

# **ASSEMBLY COMMITTEE ON PUBLIC SAFETY**

## **PUBLIC SAFETY 2000**

### **CREATING A SAFER CALIFORNIA**

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## ANIMAL ABUSE

### Protection of Birds

Except as expressly provided, existing law makes a Fish and Game Code violation a misdemeanor, punishable by imprisonment in the county jail for up to six months, a fine not exceeding \$1,000, or by both fine and imprisonment.

**AB 1178 (Frusetta), Chapter 374**, increases the misdemeanor fine from \$1,000 to a maximum of \$5,000 for specified offenses involving birds. Specifically, this new law provides for a maximum fine of \$5,000, or six months in the county jail, or both such fine and imprisonment when:

- Taking, possessing, or destroying any birds-of-prey or to take, possess, or destroy the nest or eggs of any such bird;
- Taking, possessing, or needlessly destroying the nest or eggs of any bird;
- Taking or possessing any fully protected bird;
- Taking or possessing any migratory non-game bird as designated in the Migratory Bird Treaty Act; and,
- Taking any non-game bird.

### Live Animal Markets

Frogs, turtles, birds, and fish offered for sale in live animal markets should be treated humanely. Animals should not be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while still alive.

**AB 2479 (Kuehl), Chapter 1061**, establishes regulations for the operation of live animal markets. A violation of these regulations shall result in a warning, and a subsequent violation punishable by a fine of not less than \$250 nor more than \$1,000. Specifically, this new law:

- Requires that every person who operates a live animal market do all of the following:
  - Kill all animals humanely.

- Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.
  - Take reasonable care to offer for sale only those animals or carcasses free of injury or disease.
  - Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation.
  - Provide that no live animals will be confined, held, or displayed in a manner that results in the animal being crushed, attacked, or wounded by any other animal.
  - Provide that no animal will be confined, held, or displayed in a manner that prevents the animal from lying down, standing erect, changing posture, and resting in a normal manner for that species.
  - Frogs and turtles must be held and kept in accordance with internationally accepted standards for the transport of live animals by air, as specified.
- Defines "animal" as frogs, turtles, fish, and birds sold for the purpose of human consumption.
  - Defines "live animal market" to mean a retail food market where, in the regular course of business, animals are stored alive and sold to consumers for the purpose of human consumption.
  - Provides that a fine paid for a second violation would be deferred for six months and waived upon successful completion of course work on state and local ordinances related to live animal markets.

## BACKGROUND CHECKS

### Trustline Registry

The Trustline Registry provides parents and guardians with a means of selecting caregivers who have had background checks conducted by the Department of Social Services and the Department of Justice. For placement on the registry, individuals must be 18 years of age or older and have no reported disqualifying criminal arrests and/or convictions and no disqualifying reports of substantiated child abuse. Trustline operates a "800" telephone number that parents can call to determine if a child-care provider under consideration is an applicant or a registered Trustline child-care provider. Many children are in need of services not categorized as childcare such as tutoring or counseling.

**AB 2164 (Pescetti), Chapter 239**, broadens the definition of a Trustline provider. Specifically, this new law expands the categories of persons eligible to be registered as Trustline providers to include any person performing in-home educational or counseling services to a minor and not otherwise required to be licensed pursuant to specified Health and Safety Code provisions.

### Criminal Record Reporting

Existing law requires the Department of Justice (DOJ) to provide conviction information to prospective employers about applicants for positions with supervisory or disciplinary powers over minors or positions involving domestic or personal care for the elderly and disabled. The crimes that information is reported for are felonies and serious misdemeanors, including sex crimes against minors. Existing law limits the information that can be disclosed to convictions occurring within 10 years of the date of the employer's request, but a person who has been incarcerated for the previous 10 years would not have his or her record of conviction reported.

**AB 2665 (Ackerman), Chapter 972**, expands existing law to require the Department of Justice (DOJ) to notify the requester of a background check that the subject of the request has been incarcerated within the last 10 years for any of the offenses for which the person was convicted. Specifically, this new law:

- Requires the DOJ to provide an employer with records of specified misdemeanor controlled substance violations if the subject of the request has three or more specified violations within the preceding 10-year period or has been incarcerated as a result of those convictions within the preceding 10 years.

- Requires the DOJ to provide specified felony or misdemeanor convictions occurring within 10 years of an employer's request or any felony conviction that is over 10 years if the subject of the request was incarcerated within 10 years of the employer's request.
- Requires the DOJ to provide an employer with the criminal record of a person convicted of committing specified offenses with minors if the person has been convicted or incarcerated within the last 10 years

## **Gun Control**

With the increase of gun violence nationwide, California legislators have enacted several gun control laws over the past few years. Each year, hundreds of thousands of firearm-related crimes are reported to the police. This year on Mother's Day, the "Million Mom March" was held in Washington, D.C., where mothers and others around the country urged the United States Congress to protect children by passing sensible gun control laws.

**AJR 53 (Jackson, Scott, and Villaraigosa), Chapter 70**, memorializes Congress and the President to pass common-sense gun legislation. Specifically, this joint resolution urges Congress and the President to pass gun legislation to:

- Limit handgun purchases to one purchase per person per month;
- Require background checks for all firearms;
- Reinstate a three-day waiting period for guns;
- Require child safety locks be sold with every handgun; and,
- Ban assault weapons and high-capacity magazines.

# CHILD ABUSE

## Child Abuse and Neglect Reporting Act

Most Californians who have jobs that involve caring for or supervising children are required by law to report suspected child abuse. Because of confusion regarding which agency should be contacted, suspected child abuse often goes unreported. Child victims continue to suffer when reports are not made promptly.

**AB 1241 (Rod Pacheco), Chapter 916**, makes numerous substantive and non-substantive changes to the mandatory Child Abuse and Neglect Reporting Act (CANRA). Specifically, this new law:

- Includes "neglect" in all references to "child abuse" and cross-references specific offenses against children in the definition of child abuse or neglect.
- Makes any employee of a police department, county sheriff's department, county probation department, or county welfare department a mandated reporter under the provisions of CANRA.
- Requires that training under CANRA include training in child abuse identification and reporting, and require school districts that do not train employees to report to the Department of Education the reasons why this training is not provided.
- Provides that the absence of training shall not excuse a mandated reporter from his or her duty to report under CANRA.
- Provides that reports of child abuse or neglect shall be made to any police department, sheriff's department, county probation department, if designated by the county to receive mandated reports, or the county welfare department.
- Requires specified agencies to accept a report of suspected child abuse or neglect even if the agency to whom the report is made lacks the jurisdiction to investigate the claim, and requires that such claims be immediately referred to an agency with the proper jurisdiction.
- Recasts the reporting standard requiring a report be made whenever a mandated reporter in his or her professional capacity or within the scope of his or her employment has knowledge of, or observes, a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

- Provides that a report of possible child abuse or neglect made to an employer, supervisor, co-worker, school principal, school counselor, or other person shall not be a substitute for making a report to a designated agency, as specified.
- Requires that specified additional information be included in a report of suspected child abuse or neglect.
- Requires the Department of Justice (DOJ) to include cases of severe neglect in the child abuse index maintained by the DOJ.
- Adds "costs" to provisions of law which allow a mandated reporter to submit a claim to the Board of Control for attorney's fees associated with specified court cases.
- States that this new law is not intended to abrogate decisional law which holds that a city may be liable for damages if a peace officer breaches the duty to investigate or cross-report suspected instances of child abuse or neglect.

### **Confidential Records**

Existing law requires law enforcement agencies to make public specified information relating to crimes while providing confidentiality to victims of certain offenses.

**AB 1349 (Correa), Chapter 184**, adds victims of unlawful sexual intercourse to the list of victims of sexual assault, domestic violence, and stalking whose identity may be protected by law enforcement agencies. Specifically, this new law:

- Authorizes a law enforcement agency to withhold the name of a victim of unlawful sexual intercourse upon request of the victim, or upon request of the parents or guardian of the victim.
- Provides that the current address of a victim of unlawful sexual intercourse shall remain confidential.

### **Witnesses to Crime: Duty to Report**

In 1997, Jeremy Strohmeyer killed seven-year-old Sherrice Iverson in a Nevada casino. Strohmeyer's best friend was aware of the assault, did not intervene to save the victim, and did not attempt to contact authorities.

**AB 1422 (Torlakson), Chapter 477**, creates the misdemeanor offense of failing to notify a peace officer after observing the following crimes against

a child under the age of 14 years: (1) a lewd act on a child accomplished by force or fear, (2) murder, or (3) rape. Specifically, this new law:

- Creates a duty to notify a peace officer where a person reasonably believes that he or she has observed the crime of child abuse, murder, or rape where the victim is a child under the age of 14 years.
- Provides that the duty to notify a peace officer is satisfied if the notification or attempted notification is made by telephone or any other means.
- Provides that the failure to notify is a misdemeanor, punishable by six months in the county jail, a fine of \$1,500, or both.
- Provides that the obligation to report does not apply to:
  - ❑ Persons related to either the victim or offender, including a husband, wife, parent, child, brother, sister, grandparent, grandchild, or other person related by consanguinity or affinity.
  - ❑ Persons who failed to report based on a reasonable mistake of fact.
  - ❑ Persons who failed to report based on a reasonable fear for their own safety or for the safety of their families.

### **Great Bodily Injury: Children**

Existing law provides that any person who personally inflicts great bodily injury (GBI) during the commission of a felony shall be punished by an additional and consecutive term of three years in state prison. If the victim is 70 years of age or older, pregnant, or is rendered comatose or permanently paralyzed, the additional and consecutive prison term is five years in state prison. Small Children who are the victims of serious physical abuse sustain injuries that may result in brain damage, seizures, loss of vision and other problems.

**AB 1789 (Zettel), Chapter 919**, increases the sentence enhancement for serious injury when the victim is a child under the age of five years. Specifically, this new law provides that any person who personally inflicted GBI on a child under the age of five years shall be punished by an additional and consecutive term of four, five or six years in state prison.

### **Parole: Family Notification**

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person

convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

**SB 1343 (Monteith), Chapter 314**, requires the CDC or the BPT to notify the immediate family of a parolee who requests notification of the scheduled release date whenever a person convicted of child abuse or any sex offense against a child is paroled. This new law:

- Provides that notice of the terms of the inmate's parole shall be provided to the immediate family of the parolee if the member of the family requests notification.
- Defines "immediate family of the parolee" as parents, siblings, and spouse of the parolee.
- Requires that notification be made by mail at least 45 days before the scheduled release date. The notification shall include the name of the person to be paroled, the terms of that person's parole, whether or not that person is required to register as a convicted sex offender, and the community in which that person will reside.
- Provides that when notification cannot be provided within 45 days as a result of an unanticipated release date change, as specified, the CDC shall provide notice as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

### **Abandoned Children**

Existing law provides that any parent of a child under the age of 14 years who intentionally abandons the child is guilty of an alternate felony/misdemeanor. The abandonment of babies is an increasing problem. There have been a number of recent reports nationwide of babies being abandoned in trash bins, restrooms, and parking lots. In Los Angeles alone, the county coroner reports that their office handles 15 to 20 dead, abandoned babies each year. To encourage parents to surrender their children to hospitals instead of abandoning them, several states have enacted statutes exempting parents from prosecution for child abandonment.

**SB 1368 (Brulte), Chapter 824**, creates immunity from prosecution for child abandonment if a parent or lawful custodian voluntarily surrenders physical custody of a child to an employee at a hospital emergency room

or an additional location specified by the county board of supervisors. Specifically, this new law:

- Provides immunity from criminal prosecution to a parent or person having lawful custody of a child 72 hours old or younger who delivers the child to a designated employee of a public or private hospital emergency room or to another location designated by a county.
- Requires a person taking physical custody of a child to provide a medical screening and any necessary medical care. The consent of the parent or other relative shall not be required to provide care to the child. As soon as possible, but no later than 48 hours after being taken into custody, the person shall notify Child Protective Services. The child shall be turned over to the county child protective services or child welfare agency as soon as possible.
- Requires issuing a special identification bracelet to the child at the time of surrender. The person who surrenders the child shall be given a matching code number for identification purposes.
- Provides that the parent or other person having lawful custody of the child who surrenders the child may reclaim custody of the child within 14 days of the surrender date by providing the identifying code number, unless a health practitioner knows or reasonably suspects that the child has been the victim of abuse or neglect. The voluntary surrendering of a child is not in and of itself a sufficient basis for reporting abuse or neglect.
- Provides that at the time of surrender, the designated person shall provide or make a good-faith effort to provide a voluntary questionnaire to report on the medical history of the child and parents. The form may be completed, using only the child's identification code, at the hospital or mailed in later.
- Grants immunity from civil, criminal, or administrative liability to persons or entities for accepting and caring for a child in the good-faith belief that action is required or authorized. The immunity includes, but is not limited to, instances where the child is older than 72 hours or the person surrendering the child did not have lawful custody of the child.
- There is no immunity from liability for personal injury or wrongful death including, but not limited to, injury resulting from medical malpractice.
- Requires Child Protective Services, the child welfare agency, or the county to assume temporary custody of the child as soon as possible and to report this action to the Department of Social Services (DSS). If

custody of the child is not reclaimed within 14 days of surrender, the county agency must file a petition in dependency court and follow the procedures for abused or neglected children outlined in Welfare and Institutions Code Sections 300, et seq.

- Requires DSS to instruct counties as to the process to be used to ensure that each child is determined to be eligible for Medi-Cal benefits.
- Requires DSS to file specified reports to the Legislature as to the effects of its provisions.
- Sunsets on January 1, 2006.

### **Child Molestation**

Under existing law, child molestation, in violation of Penal Code Section 647.6, is a misdemeanor. However, the crime is punishable as a felony if the defendant previously has been convicted of child molestation, lewd or lascivious conduct with a child (Penal Code 288), or a felony violation of employing a minor to perform prohibited acts when the minor was under the age of 14 years.

**SB 1784 (Figueroa), Chapter 657**, expands the list of prior felony offenses, which make a conviction for annoying or molesting a child under the age of 18 punishable as a felony. Specifically, this new law adds rape, rape in concert, incest, sodomy, oral copulation, continuous sexual abuse of a child, forcible sexual penetration, and aggravated sexual assault of a child, any of which involved a minor under the age of 16, to the list of prior felony offenses which make a conviction for annoying or molesting a child under the age of 18 punishable by two, four, or six years in the state prison.

### **Child Abuse Training: Probation Officers**

Existing law requires specified professionals to report instances of child abuse to a child protective agency under specified circumstances. A child protective agency is defined to include a police or sheriff's department, a county welfare department, or a county probation department. Specified mandated reporters are required to receive training in the reporting and identification of child abuse.

**SB 1951 (Costa), Chapter 178**, expands probation officer training related to the identification and reporting of child abuse and neglect. This new law requires:

- The Board of Corrections (BOC) to revise the annual training requirements for probation officers providing direct services to families

and children, and for probation officers to complete the updated training on child abuse identification and reporting, as specified by the BOC.

- That the training occur no less than every three years unless the chief probation officer determines that the staff member's job responsibilities do not include contact with juvenile probationers or adult probationers who are parents or have more than occasional contact with children.



# COMPUTER CRIMES

## Computer Crimes: Forfeiture

Existing law authorizes forfeiture of computers and telecommunications equipment if used to commit specific theft, fraud, and computer crimes.

**AB 1767 (Zettel), Chapter 626**, expands the number of crimes for which a computer system or telecommunications equipment may be forfeited if used in the commission of that crime. Specifically, this new law adds stalking, terrorist threats, possession of a forged item with intent to defraud, sale of deceptive identification documents, fraudulent use of an access card, possession or sale of an access card with the intent to defraud, possession of access card making equipment, removal of serial numbers, theft of information or cable services to the list of offenses for which a conviction makes a computer subject to forfeiture if used in the commission of the crime.

