ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2017
Legislative Summary

Reginald Byron Jones-Sawyer, Sr.
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Vice Chair

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LEGISLATIVE SUMMARY 2017

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TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

BACKGROUND CHECKS

Public Employment: Background Investigations

SB 1097 (Boatwright), Chapter 135, Statutes of 1993, as set forth in Government Code section 1031.1, declared the Legislature's intent that law enforcement have access to pertinent information about peace officer applicants in order to ensure that qualified individuals with good moral character are selected. (*Bardin v. Lockheed Aeronautical Sys. Co.* (1999) 70 Cal.App.4th 494, 501.) To that end, it required an employer to disclose employment information relating to a current or former employee who is an applicant for a peace officer position, and who is not currently employed as a peace officer, upon request of a law enforcement agency, if certain conditions are met. In the absence of fraud or malice, no employer is subject to any civil liability for any relevant cause of action by virtue of releasing employment information required pursuant to this section.

SB 1097 did not extend the disclosure requirements and protection from civil liability to applicants for a position other than a sworn peace officer within a law enforcement agency. However, law enforcement agencies employ persons in sensitive roles (e.g. evidence retention, dispatch, etc.) that are not sworn peace officer positions.

> **AB 1339 (Cunningham), Chapter 89,** extends an employer's disclosure requirements, and protection from civil liability for compliance, to applicants for a position other than a sworn peace officer within a law enforcement agency. Specifically, this new law: requires an employer to disclose employment information relating to a current or former employee who has applied for a position other than a sworn peace officer within a law enforcement agency.

Summary Criminal Histories

Penal Code Section 11105 allows for a number of specified entities to receive state summary criminal history information from the Department of Justice (DOJ). The criminal history of individuals provided by DOJ includes dates of arrests, arresting agencies, booking numbers, charges, and dispositions. For over 20 years, the disposition information provided to the receiving entities included sentencing information. In March of 2016, the DOJ, however, made in an internal decision that Penal Code Section 11105 does not explicitly provide them with the authority to release sentencing information as part of the state summary criminal history. As a result, DOJ has not provided these entities with sentencing information since March, 2016.

> **SB 420 (Monning), Chapter 333,** requires the DOJ to include sentencing information in the state summary criminal history, if present in the department's records at the time of response, whenever state summary criminal history is provided to specified entities.

CHILD ABUSE

Non-Economic Losses: Child Sexual Abuse

Under current law, a defendant may be ordered to pay restitution for non-economic losses for psychological harm caused, for violations of lewd acts upon a child under the age of 14, Penal Code section 288. (Pen. Code, § 1202.4, subd. (f)(3)(F).)

Since the restitution statute specifically lists only Penal Code section 288 in reference to noneconomic losses, there is a split of authority as to whether the victim of a crime of continuous sexual abuse of a child, section 288.5, is also entitled to restitution for non-economic losses.

Several appellate courts have held that permitting noneconomic restitution for convictions under section 288 but not for convictions under section 288.5 would lead to an absurd result. (See *People v. McCarthy* (2016) 244 Cal.App.4th 1096; *People v. Lehman* (2016) 247 Cal.App.4th 795, and *People v. Martinez* (2017) 8 Cal.App.5th 298.) It makes little sense for a child under the age of 14 but older than 10 years of age to be awarded non-economic damages when they are the victim of child sexual assault, but not to award non-economic damages to a child aged 10 or younger who is the victim of the same conduct. Nor does it make sense to award non-economic damages to a child who is the victim of two sexual assaults but not if they are victimized three or more times. The pertinent restitution statute must be amended to include the overlooked crimes.

> **SB 756 (Stern), Chapter 101,** authorizes non-economic restitution in cases where a person is convicted of continuous sexual child abuse or sexual acts with a child 10 years of age or younger. Specifically, this new law: Adds the crimes of continuous sexual abuse of a child and sexual acts with a child 10 years of age or younger to the statute authorizing non-economic restitution for lewd and lascivious acts against a child under the age of 14.

CONTROLLED SUBSTANCES

CURES Database: Health Information Technology System

According to recent reports by the Center for Disease Control regarding America's opioid epidemic, almost 2 million Americans abused or were dependent on prescription opioids in 2014. In 2015, more than 15,000 people died from overdoses involving prescription opioids. Today, nearly half of all U.S. opioid overdose deaths involve a prescription opioid and, due to the large population that abuses prescription opioids, over 1,000 people are treated in emergency departments for misusing prescription opioids every day.

In order to address the prevalence of prescribed opioid abuses, the California Department of Justice (DOJ) implemented and maintains the Controlled Substance Utilization Review and Evaluation System Prescription Drug Monitoring Program (CURES PDMP), a searchable database, so that practitioners have increased access to information regarding a patient's prescription history. However, because current law does not provide authority for the CURES PDMP to integrate with health information technology systems, health care practitioners face several additional burdens including, but not limited to, a delay in accessing potentially vital information for rapid treatment, increased opportunities for patients to abuse practitioner services, and decreased peer-to-peer benefits between health information technology providers. During the process of decommissioning the original CURES database and transitioning to CURES 2.0, the current operating system, the DOJ expressed the need to address these concerns through integration.

AB 40 (Santiago), Chapter 607, requires the DOJ to make electronic prescription drug records contained in its CURES PDMP accessible through integration with a health information technology (IT) system no later than October 1, 2018, if that system meets certain information security and patient privacy requirements. Specifically, this new law:

- Authorizes a health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist to submit a query to the CURES database through a Health IT system if the entity operating the system has entered into a memorandum of understanding with the Department of Justice (DOJ) addressing the technical specifications of the system to ensure the security of the data and certifies that:
    - The entity will not use or disclose CURES data for any purpose other than delivering the data to an approved health care practitioner or pharmacist or performing data processing activities that may be necessary to enable the delivery unless authorized by, and pursuant to, state and federal privacy and security laws and regulations;
    - The Health IT system will authenticate the identity of an authorized health care practitioner or pharmacist initiating CURES queries and submit the date,

time, first and last name of the patient, date of birth of the patient, and identification of the CURES user at the time of a query to CURES;

- The Health IT system meets applicable patient privacy and information security requirements of state and federal law.

- Requires DOJ, by October 1, 2018, to develop a programming interface or other method of system integration to allow Health IT systems to retrieve information in CURES on behalf of an authorized health care practitioner or pharmacist.

- Prohibits DOJ from accessing patient-identifiable information in an entity's Health IT system.

- Requires and entity operating a Health IT system that is attempting to establish an integration with CURES to pay a reasonable system maintenance fee.

- States that this bill is urgent, and necessary for the immediate preservation of the public peace, health, or safety in order to enable the DOJ to ensure that information in the CURES database will be made available to prescribing physicians, so they may prevent the dangerous abuse of prescription drugs and to safeguard the health and safety of the people of this state.

- Authorizes DOJ to prohibit integration or terminate a Health IT system's ability to retrieve information from CURES if the Health IT system or the entity operating it does not comply with specified requirements.

Pretrial Diversion: Drug-Possession Offenses

Under existing law, a defendant charged with violations of certain specified drug may be eligible to participate in a deferred entry of judgment (DEJ) if he or she meets specified criteria. (Pen. Code, §§ 1000 et seq.) With DEJ, a defendant must enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If a defendant placed in a DEJ program fails to complete the program or comply with conditions imposed, the court may resume criminal proceedings and the defendant, having already pleaded guilty, would be sentenced. If the defendant successfully completes DEJ, the arrest shall be deemed to never have occurred and the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense.

Diversion on the other hand suspends the criminal proceedings without requiring the defendant to enter a plea. Diversion also requires the defendant to successfully complete a program and other conditions imposed by the court. Unlike DEJ however, if a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense.

In order to avoid adverse immigration consequences, diversion of an offense is preferable to DEJ because the defendant is not required to plead guilty in order to participate in the program. Having a conviction for possession of controlled substances, even if dismissed, could trigger deportation proceedings or prevent a person from becoming a U.S. citizen. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.)

AB 208 (Eggman), Chapter 778, converts the existing deferred entry of judgment program for specified drug-possession offenses into a pretrial drug diversion program. Specifically, this new law:

- Changes the existing deferred entry of judgment (DEJ) program for specified drug offenses into a pretrial drug diversion program.

- Establishes the following eligibility requirements for the pretrial drug diversion program:

    - The defendant must not have a prior conviction for a drug offense within five years other than those offenses which may be diverted;

    - The charged offense did not involve violence or a threat of violence;

    - There is no evidence of a contemporaneous violation relating to narcotics or restricted dangerous drugs other than those offenses which may be diverted; and;

    - The defendant must have no prior felony conviction within the past five years.

- Retains provisions in current DEJ law that is consistent with pretrial diversion.

- Requires eligible defendants to be advised of the procedures for pretrial diversion, including that the defendant will be waiving the right to a speedy preliminary hearing, speedy trial, and to a trial by jury; that if the defendant does not perform satisfactorily in the program, the prosecuting attorney, probation department, or court may make a motion to terminate pretrial diversion and schedule the matter for further proceedings; and an explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about his or her arrest and pretrial diversion following successful completion of the program.

- Provides that a defendant's participation in pretrial diversion does not constitute a conviction or an admission of guilt for any purpose.

- Sets the length of the pretrial diversion program from between 12 months to 18 months, but allows the court to extend that time for good cause.

- Provides that the prosecutor, the court, or the probation department may move to terminate diversion if the defendant is performing unsatisfactorily, or he or she has been convicted of a felony or an offense reflecting propensity for violence.

- Provides that if pretrial diversion is terminated, either due to unsatisfactory performance or because of specified convictions, then the court shall schedule the matter for further proceedings.

- Provides for dismissal of charges if the defendant completes pretrial diversion, and deems arrest for the charges never to have occurred.

- Allows a person participating in a pretrial diversion program to use medications to treat substance use disorders under the direction of a licensed health care practitioner if the participant allows release of his or her medical records to the court for the limited purpose of determining whether he or she is using the medications under the direction of a licensed health care practitioner and is complying with the rules of the pretrial diversion program.

Alcohol and Marijuana: Penalties

From 2007 to 2014, the number of nighttime weekend drivers in the U.S. with marijuana in their system increased nearly 50%. In 2012, the California Office of Traffic Safety (OTS) released a study of weekend nighttime drivers that found more California drivers tested positive for marijuana than alcohol. Over the last 10 years the Department of Motor Vehicles data is available, the two most recent years show that for the first time, drugged drivers and drug combined with alcohol drivers are killing more Californians than alcohol impaired drivers. The AAA Foundation for Traffic Safety's Washington Study found that the percentage of drivers involved in fatal crashes who recently used marijuana more than doubled between 2013 and 2014.

SB 65 (Hill), Chapter 232, prohibits the smoking or ingestion of marijuana while driving, or the smoking or ingestion of marijuana or the drinking of an alcoholic beverage while riding as a passenger in a motor vehicle, and makes a violation punishable as an infraction.

Sentence Enhancements: Prior Convictions

The existing three-year enhancement for prior drug-crime convictions was enacted by AB 2320 (Condit), Chapter 1398, Statutes of 1985. AB 2320 included un-codified legislative intent "to punish more severely persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity." AB 2320, called "The Dealer Statute," was modeled on particularly harsh federal drug crime laws. The sponsor argued that it was necessary to eliminate an incentive for persons "to traffic [in drugs] in California where sentences are significantly lighter than in federal law." The federal laws to which the sponsor referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences.

It has been argued that the current policy of sentencing people with nonviolent drug convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use. Sentencing enhancements do not prevent or reduce drug sales. Indeed, research finds that the length of sentences does not provide any deterrent or significant incapacitation effect; in other words, longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught (See Russell, Sarah F, "Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing," 43 UC Davis L. Rev. 1135 2010.)

> **SB 180 (Mitchell), Chapter 677**, limits the current three-year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substances to convictions for a controlled substance offense where a minor was used or employed in the commission of the offense.

CORRECTIONS

Inmates: Reentry Services

Less than two thirds of California's adult male population is nonwhite or Latino (60 percent), but these groups make up three of every four men in prison: Latinos are 42 percent, Blacks are 29 percent, and other races are 6 percent. Among adult men in 2013, Blacks were incarcerated at a rate of 4,367 per 100,000, compared to 922 for Latinos, 488 for non-Latino whites, and 34 for Asians.

About half of men in prison are fathers of minor children and 42 percent of fathers lived with their children at the time of their arrest. Incarceration of fathers destabilizes and harms their families in many ways. Two-thirds of incarcerated parents are nonviolent offenders; however, contact between them and their families is severely restricted, and there are very few policies in place that protect and advocate for the rights of their children. Children with incarcerated parents are three times more likely to suffer from developmental or behavioral problems, along with mental health problems such as depression.

There is a need to address the social and systemic barriers that incarcerated and previously incarcerated men and woman face through facilitating healthy relationships with their families. Addressing the barriers faced by re-entry from prison not only supports the well-being of the individual and their families but also the strengthening of their communities.

AB 683 (E. Garcia), Chapter 45, authorizes the Counties of Alameda, Imperial, Los Angeles, Riverside, San Diego, Santa Clara, and San Joaquin to implement reentry pilot programs for inmates during or after their incarceration in a county jail. Specifically, this new law:

- Makes legislative findings and declaration, and declares legislative intent.
- Allows the Counties of Alameda, Imperial, Los Angeles, Riverside, San Diego, Santa Clara, and San Joaquin to implement pilot programs to provide reentry services and support to persons who are, or who are scheduled to be, released from a county jail.
- Requires that each pilot program established pursuant to this section to include, at a minimum, all of the following components:
    - Support services for recipients who are parents;
    - A mentorship program that employs a culturally relevant, population-specific approach that has been employed by nonprofit organizations, such as the National Compadres Network and the Brotherhood of Elders;
    - The establishment of a collaborative body of training and technical advisers;

- The establishment of a Youth Advisory Council to help inform and guide program leaders;

- Leadership opportunities, particularly for youth;

- Services to address mental health issues, including mental health issues relating to sexual exploitation, racial and ethnic disparities, and trauma;

- An advisory committee in each county to oversee the establishment and implementation of the pilot program in the county;

- Each service provider has a proven track record of providing meaningful, culturally based programming, including the support of gender specific and gender fluid approaches;

- Each service provider offers services that support culturally based family strengthening, character development, and community mobilization; and,

- Each service provider offers services before and after the recipient's release from a county jail.

- Requires that each county that elects to implement a pilot program shall conduct a study and submit a report to the Legislature on or before January 1, 2023, that includes an evaluation of the effectiveness of the pilot program.

Inmates: Psychiatric Medication

In California alone, over 100,000 people received mental health treatment in county jails in 2014-2015, according to the Department of Health Care Services. The department also acknowledges that this number is likely underreported because contractors providing mental health services in jails did not always report data to the state on services provided. According to the National Association of Counties, 64 percent of the jail population nationwide has a mental illness. A 2009 study found that 15 percent of male inmates and 31 percent of female inmates are dealing with a severe mental illness.

Involuntary medication in jails can help reduce harm in extreme cases of danger to the inmate, other inmates or staff, as well as treat an inmate's grave disability. Existing law provides procedures for involuntary medication which specifically apply to the portion of the county jail population that has been sentenced, but county jails also house individuals who are detained in jail while they face criminal charges.

AB 720 (Eggman), Chapter 347, applies the existing framework for involuntary medication of a person in county jail after being sentenced on a criminal conviction, to other inmates in county jail including those awaiting arraignment, trial, or sentencing, but limits the time period for an involuntary medication order for county jail inmates awaiting arraignment, trial, or sentencing to six months and provides a sunset date of

January 1, 2022. Specifically, this new law:

- Defines "inmate" for purposes of this law as a person confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release.

- States that if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication if the inmate is a danger to self or others, or is gravely disabled, and specified procedures involving a hearing and independent review are followed.

- States that an order for involuntary medication of an inmate who is awaiting arraignment, trial, or sentencing, shall be valid for no more than 180 days.

- States that a court may review, modify, or terminate an involuntary medication order for an inmate awaiting trial, where there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.

- Requires the jail to make a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication on a non-emergency basis.

- Specifies that in the case of an inmate who is awaiting arraignment, trial, or sentencing, the court shall review the order for involuntary medication at intervals of not more than 60 days to determine whether the grounds for the order remain.

- Clarifies that this law does not prohibit the court from suspending the criminal prosecution until the court determines that the involuntarily medicating the defendant will not interfere with his or her ability to meaningfully participate in the criminal proceedings.

- Establishes a sunset date of January 1, 2022.

Juveniles: Restraints

Every day young people in California who are detained in secure confinement are placed in restraints, including handcuffs, belly belts, and leg shackles, to be transported outside of the juvenile hall – for example, to a court appearance or doctor's appointment. Young people may spend hours in restraints as they wait to appear in court or to see a doctor. Once in court, they may remain restrained, impeding their ability to participate in their court hearing. This practice is harmful especially young people suffering from the effects of trauma and mental illness. It is also contrary to the juvenile court's goal of providing individualized rehabilitative services to young people and is unnecessary to protect young people or ensure public safety.

The indiscriminate use of restraints is not necessary to preserve public safety. Only about 10% of juvenile arrests are for violent felonies. The indiscriminate use of shackling makes little sense, given that the risk the young people pose to public safety is minimal and the potential harm to them is significant.

AB 878 (Gipson), Chapter 660, limits the use of restraints to transport a minor from a juvenile detention facility and clarifies when restraints may be used in juvenile court. Specifically, this new law:

- Provides that restraints may be used when a minor is being transported outside of a local juvenile detention facility only upon a determination made by the probation department, in consultation with the transporting agency, that restraints are necessary to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

- Requires that the least restrictive form of restraint be used consistent with the legitimate security needs of each minor if a determination is made that mechanical restraints are necessary.

- Requires a county probation department which chooses to use restraints other than handcuffs to establish procedures for documenting their use, including the reasons for use of those restraints.

- Provides that the above restrictions on restraints do not apply to restraints used by medical care providers in the course of medical treatment or transportation.

- Provides that restraints may only be used during a juvenile court proceeding if the court determines that the individual minor's behavior in custody or in court establishes a manifest need to use restraints to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

- Provides that it is the prosecution's burden to demonstrate the need to use restraints on a minor during a juvenile court proceeding.

- Requires that the least restrictive form of restraint be used and the reasons for the use of restraints be documented on the record if the court makes a determination that mechanical restraints are necessary.

Voting Rights: Inmates and Formerly Incarcerated

Civic participation can be a critical aspect of re-entry and has been linked to reducing recidivism. However, many in California's criminal justice system are not accurately apprised of their voting rights and correct voting information is not readily accessible. To add to this confusion, almost every state handles voting rights for incarcerated and formerly incarcerated individuals differently. This results in many individuals being deprived of their fundamental rights to vote on issues and candidates that directly impact their lives.

AB 1344 (Weber), Chapter 796, requires the California Department of Corrections and Rehabilitation (CDCR) and county probation departments to provide specified voting rights information to persons under their jurisdiction upon request of such person. Specifically, this new law:

- Requires CDCR to do all of the following for each parolee under the jurisdiction of the department upon the completion of his or her parole:
    - Establish and maintain on the departments Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found;
    - Post in each parole office a notice that contains the Internet Web site address at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found; and,
    - Upon request of the parolee, advise the parolee of information provided by the Secretary of State regarding voting rights for persons with a criminal history.
- Mandates each county probation department to do all of the following for each person under the department's jurisdiction:
    - Establish and maintain on the departments Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found;
    - Post in each parole office a notice that contains the Internet Web site address at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found; and,
    - Upon request of a probationer, advise the probationer of information provided by the Secretary of State regarding voting rights for persons with a criminal history, who are under the department's supervision.

Elderly Parole Program

The number of elderly prisoners in California state prisons will continue to increase exponentially if measures are not implemented and codified to ensure parole hearings. According to the California Department of Corrections and Rehabilitation (CDCR), as of February 2017, there were over 31,000 inmates 50 years of age or older.

Costs associated with geriatric medical needs begin to accumulate at 50 years of age, given that there is an overwhelming consensus that the age of 50 constitutes a point when prisoners are considered elderly. In 2010, the LAO estimated from other state projections that incarcerating elderly offenders costs two to three times more than for the general prison population. In 2010, the average cost of incarcerating an inmate was approximately $51,000.

There is a lower risk of recidivism among elderly prisoners, according to CDCR statistics. In 2015, CDCR reported that only 31.1 percent of persons who were 60 years of age and older, returned to prison after three years from being released from prison compared to the state average of 44.6 percent for all formerly incarcerated individuals. Recidivism rates for persons 50 to 54, inclusive, years of age and 55 to 59, inclusive, years of age after one year from being released from prison were 39.4 and 34.6 percent, respectively.

AB 1448 (Weber), Chapter 676, codifies the Elderly Parole Program, to be administered by the Board of Parole Hearings (BPH). Specifically, this new law:

- Requires a prisoner to be considered for parole under the Elderly Parole Program if he or she meets both of the following conditions:
    - The prisoner is 60 years of age or older; and,
    - The prisoner has served a minimum of 25 years of continued incarceration on his or her current sentence, serving either a determinate or indeterminate sentence.
- Provides that when considering the release of a prisoner by the panel or board sitting en banc, the board shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly prisoner's risk of future violence.
- States that when scheduling a parole suitability hearing or when considering a request for an advance hearing, the board shall consider whether the prisoner meets the above age and continuous incarceration requirement.
- Provides that if the prisoner is found suitable for parole under the Elderly Parole Program, the board shall release the individual on parole, as specified.
- Prohibits a prisoner from being paroled who has been sentenced under the "Three Strikes" Law, who has been sentenced to life in prison without the possibility of

parole or death, and a person who has been convicted of the first degree murder of a peace officer or a former peace officer.

- States that this bill does not alter the rights of victims at parole hearings.

- States that an individual eligible for an elderly parole hearing shall meet with the parole board as specified by existing law.

- Specifies that if parole is not granted at an elderly parole hearing, the parole board shall set the time for a subsequent elderly parole hearing as specified by existing law.

- Specifies that "elderly eligible parole date" is the date on which an inmate who qualifies as an elderly offender is eligible for release from prison.

Inmates: Petition for Name or Gender Change

Existing law allows a person to petition the court for a judgment to recognize a change of gender. The petition must include an affidavit of a physician attesting that the person has undergone clinically appropriate treatment for the purpose of gender transition. Generally, the court is required to grant the petition if the court determines that the physician's affidavit shows that the person has undergone clinically appropriate treatment for the purpose of gender transition.

Under existing law, an incarcerated transgender person seeking a name and gender change court order must first obtain approval from the warden of their facility and then the approval of the Division of Adult Institutions Regional Administrator as well as a Corrections Case Manager before filing a petition with the court. This process almost always results in either a denial or with no response from corrections officials.

Transgender people face extreme difficulties when they reenter society when their gender presentation does not match their identification documents, including employment, housing, healthcare and government subsidies. A significant number of transgender people have reported verbal harassment, denial of benefits or services, being asked to leave, or being assaulted after presenting identification documents that do not match their gender identity.

Transgender people who are incarcerated should have the same right as anyone else to legally change their name or gender and to be recognized for who they are.

SB 310 (Atkins), Chapter 856, establishes the right of inmates under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) or serving a sentence in a county jail to petition the court to obtain a name or gender marker change. Specifically, this new law:

- Provides a person under the jurisdiction of CDCR or sentenced to county jail has the right to petition the court to obtain a name change or gender change provided under

existing law.

- Requires a person under the jurisdiction of CDCR or sentenced to county jail to provide a copy of the petition for a name change to the respective department, in a manner prescribed by the department, at the time the petition is filed.

- Requires that in all documentation of a person under the jurisdiction of CDCR or a county jail, the new name of a person who obtains a name change shall be used, and prior names shall be listed as an alias.

- Makes several legislative findings and makes technical and conforming changes.

- Delays the operative date of its provisions to September 1, 2018.

Custodial Officers: Less Lethal Force

While Penal Code Section 831 gives local law enforcement agencies the authority to employ custodial officers, who generally work at the jail and provide inmate custodial services, the law precludes these officers from possessing firearms in the course of their duties.

