ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2012

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ANIMAL ABUSE

Animal Fighting

Cockfighting is a lucrative enterprise that occurs throughout California and there needs to be a way to discourage this appalling practice. However, since there is major overcrowding problem in our prison system, merely increasing the term of incarceration is not the answer. Instead, we should be looking to increase fines rather than prison terms.

SB 1145 (Emmerson), Chapter 133, increases the maximum fines for various offenses relating to animal fighting. Specifically, this new law:

- Increases the fine for any person convicted of causing any cock to fight with another cock, or with a different or with any human being, or permitting the same to be done on any premises under his or her charge or control, or aiding and abetting the fighting of any cock from a fine not to exceed $5,000 to a fine not to exceed $10,000.

- Increases the fine for any person convicted of being knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or is knowingly present at that exhibition, or is knowingly present preparations are being made for animal fighting from a fine not to exceed $1,000 to a fine not to exceed $5,000.

- Increase the fine for anyone convicted of manufacturing, buying, selling, bartering, exchanging, or having in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a gamecock or other fighting bird from a fine not to exceed $5,000 to a fine not to exceed $10,000.

- Increases the fine for any person convicted of owning, possessing, keeping, or training any bird or animal with the intent that it be used by himself or herself, or any other person in an exhibition of fighting from a fine not to exceed $5,000 to a fine not to exceed $10,000.

Pre-Conviction Forfeiture

Most cities and counties have legal limits on the number of animals a person may have on his or her property. In cases of hoarders, where large numbers of animals are seized at one time, even if the owner is eventually acquitted of criminal charges brought against him or her, he or she will not be legally allowed to keep most of the animals. However, since the animals are evidence in a criminal case, the shelter must continue to hold them until the end of proceedings. An agency can be forced to house literally hundreds of animals, creating a huge drain on the agency's resources. Moreover, the shelter cannot allow other people to adopt the animals. While the seized animals take up shelter space, other healthy, adoptable animals that arrive at the shelter are often euthanized due to the lack of space.

SB 1500 (Lieu), Chapter 598, allows pre-conviction forfeiture of a defendant's seized cat or dog in animal abuse and neglect cases. Specifically, this new law:

- Clarifies that when costs are owed for the care and treatment of a seized animal, they are "full" costs.

- Clarifies that when an animal is deemed abandoned, it becomes the property of the seizing agency, and allows the seizing agency to dispose of the animal.

- Allows a seizing agency or a prosecutor, in the case of cats and dogs, to file a petition requesting pre-conviction forfeiture of the animal during the pending criminal case and requesting that the court order the animal forfeited prior to final disposition of the criminal charges.

- Requires the prosecutor or seizing agency to serve a true copy of the pre-conviction forfeiture petition on the defendant and the prosecuting attorney.

- Requires the court to set a hearing on the pre-conviction forfeiture petition within 14 days after filing or as soon as practicable.

- Requires the court to order immediate forfeiture of an animal during the pendency of a criminal proceeding if the petitioner establishes beyond a reasonable doubt that the owner will not legally be permitted to retain the animal in question even in the event of an acquittal of criminal charges.

- Specifies that nothing in this section is intended to authorize a seizing agency or prosecutor to file a post-conviction petition to determine an owner's ability to legally retain an animal if a pre-conviction forfeiture petition previously has been filed.

- Changes the defendant's burden of proof at a hearing on a petition for reduction of an ownership prohibition or a livestock owner economic hardship exception to "preponderance of the evidence."

BACKGROUND CHECKS

Humane Officers: Background Checks

Under former law, only level 1 humane officers had to obtain federal criminal background checks from the Federal Bureau of Investigation (FBI) prior to appointment. SB 1417 (Cox), Chapter 652, Statutes of 2010, extended this requirement to all humane officers. However, in order for the Department of Justice (DOJ) to implement the federal background check requirement, the DOJ needs specific statutory language granting it authority to do so. That specific language was not included in the final version of SB 1417. This omission has created a backlog of criminal background checks for humane officers.

AB 2194 (Gaines), Chapter 143, adds clarifying language enabling the DOJ to perform a federal-level criminal offender record information check on a humane officer applicant. Specifically, this new law:

- Requires the DOJ to forward to the FBI requests for federal summary criminal history information received for purposes of seeking confirmation of the appointment of a humane officer.

- Requires the DOJ to review the information returned from the FBI and to compile and disseminate a fitness determination regarding the humane-officer applicant to the Humane Society or the Society for the Prevention of Cruelty to Animals.

Local Summary Criminal History

The California Public Records Act (PRA) requires state and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. Existing law provides that a prosecutor may, in response to a written request made pursuant to the PRA, provide information form a local summary criminal history, if release of the information would enhance public safety, the interest of justice, or the public's understanding of the justice system, and the person making the request declares that the request is made for a scholarly or journalistic purpose. Existing law also makes it a misdemeanor for any employee of the local criminal justice agency to knowingly furnish a record or information obtained from a record to a person who is not authorized by law to receive the record or information.

Many district attorney offices are converting to paperless case files and paperless record keeping. The repository for these records is the district attorney's internal case management system. Although the PRA requires disclosure of records held in electronic format, it is unclear whether the district attorney can utilize information that is contained in its case management data base without being criminally liable.

AB 2222 (Block), Chapter 84, provides that a public prosecutor is not prohibited from accessing and obtaining information from the public prosecutor's case management database to respond to a request for publicly disclosable information pursuant to the PRA.

Background Checks: Subsequent Arrest Information

Existing law requires the Department of Justice (DOJ) to maintain state summary criminal history information, including the identification and criminal history of any person, such as his or her name, date of birth, physical description, fingerprints, photographs, dates of arrest, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. DOJ is required to furnish this information in response to a request from certain authorized agencies, organizations, or individuals that need the information to fulfill employment, certification, or licensing duties, such as the employment of peace officers or the licensing of community care facilities. DOJ is also authorized to provide subsequent arrest notification to the entities described above upon the arrest of any person whose fingerprints are maintained on file at DOJ as the result of an application for licensing, employment, certification, or approval.

When an individual is fingerprinted as part of a background check for employment or licensing purposes, the employing or licensing entity can request DOJ retain the fingerprints to provide subsequent arrest notification. After the initial fingerprint search is accomplished, retaining the fingerprints allows DOJ to notice the employing or licensing entity agency that their employee or licensee was subsequently arrested. In instances where individuals with required background checks are arrested, the employing or licensing entity knows that their employee or licensee has been arrested, but they are not noticed by DOJ as to the outcome or disposition of the arrest. The employing or licensing entity must then contact the arresting agency, the district attorney, or the court to ascertain the disposition of the arrest to determine the continued suitability of their employee or licensee. This is a laborious process on both the employing or licensing entity and the criminal justice community. Currently, regulatory purpose, federal level Criminal Offender Record Information (CORI) searches are executed "in the moment," and immediately thereafter become stale. The FBI is currently developing its Next Generation Identification Rapback process, which would allow a federal level CORI search to remain fresh beyond the date of the initial search. This project is expected to be in operation in 2014.

Currently, the person who is the subject of the search provides his or her fingerprints as part of a background check for employment or licensing. Often, the applicant will not know why he or she was not hired or not approved for the license.

> **AB 2343 (Torres), Chapter 256,** authorizes California to participate in the FBI's Next Generation Identification Rapback process once the program is implemented. Specifically, this new law:
>
> - States that the DOJ may provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers and nonrelative extended family members, upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the FBI as the result of an application for licensing, employment, certification, or approval;

- Requires that, when state or federal summary criminal history information is furnished pursuant to those provisions, the authorized agency, organization, or individual shall furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision; and,

- Requires a copy of state and federal summary criminal history information, including subsequent state or federal arrest or disposition notification, to be delivered to the last contact information for the person to whom the information relates provided by the applicant, whenever a copy of the information is not furnished in person.

BAIL

Bail: Forfeiture Appeals Restructuring

Existing bail forfeiture appeals predate trial court unification. Prior to court unification, courts were divided into a two-tier system of municipal courts ("lower courts") and superior courts ("higher courts"). Under the criminal courts, municipal courts typically heard misdemeanors from beginning to end and felony filings up to, and including, the preliminary hearing. Municipal court judges acted in the role of "magistrates" in cases involving felonies, only hearing pretrial matters such as arraignment, pretrial motions, pleas and preliminary hearings. Once a defendant was "held to answer" for an offense by a municipal court magistrate, the matter was transferred to superior court. In criminal matters, prior to unification, superior court judges heard matters from the point of the filing of an "information" or an "indictment." Generally, the superior court would hear the jury trial phase of felony matters. Following unification, all matters involving criminal misdemeanors and felonies are heard in superior court.

Bail forfeiture proceedings are civil in nature. In general, jurisdiction on appeal of civil matters is determined by the amount in controversy. Appeals of matters involving $25,000 or more are heard in the court of appeal. Appeals involving $25,000 or less are heard in the appellate division of the superior court. The appellate divisions of superior courts are set up to hear appellate matters involving less than $25,000. The appellate divisions have different procedural rules than the courts of appeal. Appellate divisions do not have to issue written opinions, appeals of the division are discretionary, appellate briefs must be shorter than the courts of appeal, and less time is provided for preparing the briefs and filings. Additionally, appellate division judges are superior court judges who sit on a panel which reviews the decisions of fellow superior court judges as opposed to appellate court justices who are appointed to the courts of appeal.

> **AB 1529 (Dickinson), Chapter 470,** implements various recommendations of the California Law Revision Commission concerning trial court restructuring and state responsibility for the courts and specifically provides that a bail forfeiture appeal in which the amount in controversy exceeds $25,000 shall be heard in the court of appeal and an appeal involving $25,000 or less shall be heard in an appellate division of a superior court.

Forfeiture of Bail

When a defendant fails to appear in court after he or she has posted bail, the court will generally issue a bench warrant and forfeit the defendant's bail, meaning that the amount the defendant paid to the bail bonds person will not be returned and the bail agent is required to post the remainder of the bail. If the defendant appears in court within 180 days after forfeiture has been ordered, either voluntarily or in custody after surrender or arrest, the forfeiture shall be vacated. Existing law also requires a court to vacate the forfeiture and exonerate the bond if the defendant is arrested on the underlying case or surrendered by the bail outside the county where the case is located within the 180-day period.

The law is thus harsher for defendants who are arrested in the county where they were charged than for defendants arrested in another county, requiring that only defendants arrested within the county where the case is located to appear in court within the 180-day period in order to vacate the order of forfeiture.

AB 1824 (Hagman), Chapter 812, authorizes a court, in its discretion, to vacate the forfeiture and exonerate the bond if a person appears in court after the 180-day period ends if the person was arrested on the same case within the county where the case is located during the 180-day period and has been in continuous custody from the time of arrest until his or her appearance in court. Specifically, this new law:

- Authorizes, upon a showing of good cause, a motion to be brought to vacate the forfeiture and exonerate the bond within 20 days from the mailing of the notice of entry of judgment, where a defendant, who is outside the county where the case is located, is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period; and,

- Requires, in addition to any other notice required by law, the moving party to give the applicable prosecuting agency written notice of the motion to vacate the forfeiture and exonerate the bond at least 10 court days before the hearing.

Bail Fugitive Recovery Persons

AB 243 (Wildman), Chapter 426, Statutes of 1999, established the "Bail Fugitive Recovery Persons Act", which required bail fugitive recovery persons to meet specified training requirements and conform to specified regulations. The Bail Fugitive Recovery Persons Act was established in 1999 in response to California lawmakers' concerns about some bounty hunters retrieving fugitives in unlawful ways. In 2004, AB 2238 (Spitzer), Chapter 166, Statutes of 2004, extended the act's sunset date to January 1, 2010.

Since the sunset of the Act on January 1, 2010, there has been a significant increase in cases in which bounty hunters have overstepped appropriate, if not legal, boundaries in their apprehension of bail fugitives. The regulation of bounty hunters is needed in order to protect public safety by ensuring that these individuals are properly trained and work together with law enforcement to apprehend a bail fugitive.

AB 2029 (Ammiano), Chapter 747, re-establishes the "Bail Fugitive Recovery Persons Act" which requires that all bail fugitive recovery persons meet specified training requirements and comply with particular laws. Specifically, this new law:

- Requires a bail fugitive recovery person, a bail agent, bail permittee, or bail solicitor who contracts his or her services, as specified, and who engages in the arrest of a defendant for surrender to the appropriate authorities to comply with all of the following:

- The person must be at least 18 years of age.

- The person shall have completed a 40-hour power of arrest course certified by the Commission of Peace Officer Standards and Training (POST), which is not intended to confer the same powers of arrest as a peace officer.

- The person shall have completed 20 hours of education in subjects pertinent to the duties and responsibilities of a bail licensee.

- The person shall not have been convicted of a felony, unless the person has been licensed by the California Department of Insurance.

- Requires a bail fugitive recovery person to have in his or her possession completed certificates of required training at all times when performing his or her duties.

- Provides that in performing a bail fugitive apprehension, an individual authorized to make the apprehension shall comply with all laws applicable to that apprehension.

- Requires a bail fugitive recovery person to have in his or her possession proper documentation of authority to apprehend issued by the bail or depositor of bail.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from representing himself or herself in any manner as being a sworn law enforcement officer.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from wearing any uniform that represents himself or herself as belonging to any part or department of a federal, state, or local government. Any uniform shall not display the words United States, Bureau Task Force, Federal or other substantially similar words that a reasonable person may mistake for a government agency.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from wearing or otherwise using a badge or a fictitious name that represents himself or herself as belonging to a federal, state, or local government.

- Provides that a bail, depositor of bail, or bail fugitive recovery person may wear a jacket, shirt, or vest with the words "BAIL BOND RECOVERY AGENT," "BAIL ENFORCEMENT, " "BAIL ENFORCEMENT AGENT" displayed in at least two-inch high letters across the front and back of the jacket, shirt, or vest and in a contrasting color to that of the jacket, shirt, or vest.

- Requires that a bail, depositor of bail, or bail fugitive recovery person, except under exigent circumstances, notify local law enforcement prior to and no more than six hours before of the intent to apprehend a bail fugitive in that jurisdiction by doing all of the following:

- Indicating the name of the person authorized to apprehend a bail fugitive entering the jurisdiction.

- State the approximate time the person authorized to apprehend a bail fugitive will be entering the jurisdiction and the approximate length of stay.

- State the name and the approximate location of the bail fugitive.

- Provides that if an exigent circumstance does arise and prior notice is not given as required, the person authorized to apprehend the bail fugitive shall notify local law enforcement immediately after the apprehension, and upon request of the local jurisdiction, shall submit a detailed explanation of those exigent circumstances within three working days after the apprehension is made.

- Allows notice to be provided to a local law enforcement agency by telephone prior to the arrest of, or after the arrest has taken place, if exigent circumstances exist.

- Provides that a bail, a bail depositor, or bail fugitive recovery person may not forcibly enter a premises except as provided in existing provisions of law related to private persons' ability to forcibly enter a premises for a felony.

- States that nothing in this Act shall be deemed to authorize a bail, bail depositor, or bail fugitive recovery person to apprehend, detain, or arrest any person other than to surrender a person to the court, magistrate, or sheriff.

- States that a person authorized to apprehend a bail fugitive shall not carry a firearm or any other weapon unless in compliance with the laws of the State.

- Provides that any person who violates a provision of the Bail Fugitive Recovery Persons Act is guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed one year, by a fine not to exceed $5,000, or by both that imprisonment and a fine.

Forfeiture of Bail: Tolling of 180-Day Time Limit

When a defendant fails to appear in court after he or she has posted bail, the court will generally issue a bench warrant and forfeit the defendant's bail, meaning that the amount the defendant paid to the bail bonds person will not be returned and the bail agent is required to post the remainder of the bail. Existing law states that if the defendant re-appears in court within 180 days, the bail forfeiture may be vacated and bail may be reinstated. Under certain circumstances, the 180-day time limit may be tolled if the defendant is unable to return to court because of temporary illness, insanity or detention by military or civil authorities.

SB 989 (Vargas), Chapter 129, provides that in specified cases, if the bail agent and the prosecuting attorney agree that additional time is needed to return the defendant to the jurisdiction of the court, the court may, on the basis of the agreement, toll the 180-day

period within which to vacate bail forfeiture for the length of time agreed upon by the parties. This new law requires, in addition to any other notice required by law, the moving party of a motion to vacate a bond forfeiture or to extend the 180-day period, to give the applicable prosecuting agency written notice at least 10 court days before a hearing, and states that the 10-day notice requirement is a condition precedent to granting the motion.

CHILD ABUSE

Failure to Report a Missing Child

Law enforcement has known for years that the first 48 hours of a person's disappearance are critical to the chances of finding that child alive and successfully prosecuting any related criminal behavior.

A gap in current law was made apparent with the disappearance of two-year-old Caylee Anthony. Caylee's mother failed to report that she was missing for 31days; thus valuable time was wasted and the chances of finding her alive and unharmed dropped dramatically. While Caylee's mother was not found guilty of murder, citizens were outraged that she failed to report her child's disappearance and possible death, and that such a heinous act could not be charged as a crime.

AB 1432 (Mitchell), Chapter 805, requires a parent or guardian to report to law enforcement the disappearance or death of a child under the age of 14 within a specified period of time. Specifically, this new law:

- Provides that any parent or guardian having the care, custody or control of a child under 14 years of age who knows or should have known that the child has died shall notify a public agency, as defined in Government Code Section 53102 within 24 hours of the time the parent or guardian knew or should have known that the child has died. However, this shall not apply when the child is otherwise under the immediate care of a physician at the time of death, or if a public agency, a coroner, or a medical examiner is otherwise aware of the death.

- Provides that any parent or guardian having the care, custody or control of a child under 14 years of age shall notify law enforcement within 24 hours of the time that the parent or guardian knows or should have known that the child is a missing person and there is evidence that the child is a person at risk, as those terms are defined in Penal Code Section 14213. However, this shall not apply if law enforcement is otherwise aware of the missing person.

- Provides that a violation of either of the above is a misdemeanor punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding $1,000 or by both that fine and imprisonment.

Child Abuse and Neglect Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A number of recent events involving instances of sexual abuse between athletic coaches and youth whom coaches instruct have underscored shortcomings in the state's mandated reporter law. Specifically, coaches are not explicitly covered in CANRA.

> **AB 1435 (Dickinson), Chapter 520,** adds athletic coaches, athletic administrators, and athletic directors employed by any public or private school that provides any combination of instruction for Kindergarten, or Grades 1 to 12, inclusive, to the list of individuals who are mandated reporters under CANRA.

Child Abuse Central Index

The Attorney General administers the Child Abuse Central Index (CACI), on which reports of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child are kept. The information in CACI is predominantly used by regulatory agencies to assist in such things as screening applicants for licensing or employment in child care facilities and foster homes, and aiding in background checks for other possible child placements, and adoptions.

Children can be listed on CACI as perpetrators of physical abuse if they injure another child in circumstances other than a mutual fight or an accident. Children can also be listed on CACI as perpetrators of sexual abuse due to any reported sexual behavior between the child and another child, even if the behavior is consensual. Children in the foster-care system are especially vulnerable to being listed on CACI because they may act out due to past abuse and because their behavior is subject to closer scrutiny by child welfare agency case workers than that of children in the general population. These youth can suffer life-long restrictions on job opportunities and licensing eligibility due to misbehavior that occurred when they were under 18.

> **AB 1707 (Ammiano), Chapter 848,** removes non-reoffending minors from the CACI after 10 years. Specifically, this new law provides that a person listed in the CACI when he or she was under 18 years of age at the time of the report shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing, if no subsequent report concerning that person is received during that time period.

Child Abuse and Neglect Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) was established to identify potential child abuse or neglect to enable public authorities to protect victims, as well as obtain information to identify and prosecute child abusers.

CANRA requires a mandated reporter, as defined, to report whenever he or she in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

AB 1713 (Campos), Chapter 517, makes "image processors" mandated reporters under the CANRA and expands the list of media subject to CANRA provisions. Specifically, this new law:

- Defines an "image processor" as any person who "prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disk, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation."

- Expands the list of media to which CANRA provisions apply to include, among other things, any representation of information, data, or an image, as specified.

Child Abuse and Neglect Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) was established to identify potential child abuse or neglect to enable public authorities to protect victims, as well as obtain information to identify and prosecute child abusers.

CANRA requires a mandated reporter, as defined, to report whenever he or she in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

AB 1817 (Atkins), Chapter 521, makes commercial computer technicians mandated reporters of suspected child abuse and neglect for the purpose CANRA. Specifically, this new law:

- Makes commercial computer technicians mandated reporters for the purpose of the CANRA.

- Defines a "commercial computer technician" as any person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other materials relating to the operation and maintenance of a computer or computer network system, for a fee. A commercial computer technician does not include a person who is mandated to report suspected child abuse or neglect under federal law.

- Defines an "electronic medium" to include, but is not limited to, a recording, CD-ROM, magnetic disc memory, magnetic tape memory, CD, DVD, thumb drive, or any other computer hardware or media.

- Provides that any commercial computer technician or an employer of a commercial computer technician who provides access to a computer to an investigating agency shall have immunity from civil or criminal liability.

Child Abuse and Neglect Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

At the end of 2011, prosecutors filed criminal charges against Jerry Sandusky, the assistant football coach at Pennsylvania State University (Penn State) for nearly 15 years, for alleged sexual abuse charges. In the case against Sandusky, the Grand Jury found that there had been at least eight victims of sexual assaults throughout his career at Penn State. The head coach of the Penn State football team, Joe Paterno, allegedly knew of instances of sexual abuse but failed to report these directly to Child Welfare Services. Instead, Paterno reported the instances to a supervisor who also failed to report to Child Welfare Services.

SB 1264 (Vargas), Chapter 518, adds any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary institutions, to the list of individuals who are mandated reporters under CANRA.

CONTROLLED SUBSTANCES

Drug Overdose

Drug overdose is a serious problem in California. Between 2000 and 2006, California witnessed a 24 percent increase in the overdose death rate from 7.4 deaths per 100,000 people in 2000 to 9.8 deaths per 100,000 in 2006. Many overdoses are reversible if the individual gets medical assistance in time; however one of the most common reasons people cite for not calling "911" when they witness an overdose is fear of police involvement and criminal punishment for themselves or their friends. California can prevent many of these needless drug-related overdose deaths by encouraging witnesses of drug overdoses to call 911.

AB 472 (Ammiano), Chapter 338, provides that it shall not be a crime to be under the influence of, or in possession of, a controlled substance or drug paraphernalia if that individual seeks medical assistance for himself, herself, or another person for a drug-related overdose. Specifically, this new law:

- States that the individual must not obstruct medical or law enforcement personnel;
- Clarifies that no other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred;
- Does not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will; and,
- Does not affect liability for any offense that involves activities made more dangerous by the consumption of a controlled substance or a controlled substance analog, including but not limited to specified sections of the Vehicle Code, such as offenses related to driving under the influence.

Irrigation Supplies: Vehicle Stops

The United States Supreme Court has stated, "The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision. An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." [*Whren v. United States*, 517 U.S. 806, 809-810 (U.S. 1996).]