## Computer Crimes: Unauthorized Access

During the past year, the "Melissa" computer virus and denial-of-service attacks have received substantial media attention due to the impact on consumers and the costs to computer servers. Recent victims have included the California Highway Patrol's dispatch radio, the United States Army's Web site and Pacific Bell Internet Services. Yahoo, CNN Interactive, Amazon.Com, eBay, Datek Online, E\*Trade, ZDNet, and Buy.com were also victims to the newest form of Internet attack, denial of service.

**AB 2232 (Oller), Chapter 634**, increases the penalties and fines for introducing a contaminant into a computer, network or system. This new law:

- Expands the definition of "injury" to include any denial of service to legitimate users of a computer system, network, or program.
- Provides that any person who knowingly provided or assisted in providing access, accesses or causes to be accesses any computer, computer system, or computer network that does not result in any injury is guilty of an infraction punishable by a fine of up to \$1,000.
- Provides that any person who knowingly introduces a contaminant into any computer, computer system, or computer network for the first time and there is no injury is guilty of a misdemeanor punishable up to one year in jail or a fine up to \$5,000 or by both imprisonment and fine. If the violation results in an injury or it was a subsequent conviction for

the crime, the person is guilty of an alternate felony/misdemeanor punishable by 16 months, 2 or 3 years in state prison or up to one year in jail and/or a fine not to exceed \$10,000.

- Provides that any person who illegally uses the Internet domain name of another individual, corporation or entity in connection with the sending of one or more electronic messages and as a result causes damage to a computer, computer system or computer network for a first-time offense is guilty of an infraction punishable by a fine not to exceed \$1,000.

### **Computer Crimes: Civil Liability**

Society has become increasingly dependent on computer technology and computer networks. While the economy has benefited from this technological boom, this same interconnectivity also creates new potential hazards, particularly those posed by computer hackers and computer viruses.

A "denial-of-service" attack is an attempt by attackers to prevent legitimate users from using a service by sending a crippling barrage of data to the target Web site. The Web server receiving the requests responds to them as though they are normal data requests from legitimate Web site visitors. Due to the sheer volume of those simultaneous requests, the server is overwhelmed and the network is disabled.

**AB 2727 (Wesson), Chapter 635**, imposes a civil remedy for a loss incurred due to specified criminal acts and allows for punitive or exemplary damages where the violations are willful or done with oppression, fraud or malice. This new law:

- Allows a civil suit for damages by any owner or lessee of a computer, computer system, computer network, computer program or data who suffers damage or loss due to a defendant violating Penal Code Section 502(c) and provides the following remedies:
  - ❑ Compensatory damages.
  - ❑ Equitable or injunctive relief.
  - ❑ Attorney's fees up to an amount equal to 10 percent of the compensatory damages.
  - ❑ Punitive damages up to \$10,000 per violation for willful violations where it is proven by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice.

- Establishes a statute of limitations period of three years from the date of the act complained of, or the date of discovery of the damage, whichever is later.

### **High Technology Crime Advisory Committee**

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high-technology crime throughout California and to advise the Office of Criminal Justice Planning (OCJP) on the appropriate disbursement of funds to regional task forces.

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program (HTTAPP), a public-private administrative body under the auspices of the OCJP for the distribution of funding to develop regional high-technology crime units in California law enforcement agencies. This law is scheduled to be repealed on January 1, 2003.

**SB 1357 (Johnston), Chapter 654**, requires the appointment of a designee of the Department of Information and Technology, or of the Science and Technology Agency, if SB 1136 (Vasconcellos) is enacted, to the (HTCAC), and deletes the January 1, 2003 sunset date on the (HTTAPP) making this program permanent.



## CONTROLLED SUBSTANCES

### **Controlled Substances: Dispensing Without a License**

Existing law provides that any person who knowingly or unlawfully dispenses or furnishes a dangerous drug or device, as defined, or owns, manages, or operates a business that dispenses or furnishes a dangerous drug or dangerous device without a license to dispense or furnish these products is guilty of a misdemeanor.

Currently, if a person is arrested for furnishing a prescription drug without a license, the product must be subjected to expensive laboratory testing even if the bottle is clearly labeled.

**AB 751 (Gallegos), Chapter 350**, expands the definition of the above crime to include dispensing or furnishing any material represented as, or presented in lieu of, any dangerous drug or device.

In addition, this new law deletes the sunset date on provisions of law which allow a local health officer to take specified action, including the immediate closure of a business if the officer determines a person is dispensing drugs without a license and the business poses an immediate threat to the public health and safety.

### **Schedule II Triplicate Prescriptions**

Existing law establishes the California Uniform Controlled Substances Act, which lists controlled substances in five different schedules. Each prescription for a Schedule II controlled substance must be wholly written in ink or indelible pencil in the handwriting of the prescriber upon an official prescription form, in triplicate, issued by the Department of Justice (DOJ). The original and duplicate of the prescription are delivered to the pharmacist filling the prescription. Existing law requires the duplicate to be retained by the pharmacist and the original to be transmitted to DOJ at the end of the month in which the prescription was filled.

**AB 2018 (Thomson), Chapter 1092**, changes existing triplicate prescription requirements for Schedule II controlled substances to reduce administrative complexities and to facilitate effective pain management. Specifically, this new law:

- Allows a practitioner to orally, electronically, or in writing request larger amounts of prescription blanks, which are issued by DOJ in serially numbered groups of not more than 100 forms each in triplicate.

- Deletes the requirement that DOJ limit the issuance of triplicate prescription blanks to 100 forms during a 30-day period.
- Removes the provision that prevents DOJ from issuing more than one "prescription group" to the same prescriber at one time.
- Allows a pharmacist to fill a Schedule II controlled substance prescription, which contains an error or errors, if: (1) the pharmacist notifies the prescriber; and (2) the prescriber approves any correction and provides, by fax or mail, a corrected prescription to the pharmacist within seven days of the prescription being dispensed.

### **Electronic Prescriptions**

Based upon recent advances in computer technology, pharmacies and hospitals are increasingly changing to electronic prescription transmission. In addition, health care providers are storing prescription drug information electronically.

**AB 2240 (Bates), Chapter 293**, eliminates the requirement that electronic data transmission prescriptions for non-controlled substances be reduced to writing by a pharmacist and permits entering non-controlled substances into a pharmacy's computer from any location with the permission of the pharmacy or hospital. Electronic data transmission may also apply to prescriptions for controlled substances if authorized by federal law and approved by the California State Board of Pharmacy (Board) and the Department of Justice (DOJ). Specifically, this new law:

- Eliminates a requirement that electronic data transmission prescriptions for non-controlled substances be reduced to writing by the pharmacist, as long as the pharmacy is able to immediately produce a hard copy upon request, with specified information, for three years from the last date of furnishing the prescription.
- Requires any pharmacy that only records and stores prescriptions electronically for non-controlled substances to have a computer system that does not permit the received information to be changed, obliterated, destroyed, or disposed of, during the three-year record maintenance period. After dispensing a drug, if the previously created record is incorrect, a correcting addition may be made only by or with the approval of the pharmacist. The resulting record shall contain the correcting addition, the date it was made to the record, the identity of the person or pharmacist making the correction, and the identity of the pharmacist approving the correction.

- Permits a prescriber, a prescriber's authorized agent, or a pharmacist to enter prescriptions into a pharmacy's or hospital's computer from any location with the permission of the pharmacy or hospital.
- Provides that no dangerous drug may be dispensed pursuant to a prescription that has been electronically entered into a pharmacy computer system without the prior approval of a pharmacist.
- Provides that subject to approval by the Board and DOJ, a pharmacy or hospital may receive electronic data transmission prescriptions for controlled substances and not be required to reduce the prescriptions to written form if authorized by federal law and in accordance with any regulation promulgated by the Federal Drug Enforcement Administration. The Board must maintain a list of all requests and authorizations pursuant to this provision. This new law requires that controlled substances are subject to the same conditions for other prescriptions transmitted and recorded electronically.
- Specifies that any pharmacy dispensing Schedule II - V controlled substances pursuant to electronic transmission prescriptions is not exempt from existing reporting requirements.

### **Dronabinol**

Dronabinol, an orally taken pharmaceutical form of synthetic medicinal marijuana, is presently classified as a Schedule II controlled substance, which allows the prescription of Dronabinol only through registered, triplicate prescriptions, except for terminally ill patients.

**SB 550 (Johnston), Chapter 8**, reclassifies Dronabinol as a Schedule III controlled substance, and thereby reduces the requirements for the written prescription of the drug by physicians but does not reduce the penalties for the unlawful possession, possession for sale, or sale of the drug.

This new law takes effect immediately as an urgency stature.

### **Office-Based Opiate Treatment Programs**

There is an absence of medical addiction treatment services in certain areas of California. Current law does not authorize existing licensed narcotic treatment programs to contract with physicians to provide services in office-based settings.

**SB 1807 (Vasconcellos), Chapter 815**, requires the Department of Alcohol and Drug Programs (DADP) to establish an office-based opiate treatment program (OBOT). This new law also authorizes persons

participating in deferred entry of judgment or pre-guilty plea drug programs, as specified, to also participate in a licensed methadone or levoalphacetylmethadol (LAAM) program. Specifically, this new law:

- Requires DADP to establish an OBOT program. Requires an OBOT to either hold a primary licensed narcotics treatment program (NTP) license or be affiliated and associated with a NTP, as specified.
- Defines an "OBOT" as a program in which physicians provide addiction treatment services; and community pharmacies supply necessary medication both to physicians for distribution and through direct administration and dispensing services.
- Authorizes a person participating in a deferred entry of judgment program or a pre-guilty plea program to also participate in a licensed methadone or LAAM program if specified conditions are met.
- Finds and declares that licensed physicians, experienced in the treatment of addiction, should be allowed and encouraged to treat addiction by all appropriate means.

## CORRECTIONS

### Parole: High-Risk Sex Offenders

Approximately one-half of the 7,300 adult sex offenders now under state parole supervision are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders have received any treatment while in prison to curb their pattern of criminal activities, and only a fraction receive intensive supervision, treatment and control after they are released. Two out of three offenders fail on parole by committing new crimes or parole violations. A program to address the concerns of the public by sending such offenders to state mental hospitals is proving costly and is holding relatively few offenders.

**AB 1300 (Rod Pacheco), Chapter 142**, requires the California Department of Corrections (CDC) to the maximum extent practicable and feasible to ensure that by July 1, 2001 all parolees under active supervision deemed to be high-risk sex offenders, be placed on intensive and specialized parole supervision, and extends the period of parole to five years for persons convicted of specified sex offenses. Specifically, this new law:

- Requires the CDC to the extent feasible and subject to a legislative appropriation to ensure by July 1, 2001 that all parolees under parole supervision deemed to be high-risk sex offenders be placed in intensive and specialized parole supervision.
- Requires the CDC to develop a specialized sex offender treatment program, subject to an appropriation and at the discretion of the director. This program may include a plan of relapse prevention treatment in conjunction with intensive parole supervision.
- Requires the CDC to study the effects of intensive parole supervision and specialized sex offender treatment on the rate of recidivism of parolees, and requires that 2 two-year analyses be submitted to the Legislature on or before January 1, 2004 and January 1, 2006.
- Provides that for any inmate sentenced for conviction of specified sex offenses, the period of parole shall not exceed five years.
- Provides that any inmate sentenced under the "one-strike" sex law be on parole for a period of five years which, under specific conditions, may be extended for an additional five-year period.

- States that this new law is an urgency statute to take effect immediately.
- States that this new law shall only remain in effect until July 1, 2006, and, as of that date, is repealed.

### **Parole: Sex Offenders**

Existing law allows the Board of Prison Terms (BPT) to impose conditions of parole on any prisoner granted parole and gives the BPT the power to revoke or suspend a parole and return a parolee to custody.

**AB 1302 (Thomson), Chapter 484**, requires the parole authority to report to local law enforcement the circumstances of any conduct that was the basis of a parole revocation if that conduct upon a criminal conviction would require a parolee to register as a sex offender. This new law:

- Requires on or after January 1, 2001 whenever any paroled person has his or her parole revoked for conduct which would require the paroled person to register as a sex offender, the paroling authority must report the circumstances which were the basis for the revocation to the law enforcement agency and the district attorney who has jurisdiction over the community where the circumstances occurred.
- Requires the Department of Corrections to report the circumstances to the same agencies upon release of the paroled person, or to law enforcement or the district attorney in the county where the person is paroled, if different.

### **Prisoners: Gassing**

"Gassing" presents a serious threat to the health and safety of local detention personnel. Gassing victims should be given the opportunity to treat any disease they may have been exposed to. Only immediate medical testing of inmates who commit this form of battery will allow medical officers to effectively treat public safety personnel.

**AB 1449 (Flores), Chapter 627**, provides that every person confined in any local detention facility or any facility under the Department of Youth Authority's (CYA) jurisdiction who batters any peace officer or employee of the facility by gassing is guilty of aggravated battery, a felony. The inmate must undergo medical testing for hepatitis and tuberculosis. Specifically, this new law:

- Provides that every person confined in a local detention facility who battered any peace officer or employee of the detention facility by gassing is guilty of aggravated battery, a felony.
- Defines "gassing" as placing or throwing, or causing to be placed or thrown on another person any bodily fluids, substances, or mixture of bodily fluids or substances. AB 1449 requires actual contact with the victim's skin or membranes.
- Obligates the chief medical officer of the detention facility to order the inmate to undergo an examination or test for hepatitis and tuberculosis immediately after the event, and periodically thereafter as the medical officer determines necessary.
- Provides that the test results be provided to the officer or employee who was the target of the incident.
- Requires all incidents of gassing to be reported to the district attorney for possible prosecution.
- Makes gassing in an institution under the jurisdiction of the CYA an aggravated battery.
- Requires the CYA to report to the Legislature findings and recommendations on gassing incidents at CYA's facilities.
- Deletes the January 1, 2001 repeal date on provisions of law which make gassing in any facility of the Department of Corrections an aggravated battery.

### **Community Correctional Facilities**

Existing law authorizes the Department of Corrections to administer and operate the state prison system, and provides for the establishment and operation of community correctional and restitution centers.

Restitution has long been a desirable policy, and there is a need to increase the utilization of existing restitution centers enabling more victims to be compensated for their losses.

**AB 1478 (Baugh), Chapter 249**, allows the Director of the California Department of Corrections to commingle inmates assigned to a restitution center with inmates who are in transit for community correctional re-entry center placement. This new law also requires the Judicial Council to

provide information to sentencing courts in those areas served by a restitution center to ensure that judges responsible for sentencing are aware of the existence of restitution centers.

### **Indemnification: Erroneously Convicted Persons**

There are those rare instances where imprisoned individuals have been found factually innocent. Under existing law, the restitution for wrongful imprisonment is limited to \$10,000. Presently, the Department of Corrections (CDC) compensates an individual kept beyond his or her release date at the rate of \$100 per day.

**AB 1799 (Baugh), Chapter 630**, removes the \$10,000 limitation on the recommended appropriation for a person wrongly convicted, provides that the recommended compensation is a sum equivalent to \$100 per each day of incarceration, and excludes compensation from gross income provisions of law.

### **Prisoners: Security and Clothing**

The California Department of Forestry (CDF) operates the California Department of Corrections' (CDC) camp program, which houses inmates in camps throughout California. Inmates assigned to the firefighter program are all classified as minimum-security risks. During the non-fire season, these inmates perform community service work and are allowed to wear prison-issued denim pants and jeans.

**AB 1890 (Rod Pacheco), Chapter 525**, requires the CDC's work or fire crews that operate outside of prison grounds to wear distinctive clothing. Specifically, this new law states that the CDC shall require that prisoners working outside the prison grounds in road clean-up crews or fire crews wear distinctive clothing for identification purposes.

### **Placement of Paroled Sex Offenders**

Existing law prohibits parolees who are registered sex offenders from living within one-quarter mile of any school, K-6.