"Some sheriff offices would like to deploy certain officers in custodial facilities with the appropriate tools to address specific situations. For example, a jail may have an emergency response team that responds to critical incidents and emergency situations. A sheriff may wish to deploy this team with less lethal weapons that fire plastic, rubber, or other less lethal projectiles, but these weapons are technically firearms, and may not be used by custodial officers as defined in Penal Code Section 831.

SB 324 (Roth), Chapter 73, authorizes a custodial officer to use a firearm that is a "less lethal weapon" in the official performance of his or her duty, at the discretion of the sheriff or chief of police or his or her designee, if the custodial officer is trained in its use and complies with the policy of on the use of less lethal force as set forth by the sheriff or chief of police.

Exonerated Inmates: Transitional Services

AB 672 (Jones-Sawyer), Chapter 403, Statutes of 2015, also known as “Obie’s law,” ensured that wrongfully convicted people could get access to services which were at the time only available to parolees. Existing law requires the Department of Corrections and Rehabilitation to provide transitional services to those who have been exonerated.

However, the standard for establishing innocence changed with the passage of SB 1134 (Leno), Chapter 785, Statutes of 2016. Thus, there is a need to update the standard for eligibility for services to wrongfully convicted people so that they can receive those services consistent with that change in the law.

SB 336 (Anderson), Chapter 728, expands the definition of "exonerated," for the purpose of eligibility for assistance with transitional services upon release from prison, to include a person who has been granted a writ of habeas corpus based on the fact that new evidence exists that more likely than not would have altered the outcome of the trial resulting in dismissal of the charges, or a determination has been made that the person should be released on bail or own recognizance pending appeal or pending retrial.

Inmates: Veteran's Benefits

A large number of incarcerated military veterans are fully eligible for a wide range of benefits as a result of their service prior to their incarceration. The California Association of County Veterans Service Officers (CACVSO) is an organization of professional veterans advocates. In California, CVSO plays a role in the veteran's advocacy system and is often the initial contact in the community for veterans' services. AB 2263 (Bradford), Chapter 652, Statutes of 2014, authorized a veterans service organization to volunteer to serve as a veterans service advocate at each facility that is under the jurisdiction of the Department of Corrections and Rehabilitation (CDCR). However, in many counties where state prisons are located, CVSOs are overworked in serving the many and varied needs of their local veteran populations and consequently may have difficulty servicing the incarcerated veteran population in a timely manner.

SB 776 (Newman), Chapter 599, requires CDCR to have one employee, for every five state prisons, who is trained by the Department of Veterans Affairs (CalVet) to assist incarcerated veterans in applying for and receiving any federal veterans benefits for which they may be eligible. Specifically, this new law:

- Requires CDCR to provide one employee, other than a correctional officer or other custodial employee, for every five state prisons, who is trained and accredited by CalVet and who shall assist incarcerated veterans in applying for and receiving any federal veterans' benefits for which they may be eligible.

- Requires the employee to forward any claim he or she develops for federal veterans' benefits for an incarcerated veteran to the local county veterans service office for the following actions:

    - Quality control review;

    - Inputting the claim into the federal claims processing system; and

    - Inputting the claim into the VetPro software system used by the CalVet and local county veterans service offices, or any replacement software system that is intended to perform the same function.

COURT HEARINGS

Pretrial Diversion: Drug-Possession Offenses

Under existing law, a defendant charged with violations of certain specified drug may be eligible to participate in a deferred entry of judgment (DEJ) if he or she meets specified criteria. (Pen. Code, §§ 1000 et seq.) With DEJ, a defendant must enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If a defendant placed in a DEJ program fails to complete the program or comply with conditions imposed, the court may resume criminal proceedings and the defendant, having already pleaded guilty, would be sentenced. If the defendant successfully completes DEJ, the arrest shall be deemed to never have occurred and the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense.

Diversion on the other hand suspends the criminal proceedings without requiring the defendant to enter a plea. Diversion also requires the defendant to successfully complete a program and other conditions imposed by the court. Unlike DEJ however, if a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense.

In order to avoid adverse immigration consequences, diversion of an offense is preferable to DEJ because the defendant is not required to plead guilty in order to participate in the program. Having a conviction for possession of controlled substances, even if dismissed, could trigger deportation proceedings or prevent a person from becoming a U.S. citizen. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.)

AB 208 (Eggman), Chapter 778, converts the existing deferred entry of judgment program for specified drug-possession offenses into a pretrial drug diversion program. Specifically, this new law:

- Changes the existing deferred entry of judgment (DEJ) program for specified drug offenses into a pretrial drug diversion program.
- Establishes the following eligibility requirements for the pretrial drug diversion program:
    - The defendant must not have a prior conviction for a drug offense within five years other than those offenses which may be diverted;
    - The charged offense did not involve violence or a threat of violence;

- There is no evidence of a contemporaneous violation relating to narcotics or restricted dangerous drugs other than those offenses which may be diverted; and;

- The defendant must have no prior felony conviction within the past five years.

- Retains provisions in current DEJ law that are consistent with pretrial diversion.

- Requires eligible defendants to be advised of the procedures for pretrial diversion, including that the defendant will be waiving the right to a speedy preliminary hearing, speedy trial, and to a trial by jury; that if the defendant does not perform satisfactorily in the program, the prosecuting attorney, probation department, or court may make a motion to terminate pretrial diversion and schedule the matter for further proceedings; and an explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about his or her arrest and pretrial diversion following successful completion of the program.

- Provides that a defendant's participation in pretrial diversion does not constitute a conviction or an admission of guilt for any purpose.

- Sets the length of the pretrial diversion program from between 12 months to 18 months, but allows the court to extend that time for good cause.

- Provides that the prosecutor, the court, or the probation department may move to terminate diversion if the defendant is performing unsatisfactorily, or he or she has been convicted of a felony or an offense reflecting propensity for violence.

- Provides that if pretrial diversion is terminated, either due to unsatisfactory performance or because of specified convictions, then the court shall schedule the matter for further proceedings.

- Provides for dismissal of charges if the defendant completes pretrial diversion, and deems arrest for the charges never to have occurred.

- Allows a person participating in a pretrial diversion program to use medications to treat substance use disorders under the direction of a licensed health care practitioner if the participant allows release of his or her medical records to the court for the limited purpose of determining whether he or she is using the medications under the direction of a licensed health care practitioner and is complying with the rules of the pretrial diversion program.

Sexually Violent Predators: County Placement

Under existing law, a person who has been judicially determined to be a sexually violent predator (SVP) who has successfully completed treatment, and is to be conditionally released, shall be released in the county of domicile unless both of the following conditions are met: (1) The court finds that extraordinary circumstances require placement outside the county of residence; and, (2) The designated county of placement was given prior notice and an opportunity to comment on the proposed placement in the county.

> **AB 255 (Gallagher), Chapter 39,** provides that when designating the county of placement for an SVP, who is to be conditionally released, the courts must consider connections to the community, Specifically, if and how long the person has previously resided or been employed in the county, and if the person has next of kin in the county.

Witnesses: Support Dogs

An effective tool to help prevent psychological harm to a child victim/witness or vulnerable person victim/witness is the use of therapy or facility dogs (commonly referred to as comfort dogs). Having a courthouse dog is another step in the process to assist victims and address the need for more compassion in the legal system.

In *People v. Chenault* (2014) 227 Cal.App.4th 1503, the Court of Appeal upheld the trial court's authority to permit the use of support dogs for certain witnesses. The court recognized that while Penal Code section 868.5, expressly allows the presence of one or two support persons for a witness in certain circumstances, it does not apply to therapy dogs. (*Id*. at pp. 1513-1514.) However, under Evidence Code section 765, the trial court has broad control over the interrogation of witnesses, which includes the authority to allow the presence of a therapy/support dog during a witness's testimony. Therefore the court had the authority to permit use of the support dog under that statute. (*Id*. at p. 1514.)

Although case law recognizes the court's authority to permit use of a support dog, this practice is not codified in statute.

> **AB 411 (Bloom), Chapter 290,** authorizes the use of a support dog during the testimony of specified victims and child witnesses. Specifically, this new law:
>
> - Allows the following persons, if requested by either party in a criminal or juvenile hearing, to be afforded the opportunity to have a therapy or facility dog accompany him or her while testifying in court, subject to the approval of the court:
>
> - A child witness in a court proceeding involving any serious felony, as specified; and
>
> - A victim who is entitled to support persons under other penal code provisions.

- Requires the party seeking to utilize the therapy or facility dog to file a motioning with the court which includes all of the following:
    - The training or credentials of the therapy or facility dog;
    - The training of the therapy or facility dog handler; and,
    - Facts justifying that the presence of the therapy or facility dog may reduce anxiety or otherwise be helpful to the witness while testifying.
- Allows the court to deny a motion to utilize a therapy or facility dog if the court finds that the use of a therapy or facility dog would cause undue prejudice to the defendant or would be unduly disruptive to the court proceeding.
- Requires the court to take appropriate measures to make the presence of the therapy or facility dog as unobtrusive and non-disruptive as possible, including requiring a dog to be accompanied by a handler in the courtroom at all times.
- Requires the court, upon request, to present appropriate jury instructions designed to prevent prejudice for or against any party.
- States that nothing in this law shall prevent the court from removing or excluding a therapy or facility dog from the courtroom to maintain order or to ensure the fair presentation of evidence.
- Declares legislative intent to codify the holding in *People v. Chenault* (2014) 227 Cal.App.4th 1503 with respect to allowing an individual witness to have a support dog accompany him or her when testifying in proceedings.
- States that nothing in this law limits the use of a service dog, as specified, by a person with a disability.
- Defines certain terms for purposes of this law.

Gun Violence Restraining Orders: Records Retention

In 2014, the Legislature enacted AB 1014 (Skinner), Chapter 872, which authorized courts to issue gun violence restraining orders to remove firearms from individuals who are at-risk of committing acts of violence against themselves or others. While it was modeled after other restraining order laws, AB 1014 did not specify the period during which records were required to be retained. Under existing law, court records of other similar restraining orders (*e.g.*, civil harassment, domestic violence, elder and dependent adult abuse) are retained for the duration of the restraining order and for any renewals, and then permanently thereafter, like judgments.

AB 1443 (Levine), Chapter 172, provides that a record involving a gun violence restraining order case be retained for the duration of the restraining order and during any renewals. Thereafter, the records are to be retained permanently, like judgments.

Violent Felonies: Video Recordings

With the widespread use of social media, a troubling trend has emerged. Some individuals are committing violent crimes for the purposes of videotaping and sharing on social media. One example is the crime committed against Jordan Peisner, a Los Angeles teenager who was assaulted outside a fast food restaurant by one teenager while another recorded the incident and posted it to Snapchat.

> **AB 1542 (Dababneh), Chapter 668,** allows the court to consider the recording of a commission of a violent felony as a factor in aggravation for sentencing purposes. Specifically, this new law: states that in any case where a defendant has been convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code, the court may consider as a factor in aggravation that the defendant willfully recorded a video of the commission of the violent felony with the intent to encourage or facilitate the offense.

Sentence Enhancements: Prior Convictions

The existing three-year enhancement for prior drug-crime convictions was enacted by AB 2320 (Condit), Chapter 1398, Statutes of 1985. AB 2320 included un-codified legislative intent "to punish more severely persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity." AB 2320, called "The Dealer Statute," was modeled on particularly harsh federal drug crime laws. The sponsor argued that it was necessary to eliminate an incentive for persons "to traffic [in drugs] in California where sentences are significantly lighter than in federal law." The federal laws to which the sponsor referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences.

It has been argued that the current policy of sentencing people with nonviolent drug convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use. Sentencing enhancements do not prevent or reduce drug sales. Indeed, research finds that the length of sentences does not provide any deterrent or significant incapacitation effect; in other words, longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught (See Russell, Sarah F, "Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing," 43 UC Davis L. Rev. 1135 2010.)

> **SB 180 (Mitchell), Chapter 677**, limits the current three-year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substances to convictions for a controlled substance offense where a minor was used or employed in the commission of the offense.

Veteran's Treatment Courts: Assessment and Survey

Veterans' court is a problem-solving court intended to serve veterans who are involved with the justice system and whose court cases are affected by issues such as addiction, mental illness, and co-occurring disorders. These courts promote sobriety, recovery, and stability through a coordinated response involving cooperation and collaboration with prosecutors, defense lawyers, probation departments, county veterans service offices, the California Department of Veterans Affairs, health-care networks, employment and housing agencies and groups, volunteer mentors who are usually also veterans, and family support organizations. There is a need to provide greater access to these courts so all Veterans can get the treatment they need.

SB 339 (Roth), Chapter 595, requires the Judicial Council to conduct a study of veterans and veteran's treatment courts. Specifically, this new law:

- Requires the Judicial Council, if funding is provided, to conduct a study of veterans and veteran's treatment courts that includes all of the following:
    - A statewide assessment of the veteran's treatment courts currently in operation that includes the number of veterans participating in the program, services available, and program outcomes, including successful completion or program terminations. The assessment shall evaluate the impact of a sample of veterans treatments courts on participant outcomes, including, not limited to, program recidivism, mental health, homelessness, employment social stability, and substance abuse;
    - A survey of counties that do not operate veteran's treatment courts that identifies barriers to program implementation and assesses the need for veteran's treatment courts in those jurisdictions based on the veterans involved in the local criminal justice system. The survey shall identify alternative resources that may be available to veterans, such as community courts or other collaborative justice courts; and,
    - On or before June 1, 2020, report to the Legislature on the results of the study, including recommendations regarding the expansion of veteran's treatment courts or services to counties without veteran's treatment courts and shall explore the feasibility of designing regional model veterans treatment courts through the use of service coordination or technological resources.
- Establishes a sunset date of January 1, 2021.

Incompetence to Stand Trial: Conservatorship

Currently mentally ill defendants who cannot be restored to competency, and who do not qualify for conservatorships, are released from competency restoration programs. Under existing law, a conservatorship is allowed in circumstances where an information (post preliminary hearing) or indictment (post grand jury) is pending against the defendant containing specified criminal charges, and the defendant was not returned to competency within the requisite time frame. Under existing law, a conservatorship is not allowed if defendant is facing a complaint

(preliminary hearing has not yet been conducted).

SB 684 (Bates), Chapter 246, allows the initiation of a conservatorship for involuntary commitment when a criminal defendant is charged with specified felonies and the defendant is incompetent to stand trial. Specifically, this new law:

- Expands existing law to allows a conservatorship to be established when a defendant has been found incompetent to stand trial, if the defendant has been charged by complaint, if the following conditions are met:
    - The complaint charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person;
    - A judge has made a finding of probable cause the defendant has committed the list of felonies, specified above, and the complaint has not been dismissed;
    - As a result of a mental health disorder, the defendant is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner;
    - The defendant has been found mentally incompetent to stand trial; and
    - The person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.
- Establishes a procedure, to be approved by the court, for a prosecuting attorney, at any time before or after a defendant is determined incompetent to stand trial, to request a determination of probable cause to believe the defendant committed the offense or offenses alleged in the complaint, solely for the purpose of meeting the criteria for gravely disabled to be eligible for a conservatorship.

Grants the defendant a preliminary hearing after restoration of competency. Allows for the initiation of a conservatorship upon a criminal complaint if there has been a finding of probable cause on the complaint.

Sentencing: County of Incarceration and Supervision

In 2011, Criminal Justice Realignment (Realignment) made significant changes in the statutes governing felony sentencing (Stats. 2011, chaps. 15 (AB 109), 39 (AB 117), 136, 1st Ex. Sess., chap. 12). In relevant part, Realignment allows lower level felons to serve their sentences in county jail instead of state prison. Also, under Realignment, where a felon is sentenced to county jail, the court must suspend execution of a concluding portion of the sentence, "[u]nless the court finds that, in the interests of justice, it is not appropriate in a particular case." (Pen. Code, § 1170, subd. (h)(5)(A).) During the period of suspended execution, "known as mandatory supervision" the felon is supervised by the county probation officer. (Pen. Code, § 1170, subd. (h)(5)(B).)

When a defendant receives felony sentences in multiple jurisdictions (counties), the law provides a process for the second or subsequent court to impose a single aggregate term. Prior to Realignment, the aggregate term was served in a state prison operated by the California Department of Corrections and Rehabilitation. Thus, the county from which any portion of the aggregate sentence originated was of no consequence. Under Realignment, low level felons generally serve their sentences and are supervised at the county level. Realignment legislation does not address the issue of sentences from multiple jurisdictions. "The issue will become significant because now counties must carry the cost of local incarceration with only minimal contribution from the state, and jail space is frequently very limited." (Couzens et al., Sentencing Cal. Crimes (The Rutter Group 2016) Ch. 11, § 11:35.)

SB 670 (Jackson), Chapter 287, specifies that the court rendering a second or subsequent county-jail felony judgment determines the county or counties of incarceration and supervision. Specifically, this new law:

- Provides that when imposing judgment on a county-jail felony concurrent or consecutive to a judgment on a county-jail felony in another county or counties, the court rendering the second or subsequent judgment determines the county or counties of incarceration and supervision of the defendant.

- Requires the Judicial Council to adopt rules providing criteria for the consideration of the judge when determining the county or counties of incarceration and supervision.

CRIMINAL OFFENSES

Military Fraud: Stolen Valor Act

California currently requires an elected officer forfeit his or her office upon conviction of a crime pursuant to either the federal Stolen Valor Act of 2005 or the California Stolen Valor Act.

However, the United States Supreme Court struck down the Federal Stolen Valor Act of 2005 stating that the action of claiming military service is protected under free speech. (See *United States v. Alvarez* (2012) 132 S.Ct. 2537, 2556 [183 L.Ed.2d 547].) Therefore, the Federal Stolen Valor act of 2005 was found to be unconstitutional. Congress then passed the Federal Stolen Valor Act of 2013 with a focus on intent to make profit, obtain money, property, or obtaining something with/of tangible benefit or value.

There is now a need to conform state law to the updated federal law.

AB 153 (Chavez), Chapter 576, modifies the language of the California Stolen Valor Act to conform to the federal Stolen Valor Act of 2013. Specifically, this new law:

- Punishes as a misdemeanor offense conduct that is fraudulent, with respect to false representation as a war veteran or as a veteran or member of the Armed Forces, with the intent to obtain money, property, or other tangible benefit, as defined.

- Defines tangible benefit as "financial remuneration, an effect on the outcome of a criminal or civil court proceeding, or any benefit relating to service in the military that is provided by a federal, state, or local governmental entity."

- Expands the crime related to misrepresentation to include a person who fraudulently represents him or herself as a veteran or member of the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, or any other reserve component of the Armed Forces of the United States with the intent to obtain money, property, or other tangible benefit.

- Punishes as a misdemeanor offense a person who misrepresents him or herself as a member or veteran of specified armed forces in connection with certain acts, such as, among other things, the forgery or use of falsified military documentation, or for purposes of employment or promoting a business, charity, or other endeavor, as prescribed.

- Require elected officers, as specified, to forfeit their office upon the conviction of a crime pursuant to the federal Stolen Valor Act of 2013 or the California Stolen Valor Act that involves a fraudulent claim, made with the intent to obtain money, property, or other tangible benefit, as defined, that the person is a veteran or a member of the Armed Forces of the United States, as prescribed in those acts.

Public Agencies: Unlawful Interference

According to California Association of Clerks and Election Officials, there have been complaints at some County Clerk offices regarding aggressive solicitors harassing individuals there to conduct business. For example, in San Bernardino County, more than a dozen complaints were filed between 2014 and 2015 regarding solicitors outside the Hall of Records posing as county employees, arguing with citizens and following them into the building to enlist their business in filing fictitious business names and articles of incorporation. In Los Angeles County, solicitors have been confrontational and used aggressive tactics to acquire business from individuals who were there to conduct business with the County Clerk's office. Some of solicitors have been known to approach individuals as they get out of their vehicles on their way to the clerk's office in an attempt to get those filers to use an agent to file their documents. In some instances, these solicitors have knowingly misled individuals by stating that they are required to use an agent to file a fictitious business name.

Current state law under California Penal Code Section 602.1 only punishes acts that are considered "obstructing" or "intimidating" to persons attempting to carry on business at a public agency. This creates a void in the penal code that permits illegitimate solicitors to be exempt from the enforcement of said punishments.

> **AB 660 (Rubio), Chapter 381,** expands the crime of trespass on the property of a public agency. Specifically, this new law: makes it an infraction, punishable by a fine of up to $400, to intentionally interfere with any lawful business carried on by the employees of a public agency open to the public by knowingly making a material misrepresentation of the law to those attempting to transact business with the agency and refusing to leave, as specified.

First Degree Murder: Peace Officers

Under current law, an unlawful killing (a killing without legal justification or excuse) of a peace officer that is willful, deliberate, and premeditated is first degree murder. (Pen. Code, §§ 187-189, 195-196.)

> **AB 1459 (Quirk-Silva), Chapter 214,** restates existing law regarding first degree murder of a peace officer for purposes of the gravity of the offense and support of the survivors. Specifically, this new law:
>
> - Declares the finding of the Legislature that all unlawful killings that are willful, deliberate, and premediated and in which the victim was a peace officer, as defined in statute, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, are considered first degree murder for purposes of the gravity of the offense and the support of survivors.
>
> - States that this provision is declarative of existing law.

- Makes uncodified legislative findings and declarations.

Infectious and Communicable Diseases: Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS): Crimes and Penalties

Beginning nearly thirty years ago, several laws were passed in California that criminalized behaviors of people living with HIV or added penalties to existing crimes for those with HIV. These laws were based on fear and the limited medical science of the time. In 1988, when most of these laws were passed, there were no effective treatments for HIV and discrimination towards people living with HIV was extremely high. In the decades since these laws were passed, societal and medical understanding of HIV has greatly improved, and there are now effective treatments that lengthen and improve the quality of life for people living with HIV. Scientific advances should inform our laws, the manner in which we address our public health response to HIV/AIDS, and our thinking with respect to the equally shared responsibility between partners for maintaining sexual health.

SB 239 (Wiener), Chapter 537, reforms criminal penalties related to AIDS and HIV which specify harsher punishment than that which applies to other communicable diseases. Specifically, this new law:

- Repeals existing provisions which make it a felony to expose another to HIV and a misdemeanor to expose another to other contagious, infectious, or communicable diseases.

- Creates a new misdemeanor offense, punishable by imprisonment in the county jail for up to six months, for intentional transmission of an infectious or communicable disease where all of the following apply:

    - The defendant knows that he or she or a third party is afflicted with an infectious or communicable disease;

    - The defendant acts with the specific intent to transmit or cause an afflicted third party to transmit that disease to another person;

    - The defendant or the afflicted third party engages in conduct that poses a substantial risk of transmission to that person;

    - The defendant or the third party transmits the infectious or communicable disease to the other person; and,

    - If exposure occurs through interaction with the defendant and not a third party, the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. A person's interaction with the defendant is not involuntary solely on the basis of his or her lack of knowledge that the defendant was afflicted with the

disease.

- States that an attempt to intentionally transmit an infectious or communicable disease is a misdemeanor punishable by imprisonment in a county jail for not more than 90 days.

- Creates a new misdemeanor offense, punishable by imprisonment in a county jail for up to six months, for willful exposure of another to an infectious or communicable disease where a health officer, or the health officer's designee, acting under circumstances that make securing a quarantine or health officer order infeasible, has instructed the defendant not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease, and the defendant engages in that conduct within 96 hours of the instruction. A health officer, or the health officer's designee, may issue a maximum of two instructions to a defendant that may result in a violation of this provision.

- Specifies that the new misdemeanor offenses do not apply to a person who donates an organ or tissue for transplantation or research purposes, or a person who donates breast milk to a medical center or breast milk bank that receives breast milk for purposes of distribution.

- Provides that before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, education, and reasonable redress to the victim or victims. Repeals existing provisions related to the AIDS education programs.

- Imposes various requirements upon the court in order to prevent the public disclosure of the identifying characteristics, as defined, of the complaining witness and the defendant.