AB 2284 (Chesbro), Chapter 390, allows a peace officer to stop a person with irrigation supplies on a rock or unpaved road on specified public or forestry land, and creates civil penalties for cultivating a controlled substance on public lands.

Driving under the Influence: Controlled Substances

Under current law, there is no distinction in the manner charged for driving under the influence of alcohol and driving under the influence of a controlled substance; both are charged under the same code section. Failure to charge these cases under differing code sections makes it impracticable to trace the numbers of convictions and/or arrests for driving under the influence of a controlled subject as distinguished from driving under the influence of alcohol.

AB 2552 (Torres), Chapter 753, revises and recasts provisions related to driving under the influence of alcohol or drugs, or the combination of drugs and alcohol, by separating the provisions into three distinct sections and subsections.

- Driving under the influence of alcohol.
- Driving under the influence of drugs.
- Driving under the influence of alcohol and drugs.

This new law has a sunset date of January 1, 2014.

CORRECTIONS

Department of Juvenile Facilities

In 2007, as part of the Budget, the Legislature passed and the Governor signed into law SB 81 (Senate Budget and Fiscal Review Committee), Chapter 175. SB 81 included provisions to tighten eligibility for commitment to Division of Juvenile Facilities (DJF) to the most serious juvenile offenders. Due in part to this "realignment" of the juvenile offender population, DJF's population has dropped dramatically.

Official analyses prepared by the Legislature at that time unequivocally indicated that the Legislature did not intend this change to exclude juvenile sex offenders from eligibility for DJF commitment. Floor analyses for SB 81 in both houses stated in part: "Juvenile sex offenders are excluded from this change and will not be impacted by this bill."

SB 81 amended Welfare and Institutions Code (WIC) Section 731 to narrow the juvenile court's authority to commit a juvenile delinquent to DJF to those wards adjudicated to have committed a serious or violent offense as described in WIC Section 707(b). SB 81, which also recast WIC Section 733 to describe which juvenile offenders are ineligible for commitment to DJF, included the following, now contained in WIC Section 733(c): "(c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007." (Emphasis added.)

The *C.H.* case, decided on December 12, 2011, involved a youthful offender who, in February of 2009, was committed to DJF after unsuccessful programming efforts at the local level "in order to enable him to participate in its sex offender program." [*In re C.H.* (2011) 53 Cal.4th 94.] The commitment offense was Penal Code Section 288(a), a registerable sex offense not described in WIC Section 707(b).

The Court focused its analysis on WIC Section 731 and 733, and reconciled their apparent inconsistent provisions concerning juvenile sex offenders by concluding that the language in WIC Section 733 was intended to provide a more "nuanced approach" authorizing DJF commitment for non-WIC 707(b) juvenile sex offenders who had a previously sustained petition for a WIC 707(b) offense. Thus, the Court concluded that a delinquent ward was eligible for DJF commitment if the ward was being committed for a WIC 707(b) offense, or for a registerable sex crime if the ward had a previous WIC 707(b) offense in his or her history.

Noting that "only when a statute's language is ambiguous or susceptible of more than one reasonable interpretation may we turn to extrinsic aids to assist in interpretation," the Court concluded under the circumstances presented by its analysis "it is inappropriate to resort to the legislative history . . . to consider whether an otherwise undisclosed legislative intent might be reflected." Accordingly, the Court apparently did not consider the legislative intent described in the floor analyses quoted above.

AB 324 (Buchanan), Chapter 7, addresses the recent California Supreme Court decision in *In re C.H.*, (2011) 53 Cal.4th 94, by:

- Expressly authorizing the commitment to DJF of juvenile offenders who have been adjudicated to be wards of the juvenile court for a registerable sex offense, as specified.

- Authorizing DJF to enter into contracts with counties to furnish housing to certain juvenile sex offenders committed to DJF, as specified.

Inmates: Involuntary Administration of Psychiatric Medication

AB 1907 is follow-up legislation to AB 1114 (Lowenthal) Chapter 665, Statutes of 2011, which streamlined the process for the involuntary administration of psychiatric medication to inmates sentenced to state prisons. While AB 1114 originally included inmates sentenced to state prison and county jails, an amendment taken in the Senate Public Safety Committee limited AB 1114 to only state prisons.

AB 1907 (Lowenthal), Chapter 814, applies the laws and procedures for involuntary medication of prison inmates to county-jail inmates and to persons housed in a state prison. Additionally, it makes conforming changes to the process by which inmates of the California Department of Corrections and Rehabilitation (CDCR) can be involuntarily medicated. Specifically, this new law:

- States legislative intent to terminate the permanent injunction concerning required procedures and standards for involuntary administration of psychiatric medication of inmates set out in *Keyhea* v. *Rushen* (1986) 178 Cal.App.3d, 536.

- Clarifies that the process for involuntarily medicating a CDCR inmate also applies to inmates "housed" within a state prison.

- Clarifies that the basic grounds for involuntarily medicating an inmate are that (1) the inmate is gravely disabled and lacks capacity to refuse treatment with psychiatric medications, or (2) the inmate is a danger to him or herself or others.

- Provides that if an inmate is involuntarily administered psychiatric medication in an emergency, he or she shall receive an expedited hearing and must receive expedited access to counsel.

- Provides that failure to provide statutory notice can only be excused through a showing of good cause.

- States that in the event of any statutory-notice issues with either an initial or renewal petition filed by CDCR for involuntary administration of psychiatric medication to an inmate, an administrative law judge (ALJ) shall hear arguments as to why the case

should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

- Removes the requirement that a CDCR inmate who is involuntarily administered psychiatric medication on an emergency basis only be medicated for five days unless an ALJ issues an order authorizing the continuing, interim involuntary medication of the inmate.

- Requires that, if CDCR clinicians identify a situation that jeopardizes the inmate's health or well-being as the result and a serious mental illness, and necessitates the continuation of emergency beyond the initial 72 hours pending the full mental health hearing, CDCR will give notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. The notice must be served upon the inmate and counsel at the same time the inmate is given written notice that the involuntary medication proceedings are being initiated and is appointed counsel.

- Specifies that an ex parte order for emergency and interim involuntary medication of a CDCR inmate may be issued if there is a showing that in the absence of medication, there is a reasonable likelihood that the emergency conditions are likely to reoccur and must be supported by an affidavit from the psychiatrist showing specific facts.

- Specifies that once CDCR has requested an ex parte order for emergency and interim involuntary medication of an inmate of CDCR, the inmate and his or her counsel have two business days to respond to the request. The inmate may present facts supported by an affidavit in opposition to the request.

- Requires an ALJ to review the ex parte request for medication in an emergency. The ALJ shall have three business days to determine the merits of the request. The order shall be valid until a full hearing on the matter, replacing the five-day limit for an emergency order in existing law.

- Clarifies that CDCR may file with the Superior Court of the Office of Administrative Hearings a written notice indicating its intent to renew an existing involuntary medication order.

- Specifies that renewal of an existing order for involuntary medication of a CDCR inmate must be supported by clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication, along with other specified findings.

- Requires that if CDCR wishes to add a basis to an existing order for involuntary medication, it must give the inmate and the inmate's counsel notice in advance of the hearing, specifying what additional basis is being alleged and what qualifying

conduct within the past year supports the additional basis. This additional basis must be proved by CDCR by clear and convincing evidence at a hearing under an ALJ.

- Requires CDCR to adopt regulations to fully implement this section.

- Replaces references to "psychotropic" medications with "psychiatric" medications.

- Applies the process for involuntary administration of psychiatric medication to prison inmates to county-jail inmates.

- Provides that a county-jail inmate may be involuntarily administered psychiatric medication under the same standards and conditions that apply to involuntary medication of prison inmates.

- Differentiates the process for involuntarily administering psychiatric medication to county-jail inmates from the process for involuntarily medicating prison inmates in the following ways:

    - Hearings concerning involuntary medication of jail inmates shall be held by a superior court judge, or a court-appointed commissioner referee or hearing officer.

    - The agency seeking an order for involuntary medication is the county department of mental health.

    - A jail inmate may file an appeal of the medication order in the county superior court or the Court of Appeal, consistent with similar authority in civil commitment proceedings.

    - An inmate need not be transferred to a county mental health facility, as specified, unless that is medically necessary.

Post-Sentencing: Work Release

Existing law authorizes the board of supervisors of any county to authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program in which one day of participation will be in lieu of one day of confinement. The sheriff or other official may permit a participant in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis, but limits credit for that participation to half of the hours established for participation in a work release program, and requires that the remaining hours consist of manual labor.

AB 2127 (Carter), Chapter 749, authorizes a sheriff or other official to permit a participant in a work release program to receive work release credit for documented

participation in educational programs, vocational programs, substance abuse programs, life skills programs, or parenting programs. Specifically, this new law:

- States that participation in these programs shall be considered in lieu of performing labor in a work release program with eight work-related hours to equal to one day of custody credit; and,

- Does not limit the credit received for participation in these programs nor require that the participant perform manual labor.

Inmates: Temporary Removal

Under existing law, there is a lack of clarity as to whether the Secretary of the California Department of Corrections and Rehabilitation (CDCR) has the statutory authority to temporarily remove an inmate from the state prison to assist law enforcement in gathering evidence related to the commission of crimes.

AB 2357 (Galgiani), Chapter 145, authorizes the Secretary of CDCR to temporarily remove any inmate from prison or any other institution for the detention of adults under the jurisdiction of CDCR, including, but not limited to, permitting the inmate to participate in or assist in the gathering of evidence relating to crimes. The Secretary may require that the temporary removal be under custody, and shall not be for a period of longer than three days. The Secretary may not require the inmate to reimburse the state, in whole or in part, for expenses incurred in connection with such temporary removal.

Veterans: Correctional Counselors

Many incarcerated veterans of the United States Military are unaware of the benefits they are rightfully owed for their service to our country. Although veterans cannot collect on their benefits while incarcerated, the intent of AB 2490 is to assist incarcerated veterans in initiating the process for obtaining state and federal benefits so that they may begin collecting upon release. This policy will ultimately ease the transition to civilian life.

AB 2490 (Butler), Chapter 407, requires the California Department of Corrections and Rehabilitation (CDCR) to develop policies to assist veteran inmates in pursuing veteran's benefits, and allows the CDCR to coordinate with the Department of Veterans Affairs and county veterans services officers or veterans service organizations in developing the policies.

Corrections: Inmate Welfare Fund: Uses

Existing law provides an Inmate Welfare Fund (IWF) to be managed by the Department of Corrections and Rehabilitation (CDCR). All money in the IWF is appropriated for educational and recreational purposes at the various prison facilities and must be expended by the director of the facilities upon warrants drawn upon the State Treasury by the State Controller after approval of the claims by the California Victim Compensation and Government Claims Board. The

money in the fund must be used for the benefit, education, and welfare of inmates of prisons and institutions under CDCR's jurisdiction, including, but not limited to, the establishment, maintenance, employment of personnel for, and purchase of items for sale to inmates at canteens maintained at the state institutions, and for the establishment, maintenance, employment of personnel and necessary expenses in connection with the operation of the hobby shops at institutions under the jurisdiction of CDCR.

SB 542 (Price), Chapter 831, expands the uses of the IWF. Specifically, this new law:

- Provides that IWF funds may be utilized for the establishment, maintenance, employment of personnel, for and purchase of items for sale to inmates at canteens maintained at state institutions.

- Specifies that IWF funds may be used for the establishment, maintenance, employment of personnel, and necessary expenses in connection with the operation of the hobby shops at institutions under CDCR's jurisdiction.

- States that IWF funds may be used for educational programs, hobby and recreational programs, reentry programs and operational expenses of the IWF which may include physical education activities and hobby craft classes, inmate family visiting services, leisure-time activities, and assistance with obtaining photo identification from the Department of Motor Vehicles.

- Requires the warden of each institution and stakeholders to meet at least biannually to determine how the IWF funds are to be used in each institution.

Inmate Assessments

Existing law requires the California Department of Corrections (CDCR) to conduct assessments of all inmates that include, but are not limited to, data regarding the inmate's history of substance abuse, medical and mental health, education, family background, criminal activity, and social functioning. These assessments shall be used to place inmates in programs that will aid in their reentry to society and that will most likely reduce the inmate's chances of reoffending.

Current practice at the CDCR allows custodial staff and classification committees to assign inmates in education programs and does not require participation from educators. The lack of input by credentialed educators has led to inmates being incorrectly assigned to classrooms or programs. These incorrect assignments are caused by the failure of classification committees to thoroughly examine the educational and academic background of inmates, or failing to verify information about GED or high school diplomas; relying on old or incorrect scores on the Test of Adult Basic Education, which assesses basic skills in reading, mathematics, language and spelling; and the failure to identify behavioral issues that would make an inmate's assignment to a certain classroom or vocational program inappropriate. Incorrect assignments are problematic because getting inmates properly reassigned can take months, wasting time and resources.

SB 1121 (Hancock), Chapter 761, requires the input of a credentialed teacher, vice principal, or principal at all meetings relating to academic or vocational education program placement of an inmate, including, but not limited to, interviewing the inmate, verifying the inmate's education records and test scores, or being present at meetings relating to the academic or vocational education program placement.

Community Correctional Facilities

The primary purpose of community correctional facilities (CCFs) is to provide housing, supervision, counseling, and other correctional programs for persons committed to the California Department of Corrections and Rehabilitation (CDCR). Prior to last year's Public Safety Realignment under AB 109, CCFs were only authorized to be operated by CDCR. Under realignment, the lower-level offenders previously housed at CDCR will now be shifted to the custody of the counties. Along with the passage of realignment last year, the Legislature authorized counties to contract with local public agencies to use CCFs to house inmates sentenced to county jail.

Although the law permits counties to contract with CCFs to house low-level offenders who otherwise would be housed in county jail, the law did not make it clear that correctional staff in CCFs would retain the peace officer status they held when CCFs housed state prisoners.

SB 1351 (Rubio), Chapter 68, adds to the definition of a "peace officer" a correctional officer employed by a city, county, or city and county which operates a local CCF under contract with public agencies other than CDCR, as specified, who have the authority and responsibility for maintaining custody of inmates sentenced to or housed in that facility, and who perform tasks related to the operation of that facility.

COURT HEARINGS

Bail: Forfeiture Appeals Restructuring

Existing bail forfeiture appeals predate trial court unification. Prior to court unification, courts were divided into a two-tier system of municipal courts ("lower courts") and superior courts ("higher courts"). Under the criminal courts, municipal courts typically heard misdemeanors from beginning to end and felony filings up to, and including, the preliminary hearing. Municipal court judges acted in the role of "magistrates" in cases involving felonies, only hearing pretrial matters such as arraignment, pretrial motions, pleas and preliminary hearings. Once a defendant was "held to answer" for an offense by a municipal court magistrate, the matter was transferred to superior court. In criminal matters, prior to unification, superior court judges heard matters from the point of the filing of an "information" or an "indictment." Generally, the superior court would hear the jury trial phase of felony matters. Following unification, all matters involving criminal misdemeanors and felonies are heard in superior court.

Bail forfeiture proceedings are civil in nature. In general, jurisdiction on appeal of civil matters is determined by the amount in controversy. Appeals of matters involving $25,000 or more are heard in the court of appeal. Appeals involving $25,000 or less are heard in the appellate division of the superior court. The appellate divisions of superior courts are set up to hear appellate matters involving less than $25,000. The appellate divisions have different procedural rules than the courts of appeal. Appellate divisions do not have to issue written opinions, appeals of the division are discretionary, appellate briefs must be shorter than the courts of appeal, and less time is provided for preparing the briefs and filings. Additionally, appellate division judges are superior court judges who sit on a panel which reviews the decisions of fellow superior court judges as opposed to appellate court justices who are appointed to the courts of appeal.

> **AB 1529 (Dickinson), Chapter 470,** implements various recommendations of the California Law Revision Commission concerning trial court restructuring and state responsibility for the courts and specifically provides that a bail forfeiture appeal in which the amount in controversy exceeds $25,000 shall be heard in the court of appeal and an appeal involving $25,000 or less shall be heard in an appellate division of a superior court.

Mortgage Fraud: Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. If prosecution is not commenced within the applicable period of limitation, it is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time before or after judgment. The defense may only be waived under limited circumstances.

Criminal statutes of limitations are laws that limit the time during which a prosecution can be commenced. These statutes have been in operation for over 350 years and are deeply rooted in the American legal system. There are several rationales underlying statutes of limitations. First, statutes of limitations ensure that prosecutions are based upon reasonably fresh evidence - the idea being that over time memories fade, witnesses die or leave the area, and physical evidence becomes more difficult to obtain, identify or preserve. In short, the possibility of erroneous conviction is minimized when prosecution is prompt. Second, statutes of limitations encourage law enforcement officials to investigate suspected criminal activity in a timely fashion. In addition, it is thought that the statute of limitations may reduce the possibility of blackmail based on threats to disclose information to prosecutors or law enforcement officials. Another rationale is that as time goes by the likelihood increases that an offender has reformed, making punishment less necessary. In addition, society's retributive impulse may lessen over time, making punishment less desirable. Finally, there is the thought that statutes of limitations provide an overall sense of security and stability to human affairs.

AB 1950 (Davis), Chapter 569, extends the statute of limitations for misdemeanor crimes related to mortgage fraud, as specified, from one year to three years after discovery of the offense, or within three years after the completion of the offense, whichever is later.

Human Trafficking: Nuisance Abatement Proceedings

Under existing law, individuals engaged in human trafficking are subject to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines “criminal profiteering activity” as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking. Additionally, a “pattern of criminal profiteering activity” as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

AB 2212 (Block), Chapter 254, permits nuisance abatement in specified human trafficking cases. Specifically, this new law:

- Provides that every building or place used for the purpose of human trafficking, or upon which acts of human trafficking are held or occur, is declared a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

- Provides that in any case in which a government agency seeks to enjoin the use of a building for purposes of human trafficking, the court may award costs to the prevailing party.

- Provides that, in nuisance abatement cases involving human trafficking, one-half of the civil penalties collected, as specified, shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation by the Legislature to the California Emergency Management Agency to fund grants for human trafficking victim services and prevention programs, as specified, and that the other one-half of the civil penalties shall be paid to the city in which judgment was entered, if the action was brought by a city attorney or city prosecutor or, if the action was brought by a district attorney, the one-half of the civil penalty shall, instead, be paid to the treasurer of the county in which judgment was entered.

Protective Orders: Electronic Monitoring

Existing law authorizes a court with jurisdiction over a criminal matter, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, to issue specified orders, including an order protecting victims of violent crime from all contact by the defendant, or contact with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. Existing law also authorizes the issuance of a restraining order, valid for up to 10 years, in all cases in which a defendant has been convicted of a crime of domestic violence.

On any given year, there are about 220,000 active restraining orders, most issued in domestic violence cases. However, over 50 percent of them are violated, according to the National Partnership to End Domestic Violence.

AB 2467 (Hueso), Chapter 513, authorizes a court to order electronic monitoring of a defendant where a protective order has been issued to protect a victim of a violent crime committed by the defendant during the pendency of the criminal case, or in cases in which a defendant has been convicted of a crime of domestic violence and a protective order has been issued to protect the victim. Specifically, this new law:

- Requires the local government to receive the concurrence of the county sheriff or the chief probation officer with jurisdiction, in order to adopt a policy to authorize electronic monitoring of defendants for these purposes;

- States if the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant pay for the monitoring; and,

- Requires the local government to specify the agency with jurisdiction over electronic monitoring of defendants for these purposes.

Sexually Violent Predator Evaluations

In sexually violent predator (SVP) cases, existing law allows the district attorney or county counsel to request a replacement evaluator from the Department of State Hospitals (DSH) when the current evaluator is 'unavailable' for specific reasons. The statute does address replacing an evaluator who resigns or retires.

A number of SVP evaluators have recently resigned from the DSH panel and will not contract with the DSH to finish their pending cases throughout California. In those cases, some trail courts have not allowed prosecutors to request replacement evaluators from the DSH, and some courts are considering denying prosecutors the opportunity to present the testimony of replacement evaluators at trial.

> **SB 760 (Alquist), Chapter 790,** authorizes an attorney petitioning for the commitment of an SVP to request DSH to perform a replacement evaluation if the evaluator is no longer able to testify for the petitioner in court proceeding as a result of the retirement or resignation of the evaluator and the evaluator has not entered into a new contract to continue as an evaluator on the case except in the instance the evaluator has opined that the individual named in the petition has not met the criteria for commitment, as specified.

Forfeiture of Bail: Tolling of 180-Day Time Limit

When a defendant fails to appear in court after he or she has posted bail, the court will generally issue a bench warrant and forfeit the defendant's bail, meaning that the amount the defendant paid to the bail bonds person will not be returned and the bail agent is required to post the remainder of the bail. Existing law states that if the defendant re-appears in court within 180 days, the bail forfeiture may be vacated and bail may be reinstated. Under certain circumstances, the 180-day time limit may be tolled if the defendant is unable to return to court because of temporary illness, insanity or detention by military or civil authorities.

> **SB 989 (Vargas), Chapter 129,** provides that in specified cases, if the bail agent and the prosecuting attorney agree that additional time is needed to return the defendant to the jurisdiction of the court, the court may, on the basis of the agreement, toll the 180-day period within which to vacate bail forfeiture for the length of time agreed upon by the parties. This new law requires, in addition to any other notice required by law, the moving party of a motion to vacate a bond forfeiture or to extend the 180-day period, to give the applicable prosecuting agency written notice at least 10 court days before a hearing, and states that the 10-day notice requirement is a condition precedent to granting the motion.

Juveniles: Contempt of Court

In child sex assault cases, all too often a combination of factors – the loss of a breadwinner's income and fear of financial instability, denial, misconceptions of how a molested child will act may lead to a hostile environment for the victim. These factors can make clear to the victim, a child, that the family's finances and relationships are in ruin because of his or her allegations.

The victim, who initially wanted the abuse to stop, now wants the legal process to stop. In some cases, leading them to recant their initial statements or refuse to participate in the legal proceeding. Without their testimony, they are told the case will go away and the family can return to how it was before the allegations were made.

> **SB 1248 (Alquist), Chapter 223,** requires a minor under 16 years of age, who is a victim of a sex crime, and who refuses to testify in a court proceeding to meet with a victims advocate, as defined, unless the court finds, for good cause that it is not in the best interest of the victim.

Attorney General: Grand Jury Proceedings

The California Attorney General's Office (AG) is investigating significant financial crimes of statewide scope and impact. Unfortunately, existing county grand jury authority to investigate these crimes is ill-suited to the needs of these cases as crimes of a financial nature often occur in multiple jurisdictions and, thus, are often beyond the scope of single-county grand juries. Advances in technology, especially the Internet, have also made it much easier for bad actors to commit theft or fraud across many counties in California. Under existing law, the AG may ask a district attorney to convene a grand jury for the AG to use to bring a case; in cases of Medi-Cal fraud, the AG may convene a grand jury without the consent of the district attorney.