**AB 1988 (Strickland), Chapter 153**, clarifies existing law relating to inmates released on parole for any violation of child molestation or continuous sexual abuse of a child. Specifically, this new law provides that the prohibition against placement or residency within one-quarter mile of a school remains effective during the entire period of parole and is not limited to the initial placement of the parolee.

## **Children Of Incarcerated Women: Study**

Existing law requires the California Department of Corrections (CDC) to establish and implement a community treatment program for women sentenced to state prison who have one or more children under the age of six years. Currently, there are over 22,000 children impacted by their mothers' incarceration and little is known about where or with whom they are residing, their health status, their progress in school, and who is paying for their care. Moreover, little is known about the combination of risk factors that leads many of these children into involvement with the criminal justice system.

**AB 2316 (Mazzoni), Chapter 965**, requires the California Research Bureau (CRB) in the California State Library to conduct a study of the children of women who are incarcerated in state prisons. Specifically, this new law:

- Requires CRB to conduct a study of the children of women who are incarcerated in state prisons.
- Requires that CRB design and complete the study, surveying selected state prisoners in cooperation with CDC. Requires that CRB review the records of local agencies to obtain outcome information about a sample of women prisoners' children.
- Requires county agencies, including members of multidisciplinary teams, and school districts to permit CRB to have reasonable access to records, to the extent permitted by federal law.
- Requires that CRB follow appropriate procedures to ensure confidentiality of the records and to protect the privacy of the survey participants, their children, and participating agencies.

## **Stalking**

Under existing law, the maximum term for a second felony stalking conviction is four years. In most cases, these penalties are sufficient to deter stalkers from continuing this behavior after they are released from state prison. However, in a small, but growing number of cases, stalkers continue to stalk their victims or stalk new victims after they are released from prison. These repeat and serial stalkers are among the most dangerous criminal offenders.

**AB 2425 (Corbett), Chapter 669**, increases the aggravated penalty for a subsequent conviction for stalking, expands the specified offenses that would support a conviction, requires the county sheriff to operate a telephone number where victims of stalking can inquire as to the bail

status of persons arrested for stalking, and requires intensive parole supervision for parolees convicted of stalking. Specifically, this new law:

- Provides that any person previously convicted of a felony violation of stalking, inflicting corporal injury on a spouse, threatening to commit a crime that would result in death or great bodily injury, or violation of a domestic violence restraining order, and who was convicted of stalking shall be punished by imprisonment in the state prison for two, three, or five years.
- Requires the county sheriff to designate a telephone number which shall be available to the public to inquire regarding the bail status, release, or scheduled release of any person arrested for stalking, but does not require the sheriff to establish a new telephone number.
- Requires the California Department of Corrections (CDC) to ensure that any parolee convicted of stalking, on or after January 1, 2002, who was deemed to be at a high risk of committing a repeat stalking offense be placed on intensive and specialized parole supervision for the period of parole.
- States that CDC shall accomplish the requirements of this new law by redirecting staff resources from low-risk offenders, and requires that the program include referral to specialized services, such as substance abuse treatment.
- Requires CDC to obtain the services of mental health providers specializing in the treatment of stalking patients, and requires parolees to participate in clinical counseling programs aimed at reducing the likelihood that the parolee will re-offend.
- States that the program shall be targeted at parolees convicted of stalking who met the following conditions: (1) the offender was within one year of being released on parole; (2) the offender had been subject to a clinical assessment; (3) a review of the offender's criminal history indicated that the offender posed a high risk of committing new stalking offense upon his or her release on parole; and, (4) the offender, based on his or her clinical assessment, may be amenable to treatment.
- Requires that clinical treatment for inmates who met the conditions for placement in this program shall begin prior to the inmate's parole date, while the inmate was still incarcerated.

- Requires the CDC to evaluate the intensive supervision program and report to the Legislature as to the effectiveness of the program.
- Makes the intensive supervision requirement contingent upon a budget appropriation.

### **Parole: Battered Woman Syndrome**

In view of the circumstances surrounding crimes committed by battered women against their batterers and the inability of many of these women to present evidence of the abuse they endured as a defense at trial, these women should receive serious and heightened review of their sentences.

**SB 499 (Burton), Chapter 652**, requires the Board of Prison Terms (BPT) in granting or denying parole to consider whether the prisoner had suffered from battered women syndrome (BWS) at the time of the commission of the crime. Specifically, this new law:

- Requires the BPT in considering a prisoner's suitability for parole to consider any evidence that at the time of the commission of the crime the prisoner had suffered from BWS.
- Limits consideration of BWS to cases occurring prior to statutory recognition of BWS in 1991.
- Requires the BPT to state on the record the facts that it considered and the reasons for the parole decision.
- Requires the BPT to report annually to the Governor and the Legislature on cases involving BWS considered during the previous year, including the BPT's decisions involving those cases and the findings of the BPT's investigation of these cases.

### **Correctional Peace Officer Training**

The increase in the number of California prisons has resulted in a large cadre of new correctional officers coming on line with substandard training. While California has made a large investment in physical plants, it has not invested in the human resources of the California Department of Corrections (CDC). Correctional peace officers have less training than any other peace officer group in California.

**SB 577 (Peace), Chapter 987**, requires the CDC and the Department of the Youth Authority (CYA) to provide 16 weeks of training to each

correctional peace officer candidate and two weeks of training to each newly appointed first-line supervisor. Specifically, this new law:

- Provides that the CDC and the CYA shall provide 16 weeks of training to each correctional peace officer candidate prior to being assigned a post or position as a correctional peace officer.
- Provides that the CDC and the CYA shall provide a minimum of two weeks of training to each newly appointed first-line supervisor.
- Requires that each new cadet or first- or second-line supervisor who attends a training academy after July 1, 2001 shall complete a course of training approved by the Commission on Correctional Peace Officers Standards and Training.
- Takes effect immediately as an urgency statute.

### **Stalking: Victim Notification**

Existing law requires the California Department of Corrections (CDC), county sheriff, or director of the local department of corrections to give notice not less than 15 days prior to the release from the state prison or a county jail of any person convicted of stalking or a felony offense involving domestic violence.

**SB 580 (Lewis), Chapter 561**, Requires that victims of stalking or felony domestic violence be notified of any change in the parole status or location of the convicted person, or if the convicted person absconds from local supervision, and requires correctional authorities to make reasonable attempts to locate a person who has requested notification but for whom a current address is not available. Specifically, this new law:

- Requires the CDC, county sheriff, or director of the local department of corrections to notify a victim of stalking or a felony offense involving domestic violence of any change in the parole status or parole location of the person convicted, or if the convicted person absconds from supervision.
- Requires the county sheriff or chief of police to make all reasonable attempts to locate a person who has requested notification but whose address and telephone number are incorrect or not current.
- Provides that an inmate released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the

inmate on parole, and there is a finding that there is a need to protect the life, safety, or well-being of the victim.

- Requires the CDC to notify by mail at least 45 days prior to the scheduled release date of any person convicted of stalking, the county sheriff, chief of police and district attorney in the jurisdiction where the person was convicted or scheduled to be released.

### **Parole: Family Notification**

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

**SB 1343 (Monteith), Chapter 314**, requires the CDC or the BPT to notify the immediate family of a parolee who requests notification of the scheduled release date whenever a person convicted of child abuse or any sex offense against a child is paroled. This new law:

- Provides that notice of the terms of the inmate's parole shall be provided to the immediate family of the parolee if the member of the family requests notification.
- Defines "immediate family of the parolee" as parents, siblings, and spouse of the parolee.
- Requires that notification be made by mail at least 45 days before the scheduled release date. The notification shall include the name of the person to be paroled, the terms of that person's parole, whether or not that person is required to register as a convicted sex offender, and the community in which that person will reside.
- Provides that when notification cannot be provided within 45 days as a result of an unanticipated release date change, as specified, the CDC shall provide notice as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

## **Interstate Compact for Adult Offender Supervision**

The Interstate Compact was enacted in 1937 to keep track of probationers and parolees who cross state lines. Since then, the ease and frequency of travel has posed a problem for the outdated Compact. According to the Council of State Governments, the existing state Compact leaves states with limited controls on the movements of state and local probationers and parolees. However, states are liable for the movements and actions of these offenders. The National Institute of Corrections reports that nearly 250,000 adult offenders each year move among the 50 states and territories. These offenders are supervised by over 3,000 different local probation and parole offices operated by more than 860 separate agencies.

**SB 2023 (Lewis), Chapter 658**, ratifies the Interstate Compact for Adult Offender Supervision (ICAOS), sponsored by the Council of State Governments. Specifically this new law:

- Ratifies a compact that would go into effect once adopted by 35 states and repeals the Uniform Act for Out-of-State Probationer or Parolee Supervision, enacted in California in 1953.
- Establishes an Interstate Commission on Adult Offender Supervision to govern, manage and monitor interstate movement of probationers and parolees within uniform procedures.
- Requires creating a State Council consisting of representatives from each branch of government, victims' rights groups and compact administrators. The state council would be responsible for appointing a commissioner who would serve as the state representative and the only voting member on the Interstate Commission on Adult Offender Supervision.
- Provides states that enter into the Compact have the legal authority and access to the legal process when dealing with other states in issues regarding the interstate movement of adult parolees and probationers, including the return of offenders.
- Requires regular reporting of compact activities to state councils, government branches and criminal justice administrators.
- Contains additional related provisions regarding the structure and guidelines of the Interstate Commission, finance, and judicial enforcement of ICAOS.
- Also establishes the California Council for Interstate Adult Offender Supervision. The Council would be responsible appointing the

commissioner who would represent California and serve on the Interstate Commission for Adult Offender Supervision. The commissioner would also be the compact administrator for the State of California for purposes of the ICAOS. The commissioner/compact administrator would be appointed for a term of two years.

- Requires the Council to determine the qualifications of the compact administrator, exercise oversight and advocacy concerning its participation in Interstate Commission activities, and perform other duties as may be determined by the Legislature or Governor.
- Specifies the Council consists of seven members. The Governor would appoint four members, one of whom would represent victims rights groups and one of whom would represent local compact administrators. One member each would be appointed by the Senate Committee on Rules and the Speaker of the Assembly. The Judicial Council would appoint one superior court judge as a member. Each member of the council would serve a term of two years. Council members shall not be compensated, except for reasonable per diem expenses related to their work for council purposes.

### **Licensing of California Youth Authority Mental Health Professionals**

A substantial number of psychologists employed by the California Youth Authority (CYA) do not have a license issued by the California Medical Board. Only a few CYA psychiatrists specialize in child and adolescent psychiatry. In 1999, CYA mental health staff distributed significant amounts of psychotropic drugs to treat schizophrenia, depression, and other forms of mental illness. Many of the substances pose substantial risks to patients and have potentially long-lasting side effects.

**SB 2098 (Hayden), Chapter 659**, requires psychologists employed by CYA to be licensed to practice in California. Specifically, this new law:

- Requires psychologists employed by or who contract with CYA to provide services to wards to be licensed to practice in California.
- Exempts psychologists employed by CYA on July 1, 1999, as long as he or she continues employment in the same class.
- Provides that the licensing requirement may be waived in order for a person to gain qualifying expertise for licensure as a psychologist.
- Provides that to the extent that funding is available, CYA in consultation with the Department of Mental Health (DMH) shall develop training in the treatment of children and adolescents for

mental health disorders and provide training to all appropriate mental health professionals.

- Requires DMH in consultation with CYA to adopt regulations by December 31, 2001 specifying standards and guidelines for the administration of psychotropic medications to any person under the jurisdiction of CYA. The standards and guidelines shall be consistent with the due process requirements as specified in the Penal Code.

## COURT HEARINGS/PROCEDURES

### Statute of Limitations: DNA Evidence

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act. The purpose of the legislation was to help law enforcement agencies promptly detect and prosecute individuals responsible for sex offenses and other violent crimes, as well as exclude suspects being investigated for such crimes. However, a number of cases that could be solved through the use of genetic profiling are barred by the current six-year statute of limitations while the State of California is in the process of modernizing its crime laboratories.

**AB 1742 (Correa), Chapter 235**, extends the statute of limitations for sex offenses and creates an exception to the statute where the identity of the offender is established through DNA testing. Specifically, this new law:

- Extends the statute of limitations from six to ten years for sex offenses where the limitation period as specified has not expired as of January 1, 2001 or the offense is committed on or after January 1, 2001.
- Provides that the statute of limitations for specified sex offenses is either 10 years or 1 year from conclusively establishing the identity of the suspect by DNA testing, whichever is later, if either of the following conditions is met:
  - For offenses committed before January 1, 2001, DNA evidence is analyzed no later than January 1, 2004.
  - For offenses committed after January 1, 2001, DNA evidence is analyzed no later than two years from the date of the offense.

### Sentencing

From 1977 to 1997, the determinate sentencing law provided for consecutive sentences subject to four basic limitations or "caps" on the various sentencing enhancements that may be applied. There were rules limiting the total time of imprisonment to twice the base term, limiting enhancements for both weapons and injuries, limiting non-violent subordinate terms to five years, and prohibiting adding enhancements on non-violent subordinate terms. There were numerous exceptions to those rules. In 1997 and 1998, the law was changed to simplify the statutory scheme with very little change in actual sentences.

**AB 1808 (Wayne), Chapter 689**, eliminates the prohibition on the imposition of enhancements on subordinate terms and clarifies a court's power to strike specified enhancements. This new law:

- Eliminates the prohibition on the imposition of enhancements on consecutive, subordinate terms for non-violent crimes.
- Confirms the discretion of the court to strike an enhancement in the interests of justice pursuant to Penal Code Section 1385.
- Allows unlimited enhancements in all sexual cases specified in Penal Code Section 667.6.
- Repeals Penal Code Section 1170.95, which sets special rules for robbery defendants that have been made irrelevant by Proposition 21 (March 2000 Primary Election).

### **Conditional Examinations**

The prosecution of elder abuse cases is often hampered by the inability of an elder adult to either remember an incident or the elder adult's rapidly changing health. A conditional examination (an examination based on videotaped testimony with court verification) preserves a witness's testimony for a trial that often occurs months, or even years, later. Often, a victim of elder abuse is competent and otherwise able to testify at the time he or she reports an incident of abuse. However, by the time the trial approaches, the victim's health can rapidly decline and with it, his or her ability to remember and communicate facts. There is no provision to apply for a conditional examination once the victim's condition begins to deteriorate. The net effect is that these cases cannot be prosecuted and must be dismissed.

**AB 1891 (Lowenthal), Chapter 186**, provides that conditional examinations may also be taken of a person 70 years of age or older or dependent adults. Specifically, this new law:

- Provides that either party to a criminal action may apply for an order to conduct a conditional examination of a material witness who is 70 years of age or older or a dependent adult.
- Defines "dependent adult" as any person between the ages of 18 and 70, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. A dependent adult includes any person

between the ages of 18 and 70 who is admitted as an inpatient to a 24-hour facility, as specified.

### **Identity Theft: Remedies**

The crime of identity theft is sharply on the rise. According to the Privacy Rights Clearinghouse, there are at least 500,000 victims of identity theft each year, many of which involve credit fraud. However, criminal identity theft cases have also increased over the years. Criminal identity theft happens when a victim's name and personal information is used by an imposter during an arrest or prosecution. Currently, a criminal identity theft victim has no convenient and fully effective way to correct criminal records created by the imposter. It may take years for a victim to correct his or her records, during which time a victim may be wrongfully apprehended or finding employment.

**AB 1897 (Davis), Chapter 956**, creates a judicial process whereby a victim of identity theft can clear his or her name. This new law:

- Allows a person who suspects that he or she is a victim of identity theft to initiate an investigation at a local law enforcement agency and to obtain a police report to document the fact of the identity theft.
- Provides that a victim of suspected identity theft may petition the court for an "expedited" judicial determination of factual innocence under the following circumstances and pursuant to the following procedures:
  - Where the perpetrator of the identity theft was convicted of a crime under the victim's identity.
  - Where the identity theft victim's name has been mistakenly associated with a record of criminal conviction.
  - Judicial determination of these issues shall be made after consideration of declarations, affidavits, police report and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense.
  - Where the court finds the petitioner factually innocent, the court shall issue an order certifying that fact. The Judicial Council is required to develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence may at any time vacate that determination if the petition,

or any information submitted in support of the petition, is found to contain any material misrepresentation of fraud.