- Requires a court, upon a finding of probable cause that an individual has violated this new law, to order the production of the individual's medical records or the attendance of a person with relevant knowledge thereof, so long as the return of the medical records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in-camera inspection. Only upon a finding by the court that the medical records or proffered testimony are relevant to the pleading offense shall the information produced pursuant to the court's order be disclosed to the prosecuting entity and be admissible, if otherwise permitted by law.

- Repeals the statute making it a felony to commit prostitution or solicitation if the person has a prior conviction for a specified sex offense and a positive AIDS test. A prior conviction for a violation of this repealed provision is invalid and vacated. All charges alleging a violation of this repealed provision are dismissed and all arrests based on a violation of this repealed provision are deemed to never have occurred.

- Provides that a person who is serving a sentence for the repealed felony prostitution/solicitation statute may petition for a recall or dismissal of the sentence before the trial court that entered the judgment of conviction in his or her case.

- Repeals the felony provision related to donating blood, tissue or semen by a person who has been diagnosed with AIDS or HIV.

Extortion: Sexual Conduct

As perpetrators have found new ways to target their victims, we must make sure that California law keeps up with these new forms of extortion that can directly victimize young adults. Faced with the fear of having their private images shared on the Internet or sent to family or friends, victims—often teens and young women—are forced to comply with the perpetrators' demands. It is simply that, because of ambiguity in California law, perpetrators of sextortion can currently be charged with a lesser crime and victims do not receive the justice that they deserve.

SB 500 (Leyva), Chapter 518, expands the crime of extortion to include not only the obtaining of property, but also the obtaining of other consideration, including sexual conduct or images of intimate body parts. Specifically, this new law:

- Redefines "extortion" as "the obtaining of property or other consideration from another, with his or her consent."

- Defines "consideration" as “anything of value, including sexual conduct, or an image of an intimate body part, as specified.”

- Provides that notwithstanding the definition of extortion, a person under 18 years of age who has obtained consideration consisting of sexual conduct or an image of an intimate body part is not guilty of extortion.

- Makes conforming cross references to other extortion statutes.

CRIMINAL PROCEDURE

Consolidated Sex Offenses: Jurisdiction

The Legislature has created several exceptions to the rule that the territorial jurisdiction of the case is where the offense occurred. Under existing law, these exceptions include specified sex offenses occurring in different counties. If all the district attorneys in the counties with jurisdiction agree, the offenses may be consolidated into a single trial. This protects repeat victims from the need to make multiple court appearances to testify against the same offender.

Because the sex offenses currently excepted are of the same class, the court has held they may be properly joined. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1113.) Under existing law, this exception does not include specified sex offenses with a child 10 years of age or younger (Pen. Code, § 288.7). Arguably, these offenses belong to the same class of sex offenses currently excepted from the general venue rule.

- **AB 368 (Muratsuchi), Chapter 379,** permits the consolidation of specified sex offenses with a child 10 years of age or younger occurring in different counties into a single trial if all district attorneys in the counties with jurisdiction agree. Specifically, this new law adds the offenses of sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years or younger to the list of specified sex offenses exempt from the rule that the territorial jurisdiction of the case is where the offense occurred.

Juveniles: Sealing of Records

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) However, juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

SB 1038 (Leno), Chapter 249, Statutes of 2014, provided a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst. Code, § 786.)

The sealing of delinquency records is an important factor in reducing recidivism and opening doors to jobs and education for many of California youth.

AB 529 (Stone), Chapter 685, requires the sealing of juvenile records relating to dismissed or unsustained juvenile court petitions and relating to diversion and

supervision programs, as specified. Specifically, this new law:

- Provides that if a person who has been alleged to be a ward of the juvenile court has his or her petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court must order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.

- Requires the court to send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records must be destroyed.

- Requires each agency and official named in the order to seal the records in its custody as directed by the order, advise the court of its compliance, and, after advising the court, seal the copy of the court's order that was received.

- Requires the court to provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed. The notice must advise the person of his or her right to nondisclosure of the arrest and proceedings, as specified.

- Provides that when a record has been sealed by the court based on a dismissed petition, as specified, the prosecutor, within six months of the date of dismissal, may petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, and requires the court to determine whether the new circumstance alleged by the prosecutor provides sufficient justification for accessing, inspecting, or utilizing the sealed record in order to refile the dismissed petition.

- Requires the probation department to seal the arrest and other records in its custody relating to a juvenile's arrest or referral and participation in a diversion or supervision program upon satisfactory completion of the program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision.

- Requires the probation department to notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall then promptly seal the records in its custody relating to the juvenile's arrest or referral and participation in the program.

- Provides that upon sealing of the records under this section, the arrest or offense giving rise to the person's participation in the program shall be deemed not to have

occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

- Requires the probation department to notify the participant in the supervision or diversion program in writing that his or her record has been sealed pursuant to the provisions of this section based on his or her satisfactory completion of the program. If the record is not sealed, the probation department shall notify the participant in writing of the reason or reasons for not sealing the record.

- Defines "satisfactory completion" of the program of supervision or diversion, and requires the probation department to make a determination of satisfactory or unsatisfactory completion within 60 days of completion of the program by the juvenile, or if the juvenile does not complete the program, within 60 days of determining that the program has not been completed by the juvenile.

- Allows a person who receives notice from the probation department that he or she has not satisfactorily completed the diversion program and that the record has not been sealed to petition for review of the decision, as specified.

- Authorizes a probation department to access sealed records for the limited purpose of determining whether the minor has previously participated in a program of supervision. Specifies that the information contained in the sealed record and accessed by the probation department remains in all other respects confidential and prohibits its dissemination to any other person or agency. Provides that access to, or inspection of, a sealed record shall not be deemed an unsealing of the record nor require notice to any other agency.

Search Warrants: Misdemeanor Disorderly Conduct/Invasion of Privacy

In *Riley v. California* (2014) 573 U.S. [134 S.Ct. 2473], the United States Supreme Court held that law enforcement officers generally must secure a warrant before searching digital information on a cell phone seized from an individual who has been arrested. (*Id*. at p. 2495.) The Legislature subsequently enacted SB 178 (Leno), Chapter 651, Statutes of 2015, the California Electronic Communications Privacy Act (CalECPA). CalECPA is a comprehensive digital privacy law which took effect on January 1, 2016 (§ 1546 et seq.). It "limits the ability of California law enforcement to obtain information directly from a smartphone or similar device, or to track them. Law enforcement must either obtain a warrant or get the consent of the person possessing the electronic device." (Daniels, *California Updates Privacy Rights with the Electronic Communications Privacy Act* (Nov. 17, 2015) JDSupra.)

Current law lists limited circumstances authorizing a search warrant for evidence that tends to show a violation of a misdemeanor crime. For example, a search warrant can be issued on the grounds that property is possessed with the intent to use it as a means of committing a public offense. (Pen. Code, § 1524, subd. (a)(3).) Arguably, under this provision, it may be difficult to obtain digital evidence of misdemeanor crimes that have already been committed with the use of an electronic device unless there is also probable cause to believe that the device is possessed

with the intent to use it to commit a public offense in the future.

AB 539 (Acosta), Chapter 342, expands the grounds for issuance of a search warrant to include evidence of a misdemeanor violation of disorderly conduct involving invasion of privacy, as specified. Specifically, this new law:

- Provides that a search warrant may be issued when the property or things to be seized consists of evidence that tends to show a violation of any of the following disorderly conduct laws occurred or is occurring:
    - Actions involving the use of any instrumentality to view the interior of specified rooms, in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of individuals inside;
    - Use of specified devices to videotape, film, photograph, or record by electronic means an identifiable person either under or through their clothing, for purposes of viewing the body or undergarments, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy; or
    - Use of specified devices to videotape, film, photograph, or record by electronic means an identifiable person in a state of full or partial undress, for the purpose of viewing the body or undergarments, without the consent or knowledge of that other person, in the interior of specified rooms in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

Release on Own Recognizance: Prior Failures To Appear

Current law requires a hearing in open court before a person arrested for certain offenses, and who has previously failed to appear in court three or more times within three years, may be granted own recognizance (OR) release. The inflexibility of this law can hinder pretrial release programs that operate during non-court hours. During non-court hours, an appropriate candidate for placement into a court-approved pretrial release program is held in jail awaiting the mandatory hearing in court. Under current law, the arrestee may also be released from an overcrowded jail without supervision.

AB 789 (Rubio), Chapter 554, allows a court to approve, without a hearing, own recognizance release pursuant to a pretrial release program for specified arrestees with three or more prior failures to appear (FTAs). Specifically, this new law:

- Provides that except for specified offenses, a person who is arrested for a felony offense, and who has three or more prior FTAs within the past three years, may be released on OR without a hearing if it is pursuant to a court-operated or court-

approved pretrial release program.

- Adds domestic violence offenses and offenses in which the defendant is alleged to have caused great bodily injury to the specified offenses for which a hearing must be held prior to releasing a person with three or more prior FTAs on OR.

- Deletes the prohibition against OR release without a hearing for arrestees of theft offenses with three or more prior FTAs and limits the prohibition as to burglary offenses to residential burglary.

- Specifies that this provision does not change the statutory requirement to hold a hearing in open court before the magistrate or judge in cases in which the person is arrested for a serious or violent felony (other than residential burglary), specified witness intimidation offenses, specified domestic violence offenses, or specified violations of a protective order.

- States that this provision does not alter or diminish the rights conferred under Marsy's Law, the Victims' Bill of Rights Act of 2008.

Grand Juries: Peace Officers

To help make judicial proceedings more transparent and accountable, SB 227 (Mitchell) Chapter 175, Statutes of 2015, prohibited a grand jury inquiry into an offense that involves a shooting or use of excessive force by a peace officer resulting in the death of a person being detained or arrested by the peace officer. (See Pen. Code, § 917.) Earlier this year, however, the Third District Court of Appeal found this law unconstitutional. (*People v. ex rel. Pierson v. Superior Court* (2017) 7 Cal.App.5th 402.) In so holding, the court noted: "The Legislature is not powerless to remedy the problem it has identified. It may submit a constitutional amendment to the electorate to remove the grand jury's power to indict in cases involving a peace officer's use of lethal force. *It could also take the less cumbersome route of simply reforming the procedural rules of secrecy in such cases, which are not themselves constitutionally derived or necessary to the grand jury's functioning….* (*Id.* at p. 414, emphasis added.)

AB 1024 is in line with the Court of Appeal's suggested remedy of "reform[ing] the procedural rules of secrecy in such cases." (*People v. ex rel. Pierson v. Superior Court*, *supra*, 7 Cal.App.5th at p. 414.) Existing law provides for the transcript of a grand jury proceeding to be made public only if there is an indictment. (Pen. Code, § 938, subds. (a) & (b).) There is no comparable requirement under existing law when the grand jury does not return an indictment.

AB 1024 (Kiley), Chapter 204, requires a court to disclose all or a part of an indictment proceeding transcript, excluding the grand jury's private deliberations and voting, when the grand jury decides not to return an indictment for an offense that involves a peace officer shooting or use of excessive force that results in the death of a detainee or arrestee. Specifically, this new law:

- Requires the court that impaneled a grand jury to disclose all or a part of the indictment proceeding, excluding the grand jury's private deliberations and voting, to a party who moves for disclosure, under the following circumstances:

    - The grand jury inquiries into a peace officer-involved shooting or use of excessive force that resulted in the death of a person being detained or arrested by the peace officer;

    - The grand jury decides not to return an indictment;

    - The district attorney, a legal representative of the deceased person, or a legal representative of the news media or public applies for disclosure of the indictment proceeding;

    - The district attorney and the affected witness involved are given notice and an opportunity to be heard; and,

    - Unless, following an in camera hearing, the court expressly finds that there exists an overriding interest that outweighs the right of public access to the record, the overriding interest supports sealing the record, a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed, the proposed sealing is narrowly tailored, and no less restrictive means exist to achieve the overriding interest.

Convictions: Expungement

AB 651 (Bradford), Chapter 787, Statutes of 2013, allows a court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. However, expungement is not available for those individuals convicted of the same crimes before the enactment of realignment. Thus, expungement is available to some persons but not others who have committed the same offense based on the date of conviction and place of incarceration.

As a matter of fairness, and to avoid equal protection challenges, the opportunity to obtain expungement should be extended for the same offenses for which a person is currently entitled to petition for expungement after realignment.

AB 1115 (Jones-Sawyer), Chapter 207, allows defendants sentenced to state prison for a felony, that if committed after enactment of the 2011 Realignment legislation would have been eligible for county jail sentencing, to obtain expungement relief. Specifically, this new law:

- Makes convictions for realigned felony offenses, but which were committed prior to the enactment of Realignment, eligible for expungement.

- Applies to petitioners seeking to dismiss a conviction for a non-serious, nonviolent, or nonsexual offense for which he or she would have been sentenced to county jail pursuant to criminal justice realignment, but was sentenced to state prison because he or she was sentenced before the implementation of realignment.

- Provides that the court, in its discretion and in the interests of justice, may grant the expungement relief only after the lapse of two years following the petitioner's completion of the sentence, provided that the petitioner is not under supervised release or is not serving a sentence for, on probation for, or charged with the commission of any offense.

- Allows the petitioner to make the application and the change of plea in person, or through an attorney, or a probation officer authorized in writing.

- Provides that in any subsequent prosecution of the petitioner for any offense, a conviction dismissed pursuant to the relief provided for by this bill shall have the same effect as if it had not been dismissed.

- Provides that a conviction dismissed by the relief provided for by this bill does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.

- Provides that the expungement relief of a conviction does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for such ownership or possession.

- Provides that the expungement relief does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.

- Allows the court to charge up to $150 for a petition for expungement to cover actual costs. However, the court must consider the petitioner's ability to pay.

- Prevents the court from granting the expungement relief unless the prosecuting attorney has been given 15 days' notice of the petition.

- Provides that if the prosecutor fails to appear and object to the petition for dismissal, then the prosecutor may not move to set aside or otherwise appeal the granting of relief.

Juveniles: Sealing of Records

On March 7, 2000, California voters approved Proposition 21, known as the Gang Violence and Juvenile Crime Prevention Act. According to the Legislative Analyst, the purpose of Proposition 21 was to change the treatment of juvenile offenders, particularly youths engaged in gang-related

criminal activity or who had committed other serious offenses. Among other things, Proposition 21 prohibited the sealing of juvenile records involving certain serious or violent offenses – offenses listed in Welfare and Institutions Code section 707, subdivision (b) (aka the "707(b) list").

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed a serious or violent offense on the 707(b) list when he or she was 14 years or older. (Welf. & Inst. Code, § 781.) In 2014, the legislature enacted a process for court-initiated sealing upon probation completion. This process also does not apply in cases involving a serious or violent offense on the 707(b) list, unless the finding on that offense was dismissed or reduced to a lesser offense not on the list. (Welf. & Inst. Code, § 786.)

In *In re G.Y.* (2015) 234 Cal.App.4th 1196, the appellate court concluded the prohibition to record sealing under the petition process applies even if the adjudicated offense on the 707(b) list is later reduced to a misdemeanor, and even if the court concludes the juvenile is otherwise rehabilitated. (*In re G.Y., supra,* 234 Cal.App.4th at pp. 1201, 1204.)

A ban on the ability to have the record of a past offense sealed can be a lifetime obstacle to good employment, housing, military service, higher education, and more.

SB 312 (Skinner), Chapter 679, authorizes the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified. Specifically, this new law:

- Modifies the lifetime ban on sealing a juvenile offense record involving a specified serious or violent offense committed when the individual was 14 years of age or older, and replaces it with language permitting the person to petition for record sealing (i.e., sealing by petition) under the following circumstances:
    - The person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained the age of 21 years of age, and has completed his or her period of probation supervision after release from the Division; and
    - The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained the age of 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court.
- Provides that a record that has been sealed pursuant to the sealing by petition process may be accessed, inspected, or utilized in a subsequent proceeding in the following circumstances:
    - By the prosecuting attorney, as necessary, to make appropriate charging decisions or to initiate a prosecution in criminal court involving a subsequent

felony offense, or by the prosecuting attorney or court to determine the appropriate sentencing for a subsequent felony offense;

- By the prosecuting attorney, as necessary, to initiate a juvenile court proceeding to determine whether a minor shall be transferred from the juvenile court to a criminal court to be tried as an adult, and by the juvenile court to make that determination;

- By the prosecuting attorney, the probation department, or the juvenile court upon a subsequent finding by the juvenile court that the minor has committed a felony offense, for the purpose of determining an appropriate disposition of the case; and

- By the prosecuting attorney, or a court of criminal jurisdiction, for the purpose of proving a prior serious and/or violent felony conviction, and determining the appropriate sentence.

- Provides that a record relating to a specified serious or violent offense committed after attaining 14 years of age that has been sealed pursuant to this provision may be accessed, inspected, or utilized by the prosecuting attorney in order to meet statutory or constitutional obligations to disclose favorable or exculpatory evidence to the defense in a criminal case.

- Requires that the information accessed, as set forth above, otherwise remain confidential and not be further disseminated.

- Provides that the waiting periods and access provisions of the sealing by petition process, as stated above, do not apply if the specified serious or violent felony offense committed after the person attained 14 years of age was dismissed or reduced to a misdemeanor by the court.

- Provides that a record related to a specified serious or violent offense that was committed after attaining 14 years of age and requires registration as a sex offender is not eligible for sealing by petition.

- Provides that a specified serious or violent offense that was committed after a person attained 14 years of age and that was subsequently reduced to a misdemeanor is eligible for court ordered record sealing after satisfactory completion of informal supervision or probation (i.e., court-initiated sealing).

Arrests: Sealing

Under existing law, a factually innocent person arrested for or charged with a crime may be able to have the records sealed by obtaining a declaration of factual innocence pursuant to Penal Code section 851.8, subdivision (b). In contrast to the onerous process of establishing factual innocence, when a person successfully completes a prefiling diversion program or a pretrial drug

diversion or deferred entry of judgment (DEJ) program, the judge may order the sealing of the arrest and related court records. (Pen. Code, §§ 851.87, 851.90, subd. (a).) Similar relief is available to seal the arrest record of a person who completes a prefiling diversion program. (Pen. Code, § 851.87.) There is no similar relief for a person who is arrested and the charges are never filed or are dismissed.

SB 393 (Lara), Chapter 680, provides a process for a person to petition a court to seal records of an arrest that did not result in a conviction, as defined, with specified exceptions. Specifically, this new law:

- Allows a person who has suffered an arrest that did not result in a conviction to petition the court to have his or her arrest and related records sealed.

- Specifies the circumstances under which an arrest did not result in a conviction for purposes of sealing.

- Provides that a person is not eligible to have their records sealed in any of the following circumstances:

    - He or she may still be charged with any of the offenses upon which the arrest was based;

    - Any of the arrest charges or any of the charges in the accusatory pleading based on the arrest is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charges; or

    - The petitioner intentionally evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest took place, or, by engaging in identity fraud for which he or she was subsequently charged. The existence of bench warrants or failures to appear that were adjudicated before the case was closed with no conviction do not establish intentional evasion.

- Sets forth what a petition to seal an arrest must contain and provides that the court may deny a petition for failing to meet those requirements.

- Provides that the Judicial Council shall furnish forms to be used by a person to have his or her arrest sealed, as specified.

- Provides that the petitioner, the prosecuting attorney, and the arresting agency may submit evidence to the court at a hearing on the petition and that the petitioner would have the initial burden of proof to establish eligibility.

- Entitles a petitioner to have such an arrest sealed as a matter of right with specified exceptions. A petitioner must establish that sealing the arrest would serve the

interests of justice when the offense upon which the arrest is based or any of the resulting charges is one of the following:

  - Domestic violence, if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both;

  - Child abuse, if the petitioner's record demonstrates a pattern of child abuse arrests, convictions, or both; or,

  - Elder abuse, if the petitioner's record demonstrates a pattern of elder abuse arrests, convictions, or both.

- Provides that a court could consider any relevant factors in determining whether the interests of justice would be served by sealing an arrest including: hardship to the petitioner, evidence of the petitioner's good character, evidence regarding the arrest, and the petitioner's record of convictions.

- Specifies the actions the court shall take if it grants a petition to seal an arrest that did not result in a conviction, which includes issuing a written ruling and order and providing it to the person whose arrest was sealed, the prosecuting attorney, and the law enforcement agency that made the arrest. The order shall state implications and limitations of the sealing, as specified, including that the arrest is deemed not to have occurred and the petitioner is released from all penalties and disabilities resulting from the arrest. However, a criminal justice agency may still access and use the arrest record under the uniform sealing process, as stated below. An arrest sealed under this provision may also be pleaded and proved in any subsequent prosecution of the petitioner as if it had not been sealed. The sealing does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to a direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. The sealing does not affect specified prohibitions on firearm access. The court must furnish a disposition report to the Department of Justice (DOJ), as specified, stating that relief was granted under this provision.

- Creates a uniform process to be followed when arrest records are sealed under any of several statutes, as specified.

- Specifies that a criminal justice agency may continue to access and use, in the regular course of its duties, a sealed arrest record and information relating to a sealed arrest.

- Provides that unless specifically authorized, a person or entity, other than a criminal justice agency or the person whose arrest was sealed, who disseminates information relating to a sealed arrest is subject to a civil penalty of not less than $500 and not more than $2,500 per violation.

- Deletes the two-year wait period for filing a petition to seal arrest records after completing a pretrial diversion program.

- Prohibits DOJ from disclosing, as part of state summary criminal history information furnished to specified entities, information concerning an arrest that did not result in a conviction and was sealed under this provision.

Concealment of Accidental Death: Statute of Limitations

According to the author, "Erica Alonso, a resident of Laguna Hills, went missing on February 15, 2015. Her body was later found a few months later on April 27, 2015 in a dry creek bed near Ortega Highway and Hot Springs Canyon Road near San Juan Capistrano. Erica's death was not a homicide. However, someone with her moved the body to hide the fact that she had died. For this reason, Erica's family and friends had no way to locate her, resulting in additional trauma to the family and community at large.

Generally, the statute of limitations for misdemeanor offenses requires commencement of prosecution within one year (Pen. Code, § 802) and within three years for felony offenses (Pen. Code. § 801). There are specified exceptions that provide for a longer statute of limitations, or a tolling of the time that the statute starts to run from when the crime is discovered. (See e.g. Pen. Code, §§ 802 and 803).

Under current law, a person who witnesses an accidental death and actively conceals or attempts to conceal it cannot be charged after one year. Arguably, when an accidental death is concealed either the body of the deceased or the perpetrator may not be discovered within this time frame.

SB 610 (Nguyen), Chapter 74, extends the statute of limitations for the crime of concealing an accidental death. Specifically, this new law:

- Provides that a charge for concealment of an accidental death may be filed be up to one year after a suspect is initially identified by law enforcement, but no more than four years after the commission of the offense.

- Names this provision "Erica's Law."

Sentencing: County of Incarceration and Supervision

In 2011, Criminal Justice Realignment (Realignment) made significant changes in the statutes governing felony sentencing (Stats. 2011, chaps. 15 (AB 109), 39 (AB 117), 136, 1st Ex. Sess., chap. 12). In relevant part, Realignment allows lower level felons to serve their sentences in county jail instead of state prison. Also, under Realignment, where a felon is sentenced to county jail, the court must suspend execution of a concluding portion of the sentence, "[u]nless the court finds that, in the interests of justice, it is not appropriate in a particular case." (Pen. Code, § 1170, subd. (h)(5)(A).) During the period of suspended execution, "known as mandatory supervision" the felon is supervised by the county probation officer. (Pen. Code, § 1170, subd. (h)(5)(B).)

When a defendant receives felony sentences in multiple jurisdictions (counties), the law provides a process for the second or subsequent court to impose a single aggregate term. Prior to Realignment, the aggregate term was served in a state prison operated by the California Department of Corrections and Rehabilitation. Thus, the county from which any portion of the aggregate sentence originated was of no consequence. Under Realignment, low level felons generally serve their sentences and are supervised at the county level. Realignment legislation does not address the issue of sentences from multiple jurisdictions. "The issue will become significant because now counties must carry the cost of local incarceration with only minimal contribution from the state, and jail space is frequently very limited." (Couzens et al., Sentencing Cal. Crimes (The Rutter Group 2016) Ch. 11, § 11:35.)