A grand jury investigates civil and criminal matters in proceedings closed to the public. A civil grand jury investigates the operation, management, and fiscal affairs of the county and the cities in the county. A criminal grand jury has constitutional authority to indict a suspect after finding probable clause that he or she committed an offense. Prosecutors present a case before a grand jury in the form of testimony and other evidence and may answer questions that members of the grand jury have concerning the law. A grand jury is not supposed to receive evidence that would be inadmissible over objection at trial. However, even if the grand jury hears evidence that would be inadmissible at trial, the indictment is not void if there is sufficient competent evidence to support the indictment. Furthermore, since the defense is not involved in the proceedings in any manner, they are not permitted to see the evidence against the accused. Once the presentation of evidence is completed by the prosecutor, the grand jury deliberates in secret. A 19-member grand jury brings an indictment when 12 or more jurors conclude that the evidence presented established probable cause to believe that the accused committed the offense. A 23-member grand jury requires the concurrence of at least 14 jurors; an 11-member grand jury requires the concurrence of at least eight jurors. Probable cause is the same standard used by a magistrate at a preliminary hearing: "Whether the evidence would lead a person of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion of guilt of the accused." Unlike a preliminary hearing, no notice is given to the accused prior to the arrest of the now defendant once an indictment is returned.

> **SB 1474 (Hancock), Chapter 568,** allows the AG to convene a statewide grand jury in cases of theft or fraud where the same actor or actors committed the offenses in multiple counties. Specifically, this new law:

- Allows the AG to convene a grand jury, without the concurrence of the district attorney to investigate, consider or issue indictments in matters in which there are two or more activities, in which fraud or theft is a material element, that have occurred in more than one county and conducted either by a single defendant or multiple defendants acting in concert.

- Provides that a special grand jury convened pursuant to this bill may be impaneled in the counties of Fresno, Los Angeles, Sacramento, San Diego, or San Francisco, at the AG's discretion.

- Provides that for special grand juries impaneled pursuant to this subdivision, the AG may issue subpoenas for documents and witnesses located anywhere in California in order to obtain evidence to present to the special grand jury.

- Provides that the special grand jury may hear all evidence in the form of testimony or physical evidence presented to them, irrespective of the location of the witness or physical evidence prior to the subpoena.

- Provides that the special grand jury may indict a person or persons with charges for crimes that occurred in counties other than where the special grand jury is impaneled and that the indictment shall then be submitted to the appropriate court in any of the counties where any of the charges could otherwise have been properly brought.

- Provides that the court where the indictment is filed under this subdivision shall have proper jurisdiction over all counts in the indictment.

- Provides that notwithstanding Penal Code Section 944, an indictment found by a special grand jury and endorsed as a true bill by the special grand jury foreperson, may be presented to the appropriate court solely by the prosecutor within five days of the endorsement of the indictment. For indictments presented to the court in this manner, the prosecutor shall also file with the court clerk, at the time of the presenting indictment, an affidavit signed by the special grand jury foreperson attesting that all the jurors who voted on the indictment heard all of the evidence presented and the proper of number of jurors voted for the indictment.

- Provides that the AG's Office shall be responsible for prosecuting any indictment produced by the grand jury.

- Provides that if a defendant makes a timely and successful challenge to the AG's right to convene a special grand jury by clearly demonstrating that the charges brought are not encompassed by this subdivision, the court shall dismiss the indictment without prejudice to the AG, who may bring the same or other charges against the defendant at a later date via another special grand jury properly convened, or by a regular grand jury or by any other procedure available.

- Specifies that this special grand jury must comply with the provision requiring the prosecutor to present exculpatory evidence to the grand jury.

- Provides that the costs charged the AG for the activities related to the grand jury shall be no more than what would be charged to a regularly impaneled grand jury convened by the county, unless an alternative payment arrangement is agreed upon by the county and the AG.

- Provides that the special grand jury created by SB 1474 is an exception to the above general rule regarding jurisdiction when an offense occurs in more than one county.

CRIME PREVENTION

Delinquency and Gang Intervention and Prevention Grants

Existing law establishes the Board of State and Community Corrections (BSCC) to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. BSCC's duties include developing recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state, receiving and disbursing federal funds, communicating with local agencies and programs and reporting to the Legislature and Governor on the implementation of local plans.

The AAR [Accountability and Administrative Review] Committee and the Select Committee on Delinquency Prevention and Youth Development have found that California spends in excess of $1 billion annually on youth crime prevention and Juvenile Justice funding, with about 75 percent of that money coming from state coffers. Despite these expenditures, the state has little ability to determine which programs have been the most effective at preventing youth crime and lowering recidivism rates among juvenile offenders. Additionally, 17 different state agencies allocate funding to programs addressing juvenile justice, delinquency and youth development, but with little coordination and collaboration among them.

AB 526 (Dickinson), Chapter 850, requires the BSCC to identify delinquency and gang intervention and prevention grant funds and programs and consolidate those grant funds and programs to create a uniform grant application process in adherence with all applicable federal guidelines and mandates. Specifically, this new law:

- Requires the BSCC to develop incentives for units of local government to develop comprehensive regional partnerships whereby adjacent jurisdictions pool grant funds in order to deliver services to a broader target population and maximize the impact of state funds at the local level;

- Requires BSCC, by January 1, 2014, to develop funding allocation policies to ensure that within three years no less than 70 percent of funding for gang and youth violence suppression, intervention, and prevention programs and strategies is used in programs that utilize promising and proven evidence-based principles and practices;

- Requires BSCC to communicate with local agencies and programs in an effort to promote the best evidence-based principles and practices for addressing gang and youth violence through suppression, intervention, and prevention; and

- States that these provisions shall not be construed to include funds already designated to the Local Revenue Fund 2011.

Elder Theft: Wire Transfers

The Federal Trade Commission (FTC) reports that wire transfers are the number one form of consumer scam. In 2010 alone, 43,866 complaints involving wire transfer scams were made to the FTC. These scams involved people posing as family members, friends, legitimate businesses, sweepstake contests, and government entities. Seniors in particular become targets of elaborate fraud schemes because they are likely to have savings, own their home, and have good credit. According to statistics from the National White Collar Crime Center, 1,259 California seniors aged 60 or older lost a total of over $7.1 million during 2011 via scams that involved wire transfers. From January to March 15, 2012, 212 California seniors lost a total of just under $2 million to scams involving wire transfers.

AB 1525 (Allen), Chapter 632, requires money transmitters to provide their contracted agents with training materials on recognizing and responding to elder or dependent adult financial abuse by April 1, 2013, and annually thereafter. Specifically, this new law:

- Requires money transmission licensees to provide their contracted agents training material to help those agents recognize, and respond to elder or dependent adult financial abuse by April 1, 2013.

- Requires money transmission licensees to provide newly appointed agents with elder and dependent adult financial abuse training material within one month of the new agent's appointment.

- Exempts licensees that deal solely with stored value (i.e. gift cards, pre-paid credit cards, pay-roll cards), and limits the applicability to money transmitters (i.e. Western Union, MoneyGram) and the sales of payment instruments (i.e. cashier's checks, money orders).

- Exempts licensees that offer their services exclusively through the Internet.

Professional Sports Facilities: Safety

An increase in notoriety of violent acts in professional sporting venues has brought attention to these facilities. There are a number of existing laws that apply to safety in professional sports facilities. For instance, it unlawful for any person attending a professional sporting event to throw any object on or across the court or field of play with the intent to interfere with play or distract a player. It is also unlawful to enter upon the court or field of play without permission from an authorized person after the authorized participants have entered the court or field to begin the sporting event and until the participants of play have completed the playing time of the sporting event. Facility owners must also provide a notice specifying the unlawful activity prohibited by this section and the punishment for engaging in that prohibited activity. Further, the notice shall be prominently displayed throughout the facility or may be provided by some other manner, such as on a big screen or by a general public announcement.

AB 2464 (Gatto), Chapter 261, requires owners of professional sports facilities to post notices of emergency contact information. Specifically, this new law:

- Requires the owner of any professional sports facility to post written notices displaying the text message number and telephone number to contact security in order to report a violent act.

- Provides that the notices must be visible from a majority of seating in the stands at all times, at controlled entry areas, and at parking facilities which are part of the professional sports arena.

Mutual Aid Agreements

Assembly Member La Malfa contends that the remote location of Tulelake (population 1,010, on the California-Oregon border, midway between the Pacific and Nevada) merits a unique mutual aid agreement with Malin (population 870, a fellow rural border city in Oregon), rather than routing assistance requests through the California Highway Patrol (CHP).

According to the Tulelake Police Chief, "This issue has been raised in connection with our ongoing Hispanic gang problems that we have been dealing with for the last 15 years. Our local gang population is very mobile in their activities, freely crossing state and county lines."

"The problem has become more significant over the last several years due to budget issues that have severely hampered each agency's ability to address the growing problem. We are dependent on our allied agencies to provide the cover to handle these calls. As in most jurisdictions, our gang calls involve multiple people and increasing levels of violence. Even with our current situation, we are lucky to have three officers present on calls involving up to twenty opposing gang members. The ability to have a cover officer on these calls cannot be overstated. Due to the decreased staffing levels of both Modoc and Siskiyou County Sheriff's offices, our small agency has had to rely on the neighboring police department in Merrill and Malin, Oregon for cover so that these calls can be handled as safely as possible."

SB 1067 (La Malfa), Chapter 269, authorizes the City of Tulelake, California, to enter into a mutual aid agreement with the City of Malin, Oregon, for the purpose of permitting their police departments to provide mutual aid to each other when necessary. Before the effective date of the agreement, the agreement shall be reviewed and approved by the CHP Commissioner.

Injuries at Developmental Centers

Existing law requires developmental centers to immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation. Existing law also establishes a police force,

called the "Office of Protective Services" (OPS) within the state Department of Developmental Services (DDS), to act as a law enforcement agency for developmental centers.

DDS' internal policy calls for reporting of virtually all injuries of unknown origin, even relatively minor ones that require only five sutures for treatment, to local law enforcement. The number of reports transmitted to local law enforcement agencies may dilute the effectiveness of this reporting requirement. Additionally, the current reporting law does not include allegations of sexual assault or assaults with a deadly weapon or force likely to produce great bodily injury.

> **SB 1522 (Leno), Chapter 666,** requires a developmental center to immediately report a death, a sexual assault, an assault with a deadly weapon by a nonresident of the developmental center, an assault with force likely to produce great bodily injury, an injury to the genitals when the cause of injury is undetermined, or a broken bone when the cause of the break is undetermined, to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether OPS has investigated the facts and circumstances relating to the incident.

CRIMINAL JUSTICE PROGRAMS

County Jails: Inmate Welfare Funds

SB 718 (Scott), Chapter 251, Statutes of 2007, created a pilot program in specified counties that authorized sheriffs in those counties to distribute money from the inmate welfare fund for the purpose of assisting indigent inmates with the re-entry process. This program was to have only remained in effect until January 1, 2013.

> **AB 1445 (Mitchell), Chapter 233**, extends until January 1, 2015, the sunset date on the above program, clarifies that money from the inmate welfare fund shall not be used to provide services that are required to be provided by the sheriff, and requires the sheriff to include specified additional information regarding the operation of the program in the itemized report of expenditures which must be submitted to the board of supervisors under existing law.

Child Abuse Central Index

The Attorney General administers the Child Abuse Central Index (CACI), on which reports of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child are kept. The information in CACI is predominantly used by regulatory agencies to assist in such things as screening applicants for licensing or employment in child care facilities and foster homes, and aiding in background checks for other possible child placements, and adoptions.

Children can be listed on CACI as perpetrators of physical abuse if they injure another child in circumstances other than a mutual fight or an accident. Children can also be listed on CACI as perpetrators of sexual abuse due to any reported sexual behavior between the child and another child, even if the behavior is consensual. Children in the foster-care system are especially vulnerable to being listed on CACI because they may act out due to past abuse and because their behavior is subject to closer scrutiny by child welfare agency case workers than that of children in the general population. These youth can suffer life-long restrictions on job opportunities and licensing eligibility due to misbehavior that occurred when they were under 18.

> **AB 1707 (Ammiano), Chapter 848,** removes non-reoffending minors from the CACI after 10 years. Specifically, this new law provides that a person listed in the CACI when he or she was under 18 years of age at the time of the report shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing, if no subsequent report concerning that person is received during that time period.

Post-Sentencing: Work Release

Existing law authorizes the board of supervisors of any county to authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program in which one day of

participation will be in lieu of one day of confinement. The sheriff or other official may permit a participant in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis, but limits credit for that participation to half of the hours established for participation in a work release program, and requires that the remaining hours consist of manual labor.

AB 2127 (Carter), Chapter 749, authorizes a sheriff or other official to permit a participant in a work release program to receive work release credit for documented participation in educational programs, vocational programs, substance abuse programs, life skills programs, or parenting programs. Specifically, this new law:

- States that participation in these programs shall be considered in lieu of performing labor in a work release program with eight work-related hours to equal to one day of custody credit; and,

- Does not limit the credit received for participation in these programs nor require that the participant perform manual labor.

Emergency Services: Silver Alert

California has the largest number of seniors – 4.5 million, age 65 or older in the nation. Due to the Silver Tsunami, that number is expected to double to 9 million by 2030. However, when a senior goes missing and has been determined by law enforcement to be in danger (for example, a senior with Alzheimer's Disease who has wandered away from home), California has no uniform alert system to help with recovery. Missing seniors must be found quickly as they have a 50 percent greater chance of serious injury or death due to exposure and missing much needed medications when they have been missing over 24 hours,

SB 1047 (Alquist), Chapter 651, authorizes a law enforcement agency to request the California Highway Patrol (CHP) to activate a "Silver Alert" if a person 65 years of age or older is missing. Specifically, this new law:

- Provides that if a person is reported missing to law enforcement agency, and the agency determines that specified requirements are met, the agency may request the CHP to activate a Silver Alert. If the CHP concurs that the requirements are met, it shall activate the silver Alert in the geographical area requested by the investigating law enforcement area.

- States that a law enforcement agency may request a Silver Alert be activated if that agency determines that all of the following conditions are met in regard to the investigation of the missing person:

    - The missing person is 65 years of age or older.

- The investigating law enforcement agency has utilized all available local resources.

- The law enforcement agency determines that that the person has gone missing under unexplained or suspicious circumstances.

- The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or there are other factors indicating that the person may be in peril.

- There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

- Defines a "Silver Alert" as a notification system, that can be activated as specified, and is designed to issue and coordinate alerts with respect to a person 65 years of age or older who is reported missing.

- Requires the CHP, upon activation of a Silver Alert, to assist the investigating law enforcement agency by issuing a be-on-the-lookout, an Emergency Digital Information Service (EDIS) message, or an electronic flyer.

- States that this section shall remain in effect only until January 1, 2016, and as of that date is repealed , unless a later enacted statute that is enacted before January 1, 2016, deletes or extends that date.

CRIMINAL OFFENSES

Failure to Report a Missing Child

Law enforcement has known for years that the first 48 hours of a person's disappearance are critical to the chances of finding that child alive and successfully prosecuting any related criminal behavior.

A gap in current law was made apparent with the disappearance of two-year-old Caylee Anthony. Caylee's mother failed to report that she was missing for 31days; thus valuable time was wasted and the chances of finding her alive and unharmed dropped dramatically. While Caylee's mother was not found guilty of murder, citizens were outraged that she failed to report her child's disappearance and possible death, and that such a heinous act could not be charged as a crime.

AB 1432 (Mitchell), Chapter 805, requires a parent or guardian to report to law enforcement the disappearance or death of a child under the age of 14 within a specified period of time. Specifically, this new law:

- Provides that any parent or guardian having the care, custody or control of a child under 14 years of age who knows or should have known that the child has died shall notify a public agency, as defined in Government Code Section 53102 within 24 hours of the time the parent or guardian knew or should have known that the child has died. However, this shall not apply when the child is otherwise under the immediate care of a physician at the time of death, or if a public agency, a coroner, or a medical examiner is otherwise aware of the death.

- Provides that any parent or guardian having the care, custody or control of a child under 14 years of age shall notify law enforcement within 24 hours of the time that the parent or guardian knows or should have known that the child is a missing person and there is evidence that the child is a person at risk, as those terms are defined in Penal Code Section 14213. However, this shall not apply if law enforcement is otherwise aware of the missing person.

- Provides that a violation of either of the above is a misdemeanor punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding $1,000 or by both that fine and imprisonment.

"Open Carry" Prohibition

AB 144 (Portantino), Chapter 725, Statutes of 2011 made 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.

AB 144 was passed in response to handguns being carried in public which alarmed unsuspecting individuals. In addition, this behavior caused 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.

After the passage of AB 144 (Portantino), which applied only to the carrying of an exposed and unloaded handgun, "open carry" advocates resorted to carrying unloaded rifles and shotguns in public.

AB 1527 (Portantino), Chapter 700, makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this new law:

- Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed $1,000, or both for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed $1,000, or both if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that 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.

- Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:

    - By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;

- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;

- If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified;

- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;

- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;

- 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 or agent of that business;

- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;

- 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;

- By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition;

- 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;

- 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;

- Within a licensed gun show;

- Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;

- By any person while engaged in the act of making or attempting to make a lawful arrest;

- 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;

- 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;

- Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice;

- At any established public target range while the person is using that firearm upon the target range;

- 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;

- Complying with specified provisions of law relating to the regulation of firearms;

- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training;

- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;

- Incident to and at the request of a sheriff or chief or other head of a municipal police department;

- If 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 firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,

        - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.

    - By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;

    - By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;

    - By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system;

    - 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;

    - The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;

    - By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training;

    - By a person in compliance with specified provisions related to carrying a firearm in an airport; or,

    - By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

- Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.

- Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

- Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.

- Makes conforming technical changes.

Bail Fugitive Recovery Persons

AB 243 (Wildman), Chapter 426, Statutes of 1999, established the "Bail Fugitive Recovery Persons Act", which required bail fugitive recovery persons to meet specified training requirements and conform to specified regulations. The Bail Fugitive Recovery Persons Act was established in 1999 in response to California lawmakers' concerns about some bounty hunters retrieving fugitives in unlawful ways. In 2004, AB 2238 (Spitzer), Chapter 166, Statutes of 2004, extended the act's sunset date to January 1, 2010.

Since the sunset of the Act on January 1, 2010, there has been a significant increase in cases in which bounty hunters have overstepped appropriate, if not legal, boundaries in their apprehension of bail fugitives. The regulation of bounty hunters is needed in order to protect public safety by ensuring that these individuals are properly trained and work together with law enforcement to apprehend a bail fugitive.

AB 2029 (Ammiano), Chapter 747, re-establishes the "Bail Fugitive Recovery Persons Act" which requires that all bail fugitive recovery persons meet specified training requirements and comply with particular laws. Specifically, this new law:

- Requires a bail fugitive recovery person, a bail agent, bail permittee, or bail solicitor who contracts his or her services, as specified, and who engages in the arrest of a defendant for surrender to the appropriate authorities to comply with all of the following:

    - The person must be at least 18 years of age.

    - The person shall have completed a 40-hour power of arrest course certified by the Commission of Peace Officer Standards and Training (POST), which is not intended to confer the same powers of arrest as a peace officer.

    - The person shall have completed 20 hours of education in subjects pertinent to the duties and responsibilities of a bail licensee.

    - The person shall not have been convicted of a felony, unless the person has been licensed by the California Department of Insurance.

- Requires a bail fugitive recovery person to have in his or her possession completed certificates of required training at all times when performing his or her duties.

- Provides that in performing a bail fugitive apprehension, an individual authorized to make the apprehension shall comply with all laws applicable to that apprehension.

- Requires a bail fugitive recovery person to have in his or her possession proper documentation of authority to apprehend issued by the bail or depositor of bail.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from representing himself or herself in any manner as being a sworn law enforcement officer.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from wearing any uniform that represents himself or herself as belonging to any part or department of a federal, state, or local government. Any uniform shall not display the words United States, Bureau Task Force, Federal or other substantially similar words that a reasonable person may mistake for a government agency.

- Prohibits a bail, depositor of bail, or bail fugitive recovery person from wearing or otherwise using a badge or a fictitious name that represents himself or herself as belonging to a federal, state, or local government.

- Provides that a bail, depositor of bail, or bail fugitive recovery person may wear a jacket, shirt, or vest with the words "BAIL BOND RECOVERY AGENT," "BAIL ENFORCEMENT, " "BAIL ENFORCEMENT AGENT" displayed in at least two-inch high letters across the front and back of the jacket, shirt, or vest and in a contrasting color to that of the jacket, shirt, or vest.

- Requires that a bail, depositor of bail, or bail fugitive recovery person, except under exigent circumstances, notify local law enforcement prior to and no more than six hours before of the intent to apprehend a bail fugitive in that jurisdiction by doing all of the following:

    - Indicating the name of the person authorized to apprehend a bail fugitive entering the jurisdiction.

    - State the approximate time the person authorized to apprehend a bail fugitive will be entering the jurisdiction and the approximate length of stay.

    - State the name and the approximate location of the bail fugitive.

- Provides that if an exigent circumstance does arise and prior notice is not given as required, the person authorized to apprehend the bail fugitive shall notify local law enforcement immediately after the apprehension, and upon request of the local jurisdiction, shall submit a detailed explanation of those exigent circumstances within three working days after the apprehension is made.

- Allows notice to be provided to a local law enforcement agency by telephone prior to the arrest of, or after the arrest has taken place, if exigent circumstances exist.

- Provides that a bail, a bail depositor, or bail fugitive recovery person may not forcibly enter a premises except as provided in existing provisions of law related to private persons' ability to forcibly enter a premises for a felony.

- States that nothing in this Act shall be deemed to authorize a bail, bail depositor, or bail fugitive recovery person to apprehend, detain, or arrest any person other than to surrender a person to the court, magistrate, or sheriff.

- States that a person authorized to apprehend a bail fugitive shall not carry a firearm or any other weapon unless in compliance with the laws of the State.

- Provides that any person who violates a provision of the Bail Fugitive Recovery Persons Act is guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed one year, by a fine not to exceed $5,000, or by both that imprisonment and a fine.

Sexual Activity with Detained Persons

Existing law prohibits sexual activity between a consenting adult confined in a detention facility and an employee, officer, agent or volunteer of the detention facility, except for authorized conjugal visits. Current law defines a "detention facility" as: (1) a prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors; (2) a building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity; (3) a room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility; (4) a vehicle used to transport confined persons during their period of confinement; and, (5) a court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances. However, existing law is currently vague on whether detention facility includes a vehicle transporting a confined individual who has been arrested but has not been processed or booked.

AB 2078 (Nielsen), Chapter 96, includes peace officers in the category of people subject to criminal penalties for engaging in consensual sexual activity with confined persons, and adds a clarification to the definition of a "detention facility" for purposes of the crime.

Unauthorized Sale of Goods on a Public Transportation System

Los Angeles County Transit Services Bureau deputies receive frequent complaints from transit operators and from patrons who deal with the annoyances caused by unauthorized vendors during their daily commute. These offenders often sell consumable items, such as food and drinks, but more often non-consumable items, such as batteries, flowers, pirated DVDs, and music CDs. The consumable products can present a public safety concern, while the counterfeit

non-consumable items are illegal to possess or sell. Moreover, these sales negatively impact small businesses that play by the rules. The Transit Authority wants to give passengers a more peaceful ride by clearing platforms and stations of aggressive and unlicensed vendors.