### **Criminal Procedure: Death Penalty**

Existing law requires the court to give criminal proceedings, including the setting for trial and hearing of the matter, precedence over any civil matters or proceedings. Death penalty trials are usually longer and more complex than other criminal trials, and should be given precedence.

**AB 2125 (Pacheco), Chapter 268**, requires that the court give death penalty cases in which both the defense and the prosecution have informed the court that they are prepared to proceed to trial precedence over other criminal proceedings, unless the court finds in the interest of justice that it is not appropriate.

### **Sex Offenders: Criminal Record Expungement**

Existing law allows a person who has successfully completed probation to have the accusations or information against him or her dismissed, and except as noted, shall be released from all penalties and disabilities resulting from the conviction of the offense.

**AB 2320 (Dickerson), Chapter 226**, prohibits any person convicted of a felony violation of being a person over the age of 21 and engaging in unlawful sexual intercourse with a minor under the age of 16 from having the accusatory pleading against him or her dismissed, and from being relieved from all penalties and disabilities as a result.

### **Jury Selection**

Before 1990, the questioning of prospective jurors in criminal cases ("voir dire") was conducted by prosecutors and defense attorneys. In 1990, Proposition 115 changed jury selection procedures by having judges conduct voir dire.

**AB 2406 (Migden), Chapter 192**, restores the right to prosecutors and defense attorneys to question prospective jurors in criminal cases within limits prescribed by the court. Specifically, this new law:

- Provides that counsel for both parties, upon completion of the court's initial examination, have the right to question prospective jurors.
- Provides that the court has the discretion to limit the questioning of jurors. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify

an aggregate amount of time for each party, which may be allocated among the prospective jurors by counsel.

- Provides that any limitations on the time allowed for questioning jurors and any determination that a particular question was not for the purpose of exercising a challenge for cause, shall not cause any conviction to be reversed, unless it results in a miscarriage of justice as defined in the California Constitution.

### **Juror Privacy**

Prosecutors and defense lawyers frequently attempt to question jurors after trials, asking for feedback about how to be more effective advocates and often times investigating claims of juror misconduct. Existing law provides that before discharging the jury in a criminal case, the judge must inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with any person.

**AB 2567 (Jackson), Chapter 242**, expands the juror privacy admonition to require the defense and prosecution to more fully advise jurors of their rights regarding discussing the deliberation or verdict. Specifically, this new law provides that before discussing the jury deliberation or verdict with a member of the jury more than 24 hours after the verdict, both the prosecution and the defense shall inform the juror of the following:

- The identity of the case.
- The party in the case that the person represents.
- The subject of the interview.
- The absolute right of the juror to discuss or not to discuss the deliberation or verdict with any person.
- The right of the juror to review and have a copy of any declaration filed with the court.

### **Commitment Petitions**

Existing law authorizes the Board of Prison Terms to order a person referred to the Department of Mental Health to remain in custody for a full evaluation for no more than 45 days, unless his or her scheduled date of release falls more than 45 days after referral. That person may be committed after a probable cause hearing and after a trial where he or she is found to be a sexually violent

predator (SVP). Existing law was unclear as to whether a person could be detained beyond his or her scheduled date of release until a probable cause hearing was completed.

**SB 451 (Schiff), Chapter 41**, clarifies existing law and authorizes the Board of Prison Terms to order a person referred to the Department of Mental Health to remain in custody for no more than 45 days beyond the person's scheduled release date and remain in custody pending the completion of the probable cause hearing. Specifically, this new law:

- Provides that a SVP may remain in custody for no more than 45 days beyond his or her scheduled release date for a full evaluation.
- Provides that upon filing a petition, and after a judicial finding of probable cause, the judge shall order that the SVP be detained until a probable cause hearing can be completed and the hearing shall commence within 10 calendar days of the judge's order.
- Provides that upon the commencement of the probable cause hearing, the SVP shall remain in custody pending the completion of the hearing.

### **Post-Conviction DNA Testing**

Currently, California lacks a statute giving inmates the right to post-conviction DNA testing and, consequently, such testing is at the discretion of the prosecutor. Innocent persons should not serve time or be executed for crimes they did not commit. As long as an innocent person is incarcerated for a crime he or she did not commit, the guilty party remains at-large and represents a continuing danger to society.

**SB 1342 (Burton), Chapter 821**, requires the court to grant a motion for the performance of DNA testing under specified conditions for any person convicted of a felony currently serving a term of imprisonment, and requires the appropriate governmental entity to preserve any biological material secured in a criminal case, as specified. Specifically, this new law:

- Provides that a person convicted of a felony and currently serving a term of imprisonment may make a written motion verified under penalty of perjury before the trial court which entered the conviction for performance of DNA testing.
- Requires that the motion for DNA testing explain why identity was, or should have been, an issue in the case; how the requested testing would raise a reasonable probability that that there would have been a

more favorable verdict if the results of DNA testing were available at the trial; and identify the material to be tested and the specific type of DNA testing sought.

- Requires that a notice of the hearing be served on the Attorney General; the district attorney in the county of conviction; and, if known, the governmental agency or laboratory holding the evidence, and requires that responses be filed within 60 days of service.
- Allows the court discretion to grant a hearing on the motion, and requires that the motion be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable.
- Requires the court to appoint counsel for an indigent, convicted person.
- States the court shall grant the hearing on the motion for DNA testing if all of the following has been established:
  - The evidence to be tested is available and in a condition that would permit DNA testing requested in the motion.
  - The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect.
  - The identity of the defendant was, or should have been, a significant issue in the case.
  - The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator or accomplice to the crime or enhancement which resulted in the conviction or sentence.
  - The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the defendant's verdict or sentence or would have been more favorable if the results of DNA testing had been available at the time of conviction. The court, in its discretion, may consider any evidence whether or not it was introduced at the trial.
  - The evidence sought to be tested either:
    - Was not tested previously, or

- Was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.
- The testing requested employs a method generally accepted within the scientific community.
- The motion is not made solely for the purpose of delay.
- Requires that the testing be conducted by a laboratory mutually agreeable to the district attorney or the attorney general, as specified, and the person filing the motion; and if the parties cannot agree, the court's order shall designate a laboratory.
- Requires that the results of any testing ordered be fully disclosed to each of the parties. If requested by either party, the court shall order production of the underlying data and notes.
- Provides that the cost of DNA testing shall be borne by the State or by the applicant if the court finds that the applicant is not indigent and has the ability to pay, and states legislative intent to appropriate funds for this purpose.
- Provides that any order granting or denying a motion for DNA testing shall not be appealable, and shall be reviewable only through petition for writ of mandate or prohibition as specified.
- Requires the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with the case, and the governmental entity shall have the discretion to determine how that evidence is retained, as long as it is retained in a condition suitable for DNA testing.
- Allows a governmental entity to destroy biological materials before the expiration date of the following conditions are met:
  - The governmental entity notifies the person who remains incarcerated in connection with the case, any counsel of record, the public defender and the district attorney in the county of conviction and the Attorney General of its intention to dispose of the material.
  - The entity does not receive within 90 days of the notice any of the following:

- A motion requesting that DNA testing be performed, which allows that the material sought to be tested only be retained until such time as the court issues a final order.
  - A request under penalty of perjury that the material not be destroyed because a motion for DNA testing will be filed within 180 days, and a motion is in fact filed within that time period.
  - A declaration of innocence under penalty of perjury filed with the court within 180 days of the judgment of conviction or before July 1, 2001, whichever is later; however, the court shall permit the destruction of the evidence upon a showing that the declaration is false or that there is no issue of identity which would be affected by future testing.
- States that this section shall become inoperative on January 1, 2003 and is repealed as of that date unless a later enacted statute extends or deletes this provision.

**Crimes Involving Alcohol Or Substance Abuse: Drug and Alcohol Assessment Programs**

Substance abuse is a significant factor contributing to criminal behavior. Persons arrested with alcohol or drugs in their system are not adequately being assessed or monitored for substance abuse.

**SB 1386 (Alpert), Chapter 165**, authorizes a county to develop and administer an alcohol and drug problem assessment program for a person convicted of a crime that involves alcohol or substance abuse, and allows a report from the assessment program to be used by the court at sentencing. Specifically, this new law:

- Provides that each county may develop and administer an alcohol and drug problem assessment program for a person convicted of a crime in which the court finds that alcohol or substance abuse was substantially involved in the commission of the crime. This program shall include a face-to-face interview with each program participant, and may be operated in coordination with a county alcohol and drug problem assessment program for driving under the influence (DUI) or DUI-related offenses.
- Provides that an alcohol and drug problem assessment report shall be prepared for each participant in the program. The report may be used to determine the appropriate sentence for the participant.

- Provides that a court may order any person convicted of a crime that involved the use of drugs or alcohol, or who was found to be under the influence of drugs or alcohol during the commission of the crime, to participate in the assessment program.
- Provides that there shall be levied an assessment of not more than \$150, where the court orders the defendant to participate in a county alcohol and drug problem assessment program. The court shall determine if the defendant has the ability to pay the assessment.
- Excludes persons convicted of a DUI or a DUI-related offense from participation in any program established by this new law.

### **Turning Point Academy**

In an effort to combat youth violence, the California Legislature and Governor sought a new approach to dealing with a youth who commits a firearm-related offense on a campus or off campus at a school-related activity. The goal is to begin intervention early, before a youth begins to get into more trouble.

**SB 1542 (Schiff), Chapter 366**, creates a pilot project to establish a boot camp academy for first-time juvenile offenders who are minors, 15 years or older, and use a firearm at a school or during a school activity. Specifically, this new law:

- Requires the Military Department (MD) to establish the Turning Point Academy, consisting of physical training, education, drug screening and counseling services for specified delinquent youth which will become inoperative July 1, 2002.
- Establishes Academy eligibility requirements to include a juvenile 15 years of age or older adjudicated to be delinquent for having possessed, sold or furnished a firearm on a school campus or at a school activity. The minor must be a first-time offender and cannot be mentally ill or otherwise physically or mentally unsuitable.
- Prohibits the use of physical and chemical force or physical or mental intimidation, as specified.
- Creates a Mandatory Advisory Committee consisting of 11 representatives from the MD, the California Youth Authority, the Legislature, the probation department, the office of education, law enforcement, juvenile detention, adolescent development or mental health and a juvenile court judge.

- Requires the MD, pursuant to the recommendations of an Advisory Committee, to adopt policies and procedures on matters relating to cadet and staff safety; staff training; cadet discipline, motivation and mentoring; academic and vocational education assessment and programming; behavior counseling; and cadet graduation planning.
- Requires that all custodial, teaching and mental health staff be appropriately trained, credentialed or licensed, as specified.
- Requires the Board of Corrections (BOC), using existing standards for local juvenile facilities, to oversee the Academy and requires the BOC to prepare and submit a report to the Legislature by July 1, 2002.
- Requires the county board of supervisors of a county seeking to place its ward in the Academy to adopt a resolution indicating that the county's desire to opt-in the Academy program.
- Allows courts to commit eligible youth to the Academy for a commitment for up to six months while retaining jurisdiction over the wards and requires the courts placing wards in the Academy to review their status monthly.
- Mandates that the minor placed in the Academy participate in six months of intensive county probation aftercare upon release from the Academy.
- Appropriates \$9.21 million for the Academy and allows up to five percent of that amount to be used by an independent researcher to conduct an evaluation of the effectiveness and experimental design of the Academy.
- Is an urgency measure which takes effect immediately.

### **Deferred Entry Of Judgment: Reimbursement Of Costs**

Over the years, courts have increasingly used deferred entry of judgment as an alternative to formal probation. However, because deferred entry of judgment defendants are not sentenced, provided they comply with the requirements of the program, they do not fall within the statutory provisions requiring reimbursement of the probation department for the costs of preparing progress reports.

**SB 1574 (Alarcon), Chapter 42**, requires the defendant to reimburse the probation department for the reasonable costs of probation services provided in deferred entry of judgment cases. Specifically, this new law requires the defendant to reimburse the probation department for the

reasonable cost of any program investigation or progress report filed with the court in deferred entry of judgment cases, based upon the defendant's ability to pay.

### **Custody Release Requirements**

Existing law specifies differing citation and release procedures for juvenile offenders. In 1999, SB 334 (Alpert), Chapter 996, Statutes of 1999, amended certain custody release requirements that were only effective for 67 days prior to the passage of Proposition 21.

**SB 1603 (Peace), Chapter 663**, streamlines and clarifies the requirements of release for minors from custody. Specifically, this new law:

- Provides that as a condition for the release of a minor on home supervision, a probation officer shall require the minor to sign, and may also require his or her parent, guardian, or relative to sign, a written promise to appear before the probation officer at the juvenile hall or other suitable place designated by the peace or probation officer at a specified time.
- Provides that a minor 14 years of age or older who is taken into custody for a felony offense shall not be released until the minor has signed a written promise to appear or has been given an order to appear at the juvenile court on a date certain. A peace officer may also require the minor's parent, guardian or relative to sign a written promise to appear at the same place.

### **Juvenile Justice Commissions And Juvenile Court Orders**

Existing law provides that a juvenile justice commission may inquire into the operations of a group home serving wards and dependent children of the juvenile court. However, in conducting its inquiry of a group home a commission may not review confidential records of minors. Currently, a juvenile justice commission must seek separate authorization from the court each time the commission wants to access confidential records, including the records of minors. This requirement places some limitations on a commission's ability to investigate the services a minor is receiving in a particular group home.

**SB 1611 (Bowen), Chapter 908**, authorizes a juvenile justice commission to have access to the juvenile court records of a minor and the financial records of a group home. Specifically, this new law:

- Authorizes a juvenile justice commission to review the court or case records of a minor and the commission must keep the identities of the minors confidential.
- Authorizes a juvenile justice commission to review the financial records of a group home. However, the commission may not review the personnel records of employees or the records of donors to the group home.
- Provides that the court may join in juvenile court proceedings a private service provider. A "private service provider" is defined as any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

### **Child Witnesses: Closed-Circuit Television**

Existing law authorizes a minor under the age of 13 years to give testimony by way of a closed-circuit television if the minor's testimony will involve a recitation of the facts, and if the testimony relates to an alleged sexual offense on or with the minor, or if the minor is a victim of a "violent" felony. These provisions are operative until January 1, 2001 and on that date are repealed.

**SB 1715 (Ortiz), Chapter 207**, extends the sunset date until January 1, 2003 on the provisions of law which allow a minor under the age of 13 to testify by way of closed-circuit television.

### **Compulsory Education: Contempt Orders**

Parents, guardians or other persons having control or charge of a student have a duty to send the student to specified educational institutions. It is an infraction to violate compulsory education laws. Existing law is silent as to whether a court may order a parent to enroll his or her habitually truant child in school, after the parent has violated California's compulsory education law.

**SB 1913 (McPherson), Chapter 465**, codifies the ability of judges to legally compel parents to enroll truant children in an educational program. Specifically, this new law:

- Authorizes a court to order, in addition to existing fines or programs, that a person convicted of the infraction of violating compulsory education laws immediately enroll the student in the appropriate school or educational program and provide proof of enrollment to the court.

- Provides that willful violation of such an order is punishable as civil contempt with a fine of up to \$1,000. An order of contempt shall not include imprisonment.
- Provides these provisions are repealed on January 1, 2005.
- Requires the Legislative Analyst, in consultation with the California District Attorneys Association and the Department of Education, to develop a report to be submitted to the Legislature on or before January 1, 2004 regarding the implementation of this new law.