SB 670 (Jackson), Chapter 287, specifies that the court rendering a second or subsequent county-jail felony judgment determines the county or counties of incarceration and supervision. Specifically, this new law:

- Provides that when imposing judgment on a county-jail felony concurrent or consecutive to a judgment on a county-jail felony in another county or counties, the court rendering the second or subsequent judgment determines the county or counties of incarceration and supervision of the defendant.

- Requires the Judicial Council to adopt rules providing criteria for the consideration of the judge when determining the county or counties of incarceration and supervision.

DNA

Sex Assault Evidence: Reporting

A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. Specifically, the report found that "[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public.

AB 41 (Chiu), Chapter 694, requires local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody. Specifically, this new law:

- Requires law enforcement agencies to report information regarding rape kit evidence, within 120 days of the collection of the kit, to the Department of Justice (DOJ) through a database established by the DOJ. Specifies that information shall include, among other things:
    - The number of kits collected;
    - If biological evidence samples were submitted to a DNA laboratory for analysis; and if a probative DNA profile was generated; and,
    - If evidence was not submitted to a DNA laboratory for processing, the reason or reasons for not submitting evidence from the kit to a DNA laboratory for processing.
- Requires a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested, except as specified.
- Provides that upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of the crime scene evidence pursuant to existing law, the agency shall state in

writing the reason the kit collected as part of the case's investigation was not analyzed.

- Imposes these requirements for kits collected on or after January 1, 2018.

- Requires that the DOJ file a report to the Legislature on an annual basis summarizing the information in its database.

- Prohibits law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency's duty to produce exculpatory evidence to a defendant in a criminal case.

- Provides that money to pay for this bill should first come from funds received from the federal Office on Violence Against Women before appropriating money from the general fund.

DOMESTIC VIOLENCE

Eavesdropping

California is one of only 11 states that does not allow a domestic violence survivor to use recorded evidence of her abuse in a courtroom unless the abuser gives consent to being recorded. California law does allow a survivor to introduce recordings of confidential communications related to any felony involving violence against the person (Penal Code § 633.5). However many crimes involving domestic violence, such as assault or battery are classified as misdemeanors, and relevant recordings of this otherwise reliable evidence is inadmissible in court.

> **AB 413 (Eggman), Chapter 191**, allows a party to a confidential communication to record the conversation for the purpose of obtaining information reasonably believed to relate to the crime of domestic violence.

Domestic Violence Reporting: Strangulation and Suffocation

The California Department of Justice collects data on domestic-violence related calls for assistance directly from local law enforcement agencies. Domestic violence calls that involved the use, or threat to use, of a firearm, knife or cutting instrument or other dangerous weapon are reported according to the type of weapon used regardless of the outcome or injury. There is also a separate category for the use of a personal weapon such as hands, fists, or feet if it is considered an aggravated assault under Uniform Crime Reporting (UCR) guidelines. An aggravated assault is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury, such as broken bones, internal injuries, or cuts requiring stitches. Currently, there is no data collected on domestic violence calls involving strangulation or suffocation.

> **SB 40 (Roth), Chapter 331,** requires law enforcement agencies and the Attorney General to include the number of domestic violence incidents involving strangulation or suffocation in their existing reporting requirements. Specifically, this new law:
>
> - Requires written notice to be furnished to victims at the scene informing the victim that strangulation may cause internal injuries and encouraging the victim to seek medical attention.
>
> - Requires each law enforcement agency to document whether the incident involved strangulation or suffocation in its recording of domestic violence-related calls.
>
> - Requires each law enforcement agency to include the number of domestic violence calls involving strangulation or suffocation in its monthly report to the Attorney General.

- Requires the Attorney General to include the number of domestic violence calls involving strangulation or suffocation in its report to the Governor, the Legislature, and the public.

- Requires each law enforcement agency to include in its report of a domestic violence incident a notation of whether there were indications that the incident involved strangulation or suffocation which includes whether any witness or victim reported any incident of strangulation or suffocation, whether any victim reported symptoms of strangulation or suffocation, or whether the officer observed any signs of strangulation or suffocation.

Evidentiary Privileges: Domestic Violence Counselor-Victim Privilege

In 1986 the Legislature created an evidentiary privilege between victims and domestic violence counselors. (SB 2040 (Morgan), Chapter 854, Statutes of 1986). The purpose of the privilege was to encourage full and free disclosure between a victim and counselor in domestic violence situations. Victims who are aware that the counselor cannot guarantee confidentiality may not use the service.

Thus, under existing law, a domestic violence victim, whether or not a party to an action, has a privilege to refuse to personally disclose, and to prevent a domestic violence counselor from disclosing, a confidential communication between the victim and the counselor. (Evid. Code, § 1037.5.) A 'domestic violence counselor" is defined as a person who is employed by a domestic violence victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has specified training. (Evid. Code, § 1037.1, subd. (a).) Additionally, the "domestic violence victim service organization" must be "nongovernmental." (Evid. Code, § 1037.1, subd. (b).)

In a similar context, the sexual assault counselor-victim privilege, there is a broader definition for organizations that qualify for the sexual assault counselor-victim privilege. The definition of a sexual assault counselor does not require that either the office or the organization where the counselor is employed be "non-governmental." Therefore, sexual assault counselors employed by a public college or university are entitled to hold the privilege and the confidentiality of their communications with victims of sexual assault that are made in the course of the relationship and in confidence, are protected.

It is inconsistent for the communications between a college student who is the victim of a sexual assault and a counselor to be protected, but for the communications between a college student who is the victim of domestic violence and the same counselor not to be protected. Consistency for campus-based counseling services is needed.

SB 331 (Jackson), Chapter 178, expands the definition of a "domestic violence victim services organization" for purposes of the domestic violence victim-counselor evidentiary privilege. Specifically, this new law: Adds organizations that operate on the campus of a public or private college or university with the primary mission to provide services to victims of domestic violence to the definition of "domestic violence victim service

organization" in current law so that communications between a victim and counselor at such an organization are covered by the privilege.

DRIVING UNDER THE INFLUENCE

Alcohol and Marijuana: Penalties

From 2007 to 2014, the number of nighttime weekend drivers in the U.S. with marijuana in their system increased nearly 50%. In 2012, the California Office of Traffic Safety (OTS) released a study of weekend nighttime drivers that found more California drivers tested positive for marijuana than alcohol. Over the last 10 years the Department of Motor Vehicles data is available, the two most recent years show that for the first time, drugged drivers and drug combined with alcohol drivers are killing more Californians than alcohol impaired drivers. The AAA Foundation for Traffic Safety's Washington Study found that the percentage of drivers involved in fatal crashes who recently used marijuana more than doubled between 2013 and 2014.

SB 65 (Hill), Chapter 232, prohibits the smoking or ingestion of marijuana while driving, or the smoking or ingestion of marijuana or the drinking of an alcoholic beverage while riding as a passenger in a motor vehicle, and makes a violation punishable as an infraction.

Military Pretrial Diversion: Driving Under the Influence

SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a military diversion program for current or former members of the military who are charged with a misdemeanor and who may be suffering from service-related trauma, substance abuse, or mental health issues. The Vehicle Code prohibits diversion for anyone charged with a driving under the influence of drugs and/or alcohol (DUI) offense (Veh. Code, § 23640). The military diversion statute did not mention this rule (Pen. Code, § 1001.80).

In grappling with these two statutes, the state courts of appeal issued conflicting opinions as to whether the Vehicle Code prohibits military diversion for defendants charged with DUI. (*People v. VanVleck* (2016) 2 Cal.App.5th 355, rev. gtd. Nov. 16, 2016, S237219; *Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275, rev. gtd. Nov. 16, 2016, S237734.)

SB 725 (Jackson), Chapter 179, specifies that a trial court can grant military pretrial diversion on a misdemeanor charge of driving under the influence of alcohol and/or drugs (DUI). Specifically, this new law:

- Provides that a trial court can grant diversion on a misdemeanor charge of DUI or of DUI causing injury, to a veteran or current member of the military who is suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her military service.

- States that participation in the military diversion program does not limit the Department of Motor Vehicles' (DMV) ability to take administrative sanctions against the person's driver's license.

EVIDENCE

Eavesdropping

California is one of only 11 states that does not allow a domestic violence survivor to use recorded evidence of her abuse in a courtroom unless the abuser gives consent to being recorded. California law does allow a survivor to introduce recordings of confidential communications related to any felony involving violence against the person (Penal Code § 633.5). However many crimes involving domestic violence, such as assault or battery are classified as misdemeanors, and relevant recordings of this otherwise reliable evidence is inadmissible in court.

> **AB 413 (Eggman), Chapter 191**, allows a party to a confidential communication to record the conversation for the purpose of obtaining information reasonably believed to relate to the crime of domestic violence.

Character Evidence: Prior Human Trafficking Offense

The Legislature has enacted narrow exceptions to the general rule prohibiting propensity evidence. In 1996, Evidence Code section 1108 was added to allow introduction of evidence of other acts of sexual misconduct in a prosecution for a sex offense. (Evid. Code, § 1108; AB 882 (Rogan), Chapter 439, Statutes of 1996.) In 1996, the Legislature added a similar provision to allow the admission of evidence that the defendant committed other acts of domestic violence in domestic violence cases. (See Evid. Code, § 1109; SB 1876 (Solis), Chapter 261, Statutes of 1996.) The Legislature has similarly enacted laws allowing propensity evidence of abuse of an elder or dependent person (AB 2063 (Zettel), Chapter 517, Statutes of 2000) or child abuse (AB 114 (Cohn), Chapter 464, Statutes of 2005). (See Evid. Code, § 1109, subd. (a)(2) & (3).)

Arguably, the challenges with prosecuting sex trafficking offenses are similar to the challenges with prosecuting the other crimes that are already exceptions to this rule: sexual offenses, crimes of domestic violence, elder and dependent abuse, and child abuse.

> **SB 230 (Atkins), Chapter 805,** expands the definition of "sexual offense" to include specified offenses related to human trafficking for purposes of the Evidence Code exception which provides that evidence of another sexual offense is not inadmissible to prove conduct in a current sexual offense action.

Exhibits

Existing law provides a process by which a party may obtain a certified photographic record of an exhibit before a trial court storing the exhibit destroys or otherwise disposes of it. The certified photographic record is admissible as evidence. Current law does not provide for a digital record of an exhibit to be taken.

SB 238 (Hertzberg), Chapter 566, authorizes, in addition to a photographic record, a digital record of an exhibit to be taken, as specified, and retained by the clerk of the court. Specifically, this new law:

- Requires a duplicate of the photographic or digital record to be delivered to the clerk for certification and deletes the requirement that the clerk be provided with a negative of a photograph.
- Defines "photographic" for these purposes as a photographic image of the exhibit or its equivalent stored in any form.
- Defines "duplicate" for these purposes as a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.
- Provides that a certified digital record of an exhibit shall not be deemed inadmissible.

Evidentiary Privileges: Domestic Violence Counselor-Victim Privilege

In 1986 the Legislature created an evidentiary privilege between victims and domestic violence counselors. (SB 2040 (Morgan), Chapter 854, Statutes of 1986). The purpose of the privilege was to encourage full and free disclosure between a victim and counselor in domestic violence situations. Victims who are aware that the counselor cannot guarantee confidentiality may not use the service.

Thus, under existing law, a domestic violence victim, whether or not a party to an action, has a privilege to refuse to personally disclose, and to prevent a domestic violence counselor from disclosing, a confidential communication between the victim and the counselor. (Evid. Code, § 1037.5.) A 'domestic violence counselor" is defined as a person who is employed by a domestic violence victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has specified training. (Evid. Code, § 1037.1, subd. (a).) Additionally, the "domestic violence victim service organization" must be "nongovernmental." (Evid. Code, § 1037.1, subd. (b).)

In a similar context, the sexual assault counselor-victim privilege, there is a broader definition for organizations that qualify for the sexual assault counselor-victim privilege. The definition of a sexual assault counselor does not require that either the office or the organization where the

counselor is employed be “non-governmental.” Therefore, sexual assault counselors employed by a public college or university are entitled to hold the privilege and the confidentiality of their communications with victims of sexual assault that are made in the course of the relationship and in confidence, are protected.

It is inconsistent for the communications between a college student who is the victim of a sexual assault and a counselor to be protected, but for the communications between a college student who is the victim of domestic violence and the same counselor not to be protected. Consistency for campus-based counseling services is needed.

> **SB 331 (Jackson), Chapter 178,** expands the definition of a “domestic violence victim services organization” for purposes of the domestic violence victim-counselor evidentiary privilege. Specifically, this new law: Adds organizations that operate on the campus of a public or private college or university with the primary mission to provide services to victims of domestic violence to the definition of “domestic violence victim service organization” in current law so that communications between a victim and counselor at such an organization are covered by the privilege.

FINES AND FEES

Juveniles: Administrative Fees

Criminal fines, fees, and assessments have climbed steadily in recent decades. Government entities tasked with collecting this debt have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts.

A recent study by the Policy Advocacy Clinic at University of California Berkeley School of Law has found that imposing administrative fees to families with youth in the juvenile justice system is harmful, unlawful, and costly. Current California law allows counties to charge administrative fees, which can quickly add up to thousands of dollars, an incredible burden to families with youth in the juvenile justice system. In fact, such criminal justice debt undermines the rehabilitative goals of the juvenile justice system and leads to increased recidivism. Furthermore, most youth in the juvenile system come from poor families who cannot afford to pay fees, and counties ultimately obtain minimal returns despite the high fiscal and societal costs associated with collecting fees.

SB 190 (Mitchell), Chapter 678, limits the authority of local agencies to assess and collect specified fees against persons subject to the juvenile delinquency system. Specifically, this new law:

- Provides that the authority of a county financial-evaluation officer to make financial evaluations, including evaluations of parental liability, for specified costs and to reduce, cancel, or remit those costs does not apply to minors who are placed on pre-petition informal supervision, who are the subject of a delinquency petition, or who are placed on probation. The authority to make financial evaluations remains for dual status children for purposes of the dependency jurisdiction only.

- Limits the recovery of administrative fees to be paid by home-detention participants to persons over 21 years of age and under the jurisdiction of the criminal court.

- Limits the recovery of fees to be paid by probationers for drug testing to those persons over 21 years of age and under the jurisdiction of the criminal court, regardless of whether the program is publicly or privately operated.

- Eliminates liability of a minor or his or her parents or guardians for the following costs associated with the filing of a juvenile delinquency petition in the juvenile court:

    - Costs incurred for transporting, feeding, and sheltering a minor held in temporary custody in a law enforcement facility.

- Costs associated with any service program the minor may be required to participate in;
- Costs of support for a minor detained in a juvenile facility;
- Costs of probation supervision, home supervision, or electronic supervision;
- Costs of food, shelter, and care of a minor who remains in the custody of probation or detained in a juvenile facility after the parent or guardian receives notice of release;
- Costs of support of minors placed in out-of-home placements other than county institutions; and,
- Costs of care, support, and maintenance when a minor is voluntarily placed in out-of-home care and the minor receives specified aid.

- Provides that a minor who is ordered to pay restitution for damaging or discarding an electronic monitor is entitled to an ability-to-pay hearing without requesting one.
- Provides that the expense for the support and maintenance of a juvenile delinquency ward shall be paid entirely from the county treasury.
- Repeals the registration fee of up to $50 for appointment of legal counsel for minors.
- Limits the recovery of fees associated with services provided during diversion to those services provided directly to the minor's family, but not the services rendered to the minor.
- Limits the recovery of fees for appointed legal representation to those services provided directly to the parents of a minor involved in a juvenile dependency proceeding. Attorney fees for legal services for the minor are not recoverable.
- Provides that when a minor is designated as a dual status child, specified fees apply for purposes of the dependency jurisdiction only but not for purposes of the delinquency jurisdiction.

Attorney Fees: Authority to Impose

Under existing law, a low-income, homeless, or impoverished person who is accused of a crime that he or she did not commit can still be ordered to pay the court for the costs of a court-appointed attorney. The impact of this law subjects an individual who was falsely arrested, wrongly imprisoned, wrongly prosecuted, and ultimately exonerated, to pay an “accusation tax” penalty of thousands of dollars for asserting his or her constitutional right to an attorney.

SB 355 (Mitchell), Chapter 62, eliminates the fee for court-appointed counsel in cases which do not result in a conviction for a felony or a misdemeanor. Specifically, this new law:

- States that the fee for court-appointed counsel only applies in cases which do result in a conviction for a felony or a misdemeanor.

- Authorizes the court, in cases which result in a conviction, to order the defendant to appear before a county officer to make a determination of whether or not he or she must pay all or a portion of the fees associated with court-appointed counsel.

FIREARMS

Open Carry: Unincorporated Areas

Existing law makes it is a misdemeanor to openly carry an unloaded firearm that is not a handgun in an incorporated area of a city or city and county, but the same is not true in an unincorporated area of a county. This creates a dangerous loophole that allows a person to openly carry a rifle or an assault weapon in these areas.

> **AB 7 (Gipson), Chapter 734**, makes it a misdemeanor to carry an unloaded firearm other than a handgun in a public place or upon a public street in an area where the discharge of a firearm is prohibited in an unincorporated area of a county.

Firearms: Gun Free Zones

Under existing law, any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority is guilty of a crime.

A safe learning environment is essential for our children to be successful in the classroom. Classrooms are laboratories of learning. They provide opportunities to discover art, music, history and mathematics to prepare oneself for college or a career. That's not possible if a school district allows armed civilians to carry firearms on California school campuses.

> **AB 424 (McCarty), Chapter 779,** deletes the authority of a school district superintendent, his or her designee, or equivalent school authority to provide written permission for a person to possess a firearm within a school zone, and, also, exempts sanctioned shooting sports or activities from the prohibition.

Firearms: Peace Officer Standards and Training Courses

Existing law generally requires that a firearms transaction be conducted through a licensed firearms dealer and prohibits the transfer unless the person has been issued a firearms license.

As amended by the Safety for All Act of 2016, approved by voters as Proposition 63 at the November 8, 2016, statewide general election, generally prohibits the possession of large capacity magazines regardless of the date the magazine was required.

Sworn peace officers are exempt from the above provisions, however individuals who are enrolled in a training program to become sworn peace officers (cadets) are not necessarily exempt. This is problematic because it does not allow cadets to receive adequate training. Currently, cadets lawfully may not train with large-capacity magazines and other firearms that they may be expected to use as officers.

AB 693 (Irwin), Chapter 783, exempts persons enrolled in the course of basic training prescribed by the Commission on Peace Officers Standards and Training (POST) from specified prohibitions related to firearms, ammunition, and large-capacity magazines, and exempts an instructor of the course, or a POST staff member from the ammunition purchase requirements relating to the purchase of ammunition through a licensed ammunition vendor.

Ban on Possession of Firearms: Hate Crimes

Under existing law, individuals convicted of violent misdemeanors and misdemeanors that involve the use or threatened use of a firearm, are generally prohibited from possessing or acquiring firearms for 10 years after conviction, unless they successfully petition a court to restore their firearm eligibility. However, this prohibition does not apply to those convicted of a misdemeanor hate crime. Unbelievably, those who commit violent misdemeanors may keep their gun if the offense is, instead, charged as a hate crime.

At least six states (Delaware, Maryland, Massachusetts, Minnesota, New Jersey, and Oregon) have enacted laws to prohibit violent hate crime misdemeanants from possessing and acquiring firearms. As a leader in enacting laws to prevent gun violence, it is time California joins these states.

AB 785 (Jones-Sawyer), Chapter 784, adds two hate crimes to the list of misdemeanors that result in a ban on the right to possess a firearm for 10 years. Specifically, this new law:

- Adds the misdemeanor to interfere by force or threat of force with another person's free exercise of any constitutional right or privilege because of the other person's actual or perceived race, religion, national origin, disability, gender, or sexual orientation to the list of offenses that result in a ban on the right to possess a firearm for ten years.

- Adds the misdemeanor to knowingly deface, damage, or destroy the property of another person, for the purpose of intimidating or interfering with the exercise of any of those constitutional rights because of those specified characteristics to the list of misdemeanors that can result in a ban on the right to possess a firearm for ten years.

Gun Violence Restraining Orders: Records Retention

In 2014, the Legislature enacted AB 1014 (Skinner), Chapter 872, which authorized courts to issue gun violence restraining orders to remove firearms from individuals who are at-risk of committing acts of violence against themselves or others. While it was modeled after other restraining order laws, AB 1014 did not specify the period during which records were required to be retained. Under existing law, court records of other similar restraining orders (*e.g.*, civil harassment, domestic violence, elder and dependent adult abuse) are retained for the duration of the restraining order and for any renewals, and then permanently thereafter, like judgments.

AB 1443 (Levine), Chapter 172, provides that a record involving a gun violence restraining order case be retained for the duration of the restraining order and during any renewals. Thereafter, the records are to be retained permanently, like judgments.

Firearms: Warnings

Existing California firearm laws are complex and have different effectiveness dates, scopes, and penalties. Many purchasers and firearm range and store owners are uncertain on how to comply. Consumer education at the point of sale and when taking the Firearms Safety Certificate (FSC) test helps ensure firearms are properly stored and the owners better understand the laws they are expected to follow. Existing law already requires notices and disclosures to be posted at the point of sale and information be provided to a firearm purchaser when they obtain an FSC.

AB 1525 (Baker), Chapter 825, updates warnings on packaging, instructional manuals, pamphlets, and signs posted at retailers relating to the risks of firearms to reflect recent updates in California law related to firearms. Specifically, this new law:

- Adds information to specified warnings related to the following firearms regulations:
    - Requirements to handle firearms responsibly and to securely store firearms to prevent access by children or other prohibited persons;
    - Warnings of fines or imprisonment for failure to comply with specified regulations;
    - Information about the associated Attorney General's Web site; and
    - Warnings that a child may not be able to distinguish a firearm from a toy.
- Updates warnings relating to the risks of firearms and the laws regulating firearms for the packaging of firearms, the descriptive materials that accompany firearms, and the instructional manual developed by the Department of Justice (DOJ).
- Updates, as of January 1, 2019, the warnings included at the premises of licensed firearms dealers.
- Requires, as of January 1, 2019, specified warnings be given to persons who take the firearms safety certificate examination and requires the applicant to acknowledge receipt of the warning prior to the issuance of the firearm safety certificate.

  Requires, as of January 1, 2019, that the DOJ update the testing materials for the handgun safety certificate once every five years and requires the DOJ to update the related Web site regularly to reflect current laws and regulations.

Securing Handguns: Vehicles

Under existing law, every person that leaves a handgun in a vehicle must lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

SB 497 (Portantino), Chapter 809, allows a peace officer when leaving a handgun in an unattended vehicle to lock the handgun in the center console, as specified. Specifically, this new law:

- Provides that a peace officer, when leaving a handgun in an unattended vehicle not equipped with a trunk, may lock the handgun out of plain view within the center utility console of that motor vehicle with a padlock, keylock, combination lock, or other similar locking device.

- Defines "peace officer" to mean “a sworn California peace officer or a sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties, while that officer is on duty or off duty.”

- Defines "trunk" to mean “the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger compartment. A trunk does not include the rear of a hatchback, station wagon, or sport utility vehicle, any compartment that has a window, or a toolbox or utility box attached to the bed of a pickup truck.”

- Defines "plain view" to include “any area of a vehicle that is visible by peering through the windows of the vehicle, including windows that are tinted, or without illumination.

Firearm Violence Research Center: Gun Violence Restraining Orders

Last year, the Legislature appropriated funds to establish the University of California's Firearm Violence Research Center to conduct research related to firearm violence and its prevention. Currently, the UC Firearm Violence Research Center does not have access to information regarding gun violence restraining orders (GRVO's). Existing law does allow academic researchers to access some criminal history records. However, since the GVROs are civil court orders and not criminal offender records, existing law does not allow researchers to access the GVRO information. Without access to the GVRO records, researchers will not be able to monitor its effectiveness or make suggestions on how to improve the program and overall gun violence prevention measures

SB 536 (Pan), Chapter 810, requires the state Department of Justice (DOJ) to make information related to GVRO's that is maintained in the California Restraining Order and Protective Order System or any similar database maintained by the department available to researchers affiliated with the University of California, or, at the discretion of DOJ, any other entity that is concerned with the study and prevention of violence, for academic and research purposes.