AB 2247 (Lowenthal), Chapter 750, makes it a criminal infraction for a person to sell any goods, merchandise, property, or services in a public transportation system without the express written consent of the system operator. Specifically, this new law:

- Makes it a *criminal* infraction for a person to sell or peddle any goods, merchandise, property, or services on the facilities, vehicles, or property of any public transportation system without the express written consent of the system operator.

- Adds this violation to the list of violations which the specified transit districts may enforce through an alternative *civil* infraction process.

- Allows an issuing officer to correct errors on and reissue a notice of violation for any of the civil offenses.

- Requires the issuing agency to mail a copy of the correction to the address provided by the person cited at the time the original ticket was served.

Peace Officers Training: Cheating

As part of its mission to enhance California law enforcement and as a service to its stakeholders, the Commission on Peace Officers Standards and Training (POST) develops, maintains and disseminates high-stakes tests required to be administered to students within the network of 40 POST certified basic course academies. Academy students are required to pass 26 high-stakes tests that measure mastery of units of knowledge called "Learning Domains" during basic training. These tests are referred to as "high-stakes" because failure to successfully pass any of these tests results in the termination of training.

Over the past few years, POST staff has noted a steady undercurrent of test security violations throughout the POST academy network. These violations have ranged from minor to major infractions identified by academy staff, brought to the attention of POST and resolved through changes in academy policy, guidelines or procedures. Some violations were simply honest mistakes and some were caused by unanticipated circumstances. To the credit of the academy personnel involved in these incidents, they were promptly and adequately resolved. Nonetheless, these incidents highlight the fact that POST's current testing processes are antiquated and vulnerable. A test security breach has far-reaching implications for the law enforcement community. More costly damage may occur when the honesty and integrity of a peace officer is questioned because the officer graduated from an academy that had a cheating scandal.

AB 2285 (Eng), Chapter 372, makes a peace officer trainee, as defined, who knowingly cheats, assists in cheating, or aids, abets, or knowingly conceals efforts by others to cheat

in any manner on a basic course examination mandated by POST liable for a fine of not more than $1,000 per occurrence.

Professional Sports Facilities: Safety

An increase in notoriety of violent acts in professional sporting venues has brought attention to these facilities. There are a number of existing laws that apply to safety in professional sports facilities. For instance, it unlawful for any person attending a professional sporting event to throw any object on or across the court or field of play with the intent to interfere with play or distract a player. It is also unlawful to enter upon the court or field of play without permission from an authorized person after the authorized participants have entered the court or field to begin the sporting event and until the participants of play have completed the playing time of the sporting event. Facility owners must also provide a notice specifying the unlawful activity prohibited by this section and the punishment for engaging in that prohibited activity. Further, the notice shall be prominently displayed throughout the facility or may be provided by some other manner, such as on a big screen or by a general public announcement.

AB 2464 (Gatto), Chapter 261, requires owners of professional sports facilities to post notices of emergency contact information. Specifically, this new law:

- Requires the owner of any professional sports facility to post written notices displaying the text message number and telephone number to contact security in order to report a violent act.

- Provides that the notices must be visible from a majority of seating in the stands at all times, at controlled entry areas, and at parking facilities which are part of the professional sports arena.

Funeral Picketing

While the picketing and protesting of funerals remains a relatively rare occurrence, one particular organization, the Westboro Baptist Church, has become notorious for its homophobic and incendiary signs.

In *Snyder v. Phelps* (2011) 131 S. Ct. 1207, the U.S. Supreme Court held that the family of a deceased service member could not seek damages against this organization. The Court found that the protesters had a fundamental first amendment right to be present. The court found it significant that the protesters were more than 1,000 feet away from the funeral, on public land, and was not unruly or loud. However, the Court also reemphasized the government's ability to restrict speech by time, place, and manner.

Largely in reaction to the actions of the Westboro Baptist Church, Congress and many states have passed legislation to limit these protests. California lacks this same protection for grieving families.

SB 661 (Lieu), Chapter 354, prohibits picketing, except on private property, targeted at a funeral during a time period beginning one hour before the funeral and ending one hour after its conclusion. Specifically, this new law:

- States that violation of this section is punishable by a fine not to exceed $1,000, imprisonment in a county jail for up to six months, or both a fine and imprisonment.

- Defines a "funeral" as "the ceremony or memorial service held in connection with the burial or cremation of a deceased person."

- Defines "picketing" for purposes of this section as "protest activities engaged in by any person within 300 feet of a burial site, mortuary, or place of worship."

- Specifies that "protest activities" includes oration, speech, use of sound amplification equipment in a manner that is intended to make or makes speech, including, but not limited to, oration audible to participants in a funeral, or similar conduct that is not part of the funeral, before an assembled group of people.

- Defines "targeted at" as "directed at or toward the deceased person or attendees of a funeral."

Animal Fighting

Cockfighting is a lucrative enterprise that occurs throughout California and there needs to be a way to discourage this appalling practice. However, since there is major overcrowding problem in our prison system, merely increasing the term of incarceration is not the answer. Instead, we should be looking to increase fines rather than prison terms.

SB 1145 (Emmerson), Chapter 133, increases the maximum fines for various offenses relating to animal fighting. Specifically, this new law:

- Increases the fine for any person convicted of causing any cock to fight with another cock, or with a different or with any human being, or permitting the same to be done on any premises under his or her charge or control, or aiding and abetting the fighting of any cock from a fine not to exceed $5,000 to a fine not to exceed $10,000.

- Increases the fine for any person convicted of being knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or is knowingly present at that exhibition, or is knowingly present preparations are being made for animal fighting from a fine not to exceed $1,000 to a fine not to exceed $5,000.

- Increase the fine for anyone convicted of manufacturing, buying, selling, bartering, exchanging, or having in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in

place of the natural spur of a gamecock or other fighting bird from a fine not to exceed $5,000 to a fine not to exceed $10,000.

- Increases the fine for any person convicted of owning, possessing, keeping, or training any bird or animal with the intent that it be used by himself or herself, or any other person in an exhibition of fighting from a fine not to exceed $5,000 to a fine not to exceed $10,000.

Metal Theft

Metal theft has been increasing nationwide. According to a March 27, 2008 U.S. News and World Report article, some areas have seen an increase in metal theft of 400 percent since 2003 statistics. Drastic increases in market costs of metals (such as copper, aluminum, and bronze) are the main reason for the increase in theft. For instance, in 2003, the cost of copper on the open market was $0.75 per unit; in 2008, the cost of copper rose to $3.60 per unit.

One reason cited for the increase in metal theft is the lack of a requirement in most states to require scrap metal dealers to document where they receive their metal. Even where those laws exist, police have not enforced them. One method states are using is requiring scrap metal dealers to take the name and thumb print of sellers in order that stolen goods can be more easily traced, thereby reducing the number costly police investigations. California requires scrap dealers maintain a written record and driver's license number of persons selling metal to dealers.

SB 1387 (Emmerson), Chapter 656, prohibits junk dealers and recyclers from possessing fire hydrants, manhole covers or backflow devices without proper certification, as specified; and provides that possession of stolen fire hydrants, manhole covers or backflow devices by persons engaged in the salvage, recycling, purchase or sale of scrap metal, shall be punishable by an additional fine up to $3,000.

CRIMINAL PROCEDURE

Forfeiture of Bail

When a defendant fails to appear in court after he or she has posted bail, the court will generally issue a bench warrant and forfeit the defendant's bail, meaning that the amount the defendant paid to the bail bonds person will not be returned and the bail agent is required to post the remainder of the bail. If the defendant appears in court within 180 days after forfeiture has been ordered, either voluntarily or in custody after surrender or arrest, the forfeiture shall be vacated. Existing law also requires a court to vacate the forfeiture and exonerate the bond if the defendant is arrested on the underlying case or surrendered by the bail outside the county where the case is located within the 180-day period.

The law is thus harsher for defendants who are arrested in the county where they were charged than for defendants arrested in another county, requiring that only defendants arrested within the county where the case is located to appear in court within the 180-day period in order to vacate the order of forfeiture.

AB 1824 (Hagman), Chapter 812, authorizes a court, in its discretion, to vacate the forfeiture and exonerate the bond if a person appears in court after the 180-day period ends if the person was arrested on the same case within the county where the case is located during the 180-day period and has been in continuous custody from the time of arrest until his or her appearance in court. Specifically, this new law:

- Authorizes, upon a showing of good cause, a motion to be brought to vacate the forfeiture and exonerate the bond within 20 days from the mailing of the notice of entry of judgment, where a defendant, who is outside the county where the case is located, is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period; and,

- Requires, in addition to any other notice required by law, the moving party to give the applicable prosecuting agency written notice of the motion to vacate the forfeiture and exonerate the bond at least 10 court days before the hearing.

Mortgage Fraud: Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. If prosecution is not commenced within the applicable period of limitation, it is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time before or after judgment. The defense may only be waived under limited circumstances.

Criminal statutes of limitations are laws that limit the time during which a prosecution can be commenced. These statutes have been in operation for over 350 years and are deeply rooted in the American legal system. There are several rationales underlying statutes of limitations. First, statutes of limitations ensure that prosecutions are based upon reasonably fresh evidence - the idea being that over time memories fade, witnesses die or leave the area, and physical evidence becomes more difficult to obtain, identify or preserve. In short, the possibility of erroneous conviction is minimized when prosecution is prompt. Second, statutes of limitations encourage law enforcement officials to investigate suspected criminal activity in a timely fashion. In addition, it is thought that the statute of limitations may reduce the possibility of blackmail based on threats to disclose information to prosecutors or law enforcement officials. Another rationale is that as time goes by the likelihood increases that an offender has reformed, making punishment less necessary. In addition, society's retributive impulse may lessen over time, making punishment less desirable. Finally, there is the thought that statutes of limitations provide an overall sense of security and stability to human affairs.

> **AB 1950 (Davis), Chapter 569,** extends the statute of limitations for misdemeanor crimes related to mortgage fraud, as specified, from one year to three years after discovery of the offense, or within three years after the completion of the offense, whichever is later.

Arrested Custodial Parents

AB 760 (Nava), Chapter 635, Statutes of 2005, required that if during the booking process, an arrested person is identified as a custodial parent with responsibility for a minor child the arrested person shall be given two additional phone calls for the purpose of arranging for the care of the minor child or children. This has led to some confusion as to whether the arresting officer is responsible for informing the arrested individual of the right to two additional phone calls.

> **AB 2015 (Mitchell), Chapter 816,** requires an arresting or booking officer to inquire if an arrested person is a custodial parent with responsibility for a minor child, and requires that a sign be posted in a conspicuous place informing an arrested custodial parent of his or her right to two additional phone calls for the purpose of arranging for the care of the child or children in the parent's absence.

Sealing Juvenile Court Records

Existing law authorizes the court, upon petition from a person who has reached 18 years of age, to seal all records relating to the person’s case in the custody of a juvenile court if the person has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, and if rehabilitation has been attained to the satisfaction of the court.

Existing law authorizing the sealing of juvenile court records does not take into account that some prostitution-related offenses committed by juveniles may have resulted from human trafficking and that requiring a showing of rehabilitation is unnecessary.

AB 2040 (Swanson), Chapter 197, allows a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution to petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained. Specifically, this new law:

- Makes ineligible for relief a person who paid or attempted to pay money or any other valuable thing to any person for the purpose of prostitution.

- Does not authorize the sealing of any part of a person's record that is unrelated to an act of prostitution.

- Applies retroactively.

Tracking Device Search Warrants

In *U.S. v. Jones* (2012) 132 S.Ct. 945, the United States Supreme Court held that attaching a global positioning system (GPS) device to a person's vehicle to track his or her movements constitutes a search within the meaning of the Fourth Amendment, and therefore must be reasonable.

While the Court's decision established that the use of a tracking device qualifies as a search, the opinion left open other questions. First, the Court did not decide the questions of whether a warrant is required for these types of searches, and whether it requires probable cause, as opposed to a lesser standard like reasonable suspicion. The Court also did not answer the question of how it might apply the Fourth Amendment to law enforcement data collection that does not require a physical intrusion, such as where GPS or toll paying devices are installed or used by the owner and the information they produce are mined by law enforcement authorities.

Because of these unanswered questions, the State's courts and law enforcement agencies are using different standards for the use of these devices. A statewide standard is necessary.

AB 2055 (Fuentes), Chapter 818, establishes procedures for tracking-devices search warrants. Specifically, this new law:

- Allows a tracking-device search warrant to be issued when the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed that act or is committing that act, or will assist in locating an individual that has committed or is committing that act.

- Provides that a tracking-device search warrant shall be executed in a manner meeting the requirements specified in Penal Code Section 1534(b).

- Requires a tracking-device search warrant to identify the person or property to be tracked and to specify a reasonable length of time, not to exceed 30 days, from the date the warrant is issued, that the device may be used.

- Allows the court to grant one or more extensions for the time that the device may be used if good cause is established. Each extension may last a reasonable length of time, but may not exceed 30 days.

- Requires the executing officer to execute the warrant by installing a tracking device or by serving a warrant on a third-party possessor of the tracking data.

- Requires the officer to perform any installation authorized by the warrant during the daytime, unless the magistrate expressly authorizes installation at another time for good cause.

- Mandates execution of the warrant to be completed no later than 10 days immediately after the date of issuance, and deems a warrant executed within this 10-day period to be timely executed.

- Provides that after 10 days the warrant shall be void, unless it has been executed.

- States that an officer executing a tracking-device search warrant is not required to knock and to announce his or her presence before execution.

- Requires the executing officer to file a return to the warrant no later than 10 calendar days after the use of the tracking device has ended.

- Requires the executing officer to serve a copy of the warrant on the person who was tracked or whose property was tracked no later than 10 calendar days after the use of the tracking device has ended.

- Authorizes a judge, for good cause, to delay service of a copy of the warrant if a government agency makes this request.

- Provides that an officer installing a device authorized by a tracking device search warrant may install and use the device within California.

- Specifies that the provisions of this law do not create a cause of action against any foreign or California Corporation, its officers, employees or agents who provide location information to law enforcement.

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

- Defines "daytime" as the hours between 6:00 a.m. and 10:00 p.m. according to local time.

Veteran Services: Restorative Relief

Many veterans are suffering from mental illnesses and substance abuse as a result of service in the United States Military. The Department of Defense recognizes restorative relief as a best practice in promoting a framework to help veterans afflicted with mental health and/or substance abuse addiction to obtain treatment and services in order to resolve outstanding criminal offenses and stabilize their lives. AB 2371 aims to get veteran defendants the treatment that they need. Veterans have sacrificed for our country. We need to support them and give them the rehabilitation they need.

AB 2371 (Butler), Chapter 403, provides restorative relief to a veteran defendant who acquires a criminal record due to a mental disorder stemming from military service. Specifically, this new law:

- Provides that the restorative relief provision shall apply to cases in which a trial court or a court monitoring the defendant's performance on probation finds at a public hearing that the defendant meets the following eligibility criteria:
    - He or she was granted probation, and at the time that probation was granted had alleged the offense was committed as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems stemming from military service;
    - He or she is in substantial compliance with the conditions of that probation;
    - He or she has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health problems stemming from military service;
    - He or she does not represent a danger to the health and safety of others; and,
    - He or she has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice.
- Enumerates factors the court may consider in determining whether the grant of restorative relief would be in the interests of justice, including, but not limited to:
    - The defendant’s completion and degree of participation in education, treatment, and rehabilitation as ordered by the court;
    - The defendant’s progress in formal education;

- The defendant's development of career potential;
- The defendant's leadership and personal responsibility efforts; and,
- The defendant's contribution of service in support of the community.

- States that if the court finds a case satisfies the eligibility requirements, then the court may, by form of a written order with a statement of reasons, do any of the following:
  - Deem all conditions of probation, including fines, fees, assessments, and programs, except victim restitution, to be satisfied and terminate probation early;
  - Exercise discretion pursuant to Penal Code Section 17(b) to reduce an eligible felony to a misdemeanor; and,
  - Grant relief in accordance with Penal Code Section 1203.4.

- Provides that, notwithstanding the language of Penal Code Section 1203.4, a dismissal of the action under this subdivision releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action.

- Prohibits dismissal of the following offenses:
  - Failure to stop and submit to inspection of equipment for an unsafe condition;
  - Unlawful sexual intercourse with a minor under 16 years of age where the defendant is 21 years of age or older;
  - Sodomy with a minor under 14 years of age where the perpetrator is more than 10 years older;
  - Lewd or lascivious acts upon a child;
  - Oral copulation with a minor under 14 years of age where the perpetrator is more than 10 years older;
  - Continuous sexual abuse of a child; and,
  - Sexual penetration with a minor under 14 years of age where the perpetrator is more than 10 years older.

- Provides that a dismissal under this section does not affect the requirement to register as a sex offender under Penal Code Section 290.

- States that, when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, the defendant will not have to disclose

his or her arrest on the dismissed action, the dismissed action, or the conviction that was set aside, except for when the question is contained in a questionnaire or application for any law enforcement position.

- Gives the court discretion to seal the arrest and court records of the dismissed action, making the records thereafter viewable by the public pursuant to a court order.

- Provides that the dismissal of the action under these provisions shall be a bar to any future action based on the conduct charged in the dismissed action.

- Specifies that dismissed convictions can still be pleaded and proved as a prior conviction in a subsequent prosecution for another offense.

- Provides that a set-aside conviction can still be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the defendant's driving privilege on the grounds of multiple convictions.

- Specifies that the defendant's DNA sample and profile shall not be removed as a result of a dismissal under these provisions.

DOMESTIC VIOLENCE

Writ of Habeas Corpus

In 1991, the Legislature enacted AB 785, Chapter 812, which amends Evidence Code Section 1107, to allow Battered Woman Syndrome (BWS) now known as intimate partner battering and its effects to be introduced as evidence in cases where battered women are accused of killing their abusers. BWS evidence was intended to explain to juries how a battered woman could have an honest belief she was in imminent danger or acted in self-defense. This law did not apply retroactively and only affected the trials of women after 1992.

Existing law also provides, until January 1, 2020, that a writ of habeas corpus may be filed on the basis that expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, if there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had been admitted, the result of the proceedings would have been different.

Due to the amount of time needed to investigate these 20 year old cases, only 19 inmates have successfully petitioned for a writ and been released by the courts. This problem is also exacerbated by the length of time it takes to find legal representation for these petitioners. Some petitioners are also barred from applying for habeas relief under the above statute because expert testimony related to intimate partner battering and its effects was presented during the trial proceedings.

AB 593 (Ma), Chapter 803, provides that a writ of habeas corpus based on intimate partner battering and its effects may also be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different. Specifically, this new law:

- Specifies that a showing that expert testimony relating to intimate partner battering and its effects was presented to the trier of fact is not a bar to granting a petition under this section if that expert testimony was not competent or substantial;

- Places the burden of proof on the petitioner to establish a sufficient showing that competent and substantial expert testimony was not presented to the trier of fact, and had that evidence been presented, there is a reasonable probability that the result of the proceedings would have been different;

- Limits the applicability of the law to violent felonies that were committed before August 29, 1996, and resulted in judgments of conviction or sentence after a plea or

trial as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability.

- States that if a petitioner under this statute has previously filed a petition for writ of habeas corpus, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of expert testimony relating to BWS or intimate partner battering and its effects at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus; and

- Deletes the January 1, 2020 sunset date.

Board of Parole Hearings

Existing law requires the Board of Parole Hearings (BPH), in reviewing a prisoner's suitability for parole, to consider any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering, but was convicted of the offense prior to the enactment of Section 1107 of the Evidence Code, which allowed intimate partner battering and its effects to be introduced as evidence in cases where battered women were accused of killing their abusers. BPH must state on the record the information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. BPH is also required to annually report to the Legislature and the Governor on the cases it considered during the previous year where the prisoner had experienced intimate partner battering at the time of the offense, and must include its decision and the findings of its investigations of those cases.

Often, recommendations against parole release are made solely due to the charge being homicide related while placing little weight on evidence showing that the victim was a domestic violence victim whose charge was directly related to or a result of intimate partner battering and its effects. Additionally, when a domestic violence victim is questioned by BPH on the crimes he or she committed, the victim often discusses the history of his or her victimization and prior abuse. BPH often considers this acknowledgement of victimization as "lack of insight" and denies parole.

AB 1593 (Ma), Chapter 809, requires BPH, when reviewing a prisoner's suitability for parole, to give great weight to information or evidence of intimate partner battering at the time of the crime. Specifically, this new law:

- Clarifies that BPH must consider information or evidence that, at the time of the crime, the person had experienced intimate partner battering if the person was convicted of an offense that occurred prior to August 29, 1996;

- Requires BPH to include in its annual report to the Legislature and the Governor specific and detailed findings of its investigations of cases where a prisoner had experienced intimate partner battering at the time of the offense; and,

- States that the fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime and its causes.

Contempt of Court: Domestic Violence

SB 1356 (Yee), Chapter 49, Statutes of 2008, removed the provision that required victims who refused to testify to undergo counseling. Prior to the passage of SB 1356, existing law provided that domestic violence victims in California could be found in contempt of court for refusing to testify against their batterers and that punishment could be incarceration. Existing law also provided two exceptions for incarceration: (1) a court could not imprison a victim of sexual assault for contempt when the contempt consisted of refusing to testify concerning that sexual assault; and (2) courts were able to compel victims to testify by first requiring them to attend a domestic violence counseling program for victims, and then, if the victim continued to refuse, the court had the option to incarcerate. The purpose of SB 1356 was to "align protections for domestic violence victims with those for sexual assault victims by exempting domestic violence victims from being incarcerated when they were held in contempt for refusing to testify in court." Prosecutors feared that SB 1356 would have a dire impact on domestic violence cases by eliminating the court's ability to incarcerate. SB 1356 also had the consequence of removing the court's ability to require victims to undergo counseling if they refused to testify.

> **AB 2051 (Campos), Chapter 510,** authorizes courts to refer victims of domestic violence cases to a domestic violence counselor when they refuse to testify, and to authorize prosecutors to re-file charges when they dismiss cases due to a domestic violence victim's failure to testify, as specified.

Domestic Violence Fund Fee

Data from the March 2004 report "Domestic Violence Audit: Assessment, Collection, and Distribution of Domestic Violence Fines and Fees" produced by the Administrative Office of the Courts Internal Audit Services Division indicates that over time there has been a marked decrease in the fines assessed against defendants. Courts have not been consistent in assessing statutorily required domestic violence fines and fees. Some counties fail to assess fines and fees, other counties incorrectly assess them, and some judges waive or reduce the fee without any documentation to determine the defendants' inability to pay the full amount. Since fees assessed in domestic violence convictions ultimately flow into local domestic violence programs, to the state's Domestic Violence Restraining Order Reimbursement Fund, and to the state's Domestic Violence Training and Education Fund, unsupported fee reductions or waivers, as well as incorrectly assessed fees, have led to reduction in available funding for domestic violence victims.

