorneys acting within the scope of his or her authority from overhearing or recording any communication that they could lawfully overhear or record.

Inmates: Hospitals: Reimbursement Costs

Existing law allows mentally disordered offenders (MDOs) treated by the Department of Mental Health at a state institution, such as Atascadero State Hospital, during their three-year probation period to challenge their continued treatment and commitment in a court. These trials take place in the superior court of the county that hosts the state institution where he or she is housed. As a result, San Luis Obispo and San Bernardino Counties bear the cost of over 90 percent of these trials as those counties house two primary facilities for MDOs. In late 2010, the State Controller abruptly ceased processing MDO trial reimbursements and notified the counties that it could no longer reimburse for MDO trial-related costs because the Controller was not explicitly authorized to do so under Penal Code 4750.

> **AB 1016 (Achadjian), Chapter 660,** entitles a city, county, or superior court to reimbursement from the California Department of Corrections and Rehabilitation for the reasonable and necessary costs connected with state prisoners and any non-treatment costs.

Local Government: Fees and Penalties

Existing law authorizes counties to charge a variety of fees. In most cases, a board of supervisors can adjust fees to recover the cost of providing a good or service. However, some county fees are established by the State and the Legislature must act each time to change them. In 2009, SB 676 (Wolk), Chapter 606, increased or eliminated statutory limits on 11 different fees; many of these fees set by the Legislature had not been adjusted in decades. Fees set by statue generally lack provisions for cost-of-living adjustments, and the Legislature must regularly review these fees to ensure they accurately reflect actual costs.

The juvenile registration fee for public defender services has not been increased since 1996 even though SB 676 increased the adult public defender registration fee from $25 to $50.

The base vital records fees for birth and death certificates adjust periodically with the Consumer Price Index, but still fail to accurately reflect the cost of preparation.

The full cost of providing these services is typically subsidized by a county's general fund, which can affect other mandated county services.

> **AB 1053 (Gordon), Chapter 402,** increases the fees for various services provided by the county or court. Specifically, this new law:
>
> - Increases the registration fee for use of public defender services by juveniles from a maximum fee of $25 to a maximum fee of $50.
> - Incrementally increases the fee for birth and death certificates, imposing a net fee increase of $5 on January 1, 2012, and additional $2 fee increases on January 1, 2013, and January 1, 2014.

- Specifies that the issuing agency retains 85 percent of the base-fee revenues solely to support activities related to the issuance of certified copies of vital records, and transmits 15 percent of the fee to the State Registrar.

- Requires, after January 1, 2014, that the new statutory base fee must be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the Department of Public Health.

- Provides that the actual dollar fee or charge for birth and death certificates shall be rounded to the nearest whole dollar.

- Adds the business-license fee on state-licensed laboratories performing substance-abuse testing to the list of fees which are to be adjusted annually.

Medical Marijuana

Existing law allows seriously ill Californians to have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

Recently, there has been an increase in lawsuits challenging the authority of local governments to regulate land use, zoning, business licensure, and use permit conditions as they affect the operations of what are commonly referred to as "dispensaries" or "pot clubs." The suits focus on the discrepancy between Article XI, Section 7 of the California Constitution which states, "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" and the language in Proposition 215 of 1996 and the Medical Marijuana Program (MMP), which constitute the parameters of medical marijuana cooperative or collective regulation and, therefore preclude local governments from enforcing any additional requirements.

> **AB 1300 (Blumenfield), Chapter 196,** allows local governments to regulate marijuana cooperatives and collectives. Specifically, this new law allows cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective; and to allow the civil or criminal enforcement of those local ordinances; and to enact other laws consistent with the MMP.

Expungement Standards

California's expungement process is currently inconsistent. Penal Code section 1203.4, which applies to cases in which the judge sentences a person to probation, allows a court to exercise its discretion to dismiss a conviction "in the interests of justice." However, there is no parallel

provision in Penal Code section 1203.4a, which applies to misdemeanor cases where a judge did not order probation.