### **Sexually Violent Predator Commitment Evaluations**

The Sexually Violent Predator (SVP) Act became effective January 1, 1996. The Act created a new civil commitment for SVPs for the purpose of providing treatment to mentally disordered individuals who cannot control sexually violent criminal behavior.

Occasionally, it is necessary to prepare updated evaluations to support the filing of a SVP commitment or recommitment petition, where an evaluation has become stale with the passage of time or because the treating doctor is no longer available to testify in court. Without the update, the petition could be denied, or at least delayed, until a new evaluation is obtained. The Department of Mental Health (DMH) and prosecuting attorneys have requested that the law clearly state the updated evaluations shall include review of available medical and psychological records, consultation with current treating clinicians, and interviews with the person being evaluated.

**SB 2018 (Schiff), Chapter 420**, makes changes in the SVP Act relative to examinations, notice of release and SVP commitments. Specifically, this new law:

- Provides that a district attorney may request the DMH to perform updated evaluations for evidence at commitment and recommitment hearings.
- Provides that the updated evaluations shall include a review of all available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated either voluntarily or by court order.
- Allows a court to order the disclosure of confidential medical and psychological records where the SVP objects to disclosure for the purpose of updating or replacing evaluations.

- Clarifies that the term of an extended commitment shall commence from the date of the termination of the previous commitment.
- Provides that in conformity with the existing practice and interpretation of the governing law, the term of subsequent commitments shall be for two years.
- Removes the sunset on the existing provision set to expire on July 1, 2001, which provides that the two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment.
- Requires DMH to report every 10 days to the California Law Enforcement Telecommunications System (CLETS) updated information pertaining to persons released under the Forensic Conditional Release Program.
- Provides a six-month delay period from the date of enactment of this bill for the Department of Justice to incorporate the new DMH information into CLETS.
- Is an urgency statute which takes effect immediately.



## CRIME PREVENTION

### Rural Crime Prevention Program

Existing law authorizes the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare to develop a Rural Crime Prevention Program which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office until June 30, 2000. Existing law also requires the Legislative Analyst to prepare and submit to the Legislature by December 31, 2000, a detailed cost-benefit analysis of the entire program.

**AB 1727 (Reyes), Chapter 310**, extends the sunset date of the Rural Crime Prevention Program until January 1, 2002, and extends until December 31, 2001 the date upon which the Legislative Analyst is required to submit a cost-benefit analysis to the Legislature. This new law is an urgency statute which takes effect immediately.

### Crime Prevention Programs: Fines

Existing law provides that persons convicted of certain crimes may, at the court's discretion, be required to pay a \$10 fine that is used to implement local crime prevention programs. Crime prevention budgets vary greatly between the 58 California counties.

**AB 1840 (Bates), Chapter 399**, makes payment of a \$10 fine used to implement local crime prevention programs mandatory if the defendant has the ability to pay, rather than at the court's discretion. The amounts collected will be held in trust, to be used exclusively for the jurisdiction where the offense occurred. Specifically, this new law:

- Provides that in any case where the defendant is convicted of robbery, car jacking, burglary, forgery, theft, grand theft, petty theft, or vandalism, the court shall order the defendant to pay a \$10 fine in addition to any other penalty or fine imposed if the court determines that the defendant has the ability to pay all or part of the fine.
- Requires that all fines collected be held in trust by the county collecting them, until transferred to the local law enforcement agency to be used exclusively for the jurisdiction where the offense took place. All moneys collected shall implement, support, and continue local crime prevention programs.

- Provides that all amounts collected shall be in addition to, and shall not supplant, funds received for crime prevention purposes from other sources.

### **Juvenile Crime Prevention**

With the passage of Proposition 21, the Juvenile Crime and Gang initiative, the Legislature has focused on increasing crime prevention efforts to keep juvenile offenders out of the criminal justice system.

**AB 1913 (Cardenas), Chapter 353**, appropriates \$242.6 million for local law enforcement programs: \$121.3 million to continue funding of the Citizens Option for Public Safety (COPS) program and \$121.3 million to juvenile justice initiatives to be administered by the Board of Corrections. Specifically, this new law:

- Appropriates \$121.3 million for continued funding for the COPS program, which provides supplemental funds to cities and counties for front-line peace officers.
- Includes \$21 million to guarantee a minimum of \$100,000 to participating cities and/or counties, as specified.
- Provides for additional new components to the COPS program such as requiring the return of unused moneys to the General Fund and an annual report on expenditures to the Legislature.
- Appropriates \$121.3 million for local juvenile justice programs that have demonstrated their effectiveness in reducing delinquency and requires counties to use a multi-agency Juvenile Justice Coordinating Council with specified outcome measures.
- Requires counties or a city or county to which funding has been allocated to provide the Board of Corrections with specified reports on the effectiveness of funded programs. Funding allocated for juvenile justice programs must be used to supplement and not supplant funding by local agencies for existing services.
- Takes effect immediately as an urgency statute with a repeal date of July 1, 2002.

### **Placement of Paroled Sex Offenders**

Existing law prohibits parolees who are registered sex offenders from living within one-quarter mile of any school, K-6.

**AB 1988 (Strickland), Chapter 153**, clarifies existing law relating to inmates released on parole for any violation of child molestation or continuous sexual abuse of a child. Specifically, this new law provides that the prohibition against placement or residency within one-quarter mile of a school remains effective during the entire period of parole and is not limited to the initial placement of the parolee.

### **Trustline Registry**

The Trustline Registry provides parents and guardians with a means of selecting caregivers who have had background checks conducted by the Department of Social Services and the Department of Justice. For placement on the registry, individuals must be 18 years of age or older and have no reported disqualifying criminal arrests and/or convictions and no disqualifying reports of substantiated child abuse. Trustline operates a "800" telephone number that parents can call to determine if a child-care provider under consideration is an applicant or a registered Trustline child-care provider. Many children are in need of services not categorized as childcare such as tutoring or counseling.

**AB 2164 (Pescetti), Chapter 239**, broadens the definition of a Trustline provider. Specifically, this new law expands the categories of persons eligible to be registered as Trustline providers to include any person performing in-home educational or counseling services to a minor and not otherwise required to be licensed pursuant to specified Health and Safety Code provisions.

### **Crime Prevention Program**

In 1999, the Legislature passed and Governor Davis signed into law eight bills placing new regulations on firearms. During legislative hearings, public hearings, and meetings with law enforcement and firearm dealers, several people expressed a need to provide training to inform law enforcement, firearm dealers, and the public in the area of the recent changes in California firearm laws.

**AB 2536 (Scott), Chapter 479**, requires the Department of Justice (DOJ) to produce public service announcements relative to the newly enacted gun legislation. This new law:

- Requires that the DOJ produce public service announcements in both English and Spanish to inform the public on:
  - Changes in firearms laws and how to obtain more information on current laws.

- A gun owner's responsibilities for the safe storage of a firearm as included in the DOJ Basic Firearms Safety Course and Penal Code Section 12080.
- Provides that no publicly elected official shall be identified with or involved in the public service announcements, but allows DOJ to be identified as the producer of the Public Service Announcements (PSA).
- Requires DOJ to seek PSA airtime once the PSAs have been produced. Nothing in this new law precludes DOJ from seeking funds to purchase airtime for the PSAs.
- Appropriates, on a one-time basis, \$125,000 to DOJ for the purpose of implementing this new law.

### **Reporting Threats Against Public Officials**

Existing law makes it a crime to threaten certain public officials, appointees, judges, staff, or their immediate family. Law enforcement agencies are required to report all such threats to the Department of Justice (DOJ) and all threats against state officials to the California Highway Patrol (CHP). Threats against local and state officials, estimated at about 100 reported crimes annually, are currently analyzed and investigated by local law enforcement and the CHP, respectively.

- **SB 1859 (Chesbro), Chapter 233**, eliminates the duty imposed on local law enforcement to notify the DOJ of threats against public officials. Specifically, this new law deletes the requirement that any law enforcement agency that has knowledge of a threat against a public official shall immediately report that information to the DOJ.

## CRIMINAL JUSTICE PROGRAMS

### **Continuing Education: Mental Illness and Developmental Disability**

Under current law, law enforcement officers are required to receive six hours during basic training in how to deal with persons with mental illnesses and developmental disabilities.

**AB 1718 (Hertzberg), Chapter 200**, requires the Commission on Peace Officer Standards and Training (POST) to establish and update a continuing education classroom training course regarding persons with developmental disabilities or mental illness. Specifically, this new law:

- Requires that, on or before June 30, 2001, POST establish and keep updated a continuing education classroom-training course relating to law enforcement intervention with developmentally disabled and mentally ill persons. The training course is to be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability.
- Requires POST to submit a report to the Legislature by October 1, 2003 that includes a description of the process by which the course was established and information on the number of officers that attended the course or other courses certified by the commission relating to mentally ill and developmentally disabled persons.

### **Criminal Identity Theft Database**

Numerous information brokers now offer easily accessible information about people by linking thousands of names to public records databases, such as court records databases, which include criminal records. The information brokers perform criminal background searches for employers or any other person seeking such information. Unfortunately, the information they provide may be wrong, either due to error or because an individual in their database has been the victim of identity theft. An individual might have a criminal history wrongly connected to his or her name and personal identifiers when another person steals his or her identity and fraudulently uses the victim's name.

**AB 1862 (Torlakson), Chapter 634**, establishes a database of victims of identity theft and has the Department of Justice (DOJ) maintain a toll-free number to assist victims in clearing their names in criminal records, public records, employment histories and credit files, and other records, beginning September 1, 2001. This new law:

- Provides that a victim of identity theft may submit a court order, obtained pursuant to any provisions of law, along with fingerprints and other prescribed information to the DOJ. DOJ is then required to verify this information against information maintained by the Department of Motor Vehicles.
- Requires DOJ to establish and maintain a data base to record information concerning victims of criminal identity theft and to allow criminal justice agencies, the victim, and other individuals and agencies authorized by the victim to access the data base, as specified.
- Requires DOJ to establish and maintain a toll-free number to provide access to this information.
- Provides for a September 1, 2001 effective date.

### **Juvenile Crime Prevention**

With the passage of Proposition 21, the Juvenile Crime and Gang initiative, the Legislature has focused on increasing crime prevention efforts to keep juvenile offenders out of the criminal justice system.

**AB 1913 (Cardenas), Chapter 353**, appropriates \$242.6 million for local law enforcement programs: \$121.3 million to continue funding of the Citizens Option for Public Safety (COPS) program and \$121.3 million to juvenile justice initiatives to be administered by the Board of Corrections. Specifically, this new law:

- Appropriates \$121.3 million for continued funding for the COPS program, which provides supplemental funds to cities and counties for front-line peace officers.
- Includes \$21 million to guarantee a minimum of \$100,000 to participating cities and/or counties, as specified.
- Provides for additional new components to the COPS program such as requiring the return of unused moneys to the General Fund and an annual report on expenditures to the Legislature.
- Appropriates \$121.3 million for local juvenile justice programs that have demonstrated their effectiveness in reducing delinquency and requires counties to use a multi-agency Juvenile Justice Coordinating Council with specified outcome measures.

- Requires counties or a city or county to which funding has been allocated to provide the Board of Corrections with specified reports on the effectiveness of funded programs. Funding allocated for juvenile justice programs must be used to supplement and not supplant funding by local agencies for existing services.
- Takes effect immediately as an urgency statute with a repeal date of July 1, 2002.

### **State Board of Control – Fines**

The Board of Control (BOC) administers the Victims of Crime (VOC) Program, which reimburses victims for losses incurred as a result of a crime. Reimbursable expenses include medical costs, mental health counseling, funeral/burial costs, and wage or support losses not covered by insurance or other sources. The VOC program is funded from the state Restitution Fund and receives its revenue from three offender-based sources.

The BOC Revenue Recovery and Compliance Division (RRCD) conducts revenue enhancement and recovery activities on behalf of the Restitution Fund. RRCD works with the judiciary, district attorneys, court administrators, and probation officers concerning restitution fines and restitution orders on behalf of the VOC Program. The RRCD works collaboratively with the criminal justice system to coordinate, communicate, and analyze the administration of criminal restitution fines and restitution orders on a statewide basis.

**AB 2371 (Lempert), Chapter 545**, authorizes the BOC to work with the Franchise Tax Board (FTB) to collect unsatisfied restitution fines beyond an offender's term of commitment or parole. Specifically, this new law:

- Provides that the FTB may collect restitution fines and orders of \$100 or more as a pilot project, subject to approval of the Director of the Department of Finance, lowering the minimum amount that may be referred to the FTB for collection of restitution fines or orders from \$250 to \$100.
- Provides that restitution fines collected by the FTB on behalf of the counties be deposited directly into the Restitution Fund.
- Requires the board of supervisors to establish priorities of payment first between fines, penalty assessments and reparation or restitution, and then between other reimbursable costs.
- Provides that any portion of a restitution fine that remains outstanding at the end of probation or parole is enforceable by the BOC.

- Requires local governmental entities to forward any information regarding terminated cases to the BOC to assist in the collection of unpaid restitution fines.
- Provides that this pilot program shall remain in effect until January 1, 2002.

### **Victims of Crimes – Indemnification**

The Board of Control (BOC) administers the Victims of Crime Program (VOCP). However, some victims have a difficult time accessing the benefits because they do not know the program is administered by the BOC. Therefore, the BOC requested that its name be changed to more accurately reflect its major functions, responsibilities and duties to ensure that the public has greater access to the program benefits that are available to them.

With the increase of the BOC's Restitution Fund, the BOC has sought to increase the VOCP maximum benefits to help those victims whose reimbursable expenses exceed the current statutory limit of \$46,000.

**AB 2491 (Jackson), Chapter 1016**, makes numerous changes to the VOCP and renames the BOC the "California Victim Compensation and Government Claims Board". This new law:

- Changes the BOC's name to the California Victims Compensation and Government Claims Board.
- Increases the total benefits that the Board may grant to compensate victims from \$46,000 to \$70,000, as specified.
- Extends the time period for which a victim may receive wage or support loss benefits from three to five years and eliminates any time limits for wage loss benefits for victims who become permanently disabled as a result of a crime.
- Authorizes the BOC to reimburse for lost wages for a period of 30 days by parents or guardians of a child victim hospitalized or killed as a result of a crime.
- Specifies that a victim's lost wages includes any commission income as well as base wages, as specified.
- Eliminates the need for victims applying for emergency financial assistance to certify that no additional claims will be made, as specified.

- Clarifies the provisions under which services provided by certified child life specialists may be reimbursed under the VOCP.
- Makes technical changes to Penal and Welfare & Institutions Codes (WIC) sections regarding the imposition of restitution fines and orders against adult and juvenile offenders.
- Clarifies that if the full amount of a restitution order is not known at the time of the disposition hearing of a juvenile offender, the amount may be determined at a later date, similar to existing law pertaining to adult offenders.
- Clarifies that the courts may order restitution to be paid directly to the Restitution Fund, directs probation departments to determine the amounts of restitution orders payable to both the victim and to the Fund, and specifies reference to the VOCP in the WIC authorizing the courts to order restitution to be paid directly to the Fund.
- Requires until January 1, 2005, the BOC to enter into an inter-agency agreement with the University of California, San Francisco, upon adoption of a resolution by the Regents of the University of California, and upon appropriation of funds for that purpose, to establish a victims of crime recovery center at the San Francisco General Hospital to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, subject to conditions set forth by the BOC. AB 2491 requires the BOC to report to the Legislature on the effectiveness of the center no later than May 1, 2004.
- Appropriates \$2.45 million from the Restitution Fund to the BOC for the implementation of the inter-agency agreements.

### **Crime Prevention Program**

In 1999, the Legislature passed and Governor Davis signed into law eight bills placing new regulations on firearms. During legislative hearings, public hearings, and meetings with law enforcement and firearm dealers, several people expressed a need to provide training to inform law enforcement, firearm dealers, and the public in the area of the recent changes in California firearm laws.