> **AB 2094 (Butler), Chapter 511,** increases the domestic violence fund fee from a minimum of $400 to a minimum of $500, and requires the court to state a reason on the record if it reduces or waives the minimum fee.

Protective Orders: Electronic Monitoring

Existing law authorizes a court with jurisdiction over a criminal matter, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, to issue specified orders, including an order protecting victims of violent crime from all contact by the defendant, or contact with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. Existing law also authorizes the issuance of a restraining order, valid for up to 10 years, in all cases in which a defendant has been convicted of a crime of domestic violence.

On any given year, there are about 220,000 active restraining orders, most issued in domestic violence cases. However, over 50 percent of them are violated, according to the National Partnership to End Domestic Violence.

AB 2467 (Hueso), Chapter 513, authorizes a court to order electronic monitoring of a defendant where a protective order has been issued to protect a victim of a violent crime committed by the defendant during the pendency of the criminal case, or in cases in which a defendant has been convicted of a crime of domestic violence and a protective order has been issued to protect the victim. Specifically, this new law:

- Requires the local government to receive the concurrence of the county sheriff or the chief probation officer with jurisdiction, in order to adopt a policy to authorize electronic monitoring of defendants for these purposes;

- States if the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant pay for the monitoring; and,

- Requires the local government to specify the agency with jurisdiction over electronic monitoring of defendants for these purposes.

Protective Orders: Relinquishing Firearms

Existing law prohibits a person subject to a protective order, as defined, from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect, and makes a willful and knowing violation of a protective order a crime. The court, upon issuance of a protective order, is required to order the respondent to relinquish any firearm in the respondent's immediate control. Existing law allows the respondent to either immediately surrender the firearm in a safe manner, upon request of any law enforcement officer, or within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer.

Allowing the respondent to keep his or her firearms for a period up to 24 hours after being served with a protective order has led to instances where the firearm was later used to kill the person who had the protective order against the respondent. In 2005, a woman in San Diego obtained a protective order and stated in her affidavit that the subject of the restraining order owned a firearm. The protective order was issued, but the firearm was not seized. Twenty-four hours

after being served with the restraining order, the perpetrator used the firearm to kill their 17-year-old son who was training with his high school cross country team. In 2011, a woman in Santa Clara County obtained a protective order against her husband. In her declaration, the woman stated that she feared that her husband would use his registered firearm to kill their 22-year-old son and then himself. The protective order was served, but the gun was not seized. Her husband killed their son and then himself with his registered firearm.

SB 1433 (Alquist), Chapter 765, requires a peace officer serving a protective order that indicates a respondent possesses weapons or ammunition to request that the firearm be immediately surrendered. Specifically, this new law:

- Requires that, prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has a registered firearm; and,

- Requires a law enforcement officer who is serving a protective order to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

DRIVING UNDER THE INFLUENCE

Driving under the Influence: Testing

Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to determine his/her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he/she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence.

AB 2020 (Pan), Chapter 196, removes the option of providing urine samples, and mandate blood tests, for determining the level of drug intoxication when a person is accused of driving under the influence of drugs.

Driving under the Influence: Controlled Substances

Under current law, there is no distinction in the manner charged for driving under the influence of alcohol and driving under the influence of a controlled substance; both are charged under the same code section. Failure to charge these cases under differing code sections makes it impracticable to trace the numbers of convictions and/or arrests for driving under the influence of a controlled subject as distinguished from driving under the influence of alcohol.

AB 2552 (Torres), Chapter 753, revises and recasts provisions related to driving under the influence of alcohol or drugs, or the combination of drugs and alcohol, by separating the provisions into three distinct sections and subsections.

- Driving under the influence of alcohol.
- Driving under the influence of drugs.
- Driving under the influence of alcohol and drugs.

This new law has a sunset date of January 1, 2014.

ELDER ABUSE

Elder Theft: Wire Transfers

The Federal Trade Commission (FTC) reports that wire transfers are the number one form of consumer scam. In 2010 alone, 43,866 complaints involving wire transfer scams were made to the FTC. These scams involved people posing as family members, friends, legitimate businesses, sweepstake contests, and government entities. Seniors in particular become targets of elaborate fraud schemes because they are likely to have savings, own their home, and have good credit. According to statistics from the National White Collar Crime Center, 1,259 California seniors aged 60 or older lost a total of over $7.1 million during 2011 via scams that involved wire transfers. From January to March 15, 2012, 212 California seniors lost a total of just under $2 million to scams involving wire transfers.

AB 1525 (Allen), Chapter 632, requires money transmitters to provide their contracted agents with training materials on recognizing and responding to elder or dependent adult financial abuse by April 1, 2013, and annually thereafter. Specifically, this new law:

- Requires money transmission licensees to provide their contracted agents training material to help those agents recognize, and respond to elder or dependent adult financial abuse by April 1, 2013.

- Requires money transmission licensees to provide newly appointed agents with elder and dependent adult financial abuse training material within one month of the new agent's appointment.

- Exempts licensees that deal solely with stored value (i.e. gift cards, pre-paid credit cards, pay-roll cards), and limits the applicability to money transmitters (i.e. Western Union, MoneyGram) and the sales of payment instruments (i.e. cashier's checks, money orders).

- Exempts licensees that offer their services exclusively through the Internet.

Injuries at State Hospitals and Developmental Centers

Current law establishes a police force, the Office of Protective Services (OPS), in state developmental centers and mental hospitals which keep peace at institutions and investigate criminal activity. The quality of investigations by these officers has been the subject of inquiry and controversy for more than a decade. A number of government agencies and advocacy organizations have evaluated this issue and concluded that OPS officers were poorly trained and inexperienced, including the federal Attorney General's Office which identified a troubling number of unexplained injuries at developmental centers.

Existing law requires that OPS report all resident deaths and serious injuries of unknown origin to the appropriate law enforcement agency. Currently, all employees of the Department of State

Hospitals (DSH) and developmental centers within the Department of Developmental Services (DDS) are mandated reporters and must report suspected abuse to local law enforcement or department personnel. Despite this, few, if any, local law enforcement agencies have aided in investigations, leaving OPS to conduct homicide and other complex criminal investigations. Increasing incidents of unexplained injuries and deaths have raised questions as to whether the current process provides sufficient protections for residents of state hospitals and developmental centers.

SB 1051 (Liu), Chapter 660, requires the DSH and DDS to report suspected abuse to the designated protection and advocacy agency. Specifically, this new law:

- Mandates DSH to report, no later than the close of the first business day following the discovery of the reportable incident, to the designated agency the following incidents involving a resident of a state mental hospital:
    - Any unexpected or suspicious death, regardless of whether the cause is immediately known;
    - Any allegation of sexual assault, as defined, in which the alleged perpetrator is an employee or contractor of a state mental hospital or of the Department of Corrections and Rehabilitation; and,
    - Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined, in which a staff member is implicated.
- Creates the position of the Director of Protective Services, who will serve as the Chief of OPS, and will have the responsibility and authority to manage all protective service components within the department's law enforcement and fire protection divisions, including those at each state developmental center.
- Requires the Director of Protective Services to be:
    - An experienced law enforcement officer with a Peace Officers Standards and Training Management Certificate or higher, and with extensive management experience directing uniformed peace officer and investigation operations; and,
    - Appointed by, and serve at the pleasure of, the Secretary of California Health and Human Services.
- Mandates a developmental center to immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation.
- Requires all mandated reporters, who have assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, to report to the local

ombudsperson or the local law enforcement agency any abuse that has occurred in a long-term care facility, except a state mental health hospital or a state developmental center.

EVIDENCE

Writ of Habeas Corpus

In 1991, the Legislature enacted AB 785, Chapter 812, which amends Evidence Code Section 1107, to allow Battered Woman Syndrome (BWS) now known as intimate partner battering and its effects to be introduced as evidence in cases where battered women are accused of killing their abusers. BWS evidence was intended to explain to juries how a battered woman could have an honest belief she was in imminent danger or acted in self-defense. This law did not apply retroactively and only affected the trials of women after 1992.

Existing law also provides, until January 1, 2020, that a writ of habeas corpus may be filed on the basis that expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, if there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had been admitted, the result of the proceedings would have been different.

Due to the amount of time needed to investigate these 20 year old cases, only 19 inmates have successfully petitioned for a writ and been released by the courts. This problem is also exacerbated by the length of time it takes to find legal representation for these petitioners. Some petitioners are also barred from applying for habeas relief under the above statute because expert testimony related to intimate partner battering and its effects was presented during the trial proceedings.

AB 593 (Ma), Chapter 803, provides that a writ of habeas corpus based on intimate partner battering and its effects may also be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different. Specifically, this new law:

- Specifies that a showing that expert testimony relating to intimate partner battering and its effects was presented to the trier of fact is not a bar to granting a petition under this section if that expert testimony was not competent or substantial;

- Places the burden of proof on the petitioner to establish a sufficient showing that competent and substantial expert testimony was not presented to the trier of fact, and had that evidence been presented, there is a reasonable probability that the result of the proceedings would have been different;

- Limits the applicability of the law to violent felonies that were committed before August 29, 1996, and resulted in judgments of conviction or sentence after a plea or

trial as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability.

- States that if a petitioner under this statute has previously filed a petition for writ of habeas corpus, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of expert testimony relating to BWS or intimate partner battering and its effects at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus; and

- Deletes the January 1, 2020 sunset date.

Attorney General: Grand Jury Proceedings

The California Attorney General's Office (AG) is investigating significant financial crimes of statewide scope and impact. Unfortunately, existing county grand jury authority to investigate these crimes is ill-suited to the needs of these cases as crimes of a financial nature often occur in multiple jurisdictions and, thus, are often beyond the scope of single-county grand juries. Advances in technology, especially the Internet, have also made it much easier for bad actors to commit theft or fraud across many counties in California. Under existing law, the AG may ask a district attorney to convene a grand jury for the AG to use to bring a case; in cases of Medi-Cal fraud, the AG may convene a grand jury without the consent of the district attorney.

A grand jury investigates civil and criminal matters in proceedings closed to the public. A civil grand jury investigates the operation, management, and fiscal affairs of the county and the cities in the county. A criminal grand jury has constitutional authority to indict a suspect after finding probable clause that he or she committed an offense. Prosecutors present a case before a grand jury in the form of testimony and other evidence and may answer questions that members of the grand jury have concerning the law. A grand jury is not supposed to receive evidence that would be inadmissible over objection at trial. However, even if the grand jury hears evidence that would be inadmissible at trial, the indictment is not void if there is sufficient competent evidence to support the indictment. Furthermore, since the defense is not involved in the proceedings in any manner, they are not permitted to see the evidence against the accused. Once the presentation of evidence is completed by the prosecutor, the grand jury deliberates in secret. A 19-member grand jury brings an indictment when 12 or more jurors conclude that the evidence presented established probable cause to believe that the accused committed the offense. A 23-member grand jury requires the concurrence of at least 14 jurors; an 11-member grand jury requires the concurrence of at least eight jurors. Probable cause is the same standard used by a magistrate at a preliminary hearing: "Whether the evidence would lead a person of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion of guilt of the accused." Unlike a preliminary hearing, no notice is given to the accused prior to the arrest of the now defendant once an indictment is returned.

SB 1474 (Hancock), Chapter 568, allows the AG to convene a statewide grand jury in cases of theft or fraud where the same actor or actors committed the offenses in multiple counties. Specifically, this new law:

- Allows the AG to convene a grand jury, without the concurrence of the district attorney to investigate, consider or issue indictments in matters in which there are two or more activities, in which fraud or theft is a material element, that have occurred in more than one county and conducted either by a single defendant or multiple defendants acting in concert.

- Provides that a special grand jury convened pursuant to this bill may be impaneled in the counties of Fresno, Los Angeles, Sacramento, San Diego, or San Francisco, at the AG's discretion.

- Provides that for special grand juries impaneled pursuant to this subdivision, the AG may issue subpoenas for documents and witnesses located anywhere in California in order to obtain evidence to present to the special grand jury.

- Provides that the special grand jury may hear all evidence in the form of testimony or physical evidence presented to them, irrespective of the location of the witness or physical evidence prior to the subpoena.

- Provides that the special grand jury may indict a person or persons with charges for crimes that occurred in counties other than where the special grand jury is impaneled and that the indictment shall then be submitted to the appropriate court in any of the counties where any of the charges could otherwise have been properly brought.

- Provides that the court where the indictment is filed under this subdivision shall have proper jurisdiction over all counts in the indictment.

- Provides that notwithstanding Penal Code Section 944, an indictment found by a special grand jury and endorsed as a true bill by the special grand jury foreperson, may be presented to the appropriate court solely by the prosecutor within five days of the endorsement of the indictment. For indictments presented to the court in this manner, the prosecutor shall also file with the court clerk, at the time of the presenting indictment, an affidavit signed by the special grand jury foreperson attesting that all the jurors who voted on the indictment heard all of the evidence presented and the proper of number of jurors voted for the indictment.

- Provides that the AG's Office shall be responsible for prosecuting any indictment produced by the grand jury.

- Provides that if a defendant makes a timely and successful challenge to the AG's right to convene a special grand jury by clearly demonstrating that the charges brought are not encompassed by this subdivision, the court shall dismiss the indictment without prejudice to the AG, who may bring the same or other charges against the defendant at a later date via another special grand jury properly convened, or by a regular grand jury or by any other procedure available.

- Specifies that this special grand jury must comply with the provision requiring the prosecutor to present exculpatory evidence to the grand jury.

- Provides that the costs charged the AG for the activities related to the grand jury shall be no more than what would be charged to a regularly impaneled grand jury convened by the county, unless an alternative payment arrangement is agreed upon by the county and the AG.

- Provides that the special grand jury created by SB 1474 is an exception to the above general rule regarding jurisdiction when an offense occurs in more than one county.

Evidence: Exhibits in Death Penalty Cases

Existing law requires all exhibits which have been introduced or filed in any criminal action to be retained by the clerk of the court who shall establish a procedure to account for the exhibits properly until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided. The date when a criminal action or proceeding becomes final, in cases where the death penalty is imposed, is 30 days after the date of execution of sentence.

In California, there are more than 724 inmates condemned to death row. To date, there have been 14 executions and 82 non-execution deaths. Current law forces California courts to bear tremendous financial burden to continue to store and preserve physical exhibits and records in cases where an inmate sentenced to death has died a non-execution death.

SB 1489 (Harman), Chapter 283, permits a court to order the destruction of exhibits, in cases where the death penalty is imposed, 30 days after the execution of sentence or, when the defendant dies while awaiting execution, one year after the date of the defendant's death.

FINES

Metal Theft

The demand for copper is increasing globally and now draws more than $4 per pound. This high price, coupled with California's copper rich infrastructure, creates a prime target for theft. Thieves frequently strip the copper wire from signal lights, streetlamps, heating and air conditioning units, utility department transformers and public transit track. Copper theft has cost the City of Fremont over $460,000 in repairs; San Francisco Bay Area Rapid Transit has been saddled with $38 million in damages and delays; and the City of Sacramento Transportation Department has had to fund over $160,000 in copper-related repairs, which includes the repairs of more than 1,000 disabled street lamps. And for public-transit related copper theft in particular, the damage is not just an expensive irritation; it is a threat to public safety. Stolen cable can create dangerous conditions such as transit malfunction and electrocution from a stray electrical current.

> **AB 1971 (Buchanan), Chapter 82,** increases the maximum fine from $250 to $1,000 for junk and second-hand dealers who knowingly purchase or receive metals used in transportation or public utility services without due diligence.

Domestic Violence Fund Fee

Data from the March 2004 report "Domestic Violence Audit: Assessment, Collection, and Distribution of Domestic Violence Fines and Fees" produced by the Administrative Office of the Courts Internal Audit Services Division indicates that over time there has been a marked decrease in the fines assessed against defendants. Courts have not been consistent in assessing statutorily required domestic violence fines and fees. Some counties fail to assess fines and fees, other counties incorrectly assess them, and some judges waive or reduce the fee without any documentation to determine the defendants' inability to pay the full amount. Since fees assessed in domestic violence convictions ultimately flow into local domestic violence programs, to the state's Domestic Violence Restraining Order Reimbursement Fund, and to the state's Domestic Violence Training and Education Fund, unsupported fee reductions or waivers, as well as incorrectly assessed fees, have led to reduction in available funding for domestic violence victims.

> **AB 2094 (Butler), Chapter 511,** increases the domestic violence fund fee from a minimum of $400 to a minimum of $500, and requires the court to state a reason on the record if it reduces or waives the minimum fee.

Fines: Collection by Local Agencies

In 2011, AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, realigned public safety services in California. As part of the realignment plan, thousands of convicted felons are no longer being sent to the California Department of Corrections and Rehabilitation (CDCR);

instead, they are being housed in local jails. Unfortunately, the realignment plan failed to give counties the authority to collect restitution for victims from these convicted felons.

Additionally, under existing law, the sentencing court is required to assess a parole-revocation restitution fine in the same amount as that imposed for the restitution fine. This additional fine is suspended unless parole is revoked. The parole revocation fines are used by the California Victim Compensation Program to help cover treatment and other support services for victims and their families. Right now, parolees who are serving their parole revocation in county jails instead of state prisons are not paying their parole revocation fines.

Both of these oversights must be corrected so that crime victims receive the restitution they deserve and so that these prisoners do not receive an unforeseen windfall from the realignment plan.

SB 1210 (Lieu), Chapter 762, requires the court to assess a post-release community supervision (PRCS) or mandatory-supervision revocation fine in the same amount as that imposed for the restitution fine and authorizes local agencies to collect them. Specifically, this new law:

- Requires the court to assess a PRCS-revocation fine or a mandatory-supervision revocation fine in the same amount as that imposed for the restitution fine.
- States that the PRCS-revocation fine and mandatory-supervision revocation fines are suspended unless the terms of PRCS or mandatory supervision are violated and the defendant is incarcerated in the county jail for that violation.
- Provides that the PRCS-revocation fine and the mandatory-supervision revocation fine are not subject to penalty assessments.
- Specifies that the fine money shall be deposited in the restitution fund.
- Provides that any part of a restitution fine that remains unsatisfied after a defendant is no longer on PRCS or mandatory supervision is enforceable by the California Victims Compensation and Government Claims Board (VCGCB).
- Provides that any part of a restitution order that remains unsatisfied after a defendant is no longer on PRCS or mandatory supervision is enforceable by the victim.
- States that local collection programs may continue to enforce victim restitution orders once a defendant is no longer on probation, PRCS, or mandatory supervision.
- Specifies that the period for enforcement of judgments found in Civil Procedure Code Sections 683.010 et seq. does not apply to court-ordered fines, forfeitures, penalties, fees, or assessments.

- Provides that if the board of supervisors chooses to designate the county sheriff as the collecting agency, it must first obtain the concurrence of the county sheriff.

- Authorizes the agency designated by the board of supervisors in the county of incarceration to deduct 20 percent to 50 percent from the wages and trust account deposits of a county-jail inmate serving a sentence under realignment and owing a restitution fine, and to transfer that amount to the VCGCB for deposit in the restitution fund.

- Authorizes the agency designated by the board of supervisors in the county of incarceration to deduct 20 percent to 50 percent from the wages and trust account deposits of a county-jail inmate serving a sentence under realignment and owing a victim restitution order, and to transfer that amount to the VCGCB for payment to the victim or to pay the victim directly.

- Requires that the sentencing court be provided a record of payments made to the crime victim and to the restitution fund.

- Allows the agency designated by the board of supervisors in the county of incarceration to withhold an administrative fee to be held in a special deposit account for the purposes of reimbursing administrative and support costs of the restitution program, as specified.

- Directs the local agency designated by the board of supervisors to collect the restitution order first when a county-jail inmate serving a sentence under realignment owes both a restitution fine and a restitution order.

- Allows the garnishment of any compensatory or punitive damages awarded to a defendant placed on PRCS or on mandatory supervision in connection with a civil action brought against any federal, state, or local jail or prison to satisfy outstanding restitution orders or fines.

- Allows a victim who does not timely provide a current address to the VCGCB to provide documentation to the local agency designated by the board of supervisors which in turn may verify that money was in fact collected by VCGCB on the victim's behalf. Upon receipt of verified information, the VCGCB shall transmit restitution revenues to the victim.

- States that juvenile court orders regarding fines, penalties, bail, forfeiture, and victim restitution, can now be referred to the Franchise Tax Board for collection.

GANG PROGRAMS

Delinquency and Gang Intervention and Prevention Grants

Existing law establishes the Board of State and Community Corrections (BSCC) to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. BSCC's duties include developing recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state, receiving and disbursing federal funds, communicating with local agencies and programs and reporting to the Legislature and Governor on the implementation of local plans.

The AAR [Accountability and Administrative Review] Committee and the Select Committee on Delinquency Prevention and Youth Development have found that California spends in excess of $1 billion annually on youth crime prevention and Juvenile Justice funding, with about 75 percent of that money coming from state coffers. Despite these expenditures, the state has little ability to determine which programs have been the most effective at preventing youth crime and lowering recidivism rates among juvenile offenders. Additionally, 17 different state agencies allocate funding to programs addressing juvenile justice, delinquency and youth development, but with little coordination and collaboration among them.

AB 526 (Dickinson), Chapter 850, requires the BSCC to identify delinquency and gang intervention and prevention grant funds and programs and consolidate those grant funds and programs to create a uniform grant application process in adherence with all applicable federal guidelines and mandates. Specifically, this new law:

- Requires the BSCC to develop incentives for units of local government to develop comprehensive regional partnerships whereby adjacent jurisdictions pool grant funds in order to deliver services to a broader target population and maximize the impact of state funds at the local level;

- Requires BSCC, by January 1, 2014, to develop funding allocation policies to ensure that within three years no less than 70 percent of funding for gang and youth violence suppression, intervention, and prevention programs and strategies is used in programs that utilize promising and proven evidence-based principles and practices;

- Requires BSCC to communicate with local agencies and programs in an effort to promote the best evidence-based principles and practices for addressing gang and youth violence through suppression, intervention, and prevention; and

- States that these provisions shall not be construed to include funds already designated to the Local Revenue Fund 2011.

JUVENILES

Department of Juvenile Facilities

In 2007, as part of the Budget, the Legislature passed and the Governor signed into law SB 81 (Senate Budget and Fiscal Review Committee), Chapter 175. SB 81 included provisions to tighten eligibility for commitment to Division of Juvenile Facilities (DJF) to the most serious juvenile offenders. Due in part to this "realignment" of the juvenile offender population, DJF's population has dropped dramatically.

Official analyses prepared by the Legislature at that time unequivocally indicated that the Legislature did not intend this change to exclude juvenile sex offenders from eligibility for DJF commitment. Floor analyses for SB 81 in both houses stated in part: "Juvenile sex offenders are excluded from this change and will not be impacted by this bill."

SB 81 amended Welfare and Institutions Code (WIC) Section 731 to narrow the juvenile court's authority to commit a juvenile delinquent to DJF to those wards adjudicated to have committed a serious or violent offense as described in WIC Section 707(b). SB 81, which also recast WIC Section 733 to describe which juvenile offenders are ineligible for commitment to DJF, included the following, now contained in WIC Section 733(c): "(c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007." (Emphasis added.)