Firearms: Enhancements

"In 1997, the Legislature passed the "Use a Gun and You're Done" law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it." (California Budget and Policy Center (2015) *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach*.)

Deterrence was a driving factor behind this legislation: "The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime." (AB 4 (Bordonaro), Chapter 503, Statutes of 1997.)

In a 2014 report, the National Research Council concluded that the incremental deterrent effect of increases in lengthy prison sentences is modest at best. "Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation." (National Research Council (2014) *The Growth of Incarceration in the United*

States: Exploring Causes and Consequences, p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (http://www.lhc.ca.gov/studies/219/Report219.pdf.) The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the "significant sentencing enhancements" of the 10-20-life firearm law.

SB 620 (Bradford), Chapter 682, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use. Specifically, this new law:

- Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.

- Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing great bodily injury (GBI) or death while committing or attempting to commit a specified felony.

GANGS

Criminal Gangs: Shared Gang Databases

In August of 2016, the California State Auditor released findings of an investigation into the workings and impact of the CalGang Database and the other shared gang databases that feed into it across the state. The audit revealed many concerns. A review of the entries into the database found that only 13% of the entries into the system had adequate support for entry. Additionally, the audit found that the CalGang database received no state oversight and the CalGang Executive Board and the California Gang Node Advisory Committee oversee the database's function independently from state oversight and without transparency or meaningful opportunities for public input. Law enforcement agencies the audit reviewed were not complying with state law requiring informing juveniles and parents of gang designations.

AB 90 (Weber), Chapter 695, shifts responsibilities for shared gang databases from the CalGang Executive Board to the Department of Justice (DOJ) and sets policies, procedures, and oversight for the future use of shared gang databases. Specifically, this new bill:

- Shifts the responsibility for administering and overseeing the shared gang database to DOJ, and provides that commencing January 1, 2018 the CalGang Executive Board will no longer administer or oversee the CalGang database or the shared gang databases that participate in the CalGang database.

- Requires the creation of regulations to provide for periodic audits by law enforcement agencies and DOJ staff to ensure accuracy, reliability, and proper use of any shared gang database.

- Requires that the DOJ create regulations regarding the use, operation, and oversight of any shared gang database.

- Requires the DOJ to establish a technical advisory committee on the uses of the shared gang databases.

- Imposes a moratorium on the use of the CalGang database until the Attorney General certifies that specified information has been purged from it.

Restraining Orders: Gang Cases and Witnesses

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

When criminal proceedings have concluded, the court has authority to issue post-conviction protective orders in specified cases, including domestic violence, elder abuse, and sex offenses. With one exception, these protective orders can be issued only on the victim's behalf. Currently, most witnesses to crimes must go through the task of opening a civil case to receive a protective order.

AB 264 (Low), Chapter 270, requires the court to consider issuing a restraining order for up to 10 years in gang cases, and expands the court's authority to issue post-conviction restraining orders to cover witnesses to the qualifying crimes. Specifically, this new law:

- Extends the court's authority to issue post-conviction no-contact orders lasting up to 10 years in cases involving gang activity.

- Allows the court to issue post-conviction restraining orders to cover percipient witnesses to any of the crimes for which the court is authorized to issue such an order if it can be established by clear and convincing evidence that the witness has been harassed.

- Defines harassment as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."

HUMAN TRAFFICKING

Character Evidence: Prior Human Trafficking Offense

The Legislature has enacted narrow exceptions to the general rule prohibiting propensity evidence. In 1996, Evidence Code section 1108 was added to allow introduction of evidence of other acts of sexual misconduct in a prosecution for a sex offense. (Evid. Code, § 1108; AB 882 (Rogan), Chapter 439, Statutes of 1996.) In 1996, the Legislature added a similar provision to allow the admission of evidence that the defendant committed other acts of domestic violence in domestic violence cases. (See Evid. Code, § 1109; SB 1876 (Solis), Chapter 261, Statutes of 1996.) The Legislature has similarly enacted laws allowing propensity evidence of abuse of an elder or dependent person (AB 2063 (Zettel), Chapter 517, Statutes of 2000) or child abuse (AB 114 (Cohn), Chapter 464, Statutes of 2005). (See Evid. Code, § 1109, subd. (a)(2) & (3).)

Arguably, the challenges with prosecuting sex trafficking offenses are similar to the challenges with prosecuting the other crimes that are already exceptions to this rule: sexual offenses, crimes of domestic violence, elder and dependent abuse, and child abuse.

> **SB 230 (Atkins), Chapter 805,** expands the definition of "sexual offense" to include specified offenses related to human trafficking for purposes of the Evidence Code exception which provides that evidence of another sexual offense is not inadmissible to prove conduct in a current sexual offense action.

IMMIGRATION

Victims and Witnesses: Immigration Violations

Existing law protects victims and witnesses of hate crimes from being detained for immigration violations or being turned over to federal immigration enforcement.

Since the inauguration of the current presidential administration, the federal government's recent sentiment on immigration laws have generated the possibility of deportation for suspected undocumented immigrants. Forthcoming changes in federal law are likely to deter such individuals who reside in California from assisting peace officers with evidence that is potentially helpful to an investigation.

It is in the best interest of the state to establish firm connections with those in the community and to protect the public from crime and violence by encouraging all persons – victims, witnesses or anyone who provides evidence to assist in a criminal investigation – to cooperate with state and local law enforcement and not be penalized on account of their immigration status.

AB 493 (Jones-Sawyer), Chapter 194, prohibits law enforcement from detaining a crime victim or witness solely for an actual or suspected immigration violation. Specifically, this new law:

- Declares that it is the public policy of the state to protect the public from crime and violence by encouraging all victims and witness to crimes, or who could otherwise give evidence in a criminal investigation, to cooperate with the criminal justice system and not to penalize those persons for such cooperation or for being crime victims.

- Prohibits a peace officer from detaining a person who is a witness or victim to a crime exclusively for any actual or suspected immigration violation when that person is not charged with, or convicted of, committing any crime under state law.

- Allows law enforcement to turn over an individual to immigration authorities pursuant to a judicial warrant.

Immigration and Customs Enforcement Officers

As California and the rest of the nation enter into a new reality of aggressive and, at times, deceitful actions undertaken to enforce immigration actions, California must take any and all necessary actions to disassociate the actions of federal Immigration and Customs Enforcement (ICE) and Border Protection officers with those of licensed state and local peace officers.

AB 1440 (Kalra), Chapter 116, clarifies that United States Immigration and Customs Enforcement (ICE) and Border Protection officers are not California peace officers.

Law Enforcement: Sharing Data

On January 25, 2017, President Trump signed a pair of executive orders on immigration. The orders direct stepped up immigration enforcement on people in the country without documentation and the cities that don't readily hand them over for deportation.

A study by the University of Illinois – Chicago surveyed Latino immigrants in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties on their perception of local law enforcement when there's involvement in immigration enforcement. The study found that Latinos are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know. Latinos are also less likely to voluntarily offer information about crimes, and are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status;

SB 54 (De Leon), Chapter 495, limits the involvement of state and local law enforcement agencies in federal immigration enforcement. Specifically, the new law:

- States that law enforcement agencies shall not do any of the following:
    - Use agency or department money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.
    - Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement.
    - Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
    - Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or if the individual meets specified criteria regarding their past offenses.
    - Provide office space exclusive dedicated for immigration authorities for use within a law enforcement facility.
    - Contract with the federal government for the use of California law enforcement agency facilities to house federal detainees, except as specified by existing law.
- Specifies that this law does not prevent any California law enforcement agency from doing any of the following that does not otherwise violate any local law or policy of the jurisdiction in which the agency is operating:

- Investigating or enforcing violations of federal law for illegal reentry after removal subsequent to conviction of an aggravated felony. Transfers are only allowed as otherwise provided by this law.

- Responding to a request from federal immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, and similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law;

- Participating in a joint law enforcement task force, so long as the primary purpose of the task force is not immigration enforcement and such participation does not violate local law or policy which applies to the law enforcement agency.

- Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa, as specified, or to comply with specified federal laws regarding sale of firearms to non-citizens; or

- Giving immigration authorities access to interview an individual in law enforcement custody, in compliance with specified existing law.

- Provides law enforcement discretion to respond to notification or transfer requests from immigration authorities if the person meets specified criteria regarding prior convictions.

- States that if a California law enforcement agency chooses to participate in a joint law enforcement task force, for which it has agreed to dedicate resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General.

- States that this law does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to specified federal law.

JUVENILES

Juveniles: Sealing of Records

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) However, juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

SB 1038 (Leno), Chapter 249, Statutes of 2014, provided a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst. Code, § 786.)

The sealing of delinquency records is an important factor in reducing recidivism and opening doors to jobs and education for many of California youth.

AB 529 (Stone), Chapter 685, requires the sealing of juvenile records relating to dismissed or unsustained juvenile court petitions and relating to diversion and supervision programs, as specified. Specifically, this new law:

- Provides that if a person who has been alleged to be a ward of the juvenile court has his or her petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court must order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.

- Requires the court to send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records must be destroyed.

- Requires each agency and official named in the order to seal the records in its custody as directed by the order, advise the court of its compliance, and, after advising the court, seal the copy of the court's order that was received.

- Requires the court to provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed. The notice must advise the person of his or her right to nondisclosure of the arrest and proceedings, as specified.

- Provides that when a record has been sealed by the court based on a dismissed petition, as specified, the prosecutor, within six months of the date of dismissal, may

petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, and requires the court to determine whether the new circumstance alleged by the prosecutor provides sufficient justification for accessing, inspecting, or utilizing the sealed record in order to refile the dismissed petition.

- Requires the probation department to seal the arrest and other records in its custody relating to a juvenile's arrest or referral and participation in a diversion or supervision program upon satisfactory completion of the program of diversion or supervision to which a juvenile is referred by the probation officer or the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision.

- Requires the probation department to notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall then promptly seal the records in its custody relating to the juvenile's arrest or referral and participation in the program.

- Provides that upon sealing of the records under this section, the arrest or offense giving rise to the person's participation in the program shall be deemed not to have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

- Requires the probation department to notify the participant in the supervision or diversion program in writing that his or her record has been sealed pursuant to the provisions of this section based on his or her satisfactory completion of the program. If the record is not sealed, the probation department shall notify the participant in writing of the reason or reasons for not sealing the record.

- Defines "satisfactory completion" of the program of supervision or diversion, and requires the probation department to make a determination of satisfactory or unsatisfactory completion within 60 days of completion of the program by the juvenile, or if the juvenile does not complete the program, within 60 days of determining that the program has not been completed by the juvenile.

- Allows a person who receives notice from the probation department that he or she has not satisfactorily completed the diversion program and that the record has not been sealed to petition for review of the decision, as specified.

- Authorizes a probation department to access sealed records under these provisions for the limited purpose of determining whether the minor has previously participated in a program of supervision. Specifies that the information contained in the sealed record and accessed by the probation department remains in all other respects confidential

and prohibits its dissemination to any other person or agency. Provides that access to, or inspection of, a sealed record shall not be deemed an unsealing of the record nor require notice to any other agency.

Juveniles: Restraints

Every day young people in California who are detained in secure confinement are placed in restraints, including handcuffs, belly belts, and leg shackles, to be transported outside of the juvenile hall – for example, to a court appearance or doctor's appointment. Young people may spend hours in restraints as they wait to appear in court or to see a doctor. Once in court, they may remain restrained, impeding their ability to participate in their court hearing. This practice is harmful especially young people suffering from the effects of trauma and mental illness. It is also contrary to the juvenile court's goal of providing individualized rehabilitative services to young people and is unnecessary to protect young people or ensure public safety.

The indiscriminate use of restraints is not necessary to preserve public safety. Only about 10% of juvenile arrests are for violent felonies. The indiscriminate use of shackling makes little sense, given that the risk the young people pose to public safety is minimal and the potential harm to them is significant.

AB 878 (Gipson), Chapter 660, limits the use of restraints to transport a minor from a juvenile detention facility and clarifies when restraints may be used in juvenile court. Specifically, this new law:

- Provides that restraints may be used when a minor is being transported outside of a local juvenile detention facility only upon a determination made by the probation department, in consultation with the transporting agency, that restraints are necessary to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

- Requires that the least restrictive form of restraint be used consistent with the legitimate security needs of each minor if a determination is made that mechanical restraints are necessary.

- Requires a county probation department which chooses to use restraints other than handcuffs to establish procedures for documenting their use, including the reasons for use of those restraints.

- Provides that the above restrictions on restraints do not apply to restraints used by medical care providers in the course of medical treatment or transportation.

- Provides that restraints may only be used during a juvenile court proceeding if the court determines that the individual minor's behavior in custody or in court establishes a manifest need to use restraints to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

- Provides that it is the prosecution's burden to demonstrate the need to use restraints on a minor during a juvenile court proceeding.

- Requires that the least restrictive form of restraint be used and the reasons for the use of restraints be documented on the record if the court makes a determination that mechanical restraints are necessary.

Parole: Youth Offender Parole Hearings

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct. 2011] (*Graham*).) In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further decided that mandatory LWOP sentences for minors under age 18 at the time of a homicide violate the prohibition against cruel and unusual punishment. In *People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.

The court in *Caballero* advised that defendants who were sentenced for crimes they committed as juveniles could seek to modify life without parole or equivalent de facto sentences already imposed by filing a petition for writ of habeas corpus in the trial court. (*People v. Caballero, supra*, 55 Cal.4th at p. 269.) The Court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile. SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole process for inmates who were sentenced to lengthy prison terms for crimes committed when they were under the age of 18. (Pen. Code, § 3051.) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose committing offense occurred before they reached the age of 23. (Pen. Code, § 3051.)

However, research shows that cognitive brain development continues into the early 20s *or later*. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability. (See Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, Journal of Adolescent Health (Sept. 2009); National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011).) "The development and maturation of the prefrontal cortex occurs primarily during adolescence and is fully accomplished at the age of 25 years. The development of the prefrontal cortex is very important for complex behavioral performance, as this region of the brain helps accomplish executive brain functions." (Arain, et al., *Maturation of the Adolescent* Brain (2013).)

AB 1308 (Stone), Chapter 675, expands the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 23 years of age, to include those who committed their crimes when they were 25 years of age or younger. Specifically, this new law:

- Expands those eligible for a youthful parole hearing to those whose committing offense occurred when they were 25 years of age or younger.

- Excludes from the youthful offender parole provisions an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

- Requires the Board of Parole Hearings (BPH) to complete, by January 1, 2020, all youth offender parole hearings for individuals who were sentenced to indeterminate life terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this law.

- Requires BPH to complete all youth offender parole hearings for individuals who were sentenced to determinate terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this law by January 1, 2022, and requires BPH, for these individuals, to conduct a specified consultation before January 1, 2019.

Juveniles: Administrative Fees

Criminal fines, fees, and assessments have climbed steadily in recent decades. Government entities tasked with collecting this debt have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts.

A recent study by the Policy Advocacy Clinic at University of California Berkeley School of Law has found that imposing administrative fees to families with youth in the juvenile justice system is harmful, unlawful, and costly. Current California law allows counties to charge administrative fees, which can quickly add up to thousands of dollars, an incredible burden to families with youth in the juvenile justice system. In fact, such criminal justice debt undermines the rehabilitative goals of the juvenile justice system and leads to increased recidivism. Furthermore, most youth in the juvenile system come from poor families who cannot afford to pay fees, and counties ultimately obtain minimal returns despite the high fiscal and societal costs associated with collecting fees.

SB 190 (Mitchell), Chapter 678, limits the authority of local agencies to assess and collect specified fees against persons subject to the juvenile delinquency system. Specifically, this new law:

- Provides that the authority of a county financial-evaluation officer to make financial evaluations, including evaluations of parental liability, for specified costs and to reduce, cancel, or remit those costs does not apply to minors who are placed on pre-petition informal supervision, who are the subject of a delinquency petition, or who are placed on probation. The authority to make financial evaluations remains for dual status children for purposes of the dependency jurisdiction only.

- Limits the recovery of administrative fees to be paid by home-detention participants to persons over 21 years of age and under the jurisdiction of the criminal court.

- Limits the recovery of fees to be paid by probationers for drug testing to those persons over 21 years of age and under the jurisdiction of the criminal court, regardless of whether the program is publicly or privately operated.

- Eliminates liability of a minor or his or her parents or guardians for the following costs associated with the filing of a juvenile delinquency petition in the juvenile court:

    - Costs incurred for transporting, feeding, and sheltering a minor held in temporary custody in a law enforcement facility.

    - Costs associated with any service program the minor may be required to participate in;

    - Costs of support for a minor detained in a juvenile facility;

    - Costs of probation supervision, home supervision, or electronic supervision;

    - Costs of food, shelter, and care of a minor who remains in the custody of probation or detained in a juvenile facility after the parent or guardian receives notice of release;

    - Costs of support of minors placed in out-of-home placements other than county institutions; and,

    - Costs of care, support, and maintenance when a minor is voluntarily placed in out-of-home care and the minor receives specified aid.

- Provides that a minor who is ordered to pay restitution for damaging or discarding an electronic monitor is entitled to an ability-to-pay hearing without requesting one.

- Provides that the expense for the support and maintenance of a juvenile delinquency ward shall be paid entirely from the county treasury.

- Repeals the registration fee of up to $50 for appointment of legal counsel for minors.

- Limits the recovery of fees associated with services provided during diversion to those services provided directly to the minor's family, but not the services rendered to the minor.

- Limits the recovery of fees for appointed legal representation to those services provided directly to the parents of a minor involved in a juvenile dependency

proceeding. Attorney fees for legal services for the minor are not recoverable.

- Provides that when a minor is designated as a dual status child, specified fees apply for purposes of the dependency jurisdiction only but not for purposes of the delinquency jurisdiction.

Juveniles: Sealing of Records

On March 7, 2000, California voters approved Proposition 21, known as the Gang Violence and Juvenile Crime Prevention Act. According to the Legislative Analyst, the purpose of Proposition 21 was to change the treatment of juvenile offenders, particularly youths engaged in gang-related criminal activity or who had committed other serious offenses. Among other things, Proposition 21 prohibited the sealing of juvenile records involving certain serious or violent offenses – offenses listed in Welfare and Institutions Code section 707, subdivision (b) (aka the "707(b) list").

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed a serious or violent offense on the 707(b) list when he or she was 14 years or older. (Welf. & Inst. Code, § 781.) In 2014, the legislature enacted a process for court-initiated sealing upon probation completion. This process also does not apply in cases involving a serious or violent offense on the 707(b) list, unless the finding on that offense was dismissed or reduced to a lesser offense not on the list. (Welf. & Inst. Code, § 786.)

In *In re G.Y.* (2015) 234 Cal.App.4th 1196, the appellate court concluded the prohibition to record sealing under the petition process applies even if the adjudicated offense on the 707(b) list is later reduced to a misdemeanor, and even if the court concludes the juvenile is otherwise rehabilitated. (*In re G.Y., supra,* 234 Cal.App.4th at pp. 1201, 1204.)

A ban on the ability to have the record of a past offense sealed can be a lifetime obstacle to good employment, housing, military service, higher education, and more.

SB 312 (Skinner), Chapter 679, authorizes the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified. Specifically, this new law:

- Modifies the lifetime ban on sealing a juvenile offense record involving a specified serious or violent offense committed when the individual was 14 years of age or older, and replaces it with language permitting the person to petition for record sealing (i.e., sealing by petition) under the following circumstances:
    - The person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained the age of 21 years of age, and has completed his or her period of probation supervision after release from the Division; and

- The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained the age of 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court.

- Provides that a record that has been sealed pursuant to the sealing by petition process may be accessed, inspected, or utilized in a subsequent proceeding in the following circumstances:

    - By the prosecuting attorney, as necessary, to make appropriate charging decisions or to initiate a prosecution in criminal court involving a subsequent felony offense, or by the prosecuting attorney or court to determine the appropriate sentencing for a subsequent felony offense;

    - By the prosecuting attorney, as necessary, to initiate a juvenile court proceeding to determine whether a minor shall be transferred from the juvenile court to a criminal court to be tried as an adult, and by the juvenile court to make that determination;

    - By the prosecuting attorney, the probation department, or the juvenile court upon a subsequent finding by the juvenile court that the minor has committed a felony offense, for the purpose of determining an appropriate disposition of the case; and

    - By the prosecuting attorney, or a court of criminal jurisdiction, for the purpose of proving a prior serious and/or violent felony conviction, and determining the appropriate sentence.

- Provides that a record relating to a specified serious or violent offense committed after attaining 14 years of age that has been sealed pursuant to this provision may be accessed, inspected, or utilized by the prosecuting attorney in order to meet statutory or constitutional obligations to disclose favorable or exculpatory evidence to the defense in a criminal case.

- Requires that the information accessed, as set forth above, otherwise remain confidential and not be further disseminated.

- Provides that the waiting periods and access provisions do not apply if the specified serious or violent felony offense committed after the person attained 14 years of age was dismissed or reduced to a misdemeanor by the court.

- Provides that a record related to a specified serious or violent offense that was committed after attaining 14 years of age and requires registration as a sex offender is not eligible for sealing by petition.

- Provides that a specified serious or violent offense that was committed after a person attained 14 years of age and that was subsequently reduced to a misdemeanor is eligible for court ordered record sealing after satisfactory completion of informal supervision or probation (i.e., court-initiated sealing).

Parole: Youth Offender

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a life sentence without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct. 2011] (*Graham*).) In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further held the Eighth Amendment forbids a state from *mandating* the imposition of an LWOP sentence on a juvenile homicide offender. (*Id*. at p. [132 S.Ct. at p. 2469].) Consistent with these decisions, in *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy – i.e., the functional equivalent of an LWOP sentence – constitutes cruel and unusual punishment in violation of the Eighth Amendment. (*Id.* at p. 268.) While the court in *Caballero* pointed out that juvenile offenders seeking to modify an LWOP or de facto LWOP term may file petitions for writs of habeas corpus in the trial court, the Court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto LWOP for non-homicide crimes committed as a juvenile. (*People v. Caballero, supra*, 55 Cal.4th at p. 269, fn. 5.)

In accordance with the California Supreme Court's urging in *Caballero*, SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole eligibility mechanism for individuals sentenced to lengthy determinate or life terms for crimes committed when they were juveniles. (Pen. Code, § 3051.) Under the youth offender parole process created by SB 260, the person has an opportunity for a parole hearing after having served 15, 20, or 25 years of incarceration depending on their controlling offense. (Pen. Code, § 3051.) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose controlling offense occurred before they reached the age of 23. (Pen. Code, § 3051.)

The youth offender parole provisions expressly exclude a defendant who has been sentenced to LWOP. (*In re Kirchner* (2017) 2 Cal.5th 1040, 1049, fn. 4.) SB 9 (Yee), Chapter 828, Statutes of 2012, created a recall and resentencing process for juveniles sentenced to LWOP. (Pen. Code, § 1170, subd. (d)(2).) The recall and resentencing provision of SB 9 has been found to be an inadequate remedy for a *Miller* violation. (*In re Kirchner*, *supra*, 2 Cal.5th at pp. 1049-1052.)

SB 394 (Lara), Chapter 684, makes a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which an LWOP sentence has been imposed eligible for a youth offender parole hearing during his or her 25th year of incarceration. Specifically, this new law:

- Provides that a defendant who was convicted of a controlling offense that was committed before he or she had attained 18 years of age and for which the sentence is LWOP shall be eligible for release on parole by the board during his or her 25th year

of incarceration at a youth offender parole hearing unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

- Clarifies that youth offender parole does not apply to those sentenced to LWOP for a controlling offense that was committed after the person had attained 18 years of age.