A criminal record can be an impediment to a person seeking a job. Over seven million Californians face potential barriers to employment due to a prior criminal conviction. In today's economic climate, some job seekers find they are unable to obtain a new job because of a conviction that occurred many years ago. Some of these job seekers are unable to get low-level misdemeanor convictions expunged from their records due to the inconsistency in the expungement process.

AB 1384 (Bradford), Chapter 284, allows a court, in its discretion and in the interest of justice, to grant expungement relief to a defendant who has been convicted of an infraction or a misdemeanor but not granted probation. Specifically, this new law:

- Provides that to be eligible for expungement relief, the defendant has fully complied with and performed the sentence of the court, is not then serving a sentence for any other offense, and is not charged with any crime.
- Makes expungement unavailable for misdemeanor convictions of lewd acts committed upon a dependent person by a caretaker, or upon a child 15 years of age or younger when the perpetrator is 10 years older than the child.
- Specifies that an expungement will not permit a person to own or possess a firearm, or to hold public office if the person is prohibited from holding public office as a result of the conviction.

Reorganization of Deadly Weapons Statutes

In 2010, the Legislature enacted legislation reorganizing statutes governing the control of deadly weapons in a user-friendly manner in a new Part 6 of the Penal Code, without changing any substantive effect. That legislation was recommended by the Law Review Commission, and is scheduled to become operative on January 1, 2011.

Before the statutory reorganization becomes operative, a clean-up bill needs to be enacted in order to implement minor revisions that became necessary as the result of other bills being enacted and other technical revisions requested by the Office of Legislative Counsel. Enactment of clean-up legislation will help prevent confusion and ease the transition to the new statutory scheme.

AB 1402 (Committee on Public Safety), Chapter 285, makes non-substantive minor changes to the various deadly weapons provisions that have been reorganized and renumbered by the enactment of SB 1080 (Committee on Public Safety), Chapter 711, Statutes of 2010."

Controlled Substance Utilization Review and Evaluation System

Due to the rise in prescription drug abuse, prescription drug history information is maintained in the California Controlled Substance Utilization Review and Evaluation System (CURES). Under current law, California doctors and pharmacies are required to report to the Department of Justice (DOJ), within seven days, every Schedule II, III, and IV prescription that is written or filled.

In 2009, the DOJ launched its automated Prescription Drug Monitoring Program (PDMP). The program allows licensed health care practitioners eligible to prescribe controlled substances access to patient controlled substance prescription information in real-time, 24 hours per day at the point of care. Prescribers and pharmacists can now make informed decisions about patient care and detect patients who may be abusing controlled substances by obtaining multiple prescriptions from various practitioners.

While the automated PDMP is a valuable investigative, preventative, and educational tool for law enforcement, regulatory boards, and health care providers, current efforts at maintaining privacy and control of CURES data are inadequate to protect confidential patient information and deter misuse of confidential CURES data.

The DOJ also manages the California Security Prescription Printer Program and has sole responsibility to approve "security prescription printer" applications. While the DOJ has established guidelines for the security of prescription forms, current law lacks safeguards against the theft and fraudulent use of prescription pads. The DOJ has seen an increase in criminal enterprises, from gangs to organized crime, involved in prescription fraud.

SB 360 (DeSaulnier), Chapter 418, updates the CURES to reflect the new PDMP and authorizes the DOJ to initiate administrative enforcement actions to prevent the misuse of confidential information collected through the CURES program. This new law also provides additional requirements and sanctions for security prescription printers and their employees who have direct contact with, or access to, controlled-substance prescription-drug forms. Specifically, this new law:

- Expands the requirements imposed on security-printer applicants to print prescription forms for controlled substance prescriptions to include the names and addresses of any individual owner, partner, corporate officer, manager, agent, representative, employee or subcontractor with direct access to, management of, or control over controlled substance prescription forms; a signed statement regarding any prior criminal convictions for these parties, and fingerprints for the same.