The *C.H.* case, decided on December 12, 2011, involved a youthful offender who, in February of 2009, was committed to DJF after unsuccessful programming efforts at the local level "in order to enable him to participate in its sex offender program." [*In re C.H.* (2011) 53 Cal.4th 94.] The commitment offense was Penal Code Section 288(a), a registerable sex offense not described in WIC Section 707(b).

The Court focused its analysis on WIC Section 731 and 733, and reconciled their apparent inconsistent provisions concerning juvenile sex offenders by concluding that the language in WIC Section 733 was intended to provide a more "nuanced approach" authorizing DJF commitment for non-WIC 707(b) juvenile sex offenders who had a previously sustained petition for a WIC 707(b) offense. Thus, the Court concluded that a delinquent ward was eligible for DJF commitment if the ward was being committed for a WIC 707(b) offense, or for a registerable sex crime if the ward had a previous WIC 707(b) offense in his or her history.

Noting that "only when a statute's language is ambiguous or susceptible of more than one reasonable interpretation may we turn to extrinsic aids to assist in interpretation," the Court concluded under the circumstances presented by its analysis "it is inappropriate to resort to the legislative history . . . to consider whether an otherwise undisclosed legislative intent might be reflected." Accordingly, the Court apparently did not consider the legislative intent described in the floor analyses quoted above.

AB 324 (Buchanan), Chapter 7, addresses the recent California Supreme Court decision in *In re C.H.*, (2011) 53 Cal.4th 94, by:

- Expressly authorizing the commitment to DJF of juvenile offenders who have been adjudicated to be wards of the juvenile court for a registerable sex offense, as specified.

- Authorizing DJF to enter into contracts with counties to furnish housing to certain juvenile sex offenders committed to DJF, as specified.

Tattoo Removal for Human Trafficking Victims

One of the largest forms of domestic 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. Pimps use tattoos as a branding tool to show control and ownership of sex trafficking victims. These victims are forced to carry around these tattoos or “brands” on their bodies, a constant reminder of their exploitation and abuse.

Current free tattoo removal programs, such as the California Voluntary Tattoo Removal Program, are limited to the removal of gang-related tattoos on individuals between 14 and 24 years of age, who are in the custody of the Department of Corrections and Rehabilitation or county probation departments, who are on parole or probation, or who are in a community-based organization serving at-risk youth.

AB 1956 (Portantino), Chapter 746, expands the California Voluntary Tattoo Removal Program to serve individuals who were tattooed for identification in trafficking or prostitution and are in the custody of the Department of Corrections and Rehabilitation or county probation departments, who are on parole or probation, or who are in a specified community-based organization.

Sealing Juvenile Court Records

Existing law authorizes the court, upon petition from a person who has reached 18 years of age, to seal all records relating to the person’s case in the custody of a juvenile court if the person has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, and if rehabilitation has been attained to the satisfaction of the court.

Existing law authorizing the sealing of juvenile court records does not take into account that some prostitution-related offenses committed by juveniles may have resulted from human trafficking and that requiring a showing of rehabilitation is unnecessary.

AB 2040 (Swanson), Chapter 197, allows a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution to petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained. Specifically, this new law:

- Makes ineligible for relief a person who paid or attempted to pay money or any other valuable thing to any person for the purpose of prostitution.

- Does not authorize the sealing of any part of a person's record that is unrelated to an act of prostitution.

- Applies retroactively.

Recall and Resentencing

Under existing law, a juvenile who is 16 years of age or older and under the age of 18 years may be sentenced to life in prison without the possibility of parole (LWOP) if he or she is convicted of murder in the first degree and one or more special circumstances have been proven. In order to be convicted of first-degree murder with special circumstances, one of the enumerated circumstances must be shown. These special circumstances include, but are not limited to, when the defendant has a previous conviction for murder; murder committed by means of a destructive device; murder of a peace officer, firefighter, or federal law enforcement officer; the murder was committed while the defendant was engaged in a specified felony; the murder involved torture; and the defendant committed murder as an active participant in a criminal street gang and the murder was carried out for the benefit of the gang.

The use of this sentence for juveniles ignores neuroscience and well-accepted understandings of adolescent development; is a practice that is in violation of international law and out of step with international norms; and, in California, it is a policy that is applied unjustly. African American youth are sentenced to LWOP at over 18 times the rate of white youth. Hispanic youth are sentenced to LWOP five times more often than Caucasian youth. Youth are different from adults. While they should be held accountable for their actions, even those who commit serious crimes should have the opportunity to prove they have matured and changed.

SB 9 (Yee), Chapter 828, authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to LWOP to submit a petition for recall and re-sentencing to the sentencing court. Specifically, this new law:

- Requires the defendant to have served at least 15 years of his or her sentence;

- Makes ineligible for resentencing a defendant sentenced to LWOP for an offense where the defendant tortured his/her victim, or whose victim was a public safety

official including law enforcement personnel, or a firefighter, or any other law enforcement officer who is employed by the federal government, the state, or any of its political subdivisions;

- Requires the defendant to file the original petition with the sentencing court, with a copy of the petition to be served on the agency that prosecuted the case;

- Requires the petition to include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to LWOP, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

    - The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

    - The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

    - The defendant committed the offense with at least one adult codefendant.

    - The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

- States that a reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause;

- States if the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered;

- States that victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing;

- Specifies factors that the court may consider when determining whether to recall and resentence and provides that the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria;

- Provides that the court has the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the

defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence; and,

- States if the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has served 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

Juveniles: Contempt of Court

In child sex assault cases, all too often a combination of factors – the loss of a breadwinner's income and fear of financial instability, denial, misconceptions of how a molested child will act may lead to a hostile environment for the victim. These factors can make clear to the victim, a child, that the family's finances and relationships are in ruin because of his or her allegations.

The victim, who initially wanted the abuse to stop, now wants the legal process to stop. In some cases, leading them to recant their initial statements or refuse to participate in the legal proceeding. Without their testimony, they are told the case will go away and the family can return to how it was before the allegations were made.

SB 1248 (Alquist), Chapter 223, requires a minor under 16 years of age, who is a victim of a sex crime, and who refuses to testify in a court proceeding to meet with a victims advocate, as defined, unless the court finds, for good cause that it is not in the best interest of the victim.

PEACE OFFICERS

Public Officers: County of Sacramento

Existing law authorizes a county sheriff to hire public employees designated as security officers. The primary duty of a sheriff's security officer is to provide security and protection to facilities owned, operated, or administered by the county or other entities contracting with the county for police services.

AB 1643 (Dickinson), Chapter 48, expands the duties of a security officer employed by the Chief of Police of the City of Sacramento or the Sheriff of the County of Sacramento to include the physical security and protection of specified properties owned or operated by specified entities that contract for security services with the County of Sacramento. Specifically, this new law:

- Expands the duties of a security officer employed by the Chief of Police of the City of Sacramento or the Sheriff of the County of Sacramento to include the physical security and protection of any properties owned or operated by specified entities that contract for security services with the County of Sacramento, whose primary business supports national defense, or whose facility is qualified as national critical infrastructure, or who stores or manufactures materials which if stolen or compromised may threaten national security or pose a danger to residents of the County of Sacramento.

- Provides that any contract entered into with the City or County of Sacramento for security services must provide for full reimbursement to the City or County for the actual costs of providing those services, as determined by the county auditor or auditor-controller, or by the City.

- Requires the Sacramento County Board of Supervisors or the governing board of the City of Sacramento, prior to entering in to a contract for security services, to discuss the contract and the specified requirements at a duly noticed public hearing.

Custodial Officers

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

SB 1254 (LaMalfa), Chapter 66, adds Trinity and Yuba Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially

relating to specified custodial assignments are peace officers whose authority extends to any place in California while engaged in the performance of the duties of his or her respective employment.

Community Correctional Facilities

The primary purpose of community correctional facilities (CCFs) is to provide housing, supervision, counseling, and other correctional programs for persons committed to the California Department of Corrections and Rehabilitation (CDCR). Prior to last year's Public Safety Realignment under AB 109, CCFs were only authorized to be operated by CDCR. Under realignment, the lower-level offenders previously housed at CDCR will now be shifted to the custody of the counties. Along with the passage of realignment last year, the Legislature authorized counties to contract with local public agencies to use CCFs to house inmates sentenced to county jail.

Although the law permits counties to contract with CCFs to house low-level offenders who otherwise would be housed in county jail, the law did not make it clear that correctional staff in CCFs would retain the peace officer status they held when CCFs housed state prisoners.

SB 1351 (Rubio), Chapter 68, adds to the definition of a "peace officer" a correctional officer employed by a city, county, or city and county which operates a local CCF under contract with public agencies other than CDCR, as specified, who have the authority and responsibility for maintaining custody of inmates sentenced to or housed in that facility, and who perform tasks related to the operation of that facility.

RESTITUTION

Victim Contact Information

The California Department of Corrections and Rehabilitation (CDCR) collects money from inmate accounts to pay victim-restitution orders, as well as to repay disbursements from the Victims Compensation Fund back to the Victims Compensation Government Claims Board. There is currently a substantial backlog of cases in which the CDCR has collected restitution from an inmate, but where victim contact information has not been provided to the CDCR. There are also cases where the CDCR has not yet collected from an inmate account, but is aware that there is a restitution order and will begin to collect from the inmate when money is in the account. The CDCR has a court order mandating the payment of restitution but has no way to pay because it does not have victim contact information.

Existing law provides, "If the victim consents, the probation officer of the county from which the person is committed may send to the Department of Corrections and Rehabilitation the victim's contact information and a copy of the restitution order for the purpose of distributing the restitution collected on behalf of the victim." The statute is silent as to the ability of prosecutors to provide this information to the CDCR. Absent a clarifying change to existing law, prosecutors cannot share their information with the CDCR.

AB 2251 (Feuer), Chapter 124, authorizes prosecutors to send victim contact information to the CDCR for purposes of recouping restitution. Specifically, this new law:

- Authorizes a district attorney to provide the restitution order for a victim and the victim’s contact information to the CDCR so that restitution collected from an inmate can be paid to the victim through the Victim Compensation and Government Claims Board.

- Conditions the dissemination of the victim’s contact information to the CDCR on a finding by the district attorney that doing so is in the victim's best interest.

- Prohibits the district attorney from sending the victim's contact information to the CDCR when the victim affirmatively objects.

- Provides that the district attorney is not required to inform the victim of the right to object.

Human Trafficking: Seizure of Assets

Under existing law, individuals engaged in human trafficking are subjected to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines “criminal profiteering activity” as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking.

Additionally, a "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

AB 2466 (Blumenfield), Chapter 512, allows the government to seize and freeze a defendant's assets in a human trafficking case for later forfeiture proceedings to prevent the defendant from discharging those assets prior to the conclusion of the forfeiture proceedings. Specifically, this new law:

- Provides that a prosecutor may obtain an injunction and a restraining order to prevent a human trafficking defendant from transferring, hiding or dissipating assets, thus preserving those assets for payment of fines and restitution.

- Specifies a comprehensive process for preserving the assets and levying upon the assets if the defendant is convicted of the underlying crime.

Restitution: Limitations on Offset

Under California law, an employer may be charged criminally when an employee is killed or seriously injured on the job. Upon conviction, the employer will be ordered to pay restitution to the victim or victim's family, which can include medical expenses and lost future wages. If the victim or victim's family receives workers' compensation benefits from the employer's insurer, the employer will typically seek to reduce its restitution obligation to the victim or the victim's family by arguing that the employer is entitled to an 'offset' for those benefits – that is, the employer will assert that restitution owed should be reduced (offset) by the amount of any workers' compensation insurance payments made to the victim or family.

However, in some cases, the convicted employer has also been defrauding its workers' compensation insurance carrier by, for example, underreporting or failing to report the employee's wages. Despite this, the employer may still claim a workers' compensation offset to the restitution ordered by the court.

Employers who are following the law are at a competitive disadvantage when less scrupulous employers cut corners for their employee's workplace safety and workers compensation coverage. In addition, criminally negligent employers are getting the extra benefit of restitution offsets when they have defrauded their workers' compensation insurer.

SB 1177 (Leno), Chapter 868, provides that where an employer is convicted of a crime against an employee, the restitution order shall not be offset by workers' compensation

insurance payments unless the court finds substantial evidence that all insurance premiums have been made in full accordance with the law.

Victim Reimbursement

Crime victims use the Victims of Crime Program administered by the California Victim Compensation and Government Claims Board (VCGCB) to seek reimbursement for their crime related losses. All too often the program fails a significant number of these victims through confusing correspondence, inconsistent information, and different interpretations of the code. Interpretation of the law by program staff often operates contrary to legislative intent, and is overly burdensome in ways not experienced in other states.

While California has the largest victim compensation program in the nation it also has the least user-friendly system for victims. Victims and their service providers often turn away from the program unnecessarily because of confusion over the complexity of the rules, lack of timely payment, and misconceptions put forth by staff which cannot be trained fast enough to deal with the many regulatory and policy changes. The Auditor General's 2008 report and subsequent status updates support changes to the program.

SB 1299 (Wright), Chapter 870, modifies the process by which crime victims seek reimbursement from the VCGCB for pecuniary losses resulting from a crime. Specifically, this new law:

- Adds county social workers to the list of people authorized to file a claim with the VCGCB on behalf of a victim if the victim is a child abuse victim or an elder abuse victim, and that victim is unable to file on his or her own behalf.

- States that any county social worker acting as the applicant for a child victim or an elder-abuse victim shall not be required to provide personal identification, including, but not limited to, the applicant's date of birth or social security number.

- States that county social workers acting in this capacity shall not be required to sign a promise of repayment to the VCGCB.

- Extends the time period in which a victim may file a claim with the VCGCB from one year to three years from the date of the crime, from the date the victim becomes 18 years old, or from the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a result of the crime, whichever is later.

- Requires the VCGCB, when determining whether or not to grant an extension of time in which a victim or derivative victim may file a claim, to consider whether or not the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying

during the prosecution or in the punishment of the person accused or convicted of the crime or when the person convicted of the crime is scheduled for a parole hearing or released from incarceration.

- Removes the provision stating that, in considering whether or not to grant an extension of time in which the victim or derivative victim may file a claim, the VCGCB may consider any factor including, but not limited to, a recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, whether the particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring pecuniary loss, and whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

- States that any reduction in maximum rates or service limitations shall not affect payment or reimbursement of losses incurred prior to three months after the adoption of any changes by regulations.

- Prohibits any provider from charging a victim or derivative victim for any difference between the cost of a service provided to a victim or derivative victim and the program's payment for that service.

- Adds mental health services to the list of services for which, if approved, the VCGCB shall pay within an average of 90 days from the receipt of the claim for payment.

- Repeals existing law related to procedures for paying claims of qualified providers of mental health services to crime victims.

- States that reimbursement for a claim may be made beyond three years after the claim was incurred by the victim if the victim has paid the expense as a direct result of a crime for which an application has been filed and approved.

Restitution: Satisfying Obligation

Existing law gives the court power to enforce payment of fine in criminal case by imprisonment. This statutory provision is also used by defendants as a vehicle to request that the trial court exercise its discretion to convert fines to jail time. Currently, this section only authorizes crediting custody time against amounts owed for restitution or restitution fines if the inmate has defaulted on payment of other fines. The purpose of Senate Bill 1371 is to minimize the loss of potential restitution collection by ensuring that restitution fines and orders are not eligible to be converted to additional time in prison.

SB 1371 (Anderson), Chapter 49, prohibits a defendant from satisfying an order to pay direct restitution to a victim, a restitution fine, or both, through time spent in custody at the statutory rate of $30 per day.

Restitution: Piracy Cases

California remains the capital of the motion picture and television industry as well as a center for the recording industry. Piracy is a crime that causes substantial damage to affected industries.

The impetus for this law is the case of *People v. Garcia* (2011) 194 Cal.App.4th 612, a case involving convictions of failure to disclose the origin of recording or audiovisual work and the manufacture or sale of a counterfeit mark. Defendants possessed equipment for the manufacture and packaging of DVDs and CDs, pay-owe records with notations for approximately 4,000 CDs, over 10,000 pirated DVDs, and nearly 4,000 counterfeit music CDs. Defendants were ordered to pay $235,072.68 in victim restitution, with part going to the Motion Picture Association of America and to the Recording Association of America. The order was comprised of the value of both the items in the pay-owe sheets and the seized items. But the Court of Appeal modified the restitution order, holding that restitution is limited to actual economic loss and does not envision an award for potential economic loss.

With this law, the recording industry sought to explicitly provide that in video piracy cases, a defendant must pay victim restitution in an amount equal to the value of legitimate copies of the works illegally possessed by the defendant had that number of works been legitimately purchased at the wholesale price.

SB 1479 (Pavley), Chapter 873, provides that in music or video piracy cases, restitution shall include the value of pirated works that were seized from the defendant, but not actually sold. Specifically this new law:

- Specifies that for purposes of restitution involving crimes of music and video piracy, the possession of non-conforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases.

- Requires a restitution order in music and video piracy cases to be based on the value of legitimate copies of the works illegally possessed by the defendant had that number of works been legitimately purchased at the wholesale price.

SENTENCING

Recall and Resentencing

Under existing law, a juvenile who is 16 years of age or older and under the age of 18 years may be sentenced to life in prison without the possibility of parole (LWOP) if he or she is convicted of murder in the first degree and one or more special circumstances have been proven. In order to be convicted of first-degree murder with special circumstances, one of the enumerated circumstances must be shown. These special circumstances include, but are not limited to, when the defendant has a previous conviction for murder; murder committed by means of a destructive device; murder of a peace officer, firefighter, or federal law enforcement officer; the murder was committed while the defendant was engaged in a specified felony; the murder involved torture; and the defendant committed murder as an active participant in a criminal street gang and the murder was carried out for the benefit of the gang.

The use of this sentence for juveniles ignores neuroscience and well-accepted understandings of adolescent development; is a practice that is in violation of international law and out of step with international norms; and, in California, it is a policy that is applied unjustly. African American youth are sentenced to LWOP at over 18 times the rate of white youth. Hispanic youth are sentenced to LWOP five times more often than Caucasian youth. Youth are different from adults. While they should be held accountable for their actions, even those who commit serious crimes should have the opportunity to prove they have matured and changed.

SB 9 (Yee), Chapter 828, authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to LWOP to submit a petition for recall and re-sentencing to the sentencing court. Specifically, this new law:

- Requires the defendant to have served at least 15 years of his or her sentence;

- Makes ineligible for resentencing a defendant sentenced to LWOP for an offense where the defendant tortured his/her victim, or whose victim was a public safety official including law enforcement personnel, or a firefighter, or any other law enforcement officer who is employed by the federal government, the state, or any of its political subdivisions;

- Requires the defendant to file the original petition with the sentencing court, with a copy of the petition to be served on the agency that prosecuted the case;

- Requires the petition to include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to LWOP, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

- The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

- The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

- The defendant committed the offense with at least one adult codefendant.

- The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

- States that a reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause;

- States if the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered;

- States that victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing;

- Specifies factors that the court may consider when determining whether to recall and resentence and provides that the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria;

- Provides that the court has the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence; and,

- States if the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has served 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

SEX OFFENSES

Child Abuse and Neglect Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A number of recent events involving instances of sexual abuse between athletic coaches and youth whom coaches instruct have underscored shortcomings in the state's mandated reporter law. Specifically, coaches are not explicitly covered in CANRA.

> **AB 1435 (Dickinson), Chapter 520,** adds athletic coaches, athletic administrators, and athletic directors employed by any public or private school that provides any combination of instruction for Kindergarten, or Grades 1 to 12, inclusive, to the list of individuals who are mandated reporters under CANRA.

Sexual Activity with Detained Persons

Existing law prohibits sexual activity between a consenting adult confined in a detention facility and an employee, officer, agent or volunteer of the detention facility, except for authorized conjugal visits. Current law defines a "detention facility" as: (1) a prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors; (2) a building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity; (3) a room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility; (4) a vehicle used to transport confined persons during their period of confinement; and, (5) a court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances. However, existing law is currently vague on whether detention facility includes a vehicle transporting a confined individual who has been arrested but has not been processed or booked.

> **AB 2078 (Nielsen), Chapter 96,** includes peace officers in the category of people subject to criminal penalties for engaging in consensual sexual activity with confined persons, and adds a clarification to the definition of a "detention facility" for purposes of the crime.

Human Trafficking: Nuisance Abatement Proceedings

Under existing law, individuals engaged in human trafficking are subject to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines "criminal profiteering activity" as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking. Additionally, a "pattern of criminal profiteering activity" as engaging in at least two incidents of

criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

AB 2212 (Block), Chapter 254, permits nuisance abatement in specified human trafficking cases. Specifically, this new law:

- Provides that every building or place used for the purpose of human trafficking, or upon which acts of human trafficking are held or occur, is declared a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

- Provides that in any case in which a government agency seeks to enjoin the use of a building for purposes of human trafficking, the court may award costs to the prevailing party.

- Provides that, in nuisance abatement cases involving human trafficking, one-half of the civil penalties collected, as specified, shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation by the Legislature to the California Emergency Management Agency to fund grants for human trafficking victim services and prevention programs, as specified, and that the other one-half of the civil penalties shall be paid to the city in which judgment was entered, if the action was brought by a city attorney or city prosecutor or, if the action was brought by a district attorney, the one-half of the civil penalty shall, instead, be paid to the treasurer of the county in which judgment was entered.

Human Trafficking: Seizure of Assets

Under existing law, individuals engaged in human trafficking are subjected to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines “criminal profiteering activity” as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking. Additionally, a “pattern of criminal profiteering activity” as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including

all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

AB 2466 (Blumenfield), Chapter 512, allows the government to seize and freeze a defendant's assets in a human trafficking case for later forfeiture proceedings to prevent the defendant from discharging those assets prior to the conclusion of the forfeiture proceedings. Specifically, this new law:

- Provides that a prosecutor may obtain an injunction and a restraining order to prevent a human trafficking defendant from transferring, hiding or dissipating assets, thus preserving those assets for payment of fines and restitution.

- Specifies a comprehensive process for preserving the assets and levying upon the assets if the defendant is convicted of the underlying crime.

Witnesses Testimony: Support Persons

Under existing law, a victim of specified sex crimes, violent crimes, child abuse crimes, and specified offenses against an elder or dependent adult may choose up to two support persons, one of whom may accompany the witness to the witness stand; the other witness may remain in the courtroom. If the person chosen is also a prosecuting witness, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness and the testimony of the support person should be taken before they are in the court room with the prosecuting witness. This provision has been found not to violate the Confrontation Clause of the Constitution.

SB 1091 (Pavley), Chapter 148, adds a number of prostitution, human trafficking and pornography offenses to the section which allows a victim witness to have a support person present while testifying.