- Sets a deadline of July 1, 2020, for the Board of Parole Hearings to complete all youth offender parole hearings for individuals who were sentenced to LWOP and who are or will be entitled to have their parole suitability considered at a youth offender parole hearing before July 1, 2020.

Juveniles: Custodial Interrogations

Currently in California, children—no matter how young— can waive their *Miranda* rights. When law enforcement conducts a custodial interrogation, they are required to recite basic constitutional rights to the individual, known as *Miranda* rights, and secure a waiver of those rights before proceeding. The waiver must be voluntarily, knowingly, and intelligently made. *Miranda* waivers by juveniles present distinct issues. Recent advances in cognitive science research have shown that the capacity of youth to grasp legal rights is less than that of an adult.

Although existing law assures counsel for youth accused of crimes, the law does not require law enforcement and the courts to recognize that youth are different from adults. It is critical to ensure a youth understands their rights before waiving them and courts should have clear criteria for evaluating the validity of waivers.

Recently an appellate court held that a 10-year-old boy made a voluntary, knowing, and intelligent waiver of his *Miranda* rights. When the police asked if he understood the right to remain silent, he replied, "Yes, that means that I have the right to stay calm." The California Supreme Court declined to review the lower court's decision. Several justices disagreed, and in his dissenting statement Justice Liu suggested that the Legislature should address the issue, stating that California law on juvenile waivers is a half-century old and, "predates by several decades the growing body of scientific research that the [U.S. Supreme Court] has repeatedly found relevant in assessing differences in mental capabilities between children and adults."

SB 395 (Lara), Chapter 681, requires that a youth 15 years of age or younger consult with counsel prior to a custodial interrogation and before waiving any specified rights. Specifically, this new law:

- Provides that prior to a custodial interrogation and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

- Requires the court, in adjudicating the admissibility of statements of a youth 15 years of age or younger made during or after a custodial interrogation, to consider the effect

of failure to comply with the consultation with legal counsel requirement.

- Specifies that the provisions of this law do not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:
    - The officer who questioned the suspect reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat; and,
    - The officer's questions were limited to those questions that were reasonably necessary to obtain this information.
- States that a probation officer is not required to comply with the legal consultation requirement when taking a minor into temporary custody, advising the minor of his or her constitutional rights, or investigating the circumstances for which the minor was taken into custody, as specified.
- Requires the Governor to convene a panel of at least seven experts, including all of the following:
    - A representative of the California Public Defenders Association;
    - A representative of the California District Attorneys Association;
    - A representative of a statewide association representing law enforcement;
    - A representative of the judiciary;
    - A member of the public possessing expertise and experience in any or all of the following:
        - The juvenile delinquency or dependency systems;
        - Child development or special needs children; and,
        - The representation of children in juvenile court.
    - A member of the public who, as a youth, was involved in the criminal justice system; and,
    - A criminologist with experience in interpreting crime data.
- States that the panel shall be convened no later than January 1, 2023, and shall review the implementation of the requirement that a youth 15 years of age or younger be allowed to consult with an attorney prior to a custodial interrogation, and examine the effects and outcomes of the above requirement, including, but not limited to the

appropriate age at which youth should be allowed to consult with counsel.

- Requires the panel to provide information to the legislature and the Governor by April 1, 2024, including, but not limited to, relevant data on the effects and outcomes associated with the requirement that youth 15 years of age or younger be allowed to consult with an attorney prior to a custodial interrogation.

- Establishes a sunset date of January 1, 2025.

Juveniles: Honorable Discharge

In 2010, most of the authority for the discharge of juveniles was transferred from Division of Juvenile Facilities (DJF) to local juvenile courts (AB 1628 (Committee on Budget), Chapter 729, Statutes of 2010). Local juvenile courts now release juveniles from the control of the county probation department except in the limited instances where the DJF maintains this responsibility. Either the juvenile court or DJF can find the juvenile eligible for honorable, general or dishonorable discharge, depending on their behavior while incarcerated.

Prior to DJF realignment, DJF could find the juvenile eligible for an honorable discharge, releasing the juvenile from any penalties and disabilities resulting from their conviction. Upon DJF making an honorable discharge determination, courts were required to automatically release the juvenile from the penalties and disabilities resulting from their conviction. After juvenile justice realignment, the court found the statutory scheme was missing a mechanism for local probation departments or the courts to make an honorable discharge finding, although the court admitted this was likely an inadvertent error by the Legislature.

SB 625 (Atkins), Chapter 683, re-establishes a mechanism for honorable discharges for persons discharged from DJF, as specified. Specifically, this new law:

- Authorizes the Board of Juvenile Hearings (BJH) to make honorable discharge determinations and to grant an honorable discharge to a person discharged from DJF who has proven the ability to desist from criminal behavior and to initiate a successful transition into adulthood.

- Establishes initial criteria for BJH to consider when making honorable discharge determinations.

- Directs BJH to establish regulations setting forth more specific criteria for the award of an honorable discharge.

- Authorizes DJF to retain jurisdiction over a ward discharged by BJH for the sole purpose of making an honorable discharge determination.

- Establishes the process by which a person would petition for an honorable discharge.

- Specifies some of the penalties or disabilities from which a person would be released after receiving an honorable discharge.

- States that an honorable discharge does not affect a person's duty to register as a sex offender, as specified.

- Directs DJF, upon granting a person an honorable discharge, to notify the committing court and the Department of Justice.

MENTAL HEALTH

Inmates: Psychiatric Medication

In California alone, over 100,000 people received mental health treatment in county jails in 2014-2015, according to the Department of Health Care Services. The department also acknowledges that this number is likely underreported because contractors providing mental health services in jails did not always report data to the state on services provided. According to the National Association of Counties, 64 percent of the jail population nationwide has a mental illness. A 2009 study found that 15 percent of male inmates and 31 percent of female inmates are dealing with a severe mental illness.

Involuntary medication in jails can help reduce harm in extreme cases of danger to the inmate, other inmates or staff, as well as treat an inmate's grave disability. Existing law provides procedures for involuntary medication which specifically apply to the portion of the county jail population that has been sentenced, but county jails also house individuals who are detained in jail while they face criminal charges.

AB 720 (Eggman), Chapter 347, applies the existing framework for involuntary medication of a person in county jail after being sentenced on a criminal conviction, to other inmates in county jail including those awaiting arraignment, trial, or sentencing, but limits the time period for an involuntary medication order for county jail inmates awaiting arraignment, trial, or sentencing to six months and provides a sunset date of January 1, 2022. Specifically, this new law:

- Defines "inmate" for purposes of this law as a person confined in the county jail, including, but not limited to, a person sentenced to imprisonment in a county jail, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release.

- States that if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication if the inmate is a danger to self or others, or is gravely disabled, and specified procedures involving a hearing and independent review are followed.

- States that an order for involuntary medication of an inmate who is awaiting arraignment, trial, or sentencing, shall be valid for no more than 180 days.

- States that a court may review, modify, or terminate an involuntary medication order for an inmate awaiting trial, where there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding.

- Requires the jail to make a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication on a non-emergency basis.

- Specifies that in the case of an inmate who is awaiting arraignment, trial, or sentencing, the court shall review the order for involuntary medication at intervals of not more than 60 days to determine whether the grounds for the order remain.

- Clarifies that this law does not prohibit the court from suspending the criminal prosecution until the court determines that the involuntarily medicating the defendant will not interfere with his or her ability to meaningfully participate in the criminal proceedings.

- Establishes a sunset date of January 1, 2022.

Arrests: Mental Health Evaluations

Under existing law, law enforcement may lack the legal authority to transport an individual suffering from an acute mental health crisis to a mental health Urgent Care Center (UCC) in lieu of arrest, absent the individual's consent for treatment. UCCs can serve as an alternative to county jail where persons suffering from mental health crisis can receive the help they need.

SB 238 (Hertzberg), Chapter 566, authorizes release of an arrested person who is delivered to a specified facility for the purpose of mental health evaluation and treatment. Specifically, this new law:

- Authorizes a peace officer to release an arrested person from custody without taking him or her before a judge if the person is delivered, after arrest, to a hospital or urgent care facility for the purpose of mental health evaluation and treatment, and no further criminal proceedings are desirable. Specifies that such an arrest shall not be deemed an arrest, but a detention only.

- Requires a person arrested and released pursuant to this provision to be issued a certificate describing the action as a detention.

Incompetence to Stand Trial: Conservatorship

Currently mentally ill defendants who cannot be restored to competency, and who do not qualify for conservatorships, are released from competency restoration programs. Under existing law, a conservatorship is allowed in circumstances where an information (post preliminary hearing) or indictment (post grand jury) is pending against the defendant containing specified criminal charges, and the defendant was not returned to competency within the requisite time frame. Under existing law, a conservatorship is not allowed if defendant is facing a complaint (preliminary hearing has not yet been conducted).

SB 684 (Bates), Chapter 246, allows the initiation of a conservatorship for involuntary commitment when a criminal defendant is charged with specified felonies and the defendant is incompetent to stand trial. Specifically, this new law:

- Expands existing law to allows a conservatorship to be established when a defendant has been found incompetent to stand trial, if the defendant has been charged by complaint, if the following conditions are met:
    - The complaint charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person;
    - A judge has made a finding of probable cause the defendant has committed the list of felonies, specified above, and the complaint has not been dismissed;
    - As a result of a mental health disorder, the defendant is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner;
    - The defendant has been found mentally incompetent to stand trial; and
    - The person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.
- Establishes a procedure, to be approved by the court, for a prosecuting attorney, at any time before or after a defendant is determined incompetent to stand trial, to request a determination of probable cause to believe the defendant committed the offense or offenses alleged in the complaint, solely for the purpose of meeting the criteria for gravely disabled to be eligible for a conservatorship.

Grants the defendant a preliminary hearing after restoration of competency. Allows for the initiation of a conservatorship upon a criminal complaint if there has been a finding of probable cause on the complaint.

PEACE OFFICERS

Public Officers

Historically, the Chief of Police at The Port of Los Angeles has assumed the authority of being able to deputize port security officers. Security officers at The Port of Los Angeles and other ports around the state should be reasonably able to protect themselves with batons in the event of criminal activity. Currently, because port security officers operate independently of the local sheriff or police department, they need this authority to be explicitly referenced in statute.

> **AB 585 (Gipson), Chapter 107**, clarifies that a police-security officer, includes an officer employed by a chief of a police division that is within a city department that operates independently of the city police department.

Firearms: Peace Officer Standards and Training Courses

Existing law generally requires that a firearms transaction be conducted through a licensed firearms dealer and prohibits the transfer unless the person has been issued a firearms license.

The Safety for All Act of 2016, approved by voters as Proposition 63 at the November 8, 2016, statewide general election, generally prohibits the possession of large capacity magazines regardless of the date the magazine was required.

Sworn peace officers are exempt from the above provisions, however individuals who are enrolled in a training program to become sworn peace officers (cadets) are not necessarily exempt. This is problematic because it does not allow cadets to receive adequate training. Currently, cadets lawfully may not train with large-capacity magazines and other firearms that they may be expected to use as officers.

> **AB 693 (Irwin), Chapter 783**, exempts persons enrolled in the course of basic training prescribed by the Commission on Peace Officers Standards and Training (POST) from specified prohibitions related to firearms, ammunition, and large-capacity magazines, and exempts an instructor of the course, or a POST staff member from the ammunition purchase requirements relating to the purchase of ammunition through a licensed ammunition vendor.

Grand Juries: Peace Officers

To help make judicial proceedings more transparent and accountable, SB 227 (Mitchell) Chapter 175, Statutes of 2015, prohibited a grand jury inquiry into an offense that involves a shooting or use of excessive force by a peace officer resulting in the death of a person being detained or arrested by the peace officer. (See Pen. Code, § 917.) Earlier this year, however, the Third District Court of Appeal found this law unconstitutional. (*People v. ex rel. Pierson v. Superior Court* (2017) 7 Cal.App.5th 402.) In so holding, the court noted: "The Legislature is not powerless to remedy the problem it has identified. It may submit a constitutional amendment to

the electorate to remove the grand jury's power to indict in cases involving a peace officer's use of lethal force. *It could also take the less cumbersome route of simply reforming the procedural rules of secrecy in such cases, which are not themselves constitutionally derived or necessary to the grand jury's functioning….* (*Id.* at p. 414, emphasis added.)

AB 1024 is in line with the Court of Appeal's suggested remedy of "reform[ing] the procedural rules of secrecy in such cases." (*People v. ex rel. Pierson v. Superior Court*, *supra*, 7 Cal.App.5th at p. 414.) Existing law provides for the transcript of a grand jury proceeding to be made public only if there is an indictment. (Pen. Code, § 938, subds. (a) & (b).) There is no comparable requirement under existing law when the grand jury does not return an indictment.

> **AB 1024 (Kiley), Chapter 204,** requires a court to disclose all or a part of an indictment proceeding transcript, excluding the grand jury's private deliberations and voting, when the grand jury decides not to return an indictment for an offense that involves a peace officer shooting or use of excessive force that results in the death of a detainee or arrestee. Specifically, this new law:
>
> - Requires the court that impaneled a grand jury to disclose all or a part of the indictment proceeding, excluding the grand jury's private deliberations and voting, to a party who moves for disclosure, under the following circumstances:
>
> - The grand jury inquiries into a peace officer-involved shooting or use of excessive force that resulted in the death of a person being detained or arrested by the peace officer;
>
> - The grand jury decides not to return an indictment;
>
> - The district attorney, a legal representative of the deceased person, or a legal representative of the news media or public applies for disclosure of the indictment proceeding;
>
> - The district attorney and the affected witness involved are given notice and an opportunity to be heard; and,

Unless, following an in camera hearing, the court expressly finds that there exists an overriding interest that outweighs the right of public access to the record, the overriding interest supports sealing the record, a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed, the proposed sealing is narrowly tailored, and no less restrictive means exist to achieve the overriding interest.

Immigration and Customs Enforcement Officers

As California and the rest of the nation enter into a new reality of aggressive and, at times, deceitful actions undertaken to enforce immigration actions, California must take any and all necessary actions to disassociate the actions of federal Immigration and Customs Enforcement (ICE) and Border Protection officers with those of licensed state and local peace officers.

> **AB 1440 (Kalra), Chapter 116,** clarifies that United States Immigration and Customs Enforcement (ICE) and Border Protection officers are not California peace officers.

First Degree Murder: Peace Officers

Under current law, an unlawful killing (a killing without legal justification or excuse) of a peace officer that is willful, deliberate, and premeditated is first degree murder. (Pen. Code, §§ 187-189, 195-196.)

> **AB 1459 (Quirk-Silva), Chapter 214,** restates existing law regarding first degree murder of a peace officer for purposes of the gravity of the offense and support of the survivors. Specifically, this new law:
>
> - Declares the finding of the Legislature that all unlawful killings that are willful, deliberate, and premediated and in which the victim was a peace officer, as defined in statute, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, are considered first degree murder for purposes of the gravity of the offense and the support of survivors.
>
> - States that this provision is declarative of existing law.
>
> - Makes uncodified legislative findings and declarations.

Law Enforcement: Racial Profiling

AB 953 (Weber), Chapter 466, Statutes of 2015, established the Racial Identity and Profiling Act (RIPA) which required local law enforcement agencies to report specified information on stops conducted by peace officers to the Attorney General's Office, and established the RIPA Advisory Board.

> **AB 1518 (Weber), Chapter 328**, delays for one year until January 1, 2018 the collection of data and the implementation of regulations related to RIPA.

Law Enforcement: Data Sharing

On January 25, 2017, President Trump signed a pair of executive orders on immigration. The orders direct stepped up immigration enforcement on people in the country without documentation and the cities that don't readily hand them over for deportation.

A study by the University of Illinois – Chicago surveyed Latino immigrants in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties on their perception of local law enforcement when there's involvement in immigration enforcement. The study found that Latinos are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know. Latinos are also less likely to voluntarily offer information about crimes, and are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status;

SB 54 (De Leon), Chapter 495, limits the involvement of state and local law enforcement agencies in federal immigration enforcement. Specifically, the new law:

- States that law enforcement agencies shall not do any of the following:
    - Use agency or department money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.
    - Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement.
    - Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
    - Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or if the individual meets specified criteria regarding their past offenses.
    - Provide office space exclusive dedicated for immigration authorities for use within a law enforcement facility.
    - Contract with the federal government for the use of California law enforcement agency facilities to house federal detainees, except as specified by existing law.

Custodial Officers: Less Lethal Force

While Penal Code Section 831 gives local law enforcement agencies the authority to employ custodial officers, who generally work at the jail and provide inmate custodial services, the law precludes these officers from possessing firearms in the course of their duties.

Some sheriff offices would like to deploy certain officers in custodial facilities with the appropriate tools to address specific situations. For example, a jail may have an emergency response team that responds to critical incidents and emergency situations. A sheriff may wish to deploy this team with less lethal weapons that fire plastic, rubber, or other less lethal projectiles, but these weapons are technically firearms, and may not be used by custodial officers as defined in Penal Code Section 831.

SB 324 (Roth), Chapter 73, authorizes a custodial officer to use a firearm that is a "less lethal weapon" in the official performance of his or her duty, at the discretion of the sheriff or chief of police or his or her designee, if the custodial officer is trained in its use and complies with the policy of on the use of less lethal force as set forth by the sheriff or chief of police.

Securing Handguns: Vehicles

Under existing law, every person that leaves a handgun in a vehicle must lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

SB 497 (Portantino), Chapter 809, allows a peace officer when leaving a handgun in an unattended vehicle to lock the handgun in the center console, as specified. Specifically, this new law:

- Provides that a peace officer, when leaving a handgun in an unattended vehicle not equipped with a trunk, may lock the handgun out of plain view within the center utility console of that motor vehicle with a padlock, keylock, combination lock, or other similar locking device.

- Defines "peace officer" to mean “a sworn California peace officer or a sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties, while that officer is on duty or off duty.”

- Defines "trunk" to mean “the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger compartment. A trunk does not include the rear of a hatchback, station wagon, or sport utility vehicle, any compartment that has a window, or a toolbox or utility box attached to the bed of a pickup truck.”

- Defines "plain view" to include “any area of a vehicle that is visible by peering through the windows of the vehicle, including windows that are tinted, or without illumination.

RESTITUTION

Non-Economic Losses: Child Sexual Abuse

Under current law, a defendant may be ordered to pay restitution for non-economic losses for psychological harm caused, for violations of lewd acts upon a child under the age of 14, Penal Code section 288. (Pen. Code, § 1202.4, subd. (f)(3)(F).)

Since the restitution statute specifically lists only Penal Code section 288 in reference to noneconomic losses, there is a split of authority as to whether the victim of a crime of continuous sexual abuse of a child, section 288.5, is also entitled to restitution for non-economic losses.

Several appellate courts have held that permitting noneconomic restitution for convictions under section 288 but not for convictions under section 288.5 would lead to an absurd result. (See *People v. McCarthy* (2016) 244 Cal.App.4th 1096; *People v. Lehman* (2016) 247 Cal.App.4th 795, and *People v. Martinez* (2017) 8 Cal.App.5th 298.) It makes little sense for a child under the age of 14 but older than 10 years of age to be awarded non-economic damages when they are the victim of child sexual assault, but not to award non-economic damages to a child aged 10 or younger who is the victim of the same conduct. Nor does it make sense to award non-economic damages to a child who is the victim of two sexual assaults but not if they are victimized three or more times. The pertinent restitution statute must be amended to include the overlooked crimes.

> **SB 756 (Stern), Chapter 101,** authorizes non-economic restitution in cases where a person is convicted of continuous sexual child abuse or sexual acts with a child 10 years of age or younger. Specifically, this new law: Adds the crimes of continuous sexual abuse of a child and sexual acts with a child 10 years of age or younger to the statute authorizing non-economic restitution for lewd and lascivious acts against a child under the age of 14.

SEARCH WARRANTS

Search Warrants: Misdemeanor Disorderly Conduct/Invasion of Privacy

In *Riley v. California* (2014) 573 U.S. [134 S.Ct. 2473], the United States Supreme Court held that law enforcement officers generally must secure a warrant before searching digital information on a cell phone seized from an individual who has been arrested. (*Id*. at p. 2495.) The Legislature subsequently enacted the California Electronic Communications Privacy Act (CalECPA). CalECPA is a comprehensive digital privacy law which took effect on January 1, 2016 (§ 1546 et seq.). It "limits the ability of California law enforcement to obtain information directly from a smartphone or similar device, or to track them. Law enforcement must either obtain a warrant or get the consent of the person possessing the electronic device." (Daniels, *California Updates Privacy Rights with the Electronic Communications Privacy Act* (2015).)

Current law enumerates limited circumstances authorizing a search warrant for evidence that tends to show a violation of a misdemeanor crime. For example, under current law, a search warrant can be issued on the grounds that property is possessed with the intent to use it as a means of committing a public offense. (Pen. Code, § 1524, subd. (a)(3).) Arguably, under this provision, it may be difficult to obtain digital evidence of misdemeanor crimes that have already been committed with the use of an electronic device unless there is also probable cause to believe that the device is possessed with the intent to use it to commit a public offense in the future.

AB 539 (Acosta), Chapter 342, expands the grounds for issuance of a search warrant to include evidence of a misdemeanor violation of disorderly conduct involving invasion of privacy, as specified. Specifically, this new law:

- Provides that a search warrant may be issued when the property or things to be seized consists of evidence that tends to show a violation of any of the following disorderly conduct laws occurred or is occurring:
    - Actions involving the use of any instrumentality to view the interior of specified rooms, in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of individuals inside;
    - Use of specified devices to videotape, film, photograph, or record by electronic means an identifiable person either under or through their clothing, for purposes of viewing the body or undergarments, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy; or
    - Use of specified devices to videotape, film, photograph, or record by electronic means an identifiable person in a state of full or partial undress, for the purpose of viewing the body or undergarments, without the consent or

knowledge of that other person, in the interior of specified rooms in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

SEX OFFENSES

Sex Assault Evidence: Reporting

A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. Specifically, the report found that "[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public.

AB 41 (Chiu), Chapter 694, requires local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody. Specifically, this new law:

- Requires law enforcement agencies to report information regarding rape kit evidence, within 120 days of the collection of the kit, to the Department of Justice (DOJ) through a database established by the DOJ. Specifies that information shall include, among other things:
    - The number of kits collected;
    - If biological evidence samples were submitted to a DNA laboratory for analysis; and if a probative DNA profile was generated; and,
    - If evidence was not submitted to a DNA laboratory for processing, the reason or reasons for not submitting evidence from the kit to a DNA laboratory for processing.
- Requires a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested, except as specified.
- Provides that upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of the crime scene evidence pursuant to existing law, the agency shall state in writing the reason the kit collected as part of the case's investigation was not

analyzed.

- Imposes these requirements for kits collected on or after January 1, 2018.

- Requires that the DOJ file a report to the Legislature on an annual basis summarizing the information in its database.

- Prohibits law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency's duty to produce exculpatory evidence to a defendant in a criminal case.

- Provides that money to pay for this bill should first come from funds received from the federal Office on Violence Against Women before appropriating money from the general fund.

Sex Offenders: Placement on Parole

Under existing law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, specified violent felonies or a felony in which the defendant inflicts great bodily injury on any person, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if Board of Parole Hearings (BPH) and the California Department of Corrections and Rehabilitation (CDCR) finds that there is a need to protect the life, safety, or well-being of a victim or witness.

AB 335 (Kiley), Chapter 523, expand the list of specified crimes which allows a victim or witness to request that an inmate to be released on parole not be returned to a location within 35 miles of the residence of the victim or witness if the BPH or the CDCR finds that the placement is necessary to protect the victim or witness. Specifically this new law:

- Adds to the list of offenses where a victim or witness may request that an inmate may not be returned to a location within 35 miles of the residence of the victim or witness the following offenses:

    - Sexual penetration by force or violence;

    - Sexual penetration of a child under the age of 14 where the perpetrator is more than 10 years older than the child;

    - Rape of a person that is incapable of giving consent because of a mental disorder or physical disability;

    - Rape where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;

- Rape of an unconscious person;
- Sodomy of an unconscious person;
- Sodomy of a person that is incapable of giving consent because of a mental disorder or physical disability;
- Sodomy where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;
- Oral copulation of an unconscious person;
- Oral copulation of a person that is incapable of giving consent because of a mental disorder or physical disability;
- Oral copulation where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;
- Sexual penetration of an unconscious person; and,
- Sexual penetration where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance.