**AB 2536 (Scott), Chapter 479**, requires the Department of Justice (DOJ) to produce public service announcements relative to the newly enacted gun legislation. This new law:

- Requires that the DOJ produce public service announcements in both English and Spanish to inform the public on:

- Changes in firearms laws and how to obtain more information on current laws.
- A gun owner's responsibilities for the safe storage of a firearm as included in the DOJ Basic Firearms Safety Course and Penal Code Section 12080.
- Provides that no publicly elected official shall be identified with or involved in the public service announcements, but allows DOJ to be identified as the producer of the Public Service Announcements (PSA).
- Requires DOJ to seek PSA airtime once the PSAs have been produced. Nothing in this new law precludes DOJ from seeking funds to purchase airtime for the PSAs.
- Appropriates, on a one-time basis, \$125,000 to DOJ for the purpose of implementing this new law.

### **High Technology Crime Advisory Committee**

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high-technology crime throughout California and to advise the Office of Criminal Justice Planning (OCJP) on the appropriate disbursement of funds to regional task forces.

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program (HTTAPP), a public-private administrative body under the auspices of the OCJP for the distribution of funding to develop regional high-technology crime units in California law enforcement agencies. This law is scheduled to be repealed on January 1, 2003.

**SB 1357 (Johnston), Chapter 654**, requires the appointment of a designee of the Department of Information and Technology, or of the Science and Technology Agency, if SB 1136 (Vasconcellos) is enacted, to the (HTCAC), and deletes the January 1, 2003 sunset date on the (HTTAPP) making this program permanent.

### **Turning Point Academy**

In an effort to combat youth violence, the California Legislature and Governor sought a new approach to dealing with a youth who commits a firearm-related offense on a campus or off campus at a school-related activity. The goal is to begin intervention early, before a youth begins to get into more trouble.

**SB 1542 (Schiff), Chapter 366**, creates a pilot project to establish a boot camp academy for first-time juvenile offenders who are minors, 15 years or older, and use a firearm at a school or during a school activity. Specifically, this new law:

- Requires the Military Department (MD) to establish the Turning Point Academy, consisting of physical training, education, drug screening and counseling services for specified delinquent youth which will become inoperative July 1, 2002.
- Establishes Academy eligibility requirements to include a juvenile 15 years of age or older adjudicated to be delinquent for having possessed, sold or furnished a firearm on a school campus or at a school activity. The minor must be a first-time offender and cannot be mentally ill or otherwise physically or mentally unsuitable.
- Prohibits the use of physical and chemical force or physical or mental intimidation, as specified.
- Creates a Mandatory Advisory Committee consisting of 11 representatives from the MD, the California Youth Authority, the Legislature, the probation department, the office of education, law enforcement, juvenile detention, adolescent development or mental health and a juvenile court judge.
- Requires the MD, pursuant to the recommendations of an Advisory Committee, to adopt policies and procedures on matters relating to cadet and staff safety; staff training; cadet discipline, motivation and mentoring; academic and vocational education assessment and programming; behavior counseling; and cadet graduation planning.
- Requires that all custodial, teaching and mental health staff be appropriately trained, credentialed or licensed, as specified.
- Requires the Board of Corrections (BOC), using existing standards for local juvenile facilities, to oversee the Academy and requires the BOC to prepare and submit a report to the Legislature by July 1, 2002.
- Requires the county board of supervisors of a county seeking to place its ward in the Academy to adopt a resolution indicating that the county's desire to opt-in the Academy program.

- Allows courts to commit eligible youth to the Academy for a commitment for up to six months while retaining jurisdiction over the wards and requires the courts placing wards in the Academy to review their status monthly.
- Mandates that the minor placed in the Academy participate in six months of intensive county probation aftercare upon release from the Academy.
- Appropriates \$9.21 million for the Academy and allows up to five percent of that amount to be used by an independent researcher to conduct an evaluation of the effectiveness and experimental design of the Academy.
- Is an urgency measure which takes effect immediately.

### **Office-Based Opiate Treatment Programs**

There is an absence of medical addiction treatment services in certain areas of California. Current law does not authorize existing licensed narcotic treatment programs to contract with physicians to provide services in office-based settings.

**SB 1807 (Vasconcellos), Chapter 815**, requires the Department of Alcohol and Drug Programs (DADP) to establish an office-based opiate treatment program (OBOT). This new law also authorizes persons participating in deferred entry of judgment or pre-guilty plea drug programs, as specified, to also participate in a licensed methadone or levoalphacetylmethadol (LAAM) program. Specifically, this new law:

- Requires DADP to establish an OBOT program. Requires an OBOT to either hold a primary licensed narcotics treatment program (NTP) license or be affiliated and associated with a NTP, as specified.
- Defines an "OBOT" as a program in which physicians provide addiction treatment services; and community pharmacies supply necessary medication both to physicians for distribution and through direct administration and dispensing services.
- Authorizes a person participating in a deferred entry of judgment program or a pre-guilty plea program to also participate in a licensed methadone or LAAM program if specified conditions are met.
- Finds and declares that licensed physicians, experienced in the treatment of addiction, should be allowed and encouraged to treat addiction by all appropriate means.

# CRIMINAL OFFENSES

## Felony Offenses

### Medi-Cal Fraud

Medi-Cal fraud is costing taxpayers millions of dollars annually. Unscrupulous Medi-Cal providers are filing false reimbursement claims for unnecessary and fraudulent procedures.

**AB 1098 (Romero), Chapter 322**, increases the penalties for Medi-Cal fraud, expands the use of grand juries to investigate Medi-Cal fraud, and creates new regulations and crimes for clinical laboratory practices. Specifically, this new law:

- Increases the penalty for Medi-Cal fraud to two, three, or five years in the state prison, or by up to one year in the county jail, by a fine not to exceed three times the amount of the fraud, or by both a fine and imprisonment.
- Increases the penalty for specified offenses related to blood and biological specimens to up to one year in the county jail.
- Creates an alternate felony/misdemeanor punishable by 16 months, 2, or 3 years, by a fine not to exceed \$50,000, or by both a fine and imprisonment for the reckless collection, handling, or storage of biological specimens which creates a substantial risk of great bodily injury.
- Makes a second or subsequent violation for the reckless handling of biological specimens punishable by two, four, or six years in the state prison, by a fine not to exceed \$50,000, or by both a fine and imprisonment.
- Creates an enhancement of four years in the state prison if a fraudulent Medi-Cal scheme is likely to cause or causes great bodily injury to two or more persons.
- Adds specified Medi-Cal fraud offenses to the list of crimes subject to criminal profiteering asset forfeiture.

- Allows the Attorney General, with or without the concurrence of the county district attorney, to petition the court to impanel a special grand jury to investigate, consider, or issue indictments for Medi-Cal fraud.
- Allows a special grand jury convened by the Attorney General in one county to investigate Medi-Cal fraud, and to share confidential information with a second grand jury convened by the Attorney General in another county under specified conditions.
- Provides additional grounds for the denial, suspension, or revocation of licensure of clinical laboratory operators.
- Creates new licensing requirements for Medi-Cal billing companies as specified.
- Allows the Director to the Department of Health Services (DHS) to suspend or revoke the registration of a billing agent under investigation for fraud or abuse, or where there are violations of applicable regulations, or the submission of false information.
- Allows the DHS three years from the date of a violation to file a civil or administrative action for the violation of clinical laboratory laws and regulations.
- Requires the DHS and the Department of Justice (DOJ) to administer the newly formed Medi-Cal fraud programs.

### **Prisoners: Gassing**

"Gassing" presents a serious threat to the health and safety of local detention personnel. Gassing victims should be given the opportunity to treat any disease they may have been exposed to. Only immediate medical testing of inmates who commit this form of battery will allow medical officers to effectively treat public safety personnel.

**AB 1449 (Flores), Chapter 627**, provides that every person confined in any local detention facility or any facility under the Department of Youth Authority's (CYA) jurisdiction who batters any peace officer or employee of the facility by gassing is guilty of aggravated battery, a felony. The inmate must undergo medical testing for hepatitis and tuberculosis. Specifically, this new law:

- Provides that every person confined in a local detention facility who battered any peace officer or employee of the detention facility by gassing is guilty of aggravated battery, a felony.

- Defines "gassing" as placing or throwing, or causing to be placed or thrown on another person any bodily fluids, substances, or mixture of bodily fluids or substances. AB 1449 requires actual contact with the victim's skin or membranes.
- Obligates the chief medical officer of the detention facility to order the inmate to undergo an examination or test for hepatitis and tuberculosis immediately after the event, and periodically thereafter as the medical officer determines necessary.
- Provides that the test results be provided to the officer or employee who was the target of the incident.
- Requires all incidents of gassing to be reported to the district attorney for possible prosecution.
- Makes gassing in an institution under the jurisdiction of the CYA an aggravated battery.
- Requires the CYA to report to the Legislature findings and recommendations on gassing incidents at CYA's facilities.
- Deletes the January 1, 2001 repeal date on provisions of law which make gassing in any facility of the Department of Corrections an aggravated battery.

### **Crime Prevention Programs: Fines**

Existing law provides that persons convicted of certain crimes may, at the court's discretion, be required to pay a \$10 fine that is used to implement local crime prevention programs. Crime prevention budgets vary greatly between the 58 California counties.

**AB 1840 (Bates), Chapter 399**, makes payment of a \$10 fine used to implement local crime prevention programs mandatory if the defendant has the ability to pay, rather than at the court's discretion. The amounts collected will be held in trust, to be used exclusively for the jurisdiction where the offense occurred. Specifically, this new law:

- Provides that in any case where the defendant is convicted of robbery, car jacking, burglary, forgery, theft, grand theft, petty theft, or vandalism, the court shall order the defendant to pay a \$10 fine in addition to any other penalty or fine imposed if the court determines that the defendant has the ability to pay all or part of the fine.

- Requires that all fines collected be held in trust by the county collecting them, until transferred to the local law enforcement agency to be used exclusively for the jurisdiction where the offense took place. All moneys collected shall implement, support, and continue local crime prevention programs.
- Provides that all amounts collected shall be in addition to, and shall not supplant, funds received for crime prevention purposes from other sources.

### **Battery: Probation Department Employees**

Under existing law, battery upon a peace officer or other specified officers is a misdemeanor punishable by up to one year in the county jail, by a specified fine, or by both. A battery where injury is inflicted upon a peace officer or other specified officers is an alternate felony/misdemeanor punishable by 16 months, 2 or 3 years, or by up to one year in the county jail.

**AB 1899 (Havice), Chapter 236**, increases the penalty for battery upon a non-sworn employee of a probation department. Specifically, this new law:

- Makes battery upon a non-sworn employee of a probation department engaged in the performance of his or her duty punishable by up to one year in the county jail, by a fine of up to \$2,000, or by both a fine and imprisonment.
- Makes battery, with the infliction of injury, upon a non-sworn employee of a probation department engaged in the performance of his or her duty punishable by imprisonment in the state prison for 16 months, 2 or 3 years; by up to one year in the county jail; by a fine of up to \$2,000, or by both a fine and imprisonment.

### **Peace Officers: False Evidence**

Existing law makes it a misdemeanor or a felony for a peace officer to knowingly file a false police report. However, existing law does not address the planting of physical evidence on a person or in a place under the possession and control of a person, with the specific intent to cause that person to be charged with a crime.

**AB 1993 (Romero), Chapter 620**, makes it a felony for a peace officer, and a misdemeanor for any other person, to intentionally place, or move any physical matter to be wrongfully produced as genuine or true upon any trial, proceeding or inquiry. The felony is punishable by two, three, or five years in state prison. Specifically, this new law:

- Makes it a misdemeanor if any person knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry.
- Makes it a felony if any peace officer knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding or whatever, is guilty of a felony punishable by two, three, or five years in state prison.
- Provides that nothing in this new law shall preclude prosecution under any other provision of existing law.

### **Computer Crimes: Unauthorized Access**

During the past year, the "Melissa" computer virus and denial-of-service attacks have received substantial media attention due to the impact on consumers and the costs to computer servers. Recent victims have included the California Highway Patrol's dispatch radio, the United States Army's Web site and Pacific Bell Internet Services. Yahoo, CNN Interactive, Amazon.Com, eBay, Datek Online, E\*Trade, ZDNet, and Buy.com were also victims to the newest form of Internet attack, denial of service.

**AB 2232 (Oller), Chapter 634**, increases the penalties and fines for introducing a contaminant into a computer, network or system. This new law:

- Expands the definition of "injury" to include any denial of service to legitimate users of a computer system, network, or program.
- Provides that any person who knowingly provided or assisted in providing access, accesses or causes to be accesses any computer, computer system, or computer network that does not result in any injury is guilty of an infraction punishable by a fine of up to \$1,000.
- Provides that any person who knowingly introduces a contaminant into any computer, computer system, or computer network for the first time and there is no injury is guilty of a misdemeanor punishable up to one year in jail or a fine up to \$5,000 or by both imprisonment and fine. If the violation results in an injury or it was a subsequent conviction for the crime, the person is guilty of an alternate felony/misdemeanor

punishable by 16 months, 2 or 3 years in state prison or up to one year in jail and/or a fine not to exceed \$10,000.

- Provides that any person who illegally uses the Internet domain name of another individual, corporation or entity in connection with the sending of one or more electronic messages and as a result causes damage to a computer, computer system or computer network for a first-time offense is guilty of an infraction punishable by a fine not to exceed \$1,000.

## **Stalking**

Under existing law, the maximum term for a second felony stalking conviction is four years. In most cases, these penalties are sufficient to deter stalkers from continuing this behavior after they are released from state prison. However, in a small, but growing number of cases, stalkers continue to stalk their victims or stalk new victims after they are released from prison. These repeat and serial stalkers are among the most dangerous criminal offenders.

**AB 2425 (Corbett), Chapter 669**, increases the aggravated penalty for a subsequent conviction for stalking, expands the specified offenses that would support a conviction, requires the county sheriff to operate a telephone number where victims of stalking can inquire as to the bail status of persons arrested for stalking, and requires intensive parole supervision for parolees convicted of stalking. Specifically, this new law:

- Provides that any person previously convicted of a felony violation of stalking, inflicting corporal injury on a spouse, threatening to commit a crime that would result in death or great bodily injury, or violation of a domestic violence restraining order, and who was convicted of stalking shall be punished by imprisonment in the state prison for two, three, or five years.
- Requires the county sheriff to designate a telephone number which shall be available to the public to inquire regarding the bail status, release, or scheduled release of any person arrested for stalking, but does not require the sheriff to establish a new telephone number.
- Requires the California Department of Corrections (CDC) to ensure that any parolee convicted of stalking, on or after January 1, 2002, who was deemed to be at a high risk of committing a repeat stalking offense be placed on intensive and specialized parole supervision for the period of parole.
- States that CDC shall accomplish the requirements of this new law by redirecting staff resources from low-risk offenders, and requires that

the program include referral to specialized services, such as substance abuse treatment.

- Requires CDC to obtain the services of mental health providers specializing in the treatment of stalking patients, and requires parolees to participate in clinical counseling programs aimed at reducing the likelihood that the parolee will re-offend.
- States that the program shall be targeted at parolees convicted of stalking who met the following conditions: (1) the offender was within one year of being released on parole; (2) the offender had been subject to a clinical assessment; (3) a review of the offender's criminal history indicated that the offender posed a high risk of committing new stalking offense upon his or her release on parole; and, (4) the offender, based on his or her clinical assessment, may be amenable to treatment.
- Requires that clinical treatment for inmates who met the conditions for placement in this program shall begin prior to the inmate's parole date, while the inmate was still incarcerated.
- Requires the CDC to evaluate the intensive supervision program and report to the Legislature as to the effectiveness of the program.
- Makes the intensive supervision requirement contingent upon a budget appropriation.