Human Trafficking of Minors: Forfeiture

Under existing law, individuals engaged in human trafficking are subject to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines "criminal profiteering activity" as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking. Additionally, a "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

SB 1133 (Leno), Chapter 514, modifies provisions relating to forfeiture of the property of convicted human traffickers involving minors. Specifically, this new law:

- Authorizes the forfeiture of vehicles, boats, airplanes, money, negotiable instruments, securities, real property, or other things of value used for the purpose of facilitating human trafficking involving a commercial sex act where the victim is an individual under 18 years of age at the time of the commission of the crime and property acquired through human trafficking or which was received in exchange for the proceeds of human trafficking of a person under 18 years of age when the crime involved a commercial sex act.

- Provides that 50 percent of the forfeiture proceeds shall be distributed to the Victim-Witness Assistance Fund for grants to community organizations serving human trafficking victims and 50 percent of the proceeds shall be distributed to the General Fund of the state or county, depending on whether the Attorney General or district attorney prosecuted the matter.

Child Abuse Neglect and Reporting Act: Mandated Reporters

The Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

At the end of 2011, prosecutors filed criminal charges against Jerry Sandusky, the assistant football coach at Pennsylvania State University (Penn State) for nearly 15 years, for alleged sexual abuse charges. In the case against Sandusky, the Grand Jury found that there had been at least eight victims of sexual assaults throughout his career at Penn State. The head coach of the Penn State football team, Joe Paterno, allegedly knew of instances of sexual abuse but failed to report these directly to Child Welfare Services. Instead, Paterno reported the instances to a supervisor who also failed to report to Child Welfare Services.

SB 1264 (Vargas), Chapter 518, adds any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary institutions, to the list of individuals who are mandated reporters under CANRA.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predator Evaluations

In sexually violent predator (SVP) cases, existing law allows the district attorney or county counsel to request a replacement evaluator from the Department of State Hospitals (DSH) when the current evaluator is 'unavailable' for specific reasons. The statute does address replacing an evaluator who resigns or retires.

A number of SVP evaluators have recently resigned from the DSH panel and will not contract with the DSH to finish their pending cases throughout California. In those cases, some trail courts have not allowed prosecutors to request replacement evaluators from the DSH, and some courts are considering denying prosecutors the opportunity to present the testimony of replacement evaluators at trial.

> **SB 760 (Alquist), Chapter 790,** authorizes an attorney petitioning for the commitment of an SVP to request DSH to perform a replacement evaluation if the evaluator is no longer able to testify for the petitioner in court proceeding as a result of the retirement or resignation of the evaluator and the evaluator has not entered into a new contract to continue as an evaluator on the case except in the instance the evaluator has opined that the individual named in the petition has not met the criteria for commitment, as specified.

VEHICLES

Driving under the Influence: Testing

Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to determine his/her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he/she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence.

> **AB 2020 (Pan), Chapter 196**, removes the option of providing urine samples, and mandate blood tests, for determining the level of drug intoxication when a person is accused of driving under the influence of drugs.

Irrigation Supplies: Vehicle Stops

The United States Supreme Court has stated, "The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision. An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." [*Whren v. United States*, 517 U.S. 806, 809-810 (U.S. 1996).]

> **AB 2284 (Chesbro), Chapter 390**, allows a peace officer to stop a person with irrigation supplies on a rock or unpaved road on specified public or forestry land, and creates civil penalties for cultivating a controlled substance on public lands.

VETERAN SERVICES

Veteran Services: Restorative Relief

Many veterans are suffering from mental illnesses and substance abuse as a result of service in the United States Military. The Department of Defense recognizes restorative relief as a best practice in promoting a framework to help veterans afflicted with mental health and/or substance abuse addiction to obtain treatment and services in order to resolve outstanding criminal offenses and stabilize their lives. AB 2371 aims to get veteran defendants the treatment that they need. Veterans have sacrificed for our country. We need to support them and give them the rehabilitation they need.

AB 2371 (Butler), Chapter 403, provides restorative relief to a veteran defendant who acquires a criminal record due to a mental disorder stemming from military service. Specifically, this new law:

- Provides that the restorative relief provision shall apply to cases in which a trial court or a court monitoring the defendant's performance on probation finds at a public hearing that the defendant meets the following eligibility criteria:
    - He or she was granted probation, and at the time that probation was granted had alleged the offense was committed as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems stemming from military service;
    - He or she is in substantial compliance with the conditions of that probation;
    - He or she has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health problems stemming from military service;
    - He or she does not represent a danger to the health and safety of others; and,
    - He or she has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice.
- Enumerates factors the court may consider in determining whether the grant of restorative relief would be in the interests of justice, including, but not limited to:
    - The defendant’s completion and degree of participation in education, treatment, and rehabilitation as ordered by the court;
    - The defendant’s progress in formal education;

- The defendant's development of career potential;
- The defendant's leadership and personal responsibility efforts; and,
- The defendant's contribution of service in support of the community.

- States that if the court finds a case satisfies the eligibility requirements, then the court may, by form of a written order with a statement of reasons, do any of the following:
  - Deem all conditions of probation, including fines, fees, assessments, and programs, except victim restitution, to be satisfied and terminate probation early;
  - Exercise discretion pursuant to Penal Code Section 17(b) to reduce an eligible felony to a misdemeanor; and,
  - Grant relief in accordance with Penal Code Section 1203.4.

- Provides that, notwithstanding the language of Penal Code Section 1203.4, a dismissal of the action under this subdivision releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action.

- Prohibits dismissal of the following offenses:
  - Failure to stop and submit to inspection of equipment for an unsafe condition;
  - Unlawful sexual intercourse with a minor under 16 years of age where the defendant is 21 years of age or older;
  - Sodomy with a minor under 14 years of age where the perpetrator is more than 10 years older;
  - Lewd or lascivious acts upon a child;
  - Oral copulation with a minor under 14 years of age where the perpetrator is more than 10 years older;
  - Continuous sexual abuse of a child; and,
  - Sexual penetration with a minor under 14 years of age where the perpetrator is more than 10 years older.

- Provides that a dismissal under this section does not affect the requirement to register as a sex offender under Penal Code Section 290.

- States that, when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, the defendant will not have to disclose

his or her arrest on the dismissed action, the dismissed action, or the conviction that was set aside, except for when the question is contained in a questionnaire or application for any law enforcement position.

- Gives the court discretion to seal the arrest and court records of the dismissed action, making the records thereafter viewable by the public pursuant to a court order.

- Provides that the dismissal of the action under these provisions shall be a bar to any future action based on the conduct charged in the dismissed action.

- Specifies that dismissed convictions can still be pleaded and proved as a prior conviction in a subsequent prosecution for another offense.

- Provides that a set-aside conviction can still be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the defendant's driving privilege on the grounds of multiple convictions.

- Specifies that the defendant's DNA sample and profile shall not be removed as a result of a dismissal under these provisions.

Veterans: Correctional Counselors

Many incarcerated veterans of the United States Military are unaware of the benefits they are rightfully owed for their service to our country. Although veterans cannot collect on their benefits while incarcerated, the intent of AB 2490 is to assist incarcerated veterans in initiating the process for obtaining state and federal benefits so that they may begin collecting upon release. This policy will ultimately ease the transition to civilian life.

AB 2490 (Butler), Chapter 407, requires the California Department of Corrections and Rehabilitation (CDCR) to develop policies to assist veteran inmates in pursuing veteran's benefits, and allows the CDCR to coordinate with the Department of Veterans Affairs and county veterans services officers or veterans service organizations in developing the policies.

VICTIMS

Tattoo Removal for Human Trafficking Victims

One of the largest forms of domestic 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. Pimps use tattoos as a branding tool to show control and ownership of sex trafficking victims. These victims are forced to carry around these tattoos or "brands" on their bodies, a constant reminder of their exploitation and abuse.

Current free tattoo removal programs, such as the California Voluntary Tattoo Removal Program, are limited to the removal of gang-related tattoos on individuals between 14 and 24 years of age, who are in the custody of the Department of Corrections and Rehabilitation or county probation departments, who are on parole or probation, or who are in a community-based organization serving at-risk youth.

> **AB 1956 (Portantino), Chapter 746,** expands the California Voluntary Tattoo Removal Program to serve individuals who were tattooed for identification in trafficking or prostitution and are in the custody of the Department of Corrections and Rehabilitation or county probation departments, who are on parole or probation, or who are in a specified community-based organization.

Contempt of Court: Domestic Violence

SB 1356 (Yee), Chapter 49, Statutes of 2008, removed the provision that required victims who refused to testify to undergo counseling. Prior to the passage of SB 1356, existing law provided that domestic violence victims in California could be found in contempt of court for refusing to testify against their batterers and that punishment could be incarceration. Existing law also provided two exceptions for incarceration: (1) a court could not imprison a victim of sexual assault for contempt when the contempt consisted of refusing to testify concerning that sexual assault; and (2) courts were able to compel victims to testify by first requiring them to attend a domestic violence counseling program for victims, and then, if the victim continued to refuse, the court had the option to incarcerate. The purpose of SB 1356 was to "align protections for domestic violence victims with those for sexual assault victims by exempting domestic violence victims from being incarcerated when they were held in contempt for refusing to testify in court." Prosecutors feared that SB 1356 would have a dire impact on domestic violence cases by eliminating the court's ability to incarcerate. SB 1356 also had the consequence of removing the court's ability to require victims to undergo counseling if they refused to testify.

> **AB 2051 (Campos), Chapter 510,** authorizes courts to refer victims of domestic violence cases to a domestic violence counselor when they refuse to testify, and to

authorize prosecutors to re-file charges when they dismiss cases due to a domestic violence victim's failure to testify, as specified.

Confidential Information

The California Public Records Act (PRA) requires state and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. The act excludes from disclosure homes addresses and telephone numbers contained in applications for licenses to carry firearms submitted by peace officers, judges, court commissioners, and magistrates to county sheriffs and the chiefs or other heads of municipal police departments. Absent from the list of protected officials are prosecutors and public defenders. These public servants, who deal with the same dangerous criminals, are not being given the same protection afforded to judges and police officers.

The California Constitution, in Section 28 of Article I, provides that a victim has the right to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family. Under existing law, the PRA contains a list of information not required to be disclosed under the Act, however there is no cross-reference to the California Constitution, Section 28 of Article I.

AB 2221 (Block), Chapter 697, adds prosecutors and public defenders to the list of professionals whose firearm licenses and license applications are not fully required to be disclosed as public records under the PRA. Additionally, this new law adds confidential information or records pertaining to crime victims, as provided in the Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution, to the list of information not required to be disclosed as public records under the PRA.

Victim Contact Information

The California Department of Corrections and Rehabilitation (CDCR) collects money from inmate accounts to pay victim-restitution orders, as well as to repay disbursements from the Victims Compensation Fund back to the Victims Compensation Government Claims Board. There is currently a substantial backlog of cases in which the CDCR has collected restitution from an inmate, but where victim contact information has not been provided to the CDCR. There are also cases where the CDCR has not yet collected from an inmate account, but is aware that there is a restitution order and will begin to collect from the inmate when money is in the account. The CDCR has a court order mandating the payment of restitution but has no way to pay because it does not have victim contact information.

Existing law provides, "If the victim consents, the probation officer of the county from which the person is committed may send to the Department of Corrections and Rehabilitation the victim's contact information and a copy of the restitution order for the purpose of distributing the restitution collected on behalf of the victim." The statute is silent as to the ability of prosecutors to provide this information to the CDCR. Absent a clarifying change to existing law, prosecutors cannot share their information with the CDCR.

AB 2251 (Feuer), Chapter 124, authorizes prosecutors to send victim contact information to the CDCR for purposes of recouping restitution. Specifically, this new law:

- Authorizes a district attorney to provide the restitution order for a victim and the victim's contact information to the CDCR so that restitution collected from an inmate can be paid to the victim through the Victim Compensation and Government Claims Board.

- Conditions the dissemination of the victim's contact information to the CDCR on a finding by the district attorney that doing so is in the victim's best interest.

- Prohibits the district attorney from sending the victim's contact information to the CDCR when the victim affirmatively objects.

- Provides that the district attorney is not required to inform the victim of the right to object.

Witnesses Testimony: Support Persons

Under existing law, a victim of specified sex crimes, violent crimes, child abuse crimes, and specified offenses against an elder or dependent adult may choose up to two support persons, one of whom may accompany the witness to the witness stand; the other witness may remain in the courtroom. If the person chosen is also a prosecuting witness, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness and the testimony of the support person should be taken before they are in the court room with the prosecuting witness. This provision has been found not to violate the Confrontation Clause of the Constitution.

SB 1091 (Pavley), Chapter 148, adds a number of prostitution, human trafficking and pornography offenses to the section which allows a victim witness to have a support person present while testifying.

Victim Reimbursement

Crime victims use the Victims of Crime Program administered by the California Victim Compensation and Government Claims Board (VCGCB) to seek reimbursement for their crime related losses. All too often the program fails a significant number of these victims through confusing correspondence, inconsistent information, and different interpretations of the code. Interpretation of the law by program staff often operates contrary to legislative intent, and is overly burdensome in ways not experienced in other states.

While California has the largest victim compensation program in the nation it also has the least user-friendly system for victims. Victims and their service providers often turn away from the program unnecessarily because of confusion over the complexity of the rules, lack of timely

payment, and misconceptions put forth by staff which cannot be trained fast enough to deal with the many regulatory and policy changes. The Auditor General's 2008 report and subsequent status updates support changes to the program.

SB 1299 (Wright), Chapter 870, modifies the process by which crime victims seek reimbursement from the VCGCB for pecuniary losses resulting from a crime. Specifically, this new law:

- Adds county social workers to the list of people authorized to file a claim with the VCGCB on behalf of a victim if the victim is a child abuse victim or an elder abuse victim, and that victim is unable to file on his or her own behalf.

- States that any county social worker acting as the applicant for a child victim or an elder-abuse victim shall not be required to provide personal identification, including, but not limited to, the applicant's date of birth or social security number.

- States that county social workers acting in this capacity shall not be required to sign a promise of repayment to the VCGCB.

- Extends the time period in which a victim may file a claim with the VCGCB from one year to three years from the date of the crime, from the date the victim becomes 18 years old, or from the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a result of the crime, whichever is later.

- Requires the VCGCB, when determining whether or not to grant an extension of time in which a victim or derivative victim may file a claim, to consider whether or not the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime or when the person convicted of the crime is scheduled for a parole hearing or released from incarceration.

- Removes the provision stating that, in considering whether or not to grant an extension of time in which the victim or derivative victim may file a claim, the VCGCB may consider any factor including, but not limited to, a recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, whether the particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring pecuniary loss, and whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

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States that any reduction in maximum rates or service limitations shall not affect payment or reimbursement of losses incurred prior to three months after the adoption of any changes by regulations.

- Prohibits any provider from charging a victim or derivative victim for any difference between the cost of a service provided to a victim or derivative victim and the program's payment for that service.

- Adds mental health services to the list of services for which, if approved, the VCGCB shall pay within an average of 90 days from the receipt of the claim for payment.

- Repeals existing law related to procedures for paying claims of qualified providers of mental health services to crime victims.

- States that reimbursement for a claim may be made beyond three years after the claim was incurred by the victim if the victim has paid the expense as a direct result of a crime for which an application has been filed and approved.

WEAPONS

"Open Carry" Prohibition

AB 144 (Portantino), Chapter 725, Statutes of 2011 made 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.

AB 144 was passed in response to handguns being carried in public which alarmed unsuspecting individuals. In addition, this behavior caused 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.

After the passage of AB 144 (Portantino), which applied only to the carrying of an exposed and unloaded handgun, "open carry" advocates resorted to carrying unloaded rifles and shotguns in public.

AB 1527 (Portantino), Chapter 700, makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this new law:

- Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed $1,000, or both for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed $1,000, or both if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that 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.

- Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
    - By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;
    - When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;
    - If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified;
    - By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;
    - By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;
    - 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 or agent of that business;
    - By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;
    - 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;
    - By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition;

- 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;

- 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;

- Within a licensed gun show;

- Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;

- By any person while engaged in the act of making or attempting to make a lawful arrest;

- 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;

- 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;

- Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice;

- At any established public target range while the person is using that firearm upon the target range;

- 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;

- Complying with specified provisions of law relating to the regulation of firearms;

- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training;

- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;

- Incident to and at the request of a sheriff or chief or other head of a municipal police department;

- If 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 firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,

    - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.

- By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;

- By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;

- By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system;

- 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;

- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;

- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training;

- By a person in compliance with specified provisions related to carrying a firearm in an airport; or,

- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

- Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.

- Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

- Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.

- Makes conforming technical changes.

Firearms: Movie Props

Existing law provides that no person may manufacture, import into California, keep for sale, offer for sale, give, lend, or possess any short-barreled rifle or short-barreled shotgun. Existing law further provides that, except as specified, any person in California who manufactures or causes to be manufactured, imports into California, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any short-barreled rifle or short-barreled shotgun is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

AB 1559 (Portantino), Chapter 691, amends existing law allowing for Department of Justice (DOJ) to issue permits for the manufacture, possession, or use with blank cartridges of a short-barreled rifle or short-barreled shotgun, solely as a prop for a motion picture, television, or video production or entertainment event to clarify that these permits may allow for importation of these weapons for these uses. This new law states that these amendments do not constitute a change in, but are declaratory of, existing law. This new law provides that, beginning January 1, 2014, DOJ shall only charge one fee for a single transaction on the same date and time for taking title or possession of any number of firearms.

Imitation Firearms: State Preemption

The Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined, and that subdivision shall preempt and be exclusive of all

regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles, as defined Existing law prohibits, subject to specific exceptions, the purchase, sale, manufacture, shipping, transport, distribution, or receipt, by mail order or in any other manner, of an imitation firearm. (Manufacture for export is permitted.) Violations are punishable by a civil fine in an action brought by the city attorney or the district attorney of up to $10,000 for each violation.

> **SB 1315 (De Leon), Chapter 214,** creates an exemption from the general state preemption of the field regarding the regulation of imitation firearms to allow the County of Los Angeles, and any city within the County of Los Angeles, to enact and enforce an ordinance or resolution that is more restrictive than state law regulating the manufacture, sale, possession, or use of any BB device, toy gun, replica of a firearm, or other device, that is so substantially similar to an existing firearm as to lead a reasonable person to perceive that the device is a firearm and expels a projectile that is no more than 16 millimeters in diameter.

Protective Orders: Relinquishing Firearms

Existing law prohibits a person subject to a protective order, as defined, from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect, and makes a willful and knowing violation of a protective order a crime. The court, upon issuance of a protective order, is required to order the respondent to relinquish any firearm in the respondent's immediate control. Existing law allows the respondent to either immediately surrender the firearm in a safe manner, upon request of any law enforcement officer, or within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer.

Allowing the respondent to keep his or her firearms for a period up to 24 hours after being served with a protective order has led to instances where the firearm was later used to kill the person who had the protective order against the respondent. In 2005, a woman in San Diego obtained a protective order and stated in her affidavit that the subject of the restraining order owned a firearm. The protective order was issued, but the firearm was not seized. Twenty-four hours after being served with the restraining order, the perpetrator used the firearm to kill their 17-year-old son who was training with his high school cross country team. In 2011, a woman in Santa Clara County obtained a protective order against her husband. In her declaration, the woman stated that she feared that her husband would use his registered firearm to kill their 22-year-old son and then himself. The protective order was served, but the gun was not seized. Her husband killed their son and then himself with his registered firearm.

> **SB 1433 (Alquist), Chapter 765,** requires a peace officer serving a protective order that indicates a respondent possesses weapons or ammunition to request that the firearm be immediately surrendered. Specifically, this new law:

- Requires that, prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has a registered firearm; and,

- Requires a law enforcement officer who is serving a protective order to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

MISCELLENEOUS

Drug Overdose

Drug overdose is a serious problem in California. Between 2000 and 2006, California witnessed a 24 percent increase in the overdose death rate from 7.4 deaths per 100,000 people in 2000 to 9.8 deaths per 100,000 in 2006. Many overdoses are reversible if the individual gets medical assistance in time; however one of the most common reasons people cite for not calling "911" when they witness an overdose is fear of police involvement and criminal punishment for themselves or their friends. California can prevent many of these needless drug-related overdose deaths by encouraging witnesses of drug overdoses to call 911.

AB 472 (Ammiano), Chapter 338, provides that it shall not be a crime to be under the influence of, or in possession of, a controlled substance or drug paraphernalia if that individual seeks medical assistance for himself, herself, or another person for a drug-related overdose. Specifically, this new law:

- States that the individual must not obstruct medical or law enforcement personnel;
- Clarifies that no other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred;
- Does not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will; and,
- Does not affect liability for any offense that involves activities made more dangerous by the consumption of a controlled substance or a controlled substance analog, including but not limited to specified sections of the Vehicle Code, such as offenses related to driving under the influence.

Public Officers: County of Sacramento

Existing law authorizes a county sheriff to hire public employees designated as security officers. The primary duty of a sheriff's security officer is to provide security and protection to facilities owned, operated, or administered by the county or other entities contracting with the county for police services.

AB 1643 (Dickinson), Chapter 48, expands the duties of a security officer employed by the Chief of Police of the City of Sacramento or the Sheriff of the County of Sacramento to include the physical security and protection of specified properties owned or operated by specified entities that contract for security services with the County of Sacramento. Specifically, this new law:

- Expands the duties of a security officer employed by the Chief of Police of the City of Sacramento or the Sheriff of the County of Sacramento to include the physical security and protection of any properties owned or operated by specified entities that contract for security services with the County of Sacramento, whose primary business supports national defense, or whose facility is qualified as national critical infrastructure, or who stores or manufactures materials which if stolen or compromised may threaten national security or pose a danger to residents of the County of Sacramento.

- Provides that any contract entered into with the City or County of Sacramento for security services must provide for full reimbursement to the City or County for the actual costs of providing those services, as determined by the county auditor or auditor-controller, or by the City.

- Requires the Sacramento County Board of Supervisors or the governing board of the City of Sacramento, prior to entering in to a contract for security services, to discuss the contract and the specified requirements at a duly noticed public hearing.

Inmates: Involuntary Administration of Psychiatric Medication

AB 1907 is follow-up legislation to AB 1114 (Lowenthal) Chapter 665, Statutes of 2011, which streamlined the process for the involuntary administration of psychiatric medication to inmates sentenced to state prisons. While AB 1114 originally included inmates sentenced to state prison and county jails, an amendment taken in the Senate Public Safety Committee limited AB 1114 to only state prisons.

AB 1907 (Lowenthal), Chapter 814, applies the laws and procedures for involuntary medication of prison inmates to county-jail inmates and to persons housed in a state prison. Additionally, it makes conforming changes to the process by which inmates of the California Department of Corrections and Rehabilitation (CDCR) can be involuntarily medicated. Specifically, this new law:

- States legislative intent to terminate the permanent injunction concerning required procedures and standards for involuntary administration of psychiatric medication of inmates set out in *Keyhea* v. *Rushen* (1986) 178 Cal.App.3d, 536.

- Clarifies that the process for involuntarily medicating a CDCR inmate also applies to inmates "housed" within a state prison.

- Clarifies that the basic grounds for involuntarily medicating an inmate are that (1) the inmate is gravely disabled and lacks capacity to refuse treatment with psychiatric medications, or (2) the inmate is a danger to him or herself or others.