Consolidated Sex Offenses: Jurisdiction

The Legislature has created several exceptions to the rule that the territorial jurisdiction of the case is where the offense occurred. Under existing law, these exceptions include specified sex offenses occurring in different counties. If all the district attorneys in the counties with jurisdiction agree, the offenses may be consolidated into a single trial. This protects repeat victims from the need to make multiple court appearances to testify against the same offender.

Because the sex offenses currently excepted are of the same class, the court has held they may be properly joined. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1113.) Under existing law, this exception does not include specified sex offenses with a child 10 years of age or younger (Pen. Code, § 288.7). Arguably, these offenses belong to the same class of sex offenses currently excepted from the general venue rule.

AB 368 (Muratsuchi), Chapter 379, permits the consolidation of specified sex offenses with a child 10 years of age or younger occurring in different counties into a single trial if all district attorneys in the counties with jurisdiction agree. Specifically, this new law adds the offenses of sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years or younger to the list of specified sex offenses exempt from the rule that the territorial jurisdiction of the case is where the offense occurred.

Sex Offenses: Registration

Under existing law, most rape offenses require registration as a sex offender. However, registration is not required for the offenses of rape by fraud and rape by authority of a public official. These are similar to the offenses for which registration is already required.

> **AB 484 (Cunningham), Chapter 526,** adds rape by fraud and rape by authority of a public official to the list of offenses that requires registration as a sex offender.

Child Victims: Conditional Examinations

Children who are victims of sexual crimes may be ordered to testify in criminal cases against their accuser. In taking testimony from a child, the court must take special care to protect the child from harassment, embarrassment, or further trauma. Children are asked to be able to recall events accurately, understand the difference between truth and lies, and understand the importance of testifying truthfully. More psychological harm can be done to a child when the child is required to testify in a room full of strangers and to recall traumatic events.

> **AB 993 (Baker), Chapter 320,** authorizes the prosecution to apply for an order that the victims at the preliminary hearing be video recorded and the video recording be preserved when the defendant is charged with aggravated sexual assault of a child under the age of 14 years of age, or charged with oral copulation, sexual penetration, rape or sodomy of a child under 10 years of age.

Prostitution Offenses: Vehicle Impoundment

In 1993, Vehicle Code Section 22659.5 established a five-year pilot program which allowed a local government to declare a vehicle used in the commission of a prostitution offense to be declared a public nuisance if there was a criminal conviction for the conduct. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

"The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities."

AB 14 (Fuentes), Chapter 210, Statutes of 2009, authorized a city or county to adopt an ordinance declaring a vehicle to be a nuisance subject to an impoundment period of up to 30 days when the vehicle is involved in the commission of specified crimes related to prostitution, if

the owner or operator of the vehicle had a prior conviction for the same offense within the past three years.

AB 1206 (Bocanegra), Chapter 531, authorizes a two-year pilot program in the cities of Los Angeles, Oakland, and Sacramento to permit law enforcement to tow vehicles used in the commission, or attempted commission of specified offenses related to prostitution, without the requirement of a prior conviction with the past three years. Specifically, this new law:

- Authorizes the cities of Los Angeles, Oakland, and Sacramento to conduct a 24-month pilot program in which law enforcement may tow a vehicle, upon first-time arrest if it is used in the commission, or attempted commission, of pimping, pandering, or solicitation of prostitution.

- Requires the city, if it elects to implement the pilot program, to take specified actions, including, among others, offering a diversion program to prostitutes cited or arrested in the course of the pilot program.

- Authorizes impoundment only if the arrestee is the sole owner of the vehicle.

- Requires that at the time of the arrest, that the person be notified that his or her vehicle will be towed and given information on how the vehicle may be retrieved.

- Allows the registered owner or his or her agent to retrieve the vehicle at any time.

- Specifies that the registered owner or his or her agent is responsible for all towing and storage fees related to the seizure of a vehicle.

- Repeals these provisions on January 1, 2022.

Sexual Assault Victims: Rights

California established the Sexual Assault Victims' Bill of Rights in 2003. In passing that law, the Legislature found and declared that "[l]aw enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases." Upon the request of the victim, law enforcement agencies investigating the sexual assault may inform the victim of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, victims have a right to be informed whether or not the assailant's DNA profile was developed from the rape kit evidence, whether or not that profile was uploaded to the DNA database and whether or not a hit resulted from the upload.

AB 1312 (Gonzalez-Fletcher), Chapter 692, requires law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights and provides additional rights to victims of sexual assault. Specifically, this new law:

- Provides that a law enforcement agency shall not destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.

- Specifies that if law enforcement intends to dispose of a rape kit evidence from an unsolved sexual assault case, a victim of specified sexual assault crimes must be given written notice at least 60 days prior to the disposal.

- States that where there is an offense of domestic violence, as specified, or sexual assault, as specified, law enforcement shall immediately provide the victim of the crime a written card containing victims' rights and resources, as appropriate for domestic violence or sexual assault.

- States that prior to any initial medical evidentiary or physical examination arising out of a sexual assault, the medical provider shall provide written card containing victims' rights and resources for victims of sexual assault, as specified.

- Specifies that the medical provider is only required to provide the specified information card to a victim if law enforcement has provided the card to the medical provider in a language understood by the victim.

- States that after conducting the medical evidentiary or physical examination, the medical provider shall give the victim the opportunity to shower or bathe at no cost to the victim, unless a showering or bathing facility is not available.

- Specifies that a sexual assault victim retains the right to have a victim advocates and a support person present at any interview by law enforcement authorities, district attorneys, or defense attorneys regardless of whether he or she has waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys.

Sex Offenders: Registration

In its 2014 report, the California Sex Offender Management Board (CASOMB) noted there were nearly 100,000 registrants in California, as a result of California's "universal lifetime" registration for persons convicted of most sex offenses. "California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending." (CASOMB, *A Better Path to Community Safety – Sex Offender Registration in California, "Tiering Background Paper"* (2014) p. 3.)

According to the CASOMB: "Effective policy must be based on the scientific evidence. Research on sex offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests." (*Tiering Background Paper, supra*, at p. 4.) The CASOMB also noted the unintended consequences of lifetime registration. "These consequences include serious obstacles to finding appropriate housing – or any housing; obstacles to finding employment; obstacles to developing positive support systems; obstacles to developing close relationships; and obstacles to reintegrating successfully into communities." (*Ibid*.)

The report proposed a new registration system that would take into account several considerations, including introducing a tiered system of registration so that the length and level of registration matches the risk level of the offender. (*Tiering Background Paper, supra*, at p. 7.)

> **SB 384 (Wiener), Chapter 541,** effective January 1, 2021, recasts the California sex offender registry into a three-tiered registration system for periods of 10 years, 20 years, or life for a conviction in adult court of specified sex offenses, and five years or 10 years for an adjudication as a ward of the juvenile court for specified sex offenses. Specifically, this new law:
>
> - Provides that a person convicted of the most serious sex offenses or whose risk level is well above average at the time of release is required to register for life (tier three) under the Sex Offender Registration Act (Act).
>
> - Provides that unless person is subject to registration under tier three, a person convicted of a serious or violent or other specified felony sex offense must register for a minimum of 20 years (tier two) under the Act.
>
> - Provides that unless a person is subject to registration under tier two or tier three, a person convicted of a misdemeanor or non-violent, non-serious sex offense must register for a minimum of 10 years (tier one) under the Act.
>
> - Provides that a person adjudicated as a juvenile of a non-serious, non-violent sex offense must register for a minimum of five years (tier one) under the Act.
>
> - Provides that a person adjudicated as a juvenile of a serious or violent felony sex offense must register for a minimum of ten years (tier two) under the Act.

- Provides that out of state registrants, with an offense equivalent to a California registerable offense, will be placed in the corresponding tier to that offense. If there is no equivalent California offense, the person will be placed in tier two, except as specified.

- Allows DOJ to place a person required to register under the Act in a tier-to-be-determined category for up to 24 months if his or her appropriate tier designation cannot be immediately ascertained.

- Provides that a person ordered to register for an offense committed out of sexual compulsion or gratification, shall register as a tier one offender for a period of ten years unless the court states on the record reasons for requiring tier two or tier three registration.

- Provides the list of factors that the court must consider in determining whether to require tier two or tier three registration for an offense committed out of sexual compulsion or gratification, including: nature of the registerable offense: age and number of victims; whether the victim was a stranger; criminal and relevant noncriminal behavior; whether the person has previously been arrested or convicted of a sexually motivated offense; and the person's current risk of sexual or violent re-offense, including the person's static, dynamic, and violence risk levels.

- Provides that effective January 1, 2022, registrants of specified sex offenses and tier three registrants, excluding juvenile offenders, will be posted on a public Web site with full address. All other tier two registrants and those convicted of committing or attempting to commit annoying or molesting a minor, excluding juvenile offenders, will be posted on the public Web site with the ZIP Code for the registered address displayed.

- Provides that information disseminated to the public regarding a registered sex offender should also include the person's current risk of sexual or violent re-offense, including but not limited to their static dynamic violence risk levels on the SARATSO risk tools.

- Deletes current provisions allowing people required to register under the Act for misdemeanor annoying or molesting a child, felony sexual battery by restraint, or specified child pornography offenses to petition for exclusion from the Web site.

- Retains the current ability for specified registrants who received probation for an offense against a family member to apply for exclusion from the Web site.

- Provides that persons who no longer qualify for exclusion shall receive 30 days notice from DOJ before being re-posted on the public Web site.

- Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her minimum registration period.

- Sets forth a process, effective July 1, 2021, for a person who is tier two to petition for termination from the registry after 10 years under specified circumstances.

- Sets forth a process, effective July 1, 2021, for a person who is tier three based only on their risk assessment level to petition for termination from the registry after 20 years under specified circumstances.

- Requires the court, in ruling on a petition for early termination of tier two or tier three registration to determine whether community safety would be significantly enhanced by requiring continued registration.

- Specifies that a certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register under the Act unless the person is granted relief under the petition process for removal from the registry.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: County Placement

Under existing law, a person who has been judicially determined to be a sexually violent predator (SVP) who has successfully completed treatment, and is to be conditionally released, shall be released in the county of domicile unless both of the following conditions are met: (1) The court finds that extraordinary circumstances require placement outside the county of residence; and, (2) The designated county of placement was given prior notice and an opportunity to comment on the proposed placement in the county.

> **AB 255 (Gallagher), Chapter 39,** provides that when designating the county of placement for an SVP, who is to be conditionally released, the courts must consider connections to the community, Specifically, if and how long the person has previously resided or been employed in the county, and if the person has next of kin in the county.

SUPERVISED RELEASE

Sex Offender Parole: Placement at Release

Under existing law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, specified violent felonies or a felony in which the defendant inflicts great bodily injury on any person, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if Board of Parole Hearings (BPH) and the California Department of Corrections and Rehabilitation (CDCR) finds that there is a need to protect the life, safety, or well-being of a victim or witness.

AB 335 (Kiley), Chapter 523, expand the list of specified crimes which allows a victim or witness to request that an inmate to be released on parole not be returned to a location within 35 miles of the residence of the victim or witness if the BPH or the CDCR finds that the placement is necessary to protect the victim or witness. Specifically this new law:

- Adds to the list of offenses where a victim or witness may request that an inmate may not be returned to a location within 35 miles of the residence of the victim or witness the following offenses:
    - Sexual penetration by force or violence;
    - Sexual penetration of a child under the age of 14 where the perpetrator is more than 10 years older than the child;
    - Rape of a person that is incapable of giving consent because of a mental disorder or physical disability;
    - Rape where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;
    - Rape of an unconscious person;
    - Sodomy of an unconscious person;
    - Sodomy of a person that is incapable of giving consent because of a mental disorder or physical disability;
    - Sodomy where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;
    - Oral copulation of an unconscious person;

- Oral copulation of a person that is incapable of giving consent because of a mental disorder or physical disability;

- Oral copulation where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance;

- Sexual penetration of an unconscious person; and,

- Sexual penetration where a person is incapable of resisting by any intoxicating or anesthetic substance, or any controlled substance.

Parole: Youth Offender Parole Hearings

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct. 2011] (*Graham*).) In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further decided that mandatory LWOP sentences for minors under age 18 at the time of a homicide violate the prohibition against cruel and unusual punishment. In *People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.

The court in *Caballero* advised that defendants who were sentenced for crimes they committed as juveniles could seek to modify life without parole or equivalent de facto sentences already imposed by filing a petition for writ of habeas corpus in the trial court. (*People v. Caballero, supra*, 55 Cal.4th at p. 269.) The Court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile. SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole process for inmates who were sentenced to lengthy prison terms for crimes committed when they were under the age of 18. (Pen. Code, § 3051.) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose committing offense occurred before they reached the age of 23. (Pen. Code, § 3051.)

However, research shows that cognitive brain development continues into the early 20s *or later*. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability. (See Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, Journal of Adolescent Health (Sept. 2009); National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011).) "The development and maturation of the prefrontal cortex occurs primarily during adolescence and is fully accomplished at the age of 25 years. The development of the prefrontal cortex is very important for complex behavioral performance, as this region of the brain helps accomplish executive brain functions." (Arain, et al., *Maturation of the Adolescent* Brain (2013).)

AB 1308 (Stone), Chapter 675, expands the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 23 years of age, to include those who committed their crimes when they were 25 years of age or younger. Specifically, this new law:

- Expands those eligible for a youthful parole hearing to those whose committing offense occurred when they were 25 years of age or younger.

- Excludes from the youthful offender parole provisions an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

- Requires the Board of Parole Hearings (BPH) to complete, by January 1, 2020, all youth offender parole hearings for individuals who were sentenced to indeterminate life terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this law.

- Requires BPH to complete all youth offender parole hearings for individuals who were sentenced to determinate terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this law by January 1, 2022, and requires BPH, for these individuals, to conduct a specified consultation before January 1, 2019.

Voting Rights: Inmates and Formerly Incarcerated

Civic participation can be a critical aspect of re-entry and has been linked to reducing recidivism. However, many in California's criminal justice system are not accurately apprised of their voting rights and correct voting information is not readily accessible. To add to this confusion, almost every state handles voting rights for incarcerated and formerly incarcerated individuals differently. This results in many individuals being deprived of their fundamental rights to vote on issues and candidates that directly impact their lives.

AB 1344 (Weber), Chapter 796, requires the California Department of Corrections and Rehabilitation (CDCR) and county probation departments to provide specified voting rights information to persons under their jurisdiction upon request of such person. Specifically, this new law:

- Requires CDCR to do all of the following for each parolee under the jurisdiction of the department upon the completion of his or her parole:

    - Establish and maintain on the departments Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found;

- Post in each parole office a notice that contains the Internet Web site address at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found; and,

- Upon request of the parolee, advise the parolee of information provided by the Secretary of State regarding voting rights for persons with a criminal history.

- Mandates each county probation department to do all of the following for each person under the department's jurisdiction:

    - Establish and maintain on the departments Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found;

    - Post in each parole office a notice that contains the Internet Web site address at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found; and,

    - Upon request of a probationer, advise the probationer of information provided by the Secretary of State regarding voting rights for persons with a criminal history, who are under the department's supervision.

Elderly Parole Program

The number of elderly prisoners in California state prisons will continue to increase exponentially if measures are not implemented and codified to ensure parole hearings. According to the California Department of Corrections and Rehabilitation (CDCR), as of February 2017, there were over 31,000 inmates 50 years of age or older.

Costs associated with geriatric medical needs begin to accumulate at 50 years of age, given that there is an overwhelming consensus that the age of 50 constitutes a point when prisoners are considered elderly. In 2010, the LAO estimated from other state projections that incarcerating elderly offenders costs two to three times more than for the general prison population. In 2010, the average cost of incarcerating an inmate was approximately $51,000.

There is a lower risk of recidivism among elderly prisoners, according to CDCR statistics. In 2015, CDCR reported that only 31.1 percent of persons who were 60 years of age and older, returned to prison after three years from being released from prison compared to the state average of 44.6 percent for all formerly incarcerated individuals. Recidivism rates for persons 50 to 54, inclusive, years of age and 55 to 59, inclusive, years of age after one year from being released from prison were 39.4 and 34.6 percent, respectively.

AB 1448 (Weber), Chapter 676, codifies the Elderly Parole Program, to be administered by the Board of Parole Hearings (BPH). Specifically, this new law:

- Requires a prisoner to be considered for parole under the Elderly Parole Program if he or she meets both of the following conditions:

- The prisoner is 60 years of age or older; and,
- The prisoner has served a minimum of 25 years of continued incarceration on his or her current sentence, serving either a determinate or indeterminate sentence.

- Provides that when considering the release of a prisoner by the panel or board sitting en banc, the board shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly prisoner's risk of future violence.

- States that when scheduling a parole suitability hearing or when considering a request for an advance hearing, the board shall consider whether the prisoner meets the above age and continuous incarceration requirement.

- Provides that if the prisoner is found suitable for parole under the Elderly Parole Program, the board shall release the individual on parole, as specified.

- Prohibits a prisoner from being paroled who has been sentenced under the "Three Strikes" Law, who has been sentenced to life in prison without the possibility of parole or death, and a person who has been convicted of the first degree murder of a peace officer or a former peace officer.

- States that this bill does not alter the rights of victims at parole hearings.

- States that an individual eligible for an elderly parole hearing shall meet with the parole board as specified by existing law.

- Specifies that if parole is not granted at an elderly parole hearing, the parole board shall set the time for a subsequent elderly parole hearing as specified by existing law.

- Specifies that "elderly eligible parole date" is the date on which an inmate who qualifies as an elderly offender is eligible for release from prison.

Parole: Youth Offender

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a life sentence without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct. 2011] (*Graham*).) In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further held the Eighth Amendment forbids a state from *mandating* the imposition of an LWOP sentence on a juvenile homicide offender. (*Id*. at p. [132 S.Ct. at p. 2469].) Consistent with these decisions, in *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy – i.e., the functional equivalent of an LWOP sentence – constitutes cruel and unusual punishment in violation of the Eighth Amendment. (*Id.* at p. 268.) While the court in *Caballero* pointed out that

juvenile offenders seeking to modify an LWOP or de facto LWOP term may file petitions for writs of habeas corpus in the trial court, the Court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto LWOP for non-homicide crimes committed as a juvenile. (*People v. Caballero, supra*, 55 Cal.4th at p. 269, fn. 5.)

In accordance with the California Supreme Court's urging in *Caballero,* SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole eligibility mechanism for individuals sentenced to lengthy determinate or life terms for crimes committed when they were juveniles. (Pen. Code, § 3051.) Under the youth offender parole process created by SB 260, the person has an opportunity for a parole hearing after having served 15, 20, or 25 years of incarceration depending on their controlling offense. (Pen. Code, § 3051.) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose controlling offense occurred before they reached the age of 23. (Pen. Code, § 3051.)

The youth offender parole provisions expressly exclude a defendant who has been sentenced to LWOP. (*In re Kirchner* (2017) 2 Cal.5th 1040, 1049, fn. 4.) SB 9 (Yee), Chapter 828, Statutes of 2012, created a recall and resentencing process for juveniles sentenced to LWOP. (Pen. Code, § 1170, subd. (d)(2).) The recall and resentencing provision of SB 9 has been found to be an inadequate remedy for a *Miller* violation. (*In re Kirchner, supra,* 2 Cal.5th at pp. 1049-1052.)

SB 394 (Lara), Chapter 684, makes a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which an LWOP sentence has been imposed eligible for a youth offender parole hearing during his or her 25th year of incarceration. Specifically, this new law:

- Provides that a defendant who was convicted of a controlling offense that was committed before he or she had attained 18 years of age and for which the sentence is LWOP shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

- Clarifies that youth offender parole does not apply to those sentenced to LWOP for a controlling offense that was committed after the person had attained 18 years of age.

- Sets a deadline of July 1, 2020, for the Board of Parole Hearings (BPH) to complete all youth offender parole hearings for individuals who were sentenced to LWOP and who are or will be entitled to have their parole suitability considered at a youth offender parole hearing before July 1, 2020.

VETERANS

Military Fraud: Stolen Valor Act

California currently requires an elected officer forfeit his or her office upon conviction of a crime pursuant to either the federal Stolen Valor Act of 2005 or the California Stolen Valor Act.

However, the United States Supreme Court struck down the Federal Stolen Valor Act of 2005 stating that the action of claiming military service is protected under free speech. (See *United States v. Alvarez* (2012) 132 S.Ct. 2537, 2556 [183 L.Ed.2d 547].) Therefore, the Federal Stolen Valor act of 2005 was found to be unconstitutional. Congress then passed the Federal Stolen Valor Act of 2013 with a focus on intent to make profit, obtain money, property, or obtaining something with/of tangible benefit or value.

There is now a need to conform state law to the updated federal law.

AB 153 (Chavez), Chapter 576, modifies the language of the California Stolen Valor Act to conform to the federal Stolen Valor Act of 2013. Specifically, this new law:

- Punishes as a misdemeanor offense conduct that is fraudulent, with respect to false representation as a war veteran or as a veteran or member of the Armed Forces, with the intent to obtain money, property, or other tangible benefit, as defined.

- Defines tangible benefit as "financial remuneration, an effect on the outcome of a criminal or civil court proceeding, or any benefit relating to service in the military that is provided by a federal, state, or local governmental entity."

- Expands the crime related to misrepresentation to include a person who fraudulently represents him or herself as a veteran or member of the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, or any other reserve component of the Armed Forces of the United States with the intent to obtain money, property, or other tangible benefit.

- Punishes as a misdemeanor offense a person who misrepresents him or herself as a member or veteran of specified armed forces in connection with certain acts, such as, among other things, the forgery or use of falsified military documentation, or for purposes of employment or promoting a business, charity, or other endeavor, as prescribed.

- Requires elected officers, as specified, to forfeit their office upon the conviction of a crime pursuant to the federal Stolen Valor Act of 2013 or the California Stolen Valor Act that involves a fraudulent claim, made with the intent to obtain money, property, or other tangible benefit, as defined, that the person is a veteran or a member of the Armed Forces of the United States, as prescribed in those acts.

Veterans: Suicide Reporting

It is estimated by the Veterans Administration that 22 veterans a day commit suicide. Tracking this information will help determine whether or not existing suicide prevention efforts are having a positive effect, if more attention to this matter is needed in the future and where to allocate existing resources for mental health funding. Our brave servicemen and women deserve this Legislatures much needed attention on this issue.

> **AB 242 (Arambula), Chapter 222**, requires a certificate of death to indicate whether the deceased person was ever in the Armed Forces of the United States and further requires the State Department of Public Health to compile data from the electronic death registration system in order to annually report information to the Legislature and Department of Veteran Affairs regarding the ages, sexes, nationalities, and methods of suicide of veterans.

Veteran's Treatment Courts: Assessment and Survey

Veterans' court is a problem-solving court intended to serve veterans who are involved with the justice system and whose court cases are affected by issues such as addiction, mental illness, and co-occurring disorders. These courts promote sobriety, recovery, and stability through a coordinated response involving cooperation and collaboration with prosecutors, defense lawyers, probation departments, county veterans service offices, the California Department of Veterans Affairs, health-care networks, employment and housing agencies and groups, volunteer mentors who are usually also veterans, and family support organizations. There is a need to provide greater access to these courts so all Veterans can get the treatment they need.