### **Insurance Fraud**

Organized crime rings operate illegal medical mills that defraud insurers by encouraging the filing of fraudulent personal injury claims. Sometimes, these mills are set up and operated by corrupt medical or legal professionals, who typically employ people known as "cappers" to recruit fraudulent accident victims. The existing penalty structure allows fines for first offenses, but not for subsequent offenses.

**AB 2594 (Cox), Chapter 843**, increases the potential fines for the related criminal offenses of insurance fraud and illegal referral fee payments to obtain the referral of patients. Specifically, this new law:

- Increases the potential fine for a first offense to an amount up to \$50,000.
- Adds a potential fine of up to \$50,000 as an additional or alternative punishment for a second or subsequent conviction.

## **Computer Crimes: Civil Liability**

Society has become increasingly dependent on computer technology and computer networks. While the economy has benefited from this technological boom, this same interconnectivity also creates new potential hazards, particularly those posed by computer hackers and computer viruses.

A "denial-of-service" attack is an attempt by attackers to prevent legitimate users from using a service by sending a crippling barrage of data to the target Web site. The Web server receiving the requests responds to them as though they are normal data requests from legitimate Web site visitors. Due to the sheer volume of those simultaneous requests, the server is overwhelmed and the network is disabled.

**AB 2727 (Wesson), Chapter 635**, imposes a civil remedy for a loss incurred due to specified criminal acts and allows for punitive or exemplary damages where the violations are willful or done with oppression, fraud or malice. This new law:

- Allows a civil suit for damages by any owner or lessee of a computer, computer system, computer network, computer program or data who suffers damage or loss due to a defendant violating Penal Code Section 502(c) and provides the following remedies:
  - Compensatory damages.
  - Equitable or injunctive relief.
  - Attorney's fees up to an amount equal to 10 percent of the compensatory damages.
  - Punitive damages up to \$10,000 per violation for willful violations where it is proven by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice.
- Establishes a statute of limitations period of three years from the date of the act complained of, or the date of discovery of the damage, whichever is later.

## **Abortion**

Three Penal Code sections make it a crime, subject to imprisonment in state prison, for a woman to seek, a physician to provide, or any other person to solicit a woman to have an abortion. The Therapeutic Abortion Act, referenced in

Penal Code Sections 274, 275 and 276, has been found [in large part] by the courts to be unconstitutional.

In 1991, Attorney General Daniel Lungren opined that only a licensed physician could perform an abortion under California law. (74 Ops.Atty.Gen. 101.) The Attorney General reasoned that the United States Supreme Court had recently held that ". . . it is [still] permissible for the States to impose criminal sanctions on the performance of an abortion by a nonphysician." [Akron v. Akron Center For Reproductive Health (1983) 462 U.S. 416, 430 fn. 12.] Attorney General Lungren stated Penal Code Section 274 read in conjunction with the preamble to the Therapeutic Abortion Act (which is constitutionally valid) permits criminal liability to be imposed against any person who performs an abortion without a license.

**SB 370 (Burton), Chapter 692**, repeals three Penal Code sections relative to abortion and clarifies that any person who performs or assists in performing an abortion without a valid license to practice medicine is subject to criminal penalties pursuant to the Business and Professions Code. Specifically, this new law:

- Repeals Penal Code Section 274 relative to providing, supplying and administering abortions.
- Repeals Penal Code Section 275 relative to a woman soliciting an abortion.
- Repeals Penal Code Section 276 relative to soliciting a woman to submit to an abortion.
- Clarifies that any person that performs or assists in performing an abortion without a valid license to practice medicine is subject to criminal penalties pursuant to the Business and Professions Code.

### **Child Molestation**

Under existing law, child molestation, in violation of Penal Code Section 647.6, is a misdemeanor. However, the crime is punishable as a felony if the defendant previously has been convicted of child molestation, lewd or lascivious conduct with a child (Penal Code 288), or a felony violation of employing a minor to perform prohibited acts when the minor was under the age of 14 years.

**SB 1784 (Figueroa), Chapter 657**, expands the list of prior felony offenses, which make a conviction for annoying or molesting a child under the age of 18 punishable as a felony. Specifically, this new law adds rape, rape in concert, incest, sodomy, oral copulation, continuous sexual abuse of a child, forcible sexual penetration, and aggravated sexual

assault of a child, any of which involved a minor under the age of 16, to the list of prior felony offenses which make a conviction for annoying or molesting a child under the age of 18 punishable by two, four, or six years in the state prison.

### **Theft by Fraud**

Recently, a special statewide law enforcement task force chaired by the Commissioner of the California Highway Patrol looked at ways to speed recovery of stolen property. The task force found that gas tampers, generators and air compressors are some of the equipment targeted by rental thieves. These popular rental items cost thousands of dollars. The longer the rental company waits to contact law enforcement for help, the less chance there is that the equipment will be returned.

**SB 1867 (Speier), Chapter 176**, provides that where a renter fails to return personal property within a specified period after a written demand has been made, theft by fraud will be rebuttably presumed. This new law:

- Provides that where a person leased or rented the personal property of another person pursuant to a written contract, and that property has a value greater than \$1,000 and is not a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 10 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.
- Provides that where a person has leased or rented the personal property of another person pursuant to a written contract, and where the property has a value no greater than \$1,000, or where the property is a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.

### **Insurance Fraud**

Recently, the Legislature investigated the rise in criminal organizations that specialize in vehicle theft and fraud. It has been estimated that there may be as many as 7,000 staged accidents per year resulting in substantial costs to insurers and consumers.

**SB 1988 (Speier), Chapter 867**, creates the Anti-Auto Theft and Insurance Fraud Act of 2000. Specifically, this new law:

- Makes legislative findings that auto insurance fraud and theft in California costs approximately \$9 billion annually and that more needs to be done to curtail these illegal activities.
- Requires a person licensed under the Medical Practice and Chiropractic Acts to have his or her license to practice revoked for a period of 10 years upon the second conviction, or upon convictions of multiple counts of certain insurance fraud offenses. SB 1988 provides that engaging in any conduct prohibited under specified provisions related to false or fraudulent insurance claims or statements shall constitute cause for disbarment or suspension of an attorney from the State Bar. The applicable licensing boards shall investigate a licensee against whom an information or indictment has been filed that alleges a violation of specified provisions prohibiting conduct involving false or fraudulent insurance claims or statements, if the district attorney does not otherwise object to initiating an investigation.
- Increases the fine for conviction of insurance fraud from \$10,000 to \$15,000.
- Restricts ownership of businesses that practice medicine, except for hospitals and clinics, to licensed physicians and surgeons; and allows the Department of Health Services to exempt a business from this restriction upon application to the director and proof that an exemption would be in the public interest.
- Directs BAR to establish a pilot program involving the inspection of completed auto body work on insured vehicles until June 30, 2003, and also provides for the following:
  - Establishes a system for how these vehicles will be selected.
  - Requires the Bureau of Automotive Repair (BAR) to report the results of the program to the Legislature by September 1, 2003.
  - Is repealed on January 1, 2004.
- Prohibits an insurer from requiring an auto body shop to pay for rental vehicles charges or towing charges of an insured as a condition of participating in the insured's direct repair program (DRP), but allows such charges if the insurer and the shop concur in writing to terms that

include instances when repairs are not completed within an agreed-upon time.

- Requires an insurer to put in writing reasons why a shop is denied participation in the insurer's DRP within 60 days of a request to participate.
- Raises the annual insurer assessment by Department of Insurance (DOI) for support of the Bureau of Fraudulent Claims from \$1,000 to \$1,300.
- Requires the DOI to develop a standardized Auto Body Repair Consumer Bill of Rights covering specified issues and requires insurers to present this form either at the time of applying for insurance or following an accident that is reported to the insurance company.
- Allows the Insurance Commissioner (IC) to declare any region of California an auto insurance fraud crisis area and allows the IC to do any of the following:
  - Require insurers to report auto insurance claims to a licensed insurance claims analysis bureau in a format to be specified by DOI.
  - Requires an insurer to report all claims to the Bureau of Fraudulent Claims when the claim was filed within 90 days of issuance of the policy with discretion given to the IC to adjust the reporting standard.
  - Doubles fines imposed for insurance fraud if committed in a fraud crisis area.
  - Repeals the above on January 1, 2006.
- Requires provisions relating to the powers and duties of the Board of Chiropractic Examiners, which were created by initiative statute be submitted to the voters.
- Adds a representative of a labor organization which has members in the auto repair business to the Bureau of Fraudulent Claims Advisory Committee.
- Allows the Insurance Commissioner to develop a public education campaign to deter participation in auto insurance fraud and to encourage reporting of fraudulent claims.

## Misdemeanors and Infractions

### Elder Abuse: Punishment

Existing law provides that any person under circumstances or conditions other than those likely to cause great bodily injury or death, causes an elder or dependent adult to suffer or inflicts unjustifiable physical pain or mental suffering is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed six months.

Existing law further provides that any person under circumstances or conditions likely to cause great bodily injury or death, causes an elder or dependent adult to suffer or inflicts unjustifiable physical pain or mental suffering is punishable by imprisonment in the county jail by up to one year, or by imprisonment in the state prison for two, three, or four years.

**AB 559 (Nakano), Chapter 214**, increases the penalty for the misdemeanor infliction of pain or suffering on an elder or dependent adult from six months to one year in the county jail, and includes a fine of up to \$6,000 for an alternate felony/misdemeanor violation.

### Witnesses to Crime: Duty to Report

In 1997, seven-year-old Sherrice Iverson was killed in a Nevada casino by Jeremy Strohmeyer. The best friend of the perpetrator was aware of the assault, did not intervene to save the victim, and did not attempt to contact authorities.

**AB 1422 (Torlakson), Chapter 477**, creates the misdemeanor offense of failing to notify a peace officer after observing the following crimes against a child under the age of 14 years: (1) a lewd act on a child accomplished by force or fear, (2) murder, or (3) rape. Specifically, this new law:

- Creates a duty to notify a peace officer where a person reasonably believes that he or she has observed the crime of child abuse, murder, or rape where the victim is a child under the age of 14 years.
- Provides that the duty to notify a peace officer is satisfied if the notification or attempted notification is made by telephone or any other means.
- Provides that the failure to notify is a misdemeanor, punishable by six months in the county jail, a fine of \$1,500, or both.
- Provides that the obligation to report does not apply to:

- ❑ Persons related to either the victim or offender, including a husband, wife, parent, child, brother, sister, grandparent, grandchild, or other person related by consanguinity or affinity.
- ❑ Persons who failed to report based on a reasonable mistake of fact.
- ❑ Persons who failed to report based on a reasonable fear for their own safety or for the safety of their families.

### **Disabled Persons' Parking: Violations: Fines And Penalties**

Mobility and access are critical to disabled individuals. The misuse of disabled placards for parking is significant and illegal parking in disabled parking spots has become a blatant and widespread practice in California.

**AB 1792 (Villaraigosa), Chapter 524**, makes changes in the application process for disabled placards, increases the penalty for misuse of a placard, and authorizes the State Department of Motor Vehicles (DMV) to conduct a specified audit of placard applications. Specifically, this new law:

- States legislative intent that DMV do the following: (1) strengthen the disabled person license plate and placard application and certification process, and review existing policies governing the investigation of placard misuse and fraud; (2) update disabled person's license plate and placard forms and program publications to ensure that applicants are aware of their rights, responsibilities and the penalties imposed for fraudulently obtaining or misusing placards; and, (3) provide adequate information regarding the appropriate use of parking spaces for the disabled.
- Requires the DMV to conduct an annual random audit of applications for disabled person's or disabled veteran's placards in order to verify the authenticity of the information submitted in support of those applications. The audit applies only to applications submitted after January 1, 2001.
- Makes the unauthorized lending or display of any disabled person's placard or a special identification license plate a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, or by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.
- Makes it a misdemeanor, punishable in the same manner as above, to park in parking stalls or spaces designated for disabled persons unless

transporting a disabled person and displaying the special identification license plate or placard.

- Requires the DMV to require the applicant for a disabled person's license plate or placard (either temporary or permanent) to submit a certificate signed by a physician or surgeon substantiating the disability and delivered directly by the applicant to the DMV. The applicant shall not be required to provide a certificate from a physician or surgeon if the applicant's disability is readily observable and uncontested.
- Requires the person signing the certificate verifying the disability to keep records sufficient to substantiate that certificate and, upon request by the DMV, shall make that information available for inspection by the Medical Board of California.

### **Identity Theft: Remedies**

The crime of identity theft is sharply on the rise. According to the Privacy Rights Clearinghouse, there are at least 500,000 victims of identity theft each year, many of which involve credit fraud. However, criminal identity theft cases have also increased over the years. Criminal identity theft happens when a victim's name and personal information is used by an imposter during an arrest or prosecution. Currently, a criminal identity theft victim has no convenient and fully effective way to correct criminal records created by the imposter. It may take years for a victim to correct his or her records, during which time a victim may be wrongfully apprehended or finding employment.

**AB 1897 (Davis), Chapter 956**, creates a judicial process whereby a victim of identity theft can clear his or her name. This new law:

- Allows a person who suspects that he or she is a victim of identity theft to initiate an investigation at a local law enforcement agency and to obtain a police report to document the fact of the identity theft.
- Provides that a victim of suspected identity theft may petition the court for an "expedited" judicial determination of factual innocence under the following circumstances and pursuant to the following procedures:
  - Where the perpetrator of the identity theft was convicted of a crime under the victim's identity.
  - Where the identity theft victim's name has been mistakenly associated with a record of criminal conviction.
  - Judicial determination of these issues shall be made after consideration of declarations, affidavits, police report and reliable

information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense.

- Where the court finds the petitioner factually innocent, the court shall issue an order certifying that fact. The Judicial Council is required to develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation of fraud.

### **Discharging Dangerous Fireworks**

Existing law provides that it is unlawful for any person to place, throw, discharge or ignite, or fire dangerous fireworks at any person or group of persons where there is a likelihood of injury to any such person. Recently, at a county fair, an individual discharged firecrackers among unsuspecting patrons. Any person who discharges firecrackers and other dangerous fireworks at a gathering poses a threat to the public.

**AB 1998 (Dutra), Chapter 274**, expands the existing prohibition surrounding the discharge of dangerous fireworks to instances when a person willfully places, throws, discharges, ignites, or fires the fireworks with the intent of creating chaos, fear, or panic. These prohibitions do not apply to any person 21 years of age or older who holds a fireworks license. Specifically, this new law:

- Expands existing law by making it a misdemeanor to discharge dangerous fireworks at or near any person or group of persons where there is either a likelihood of injury to that person or group of persons or willfully discharges the fireworks with the intent of creating chaos, fear, or panic.
- Exempts any person holding a fireworks license issued pursuant to Chapter 5 of the Health and Safety Code from the prohibitions in this new law.

### **Luring Minors From Their Homes**

With the creation of the Internet and other technological advances, sexual predators have potentially limitless access to unsuspecting children. Individuals are using the Internet to meet and pursue children in chat rooms, with the goal of luring minors out of their homes.

**AB 2021 (Steinberg), Chapter 621**, protects children from such dangers by making it a crime for an adult to lure a child out of his or her home without the permission of the child's parent or legal guardian. Specifically, this new law:

- Provides that an adult stranger who is 21 years of age or older who knowingly contacts or communicates with a minor 12 years of age or younger, who knew or reasonably should have known that the minor was 12 years of age or younger, for the purpose of persuading, transporting, or luring the minor away from his or her home or known location, without the express consent of the parent or legal guardian, and with the intent to avoid the consent of the parent or guardian is guilty of either an infraction or a misdemeanor.
- Creates an exemption where the contact or communication occurred in an emergency situation where the minor was threatened with imminent bodily, emotional, or psychological harm.
- States that it is not the Legislature's intent to criminalize acts of persons contacting minors within the scope and course of their employment or status as volunteers of recognized civic or charitable organizations.
- Defines "contact or communication" as including, but not limited to, using a telephone or the Internet as defined in the Business and Professions Code.
- Defines "stranger" as a person of casual acquaintance with whom no substantial relationship existed, or an individual with whom a relationship had been established or promoted for the primary purpose of victimization.