- Provides that if an inmate is involuntarily administered psychiatric medication in an emergency, he or she shall receive an expedited hearing and must receive expedited access to counsel.

- Provides that failure to provide statutory notice can only be excused through a showing of good cause.

- States that in the event of any statutory-notice issues with either an initial or renewal petition filed by CDCR for involuntary administration of psychiatric medication to an inmate, an administrative law judge (ALJ) shall hear arguments as to why the case should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

- Removes the requirement that a CDCR inmate who is involuntarily administered psychiatric medication on an emergency basis only be medicated for five days unless an ALJ issues an order authorizing the continuing, interim involuntary medication of the inmate.

- Requires that, if CDCR clinicians identify a situation that jeopardizes the inmate's health or well-being as the result and a serious mental illness, and necessitates the continuation of emergency beyond the initial 72 hours pending the full mental health hearing, CDCR will give notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. The notice must be served upon the inmate and counsel at the same time the inmate is given written notice that the involuntary medication proceedings are being initiated and is appointed counsel.

- Specifies that an ex parte order for emergency and interim involuntary medication of a CDCR inmate may be issued if there is a showing that in the absence of medication, there is a reasonable likelihood that the emergency conditions are likely to reoccur and must be supported by an affidavit from the psychiatrist showing specific facts.

- Specifies that once CDCR has requested an ex parte order for emergency and interim involuntary medication of an inmate of CDCR, the inmate and his or her counsel have two business days to respond to the request. The inmate may present facts supported by an affidavit in opposition to the request.

- Requires an ALJ to review the ex parte request for medication in an emergency. The ALJ shall have three business days to determine the merits of the request. The order shall be valid until a full hearing on the matter, replacing the five-day limit for an emergency order in existing law.

- Clarifies that CDCR may file with the Superior Court of the Office of Administrative Hearings a written notice indicating its intent to renew an existing involuntary medication order.

- Specifies that renewal of an existing order for involuntary medication of a CDCR inmate must be supported by clear and convincing evidence that the inmate has a serious mental disorder that requires treatment with psychiatric medication, along with other specified findings.

- Requires that if CDCR wishes to add a basis to an existing order for involuntary medication, it must give the inmate and the inmate's counsel notice in advance of the hearing, specifying what additional basis is being alleged and what qualifying conduct within the past year supports the additional basis. This additional basis must be proved by CDCR by clear and convincing evidence at a hearing under an ALJ.

- Requires CDCR to adopt regulations to fully implement this section.

- Replaces references to "psychotropic" medications with "psychiatric" medications.

- Applies the process for involuntary administration of psychiatric medication to prison inmates to county-jail inmates.

- Provides that a county-jail inmate may be involuntarily administered psychiatric medication under the same standards and conditions that apply to involuntary medication of prison inmates.

- Differentiates the process for involuntarily administering psychiatric medication to county-jail inmates from the process for involuntarily medicating prison inmates in the following ways:

    - Hearings concerning involuntary medication of jail inmates shall be held by a superior court judge, or a court-appointed commissioner referee or hearing officer.

    - The agency seeking an order for involuntary medication is the county department of mental health.

    - A jail inmate may file an appeal of the medication order in the county superior court or the Court of Appeal, consistent with similar authority in civil commitment proceedings.

    - An inmate need not be transferred to a county mental health facility, as specified, unless that is medically necessary.

Arrested Custodial Parents

AB 760 (Nava), Chapter 635, Statutes of 2005, required that if during the booking process, an arrested person is identified as a custodial parent with responsibility for a minor child the arrested person shall be given two additional phone calls for the purpose of arranging for the care of the minor child or children. This has led to some confusion as to whether the arresting officer is responsible for informing the arrested individual of the right to two additional phone calls.

> **AB 2015 (Mitchell), Chapter 816,** requires an arresting or booking officer to inquire if an arrested person is a custodial parent with responsibility for a minor child, and requires that a sign be posted in a conspicuous place informing an arrested custodial parent of his or her right to two additional phone calls for the purpose of arranging for the care of the child or children in the parent's absence.

Humane Officers: Background Checks

Under former law, only level 1 humane officers had to obtain federal criminal background checks from the Federal Bureau of Investigation (FBI) prior to appointment. SB 1417 (Cox), Chapter 652, Statutes of 2010, extended this requirement to all humane officers. However, in order for the Department of Justice (DOJ) to implement the federal background check requirement, the DOJ needs specific statutory language granting it authority to do so. That specific language was not included in the final version of SB 1417. This omission has created a backlog of criminal background checks for humane officers.

> **AB 2194 (Gaines), Chapter 143,** adds clarifying language enabling the DOJ to perform a federal-level criminal offender record information check on a humane officer applicant. Specifically, this new law:
>
> - Requires the DOJ to forward to the FBI requests for federal summary criminal history information received for purposes of seeking confirmation of the appointment of a humane officer.
>
> - Requires the DOJ to review the information returned from the FBI and to compile and disseminate a fitness determination regarding the humane-officer applicant to the Humane Society or the Society for the Prevention of Cruelty to Animals.

Confidential Information

The California Public Records Act (PRA) requires state and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. The act excludes from disclosure homes addresses and telephone numbers contained in applications for licenses to carry firearms submitted by peace officers, judges, court commissioners, and magistrates to county sheriffs and the chiefs or other heads of municipal police departments. Absent from the list of protected officials are prosecutors and public defenders. These public servants, who deal with the same dangerous criminals, are not being given the same protection afforded to judges and police officers.

The California Constitution, in Section 28 of Article I, provides that a victim has the right to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family. Under existing law, the PRA contains a list of information not required to be disclosed under the Act, however there is no cross-reference to the California Constitution, Section 28 of Article I.

AB 2221 (Block), Chapter 697, adds prosecutors and public defenders to the list of professionals whose firearm licenses and license applications are not fully required to be disclosed as public records under the PRA. Additionally, this new law adds confidential information or records pertaining to crime victims, as provided in the Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution, to the list of information not required to be disclosed as public records under the PRA.

Unauthorized Sale of Goods on a Public Transportation System

Los Angeles County Transit Services Bureau deputies receive frequent complaints from transit operators and from patrons who deal with the annoyances caused by unauthorized vendors during their daily commute. These offenders often sell consumable items, such as food and drinks, but more often non-consumable items, such as batteries, flowers, pirated DVDs, and music CDs. The consumable products can present a public safety concern, while the counterfeit non-consumable items are illegal to possess or sell. Moreover, these sales negatively impact small businesses that play by the rules. The Transit Authority wants to give passengers a more peaceful ride by clearing platforms and stations of aggressive and unlicensed vendors.

AB 2247 (Lowenthal), Chapter 750, makes it a criminal infraction for a person to sell any goods, merchandise, property, or services in a public transportation system without the express written consent of the system operator. Specifically, this new law:

- Makes it a *criminal* infraction for a person to sell or peddle any goods, merchandise, property, or services on the facilities, vehicles, or property of any public transportation system without the express written consent of the system operator.

- Adds this violation to the list of violations which the specified transit districts may enforce through an alternative *civil* infraction process.

- Allows an issuing officer to correct errors on and reissue a notice of violation for any of the civil offenses.

- Requires the issuing agency to mail a copy of the correction to the address provided by the person cited at the time the original ticket was served.

Professional Sports Facilities: Safety

An increase in notoriety of violent acts in professional sporting venues has brought attention to these facilities. There are a number of existing laws that apply to safety in professional sports facilities. For instance, it unlawful for any person attending a professional sporting event to throw any object on or across the court or field of play with the intent to interfere with play or distract a player. It is also unlawful to enter upon the court or field of play without permission from an authorized person after the authorized participants have entered the court or field to begin the sporting event and until the participants of play have completed the playing time of the sporting event. Facility owners must also provide a notice specifying the unlawful activity prohibited by this section and the punishment for engaging in that prohibited activity. Further, the notice shall be prominently displayed throughout the facility or may be provided by some other manner, such as on a big screen or by a general public announcement.

AB 2464 (Gatto), Chapter 261, requires owners of professional sports facilities to post notices of emergency contact information. Specifically, this new law:

- Requires the owner of any professional sports facility to post written notices displaying the text message number and telephone number to contact security in order to report a violent act.

- Provides that the notices must be visible from a majority of seating in the stands at all times, at controlled entry areas, and at parking facilities which are part of the professional sports arena.

Corrections: Inmate Welfare Fund: Uses

Existing law provides an Inmate Welfare Fund (IWF) to be managed by the Department of Corrections and Rehabilitation (CDCR). All money in the IWF is appropriated for educational and recreational purposes at the various prison facilities and must be expended by the director of the facilities upon warrants drawn upon the State Treasury by the State Controller after approval of the claims by the California Victim Compensation and Government Claims Board. The money in the fund must be used for the benefit, education, and welfare of inmates of prisons and institutions under CDCR's jurisdiction, including, but not limited to, the establishment, maintenance, employment of personnel for, and purchase of items for sale to inmates at canteens maintained at the state institutions, and for the establishment, maintenance, employment of personnel and necessary expenses in connection with the operation of the hobby shops at institutions under the jurisdiction of CDCR.

SB 542 (Price), Chapter 831, expands the uses of the IWF. Specifically, this new law:

- Provides that IWF funds may be utilized for the establishment, maintenance, employment of personnel, for and purchase of items for sale to inmates at canteens maintained at state institutions.

- Specifies that IWF funds may be used for the establishment, maintenance, employment of personnel, and necessary expenses in connection with the operation of the hobby shops at institutions under CDCR's jurisdiction.

- States that IWF funds may be used for educational programs, hobby and recreational programs, reentry programs and operational expenses of the IWF which may include physical education activities and hobby craft classes, inmate family visiting services, leisure-time activities, and assistance with obtaining photo identification from the Department of Motor Vehicles.

- Requires the warden of each institution and stakeholders to meet at least biannually to determine how the IWF funds are to be used in each institution.

Emergency Services: Silver Alert

California has the largest number of seniors – 4.5 million, age 65 or older in the nation. Due to the Silver Tsunami, that number is expected to double to 9 million by 2030. However, when a senior goes missing and has been determined by law enforcement to be in danger (for example, a senior with Alzheimer's Disease who has wandered away from home), California has no uniform alert system to help with recovery. Missing seniors must be found quickly as they have a 50 percent greater chance of serious injury or death due to exposure and missing much needed medications when they have been missing over 24 hours,

SB 1047 (Alquist), Chapter 651, authorizes a law enforcement agency to request the California Highway Patrol (CHP) to activate a "Silver Alert" if a person 65 years of age or older is missing. Specifically, this new law:

- Provides that if a person is reported missing to law enforcement agency, and the agency determines that specified requirements are met, the agency may request the CHP to activate a Silver Alert. If the CHP concurs that the requirements are met, it shall activate the silver Alert in the geographical area requested by the investigating law enforcement area.

- States that a law enforcement agency may request a Silver Alert be activated if that agency determines that all of the following conditions are met in regard to the investigation of the missing person:

    - The missing person is 65 years of age or older.

    - The investigating law enforcement agency has utilized all available local resources.

    - The law enforcement agency determines that that the person has gone missing under unexplained or suspicious circumstances.

- The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or there are other factors indicating that the person may be in peril.

- There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

- Defines a "Silver Alert" as a notification system, that can be activated as specified, and is designed to issue and coordinate alerts with respect to a person 65 years of age or older who is reported missing.

- Requires the CHP, upon activation of a Silver Alert, to assist the investigating law enforcement agency by issuing a be-on-the-lookout, an Emergency Digital Information Service (EDIS) message, or an electronic flyer.

- States that this section shall remain in effect only until January 1, 2016, and as of that date is repealed , unless a later enacted statute that is enacted before January 1, 2016, deletes or extends that date.

Injuries at State Hospitals and Developmental Centers

Current law establishes a police force, the Office of Protective Services (OPS), in state developmental centers and mental hospitals which keep peace at institutions and investigate criminal activity. The quality of investigations by these officers has been the subject of inquiry and controversy for more than a decade. A number of government agencies and advocacy organizations have evaluated this issue and concluded that OPS officers were poorly trained and inexperienced, including the federal Attorney General's Office which identified a troubling number of unexplained injuries at developmental centers.

Existing law requires that OPS report all resident deaths and serious injuries of unknown origin to the appropriate law enforcement agency. Currently, all employees of the Department of State Hospitals (DSH) and developmental centers within the Department of Developmental Services (DDS) are mandated reporters and must report suspected abuse to local law enforcement or department personnel. Despite this, few, if any, local law enforcement agencies have aided in investigations, leaving OPS to conduct homicide and other complex criminal investigations. Increasing incidents of unexplained injuries and deaths have raised questions as to whether the current process provides sufficient protections for residents of state hospitals and developmental centers.

SB 1051 (Liu), Chapter 660, requires the DSH and DDS to report suspected abuse to the designated protection and advocacy agency. Specifically, this new law:

- Mandates DSH to report, no later than the close of the first business day following the discovery of the reportable incident, to the designated agency the following incidents involving a resident of a state mental hospital:

    - Any unexpected or suspicious death, regardless of whether the cause is immediately known;

    - Any allegation of sexual assault, as defined, in which the alleged perpetrator is an employee or contractor of a state mental hospital or of the Department of Corrections and Rehabilitation; and,

    - Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined, in which a staff member is implicated.

- Creates the position of the Director of Protective Services, who will serve as the Chief of OPS, and will have the responsibility and authority to manage all protective service components within the department's law enforcement and fire protection divisions, including those at each state developmental center.

- Requires the Director of Protective Services to be:

    - An experienced law enforcement officer with a Peace Officers Standards and Training Management Certificate or higher, and with extensive management experience directing uniformed peace officer and investigation operations; and,

    - Appointed by, and serve at the pleasure of, the Secretary of California Health and Human Services.

- Mandates a developmental center to immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation.

- Requires all mandated reporters, who have assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, to report to the local ombudsperson or the local law enforcement agency any abuse that has occurred in a long-term care facility, except a state mental health hospital or a state developmental center.

Mutual Aid Agreements

Assembly Member La Malfa contends that the remote location of Tulelake (population 1,010, on the California-Oregon border, midway between the Pacific and Nevada) merits a unique mutual aid agreement with Malin (population 870, a fellow rural border city in Oregon), rather than routing assistance requests through the California Highway Patrol (CHP).

According to the Tulelake Police Chief, "This issue has been raised in connection with our ongoing Hispanic gang problems that we have been dealing with for the last 15 years. Our local gang population is very mobile in their activities, freely crossing state and county lines."

"The problem has become more significant over the last several years due to budget issues that have severely hampered each agency's ability to address the growing problem. We are dependent on our allied agencies to provide the cover to handle these calls. As in most jurisdictions, our gang calls involve multiple people and increasing levels of violence. Even with our current situation, we are lucky to have three officers present on calls involving up to twenty opposing gang members. The ability to have a cover officer on these calls cannot be overstated. Due to the decreased staffing levels of both Modoc and Siskiyou County Sheriff's offices, our small agency has had to rely on the neighboring police department in Merrill and Malin, Oregon for cover so that these calls can be handled as safely as possible."

SB 1067 (La Malfa), Chapter 269, authorizes the City of Tulelake, California, to enter into a mutual aid agreement with the City of Malin, Oregon, for the purpose of permitting their police departments to provide mutual aid to each other when necessary. Before the effective date of the agreement, the agreement shall be reviewed and approved by the CHP Commissioner.

Human Trafficking of Minors: Forfeiture

Under existing law, individuals engaged in human trafficking are subject to criminal sentences and fines in addition to civil proceedings under California's "criminal profiteering" statutes. California defines "criminal profiteering activity" as any act made for financial gain or advantage if the act may be charged as one of a number of crimes, including human trafficking. Additionally, a "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. If criminal profiteering for human trafficking occurs existing law provides that upon proof of specified provisions, the following assets shall be subject to forfeiture: (1) a (tangible or intangible) property interest acquired through a pattern of criminal profiteering activity; and, (2) all proceeds of a pattern of criminal profiteering activity, including all things of value received in exchange for the proceeds derived from the pattern of criminal profiteering activity.

SB 1133 (Leno), Chapter 514, modifies provisions relating to forfeiture of the property of convicted human traffickers involving minors. Specifically, this new law:

- Authorizes the forfeiture of vehicles, boats, airplanes, money, negotiable instruments, securities, real property, or other things of value used for the purpose of facilitating human trafficking involving a commercial sex act where the victim is an individual under 18 years of age at the time of the commission of the crime and property

acquired through human trafficking or which was received in exchange for the proceeds of human trafficking of a person under 18 years of age when the crime involved a commercial sex act.

- Provides that 50 percent of the forfeiture proceeds shall be distributed to the Victim-Witness Assistance Fund for grants to community organizations serving human trafficking victims and 50 percent of the proceeds shall be distributed to the General Fund of the state or county, depending on whether the Attorney General or district attorney prosecuted the matter.

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 1144 (Strickland), Chapter 867, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, this new law:

- Provides in cases where an employer who willfully fails to pay the final court judgment or final order issued by the Labor Commission for all wages due an employee, if the amount due is $1,000 or less the fine shall be not less than $1,000 and not more than $10,000 for each offense.

- Provides when law enforcement responds to a domestic violence call and actually makes an arrest, there is no the duty to inform a victim that he/she has a right to make a citizen's arrest.

- Deletes the requirement that the Department of Justice (DOJ) include information regarding an elevated risk level based on the SARATSO future violence tool on the Internet Web site.

- Omits references to the DOJ's Bureau of Narcotic Enforcement and replaces those references with the DOJ.

- Replaces references to California State Department of Health Services, and replaces them with the State Department of Public Health.

- Defines an "agency" for purposes of a grand juror's recusal from a civil grand jury based on employment with the agency that is under investigation.

- Adds references to "postrelease community supervision" and "mandatory supervision" to incorporate the new types of supervision implemented by realignment

- Makes a number of technical and cross-reference changes.

Psychiatric Evaluations: Insanity Pleas

The patient population in state hospitals had dramatically changed over the past two decades. In the mid-1990's, 80 percent of the patients were civil commitments and only 20 percent of patients had committed a crime. Today, the numbers have switched with 90 percent of patients having committed a crime. The State of California and University of California, Davis partnered on a study of NGRI [not guilty by reason of insanity] patients committed to Napa State Hospital. The study results highlight a trend in the evaluations conducted on behalf of the court and used to inform juries regarding the sanity of defendants. In almost one-half of the cases (44 percent), the court appointed evaluator failed to prepare the report consistent and pursuant state standards. Two-thirds of the time (66 percent) the evaluator failed to consider drug or alcohol use at the time of the offense. The study findings indicate that a substantial number of NGRI acquittees may have inappropriately received a NGRI finding based on lack of an adequate evaluation and faulty application of the California insanity statute by court examiners.

> **SB 1281 (Blakeslee), Chapter 150,** requires that where a psychiatrist or psychologist evaluates a defendant for purposes of a plea of not guilty by reason of insanity, the evaluation report shall include the following: a defendant's substance abuse history, his or her substance use history on the day of the commission of the offense, a review of the police report of the offense, and any other credible and relevant material reasonably necessary to describe the facts of the offense.

Release of Prisoners: Medical Release

Existing law allows a sheriff to release an inmate for transfer to a medical facility or residential care facility where a physician who is neither a county employee or under contract with the county finds the inmate's physical condition is such that he or she is rendered incapable of causing harm to others upon release and does not reasonably expect the prisoner's condition to improve to the extent that he or she could pose a threat to the safety of others, and the sheriff determines that the prisoner's medical needs would be better served in a medical facility or residence other than a county correctional facility.

Los Angeles County is the only county in California that has its own licensed acute-care hospital associated with its jail facilities and run by the sheriff. This means such medically incapacitated inmates become long-term, acute-care patients at the sheriff's jail hospital. In other counties, the sheriff's department contracts with the county or private hospitals, incurring both the medical costs as well as the cost of guarding the inmates 24-hours-a-day. In Los Angeles, the Sheriff's Department has identified 10 inmates who currently qualify for medical probation. These are felons sentenced to county jail since October 2011 as a result of realignment and each felon has become medically incapacitated since the time of sentencing. The Sheriff's Department states that the cost of the bed alone at their jail hospital is approximately $2,000 per day. The department estimates the cost so far of caring for these 10 inmates, at the time of this writing, at $908,315. The cost of caring for medically incapacitated inmates in other counties would also include added security costs.

San Bernardino Sheriff's Department estimates the cost of hospitalizing an inmate alone at $1,500 per day in that county and the cost of clinical services would increase that amount substantially. They estimate the additional cost of treating an inmate with Hepatitis C at another $60,000 annually and an inmate with HIV at $100,000 or more annually depending on the inmate's condition.

> **SB 1462 (Leno), Chapter 837,** authorizes a sheriff to release a prisoner from a county jail after conferring with a jail physician if the sheriff determines the prisoner would not reasonably pose a threat to public safety and the prisoner is deemed to have a life expectancy of six months or less. SB 1463 also authorizes the court, at the request of a sheriff, to grant medical probation to any prisoner sentenced to a county jail who is physically incapacitated, as specified, if that incapacitation did not exist at the time of sentencing, or to a prisoner who would require acute long-term inpatient rehabilitation services. Before a prisoner's compassionate release or release to medical probation, the sheriff would be required to secure a placement option for the prisoner, as specified.

Evidence: Exhibits in Death Penalty Cases

Existing law requires all exhibits which have been introduced or filed in any criminal action to be retained by the clerk of the court who shall establish a procedure to account for the exhibits properly until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided. The date when a criminal action or proceeding becomes final, in cases where the death penalty is imposed, is 30 days after the date of execution of sentence.

In California, there are more than 724 inmates condemned to death row. To date, there have been 14 executions and 82 non-execution deaths. Current law forces California courts to bear tremendous financial burden to continue to store and preserve physical exhibits and records in cases where an inmate sentenced to death has died a non-execution death.

> **SB 1489 (Harman), Chapter 283,** permits a court to order the destruction of exhibits, in cases where the death penalty is imposed, 30 days after the execution of sentence or, when the defendant dies while awaiting execution, one year after the date of the defendant's death.

Injuries at Developmental Centers

Existing law requires developmental centers to immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation. Existing law also establishes a police force, called the "Office of Protective Services" (OPS) within the state Department of Developmental Services (DDS), to act as a law enforcement agency for developmental centers.

DDS' internal policy calls for reporting of virtually all injuries of unknown origin, even relatively minor ones that require only five sutures for treatment, to local law enforcement. The number of reports transmitted to local law enforcement agencies may dilute the effectiveness of this

reporting requirement. Additionally, the current reporting law does not include allegations of sexual assault or assaults with a deadly weapon or force likely to produce great bodily injury.

SB 1522 (Leno), Chapter 666, requires a developmental center to immediately report a death, a sexual assault, an assault with a deadly weapon by a nonresident of the developmental center, an assault with force likely to produce great bodily injury, an injury to the genitals when the cause of injury is undetermined, or a broken bone when the cause of the break is undetermined, to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether OPS has investigated the facts and circumstances relating to the incident.