> **SB 339 (Roth), Chapter 595,** requires the Judicial Council to conduct a study of veterans and veteran's treatment courts. Specifically, this new law:
>
> - Requires the Judicial Council, if funding is provided, to conduct a study of veterans and veteran's treatment courts that includes all of the following:
>
> - A statewide assessment of the veteran's treatment courts currently in operation that includes the number of veterans participating in the program, services available, and program outcomes, including successful completion or program terminations. The assessment shall evaluate the impact of a sample of veterans treatments courts on participant outcomes, including, not limited to, program recidivism, mental health, homelessness, employment social stability, and substance abuse;
>
> - A survey of counties that do not operate veteran's treatment courts that identifies barriers to program implementation and assesses the need for veteran's treatment courts in those jurisdictions based on the veterans involved in the local criminal justice system. The survey shall identify alternative resources that may be available to veterans, such as community courts or other

collaborative justice courts; and,

- On or before June 1, 2020, report to the Legislature on the results of the study, including recommendations regarding the expansion of veteran's treatment courts or services to counties without veteran's treatment courts and shall explore the feasibility of designing regional model veterans treatment courts through the use of service coordination or technological resources.

- States that the above provisions shall only remain in effect until January 1, 2021, and as of that date is repealed unless a statute enacted before that date deletes or extends that date.

Veterans: Pretrial Diversion

SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a military diversion program for current or former members of the military who are charged with a misdemeanor and who may be suffering from service-related trauma, substance abuse, or mental health issues. The Vehicle Code prohibits diversion for anyone charged with a driving under the influence of drugs and/or alcohol (DUI) offense (Veh. Code, § 23640). The military diversion statute did not mention this rule (Pen. Code, § 1001.80).

In grappling with these two statutes, the state courts of appeal issued conflicting opinions as to whether the Vehicle Code prohibits military diversion for defendants charged with DUI. (*People v. VanVleck* (2016) 2 Cal.App.5th 355, rev. gtd. Nov. 16, 2016, S237219; *Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275, rev. gtd. Nov. 16, 2016, S237734.)

SB 725 (Jackson), Chapter 179, specifies that a trial court can grant military pretrial diversion on a misdemeanor charge of driving under the influence of alcohol and/or drugs (DUI). Specifically, this new law:

- Provides that a trial court can grant diversion on a misdemeanor charge of DUI or of DUI causing injury, to a veteran or current member of the military who is suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her military service.

- States that participation in the military diversion program does not limit the Department of Motor Vehicles' (DMV) ability to take administrative sanctions against the person's driver's license.

VICTIMS

Restraining Orders: Gang Cases and Witnesses

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

When criminal proceedings have concluded, the court has authority to issue post-conviction protective orders in specified cases, including domestic violence, elder abuse, and sex offenses. With one exception, these protective orders can be issued only on the victim's behalf. Currently, most witnesses to crimes must go through the task of opening a civil case to receive a protective order.

> **AB 264 (Low), Chapter 270,** requires the court to consider issuing a restraining order for up to 10 years in gang cases, and expands the court's authority to issue post-conviction restraining orders to cover witnesses to the qualifying crimes. Specifically, this new law:
>
> - Extends the court's authority to issue post-conviction no-contact orders lasting up to 10 years in cases involving gang activity.
>
> - Allows the court to issue post-conviction restraining orders to cover percipient witnesses to any of the crimes for which the court is authorized to issue such an order if it can be established by clear and convincing evidence that the witness has been harassed.
>
> - Defines harassment as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."

Victims: Support Dogs

An effective tool to help prevent psychological harm to a child victim/witness or vulnerable person victim/witness is the use of therapy or facility dogs (commonly referred to as comfort dogs). Having a courthouse dog is another step in the process to assist victims and address the need for more compassion in the legal system.

In *People v. Chenault* (2014) 227 Cal.App.4th 1503, the Court of Appeal upheld the trial court's authority to permit the use of support dogs for certain witnesses. The court recognized that while Penal Code section 868.5, expressly allows the presence of one or two support persons for a

witness in certain circumstances, it does not apply to therapy dogs. (*Id*. at pp. 1513-1514.) However, under Evidence Code section 765, the trial court has broad control over the interrogation of witnesses, which includes the authority to allow the presence of a therapy/support dog during a witness's testimony. Therefore the court had the authority to permit use of the support dog under that statute. (*Id*. at p. 1514.)

Although case law recognizes the court's authority to permit use of a support dog, this practice is not codified in statute.

AB 411 (Bloom), Chapter 290, authorizes the use of a support dog during the testimony of specified victims and child witnesses. Specifically, this new law:

- Allows the following persons, if requested by either party in a criminal or juvenile hearing, to be afforded the opportunity to have a therapy or facility dog accompany him or her while testifying in court, subject to the approval of the court:
    - A child witness in a court proceeding involving any serious felony, as specified; and
    - A victim who is entitled to support persons under other penal code provisions.
- Requires the party seeking to utilize the therapy or facility dog to file a motioning with the court which includes all of the following:
    - The training or credentials of the therapy or facility dog;
    - The training of the therapy or facility dog handler; and,
    - Facts justifying that the presence of the therapy or facility dog may reduce anxiety or otherwise be helpful to the witness while testifying.
- Allows the court to deny a motion to utilize a therapy or facility dog if the court finds that the use of a therapy or facility dog would cause undue prejudice to the defendant or would be unduly disruptive to the court proceeding.
- Requires the court to take appropriate measures to make the presence of the therapy or facility dog as unobtrusive and non-disruptive as possible, including requiring a dog to be accompanied by a handler in the courtroom at all times.
- Requires the court, upon request, to present appropriate jury instructions designed to prevent prejudice for or against any party.
- States that nothing in this law shall prevent the court from removing or excluding a therapy or facility dog from the courtroom to maintain order or to ensure the fair presentation of evidence.

- Declares legislative intent to codify the holding in *People v. Chenault* (2014) 227 Cal.App.4th 1503 with respect to allowing an individual witness to have a support dog accompany him or her when testifying in proceedings.

- States that nothing in this law limits the use of a service dog, as specified, by a person with a disability.

- Defines certain terms for purposes of this law.

Victims and Witnesses: Immigration Violations

Existing law protects victims and witnesses of hate crimes from being detained for immigration violations or being turned over to federal immigration enforcement.

Since the inauguration of the current presidential administration, the federal government's recent sentiment on immigration laws have generated the possibility of deportation for suspected undocumented immigrants. Forthcoming changes in federal law are likely to deter such individuals who reside in California from assisting peace officers with evidence that is potentially helpful to an investigation.

It is in the best interest of the state to establish firm connections with those in the community and to protect the public from crime and violence by encouraging all persons – victims, witnesses or anyone who provides evidence to assist in a criminal investigation – to cooperate with state and local law enforcement and not be penalized on account of their immigration status.

AB 493 (Jones-Sawyer), Chapter 194, prohibits law enforcement from detaining a crime victim or witness solely for an actual or suspected immigration violation. Specifically, this new law:

- Declares that it is the public policy of the state to protect the public from crime and violence by encouraging all victims and witness to crimes, or who could otherwise give evidence in a criminal investigation, to cooperate with the criminal justice system and not to penalize those persons for such cooperation or for being crime victims.

- Prohibits a peace officer from detaining a person who is a witness or victim to a crime exclusively for any actual or suspected immigration violation when that person is not charged with, or convicted of, committing any crime under state law.

- Allows law enforcement to turn over an individual to immigration authorities pursuant to a judicial warrant.

Child Victims: Conditional Examinations

Children who are victims of sexual crimes may be ordered to testify in criminal cases against their accuser. In taking testimony from a child, the court must take special care to protect the child from harassment, embarrassment, or further trauma. Children are asked to be able to recall events accurately, understand the difference between truth and lies, and understand the importance of testifying truthfully. More psychological harm can be done to a child when the child is required to testify in a room full of strangers and to recall traumatic events.

> **AB 993 (Baker), Chapter 320,** authorizes the prosecution to apply for an order that the victims at the preliminary hearing be video recorded and the video recording be preserved when the defendant is charged with aggravated sexual assault of a child under the age of 14 years of age, or charged with oral copulation, sexual penetration, rape or sodomy of a child under 10 years of age.

Sexual Assault Victims: Rights

California established the Sexual Assault Victims' Bill of Rights in 2003. (AB 898 (Chu), Chapter 537, Statutes of 2003.) In passing that law, the Legislature found and declared that "[l]aw enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases." Upon the request of the victim, law enforcement agencies investigating the sexual assault may inform the victim of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, victims have a right to be informed whether or not the assailant's DNA profile was developed from the rape kit evidence, whether or not that profile was uploaded to the DNA database and whether or not a hit resulted from the upload.

According to the U.S. Department of Justice, most sexual assault victims do not receive treatment for their injuries or report them to the police. The lack of reporting may often be due to the trauma of the actual reporting process, including the difficulty and costs related to participating in the legal process. Creating additional rights for victims and clear distribution of relevant information can make the legal process easier for them.

> **AB 1312 (Gonzalez), Chapter 692**, requires law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights and provides additional rights to victims of sexual assault. Specifically, this new law:
>
> - Provides that a law enforcement agency shall not destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.
>
> - Specifies that if law enforcement intends to dispose of a rape kit evidence from an unsolved sexual assault case, a victim of specified sexual assault crimes must be given

written notice at least 60 days prior to the disposal.

- States that where there is an offense of domestic violence, as specified, or sexual assault, as specified, law enforcement shall immediately provide the victim of the crime a written card containing victims' rights and resources, as appropriate for domestic violence or sexual assault.

- States that prior to any initial medical evidentiary or physical examination arising out of a sexual assault, the medical provider shall provide written card containing victims' rights and resources for victims of sexual assault, as specified.

- Specifies that the medical provider is only required to provide the specified information card to a victim if law enforcement has provided the card to the medical provider in a language understood by the victim.

- States that after conducting the medical evidentiary or physical examination, the medical provider shall give the victim the opportunity to shower or bathe at no cost to the victim, unless a showering or bathing facility is not available.

- Specifies that a sexual assault victim retains the right to have a victim advocates and a support person present at any interview by law enforcement authorities, district attorneys, or defense attorneys regardless of whether he or she has waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys.

Victims of Violent Crimes: Recovery Centers

The Trauma Recovery Center (TRC) at San Francisco General Hospital was originally established pursuant to legislation passed in 2000. AB 2491 (Jackson), Chapter 1016, Statutes of 2000), among other provisions, required the California Victims Compensation Board (board) to enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center at San Francisco General Hospital as a four year pilot project to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, as an alternative to fee-for-service care reimbursed by the Victim Restitution funds. The goals of the TRC included improving the process of care for victims of crime by enhancing medical services for acute victims of sexual assault, linking victims to other services to facilitate recovery, and improving access to victim compensation funds.

In May 2004, the board published its required report to the Legislature on the effectiveness of the victims of crime recovery center, and concluded that the TRC model provides a wider, more effective, range of services at a lower cost for trauma victims that the traditional fee-for-service mental health treatment programs. According to the report, the data demonstrated that this model of care is effective in engaging victims of crime with needed services, improving cooperation with law enforcement, reducing homelessness, facilitating return to work, reducing alcohol and drug abuse, and improving quality of life among victims of interpersonal violence.

AB 1384 (Weber), Chapter 587, recognizes the Trauma Recovery Center at San Francisco General Hospital as the State Pilot Trauma Recovery Center (State Pilot TRC), and requires the board to use the model developed by this center when it awards grants to establish additional trauma recovery centers. Specifically, this new law:

- Provides that the Trauma Recovery Center at the San Francisco General Hospital, University of California, San Francisco is recognized as the State Pilot Trauma Recovery Center (State Pilot TRC).

- States that the board shall use the evidence-based Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot TRC when it selects, establishes, and implements trauma recovery centers pursuant to specified law.

- Specifies that in replicating programs funded by the board, the ITRS can be modified to adapt to different populations, but it shall include specified elements.

MISCELLANEOUS

CURES Database: Health Information Technology System

According to recent reports by the Center for Disease Control regarding America's opioid epidemic, almost 2 million Americans abused or were dependent on prescription opioids in 2014. In 2015, more than 15,000 people died from overdoses involving prescription opioids. Today, nearly half of all U.S. opioid overdose deaths involve a prescription opioid and, due to the large population that abuses prescription opioids, over 1,000 people are treated in emergency departments for misusing prescription opioids every day.

In order to address the prevalence of prescribed opioid abuses, the California Department of Justice (DOJ) implemented and maintains the Controlled Substance Utilization Review and Evaluation System Prescription Drug Monitoring Program (CURES PDMP) searchable database so that practitioners have increased access to information regarding a patient's prescription history. However, because current law does not provide authority for the CURES PDMP to integrate with health information technology systems, health care practitioners face several additional burdens including, but not limited to, a delay in accessing potentially vital information for rapid treatment, increased opportunities for patients to abuse practitioner services, and decreased peer-to-peer benefits between health information technology providers. During the process of decommissioning the original CURES database and transitioning to CURES 2.0, the current operating system, the DOJ expressed the need to address these concerns through integration.

AB 40 (Santiago), Chapter 607, requires the DOJ to make electronic prescription drug records contained in its CURES PDMP accessible through integration with a health information technology (IT) system no later than October 1, 2018, if that system meets certain information security and patient privacy requirements. Specifically, this new law:

- Authorizes a health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist to submit a query to the CURES database through a Health IT system if the entity operating the system has entered into a memorandum of understanding with the Department of Justice (DOJ) addressing the technical specifications of the system to ensure the security of the data and certifies that:
    - The entity will not use or disclose CURES data for any purpose other than delivering the data to an approved health care practitioner or pharmacist or performing data processing activities that may be necessary to enable the delivery unless authorized by, and pursuant to, state and federal privacy and security laws and regulations;
    - The Health IT system will authenticate the identity of an authorized health care practitioner or pharmacist initiating CURES queries and submit the date,

time, first and last name of the patient, date of birth of the patient, and identification of the CURES user at the time of a query to CURES;

- The Health IT system meets applicable patient privacy and information security requirements of state and federal law.

- Requires DOJ, by October 1, 2018, to develop a programming interface or other method of system integration to allow Health IT systems to retrieve information in CURES on behalf of an authorized health care practitioner or pharmacist.

- Prohibits DOJ from accessing patient-identifiable information in an entity's Health IT system.

- Requires and entity operating a Health IT system that is attempting to establish an integration with CURES to pay a reasonable system maintenance fee.

- States that this bill is urgent, and necessary for the immediate preservation of the public peace, health, or safety in order to enable the DOJ to ensure that information in the CURES database will be made available to prescribing physicians, so they may prevent the dangerous abuse of prescription drugs and to safeguard the health and safety of the people of this state.

- Authorizes DOJ to prohibit integration or terminate a Health IT system's ability to retrieve information from CURES if the Health IT system or the entity operating it does not comply with specified requirements.

Vessels: Operation and Equipment

Under existing law, law enforcement may use blue lights on vessels while engaged in law enforcement activities – e.g., while patrolling lakes and inland waterways for the purpose of maintaining public safety and responding to emergencies. Despite the fact that fire agencies have a wide range of public safety responsibilities on the water, existing law does not allow them to use blue lights on their vessels.

AB 78 (Cooper), Chapter 103, expands the definition of vessels that are eligible to use distinctive blue lights to include vessels from a fire department or a fire protection district while engaged in public safety actives. Specifically, this new law:

- Reserves the use of a distinctive blue light for public safety vessels whenever the vessel is engaged in direct law enforcement activities, as specified, or public safety activities conducted by a fire department or fire protection district, as specified.

- Defines "public safety vessel" as "a law enforcement, a fire department, or a fire protection district vessel."

Human Remains: Disposition

Existing law authorizes the disposal of human remains, without a death certificate or a permit, to the nearest out-of-state funeral establishment as long as the funeral home is within 20 miles of the border in the adjacent state. The initial purpose of allowing disposition without a certificate or permit was to create "time and cost savings for families and counties [and to] aid out-of-state investigations by allowing California coroners to release bodies to the investigative agency without the issuance of a death certificate or permit when California has no interest in the case." (Sen. Rules Com., Off of Sen. Floor Analyses, 3d reading analyses of Assem. Bill No. 2105 (2005-2006 Reg. Sess.) as amended August 08, 2006, p. 5.)

The current 20-mile limit is too restrictive given the geographical realities of some counties in California. For example, for Alpine County, the nearest out-of-state licensed funeral homes are 22 and 24 miles from the California state line, which does not comply with the current 20-mile restriction.

> **AB 356 (Bigelow), Chapter 187,** expands the distance for which human remains may be transported for disposition in an adjacent state. Specifically, this new law authorizes human remains to be transported from California to an adjacent state for disposition in that state without a death certificate or a permit for disposition if the remains are found within 50 miles of the California border and are being released to a licensed funeral establishment within 30 miles of the border in the adjacent state.

Transit District (BART): Prohibition Orders

AB 716 (Dickinson) Chapter 534, Statutes of 2011, authorized the creation of a three-year pilot program under which the San Francisco Bay Area Rapid Transit District (BART) could issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. In 2013, BART initiated its AB 716 program, which also required BART to provide the Legislature with annual reports on the program. (Pub. Util. Code, § 99172.)

SB1154 (Hancock) Chapter 559, Statutes of 2014, permitted BART to continue issuing these prohibition orders until January 1, 2018. SB 1154 also clarified that BART Police Officers have the authority to issue emergency protective orders for individuals in a stalking situation within the transit system, and that they have the authority to take custody of weapons while investigating domestic violence situations.

> **AB 730 (Quirk), Chapter 46,** repeals the sunset on the law that allows BART to issue prohibition orders to passengers committing certain illegal behaviors, making BART's authority to do so permanent.

Vehicle Impoundment: Prostitution Offenses

In 1993, Vehicle Code Section 22659.5 established a five-year pilot program which allowed a local government to declare a vehicle used in the commission of a prostitution offense to be declared a public nuisance if there was a criminal conviction for the conduct. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

"The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities."

AB 14 (Fuentes), Chapter 210, Statutes of 2009, authorized a city or county to adopt an ordinance declaring a vehicle to be a nuisance subject to an impoundment period of up to 30 days when the vehicle is involved in the commission of specified crimes related to prostitution, if the owner or operator of the vehicle had a prior conviction for the same offense within the past three years.

AB 1206 (Bocanegra), Chapter 531, authorizes a two-year pilot program in the cities of Los Angeles, Oakland, and Sacramento to permit law enforcement to tow vehicles used in the commission, or attempted commission of specified offenses related to prostitution, without the requirement of a prior conviction with the past three years. Specifically, this new law:

- Authorizes the cities of Los Angeles, Oakland, and Sacramento to conduct a 24-month pilot program in which law enforcement may tow a vehicle, upon first-time arrest if it is used in the commission, or attempted commission, of pimping, pandering, or solicitation of prostitution.

- Requires the city, if it elects to implement the pilot program, to take specified actions, including, among others, offering a diversion program to prostitutes cited or arrested in the course of the pilot program.

- Authorizes impoundment only if the arrestee is the sole owner of the vehicle.

- Requires that at the time of the arrest, that the person be notified that his or her vehicle will be towed and given information on how the vehicle may be retrieved.

- Allows the registered owner or his or her agent to retrieve the vehicle at any time.

- Specifies that the registered owner or his or her agent is responsible for all towing and storage fees related to the seizure of a vehicle.

- Repeals these provisions on January 1, 2022.

Trauma Recovery Centers

The Trauma Recovery Center (TRC) at San Francisco General Hospital was originally established pursuant to legislation passed in 2000. AB 2491 (Jackson), Chapter 1016, Statutes of 2000), among other provisions, required the California Victims Compensation Board (board) to enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center at San Francisco General Hospital as a four year pilot project to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, as an alternative to fee-for-service care reimbursed by the Victim Restitution funds. The goals of the TRC included improving the process of care for victims of crime by enhancing medical services for acute victims of sexual assault, linking victims to other services to facilitate recovery, and improving access to victim compensation funds.

In May 2004, the board published its required report to the Legislature on the effectiveness of the victims of crime recovery center, and concluded that the TRC model provides a wider, more effective, range of services at a lower cost for trauma victims that the traditional fee-for-service mental health treatment programs. According to the report, the data demonstrated that this model of care is effective in engaging victims of crime with needed services, improving cooperation with law enforcement, reducing homelessness, facilitating return to work, reducing alcohol and drug abuse, and improving quality of life among victims of interpersonal violence.

AB 1384 (Weber), Chapter 587, recognizes the Trauma Recovery Center at San Francisco General Hospital as the State Pilot Trauma Recovery Center (State Pilot TRC), and requires the board to use the model developed by this center when it awards grants to establish additional trauma recovery centers. Specifically, this new law:

- Provides that the Trauma Recovery Center at the San Francisco General Hospital, University of California, San Francisco is recognized as the State Pilot Trauma Recovery Center (State Pilot TRC).
- States that the board shall use the evidence-based Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot TRC when it selects, establishes, and implements trauma recovery centers pursuant to specified law.

- Specifies that in replicating programs funded by the board, the ITRS can be modified to adapt to different populations, but it shall include specified elements.

City Prosecutors: Authority

In most of California's 58 counties, the district attorney prosecutes both felony and misdemeanor cases. However, state law allows cities to prosecute misdemeanors on their own. Cities may use their city attorneys or city prosecutors provided that they have called that in their city charter or

received consent from their county's district attorney.

Despite the dependence of several cities on city prosecutors, California law has several inconsistencies when it comes to statutes affecting city attorneys and city prosecutors. For city prosecutors to effectively ensure public safety, their interactions with other government agencies must be efficient and timely. Confusion over the authority of city prosecutors can lead to significant delay in conducting basic prosecutorial functions.

AB 1418 (O'Donnell), Chapter 299, clarifies that city prosecutors have the same authority, privileges, and protections as prosecuting city attorneys. Specifically, this new law:

- Authorizes a city prosecutor to prosecute a person for maintaining, permitting, or allowing a public nuisance to existing upon his or her property, or on property or premises he or she is occupying or leasing, after they have received reasonable notice in writing from specified persons, including city prosecutors.

- Authorizes a defendant to file a motion to disqualify a city prosecutor from performing an authorized duty involving a criminal matter and authorizes a city prosecutor to appeal an order recusing him or her from a proceeding.

- Requires the Attorney General to furnish state summary criminal history information, if needed in the course of their duties, to city prosecutors.

- Requires the DMV to make information relating to specified convictions to be available to city prosecutors on a date five years on or after the date of the conviction.

- Requires the home address that appears in DMV records of city prosecutors to be confidential if a city prosecutor requests the confidentiality of that information.

- Allows city prosecutors, for the purpose of prosecuting misdemeanors, to have access to specified records of the DMV.

Law Enforcement: Racial Profiling

AB 953 (Weber), Chapter 466, Statutes of 2015, established the Racial Identity and Profiling Act (RIPA) which required local law enforcement agencies to report specified information on stops conducted by peace officers to the Attorney General's (AG) Office, and established the RIPA Advisory Board.

AB 1518 (Weber), Chapter 328, delays for one year until January 1, 2018 the collection of data and the implementation of regulations related to RIPA.

Public Safety Omnibus Bill

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

SB 811 (Committee on Public Safety), Chapter 269, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating generally to criminal justice laws. Specifically, this new law:

- Corrects a misstatement to the definition of "human trafficking victim" in the statute pertaining to expert testimony in human trafficking cases.

- Clarifies that the application of the felony penalties in the End of Life Option Act does not preclude the application of any other criminal penalties for conduct inconsistent with the act.

- Reorganizes provisions of the Health and Safety Code by incorporating all of these non-conflicting provisions into the section as amended by Proposition 47 and repeals the other section as obsolete.

- Makes technical, non-substantive changes to provisions related to various penalty provisions related to sex offenders.

- Strikes the word "sexual" in the section that authorizes specified procedures for a minor's testimony that apply in a criminal proceeding in which a defendant is charged with a violation of human trafficking in order to apply the section to all forms of human trafficking.

- Clarifies that a government entity is not required to provide notice of obtaining electronic communication under circumstances in which the government entity has accessed electronic information under the emergency 911 authority.

- Adds the Department of Justice to the enumerated list of persons or entities allowed to inspect juvenile case files to carry out specified duties related to sex offender registrations.

- Renames the Council on Mentally Ill Offenders to the Council on Criminal Justice and Behavioral Health and makes conforming cross references.

- **APPENDIX A – INDEX BY AUTHOR**

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- **APPENDIX A – INDEX BY AUTHOR**

- **APPENDIX B – INDEX BY BILL NUMBER**

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