- Clarifies that the fee assessed by the DOJ to process the application of a security printer shall be sufficient to cover inspections of security printers in addition to the other costs specified by statutes.

- Requires that controlled substance forms shall be provided in person only to established customers.

- Requires a security printer to obtain the customer's photo identification and log the information.

- Limits the mailing of controlled substance only to an address verified by the Drug Enforcement Agency or Medical Board of California.

- Requires a security printer to report the theft or loss of controlled substance prescription forms to the DOJ within 24 hours of its occurrence.

- Requires the DOJ to impose sanctions on security printers who violate applicable statutes and regulations, including failure to comply with guidelines, failure to take reasonably precautions to prevent dishonest or illegal actions with regard to the access and control of security prescription forms, and the theft or fraudulent use of a prescriber's identity to obtain forms.

- Specifies that the sanctions for a violation of applicable statutes and regulations are a fine of up to $1,000 for a first violation, a fine of up to $2,500 for a second or subsequent violation; disciplinary proceedings for suspension or revocation of security printer status for third or subsequent violations.

- Modifies the PDMP to include the following features:

    - Allows any practitioner licensed to prescribe controlled substances of Schedules II-IV or any pharmacist to apply to participate in the PDMP, as specified; and,

    - Gives the program participant Internet access to view the electronic history of controlled substances dispensed to an individual under his or her case based on data contained in CURES.

- Provides that a PDMP application may be denied, or a subscriber suspended from the program for material falsification of an application, failure to maintain effective controls for access to the patient activity report, a suspended or revoked DEA registration, an arrest for a drug offense, or accessing information for any reason other than patient care.

- Requires an authorized subscriber to notify the DOJ within 10 days of any changes to the subscriber account.

- Allows, until July 12, 2012, a health care practitioner or pharmacist to make a written request for controlled substance history information about a person under the care of the practitioner or pharmacist, in order to provide sufficient time for subscribers to apply for access to PDMP.

- Authorizes the DOJ to audit the PDMP system and its users.

- Authorizes the DOJ to establish regulations for a system to issue citations for unauthorized use of the CURES data by subscribers with PDMP access, and provides for orders or abatement, fines of up to $2,500 per violation, and a hearing process if a subscriber is in violation of the CURES-PDMP statutes or corresponding regulations.

- Requires citations issued by the DOJ to be in writing, to particularly describe the violation including a specific citation to the statute or regulation violated, and to notify the subscriber of the opportunities to request a hearing and/or an informal conference, and the deadlines for requesting them.

- Provides that the failure of a subscriber to pay a fine within 30 days, or to comply with an abatement order within the time subscribed, may result in disciplinary action unless the citation is being appeal.

- Provides that any administrative fines collected shall be deposited in the CURES Program Special Fund.

- Specifies that the sanctions authorized pursuant to this new law shall be separate and in addition to any other administrative, civil or criminal remedies, but that a criminal action may not be initiated for a specific offense if a citation has been issued for that matter, and that if a criminal action has been filed, a citation cannot be issued for the same offense. Notwithstanding this provision, nothing shall prevent the DOJ from prosecuting a suspension or revocation of a subscriber.

- Requires an affected PMDP prescriber to immediately report the theft or loss of controlled substance prescription forms to the DOJ, and specifies the reporting shall be done no later than three days after the discovery of the theft of loss.

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 428 (Strickland), Chapter 304, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, this new law:

- Adds an inadvertently omitted cross-reference to an existing provision of law relating to the dissemination of financial records.

- Clarifies that reimbursement to counties for homicide trials after a change of venue was to apply prospectively from January 1, 1990, rather than for cases predating that date.

- Removes outdated legacy language referring to a reduction of the court construction penalty based on the amount contributed locally to the Transitional State Court Facilities Construction Fund, which is non-existent.

- Clarifies that a criminal court may obtain a thumbprint of a defendant as early in the proceedings as if feasible in light of local calendar management practices.

- Adds an omitted cross-reference change to the statute relating to the dismissal of charges after termination of probation which was inadvertently chaptered out by one of two bills enacting a non-substantive reorganization of the deadly weapon statutes.

- Clarifies that any infraction arising from a violation of a local ordinance adopted pursuant to the Vehicle Code is ineligible for expungement relief.

- Allows the Commission of Peace Officer Standards and Training to decline all or part of funds that California Environmental Protection Agency is directed to disburse to them for training for environmental crimes.

- Makes technical corrections to various other code sections.

Prison-Made Goods: Non-Profit Organizations

The California Prison Industry Authority (PIA) is a state-operated organization that was created by the Legislature to provide productive work assignments for inmates in California's adult correctional institutions. The PIA provides work assignments for approximately 5,900 inmates and operates over 60 service, manufacturing, and agricultural industries at 22 prisons throughout California. The PIA is self-supporting and does not receive an annual appropriation from the Legislature. The PIA's revenue comes from the sale of its products and services to governmental organizations.

The PIA offers goods and services, including, but not limited to, office furniture, clothing, food products, shoes, printing services, signs, binders, eye wear, gloves, license plates, cell equipment. In a majority of these categories, PIA is able to provide goods and services at a rate that is more affordable than private vendors. Under current law, only government organizations may purchase goods or services from the PIA. Nonprofit organizations, which are heavily reliant on grant money, government subsidies, and the generosity of individuals and corporations to fund their philanthropic endeavors, are unable to purchase goods and services through the PIA. The scarcity of funding sources and limited resources significantly limits both the scope and effectiveness of the nonprofit organizations' activities.

SB 608 (DeSaulnier), Chapter 307, authorizes the PIA to offer their goods and services for sale to nonprofit organizations. Specifically, this new law requires the nonprofit organization to meet all of the following conditions:

- The nonprofit organization is located in California and is exempt from taxation under specified federal tax laws.

- The nonprofit organization has entered into a memorandum of understanding with a local education agency, which is defined as a school district, county office of education, state special school, or charter school.

- The products and services are provided to public school students at no cost to students or their families.

Large Capacity Ammunition Feeding Devices

The proposed Large Capacity Feeding Device Act (H.R. 308 introduced by United States Representative Carolyn McCarthy and S. 32 introduced by United States Senator Frank Lautenberg) would ban large-capacity magazines for guns and rifles.

Large capacity magazines are not necessary for hunting or self-defense. Standard hunting rifles are usually equipped with no more than a five-round magazine and a standard pistol magazine holds six to ten rounds. Large capacity magazines enable shooters to injure or kill many people quickly before reloading. A well-trained shooter armed with a semi-automatic pistol and large capacity magazines can fire at a rate of more than six rounds per second or about 30 rounds every five seconds. Large capacity ammunition magazines have been used in numerous mass shootings, including in Tucson on January 8, 2011; Virginia Tech on April 16, 2007; Fort Hood on November 5, 2009; Columbine High School on April 20, 1999; San Francisco at 101 California Street on July 1, 1993; and the Long Island Railroad on December 7, 1993. In total, 91 people died and 114 were injured in these attacks.

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, more commonly known as the Federal Assault Weapons Ban. This Act included a ban on large capacity magazines. However, in 2004 Congress failed to renew the Act, which ended the ban on large magazines. Currently, California bans the manufacture, sale, and use of large capacity magazines, as well as five other states, and the District of Columbia. However, a ban at the federal level is necessary to ensure these magazines do not come from other states.

SJR 7 (Padilla), Chapter 63, memorializes the Legislature's support of the proposed federal Large Capacity Ammunition Feeding Device Act and urges the President and the Congress of the United States to enact the Large Capacity Ammunition Feeding Device Act.