### **Displaying A Handgun In Public**

The severity of the penalty for displaying or brandishing a deadly weapon depends on the circumstances of the offense. Existing law provides for an increased penalty if a person displays a weapon upon the grounds of a youth or day-care center during business hours or in the presence of a peace officer.

**AB 2523 (Thomson), Chapter 478**, increases the misdemeanor penalty for brandishing a handgun from six months to one year in the county jail if the offense occurred in a public place. Specifically, this new law:

- Provides that every person, in the presence of another person in a public place, except in self-defense, who draws or exhibits any handgun, whether loaded or unloaded, in a rude, angry, or threatening

manner, or uses the handgun in any fight or quarrel, is guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than three months and not more than one year, by a fine not to exceed \$1,000, or by both that fine and imprisonment.

- Defines "public place" as any of the following:
  - A public place in an incorporated city;
  - A public street in an incorporated city; or,
  - A public street in an unincorporated area.
- Changes a punishment provision to conform to existing sentencing statutes.

### **Aggravated Trespass**

Existing law defines the crime of "stalking" as harassing or following another person in conjunction with the making of a credible threat against that person or his or her immediate family. Intruders who enter a residence to stalk a victim but do not orally threaten the victim or engage in inherently threatening conduct may only be guilty of a misdemeanor trespass.

**SB 1486 (Schiff), Chapter 563**, enhances the sentence for intruders who enter a residence in which the resident or another authorized person is present at any time during the incident by creating the offense of "aggravated trespass". Specifically, this new law:

- Provides that any person who enters or remains in any noncommercial dwelling house, apartment, or other residential place without permission while the owner, or other person authorized to be in the dwelling, is present at any time is guilty of the offense of aggravated trespass.
- Provides that aggravated trespass is punishable by imprisonment in the county jail up to one year or by a fine of not exceeding \$1,000, or by both that fine and imprisonment.
- Permits a court to order a person convicted of the offense to remain on supervised probation up to three years. The court is required to order counseling as a condition of probation.
- Authorizes the court to issue a restraining order, valid for up to three years, as part of the sentence for aggravated trespass.

## **Air Pollution: Civil and Criminal Penalties**

California has 9 of the 25 Consolidated Metropolitan Statistical Areas with the worst ozone air pollution in the country. According to the American Lung Association's "State of the Air 2000" report, 33 of the 58 counties in California received an "F" for smog.

Further, the California Air Resources Board's (ARB) recent study compiled data for compliance and enforcement activities during the 1998-99 fiscal year. The study found 106 civil prosecutions and 7 criminal prosecutions resulting from more than 8,000 violation notices by local air quality control districts. The prosecutions represented the most serious violations. Of these prosecutions, the average penalty for a civil violation was \$1,585. The average criminal fine was \$500.

**SB 1865 (Perata), Chapter 805**, increases existing civil and criminal penalties for air quality violations to make them similar to water pollution and hazardous waste laws and extends the sunset date for laws governing minor air quality violations. Specifically, this new law:

- Extends to January 1, 2006, the date by which the ARB and air quality management districts or air pollution control districts (air districts) shall adopt and implement regulations for classifying and enforcing minor violations and requires a report to the Legislature on such actions taken by ARB on or before January 1, 2005.
- Increases the maximum fine and penalty for provisions regarding negligent emission of air contaminants.
- Provides that any person who negligently emits an air contaminant that causes great bodily injury is guilty of a misdemeanor and subject to a fine, imprisonment, and a civil penalty.
- Provides that any person who negligently emits an air contaminant that causes great bodily injury and who knew of the emissions and failed to take corrective action within a reasonable time is guilty of a misdemeanor and subject to a specific fine and penalty.
- Increases the maximum allowable fine and civil penalty for willful and intentional emissions of air contaminants.
- Makes any willful or intentional violation or any violation with reckless disregard for the risk, that causes great bodily injury or death to any person or results in an unreasonable risk of death or injury, a public

offense and subject to a specific fine, imprisonment, and a civil penalty. This new law also provides for a higher maximum allowable fine for corporate violators.

- Provides for the distribution of the funds collected by fines or monetary penalties levied for the same conduct.
- Exempts from the requirement that the filing of a criminal complaint requires the dismissal of any civil action for the same offense any portion of the civil action requesting injunctive relief.
- Requires the court to consider specific circumstances when considering the amount of the criminal fine to impose on a violator of specific air pollution provisions.
- Increases the maximum allowable civil penalty in situations where any person knowingly, and with the intent to deceive, falsifies any document required to be kept, and provides that the person is guilty of a misdemeanor and subject to a fine and imprisonment.
- Provides that any person who knowingly renders inaccurate any monitoring device required by ARB or an air district, is subject to a fine, or imprisonment, or both.

### **Impersonation of a Peace Officer**

Peace officer impersonation has created a serious threat to the public safety of communities. Individuals have used either authorized peace officer badges or convincing imitation badges to masquerade as law enforcement officials, committing home-invasion robberies, as well as crimes against women, children, and the elderly. In just the last few months, police impersonators in Concord, Fresno, San Francisco, Garden Grove, Long Beach, and Fairfield have committed acts ranging from attempted child molestation to the false imprisonment of hapless drivers.

**SB 1942 (Karnette), Chapter 430**, increases the misdemeanor penalty and fine for using an authentic or phony badge to impersonate a peace officer. Specifically, this new law:

- Increases the misdemeanor penalty to up to one year in county jail and/or a fine of up to \$2,000 for using an authentic badge to impersonate a peace officer.

- Increases the misdemeanor penalty to up to one year in county jail and/or a fine of up to \$2,000 for wearing or using a phony badge to impersonate a peace officer.
- Increases the current \$1,000 misdemeanor fine to \$15,000 for any person who makes any phony badge which purports to be authorized for use by a peace officer, or which so resembles the authorized badge of a peace officer that the badge would deceive an ordinary reasonable person into believing that the badge is authorized for use by a peace officer.



## DNA

### Statute of Limitations: DNA Evidence

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act. The purpose of the legislation was to help law enforcement agencies promptly detect and prosecute individuals responsible for sex offenses and other violent crimes, as well as exclude suspects being investigated for such crimes. However, a number of cases that could be solved through the use of genetic profiling are barred by the current six-year statute of limitations while the State of California is in the process of modernizing its crime laboratories.

**AB 1742 (Correa), Chapter 235**, extends the statute of limitations for sex offenses and creates an exception to the statute where the identity of the offender is established through DNA testing. Specifically, this new law:

- Extends the statute of limitations from six to ten years for sex offenses where the limitation period as specified has not expired as of January 1, 2001 or the offense is committed on or after January 1, 2001.
- Provides that the statute of limitations for specified sex offenses is either 10 years or 1 year from conclusively establishing the identity of the suspect by DNA testing, whichever is later, if either of the following conditions is met:
  - For offenses committed before January 1, 2001, DNA evidence is analyzed no later than January 1, 2004.
  - For offenses committed after January 1, 2001, DNA evidence is analyzed no later than two years from the date of the offense.

### Suspect DNA

Existing law restricts the use of a legally drawn DNA sample taken from a criminal suspect by permitting its use only in the criminal investigation in which he or she is a suspect. Most states permit using DNA samples to investigate other unsolved crimes in the same way fingerprints currently are used.

Expanding the use of available biological information will expedite the detection and prosecution of violent criminals, prevent the commission of future violent crimes, and exonerate innocent suspects.

**AB 2814 (Machado), Chapter 823**, permits DNA samples legally obtained from suspects to be compared to evidence from other crime scenes upon order of the court. Specifically, this new law:

- Provides that a biological sample taken in the course of a criminal investigation from a person who has not been convicted may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from other investigations without a court order.
- Defines "suspect" to mean a person against whom an information or indictment has been filed for a specified offense. A person remains a suspect for two years from the date of filing or until the DNA laboratory is notified of an acquittal or the dismissal of charges.
- Requires the Department of Justice (DOJ) to purge DNA profiles and samples of persons stored in the suspect data base within two years of the date of the filing of the information or indictment or when the DNA lab receives notice that the suspect was acquitted or the charges were dropped, whichever occurs earlier.
- Requires DOJ's DNA laboratory to be accredited by the American Society of Crime Laboratory Directors Accreditation Board (ASCLD/LAB) as well as meet national standards for data banks as required by federal law.
- Makes technical changes to provisions requiring samples from persons convicted of enumerated offenses in federal or other state courts.

### **Post-Conviction DNA Testing**

Currently, California lacks a statute giving inmates the right to post-conviction DNA testing and, consequently, such testing is at the discretion of the prosecutor. Innocent persons should not serve time or be executed for crimes they did not commit. As long as an innocent person is incarcerated for a crime he or she did not commit, the guilty party remains at-large and represents a continuing danger to society.

**SB 1342 (Burton), Chapter 821**, requires the court to grant a motion for the performance of DNA testing under specified conditions for any person convicted of a felony currently serving a term of imprisonment, and requires the appropriate governmental entity to preserve any biological material secured in a criminal case, as specified. Specifically, this new law:

- Provides that a person convicted of a felony and currently serving a term of imprisonment may make a written motion verified under penalty of perjury before the trial court which entered the conviction for performance of DNA testing.

- Requires that the motion for DNA testing explain why identity was, or should have been, an issue in the case; how the requested testing would raise a reasonable probability that there would have been a more favorable verdict if the results of DNA testing were available at the trial; and identify the material to be tested and the specific type of DNA testing sought.
- Requires that a notice of the hearing be served on the Attorney General; the district attorney in the county of conviction; and, if known, the governmental agency or laboratory holding the evidence, and requires that responses be filed within 60 days of service.
- Allows the court discretion to grant a hearing on the motion, and requires that the motion be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable.
- Requires the court to appoint counsel for an indigent, convicted person.
- States the court shall grant the hearing on the motion for DNA testing if all of the following has been established:
  - The evidence to be tested is available and in a condition that would permit DNA testing requested in the motion.
  - The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect.
  - The identity of the defendant was, or should have been, a significant issue in the case.
  - The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator or accomplice to the crime or enhancement which resulted in the conviction or sentence.
  - The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the defendant's verdict or sentence or would have been more favorable if the results of DNA testing had been available at the time of conviction. The court, in its discretion, may consider any evidence whether or not it was introduced at the trial.
  - The evidence sought to be tested either:

- Was not tested previously, or
  - Was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.
- The testing requested employs a method generally accepted within the scientific community.
  - The motion is not made solely for the purpose of delay.
- Requires that the testing be conducted by a laboratory mutually agreeable to the district attorney or the attorney general, as specified, and the person filing the motion; and if the parties cannot agree, the court's order shall designate a laboratory.
  - Requires that the results of any testing ordered be fully disclosed to each of the parties. If requested by either party, the court shall order production of the underlying data and notes.
  - Provides that the cost of DNA testing shall be borne by the State or by the applicant if the court finds that the applicant is not indigent and has the ability to pay, and states legislative intent to appropriate funds for this purpose.
  - Provides that any order granting or denying a motion for DNA testing shall not be appealable, and shall be reviewable only through petition for writ of mandate or prohibition as specified.
  - Requires the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with the case, and the governmental entity shall have the discretion to determine how that evidence is retained, as long as it is retained in a condition suitable for DNA testing.
  - Allows a governmental entity to destroy biological materials before the expiration date of the following conditions are met:
    - The governmental entity notifies the person who remains incarcerated in connection with the case, any counsel of record, the public defender and the district attorney in the county of conviction and the Attorney General of its intention to dispose of the material.

- The entity does not receive within 90 days of the notice any of the following:
  - A motion requesting that DNA testing be performed, which allows that the material sought to be tested only be retained until such time as the court issues a final order.
  - A request under penalty of perjury that the material not be destroyed because a motion for DNA testing will be filed within 180 days, and a motion is in fact filed within that time period.
  - A declaration of innocence under penalty of perjury filed with the court within 180 days of the judgment of conviction or before July 1, 2001, whichever is later; however, the court shall permit the destruction of the evidence upon a showing that the declaration is false or that there is no issue of identity which would be affected by future testing.
- States that this section shall become inoperative on January 1, 2003 and is repealed as of that date unless a later enacted statute extends or deletes this provision.

### **Missing Persons DNA Data Bank**

Currently, hundreds of people are missing under suspicious circumstances, many of them children. Over the past two decades, and in some cases longer, coroners in every California county in California have retained unidentifiable remains or samples of remains. It is estimated that over 2,000 remains or samples presently exist throughout the state.

**SB 1818 (Speier), Chapter 822**, creates a DNA data bank of unidentified human remains and biological samples of relatives of missing persons to investigate unsolved missing persons cases. Specifically, this new law:

- Requires the Department of Justice (DOJ) to develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person. The database shall be comprised of genetic markers appropriate for human identification but do not have the capability of predicting biological function. The sole purpose of the database is to identify missing persons. The database shall be kept separate from the convicted criminal offender database. The DNA typing shall be compatible with and uploaded into the Federal Bureau of Investigation.
- Requires the DOJ to compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal

articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons. A "high-risk" missing person is defined as a person missing as a result of a stranger abduction, under suspicious or unknown circumstances, where there is reason to assume the person is in danger or deceased and that the person has been missing for more than 30 days, or less than 30 days in the discretion of the investigating agency.

- Provides that the DOJ shall develop standards and guidelines for the preservation and storage of DNA samples. A coroner shall collect samples for DNA testing from the remains of all unidentified persons and send those samples to DOJ for testing and inclusion in the data bank. After the sample has been analyzed, the remaining evidence shall be returned to the appropriate coroner.
- Provides that after a report has been made of a person missing under high-risk circumstances, the responsible investigating law enforcement agency shall inform the parent or appropriate relatives within 30 days that they have the right to give voluntary samples for DNA testing or may collect a DNA sample from a personal article belonging to the missing person, if available.
- Provides that all samples and DNA extracted from a living person shall be destroyed after a positive identification is made and report is issued. All DNA samples are confidential and shall only be disclosed to DOJ personnel, law enforcement officers, coroners, medical examiners and district attorneys, except that a law enforcement agency may notify the victim's family if there has been a match.
- Provides that a person who collects, possesses or stores DNA or samples for DNA testing from a living person who intentionally misuses the samples shall be guilty of a misdemeanor and subject to potential civil damages, including attorneys fees and costs.
- Provides that the Missing Person DNA Data Base shall be funded by a \$2 fee increase (commencing on January 1, 2001) on death certificates issued by a local government agency or by the State. The issuing agencies may retain up to five percent of the funds from the fee increase for administrative costs. The fee increase will remain in effect only until January 1, 2006 or when federal funding for operation of the database becomes available, if it becomes available before that date. If federal funding is made available, it shall be used to assist in the identification of the backlog of high-risk missing person cases and long-term unidentified remains. Funds may be distributed by DOJ to

various counties for the purposes of pathology and exhumation as DOJ deems necessary. DOJ shall retain the authority to prioritize case analysis.

- Provides that the DOJ shall begin case analysis in 2002 and retains the authority to prioritize case analysis.
- Remains in effect only until January 1, 2006, and as of that date is repealed, unless a later statute enacted before January 1, 2006 deletes or extends that date.



## DOMESTIC VIOLENCE

### Domestic Violence: Facilitator Training

Existing law requires that a person convicted of a domestic violence crime and then granted probation is required to satisfactorily complete a batterer's treatment program.

**AB 1886 (Lowenthal), Chapter 544**, requires facilitators of batterers' intervention programs to meet minimum training and continuing education requirements. Specifically, this new law:

- Provides that a person who works as a facilitator in a batterer's intervention program complete the following requirements:
  - Forty hours of approved core-basic training as specified.
  - Fifty-two weeks, or no less than 104 hours in six months, as a trainee in an approved batterer's intervention program with a minimum of a two-hour group session each week under the supervision of an experienced facilitator, as defined.
- Defines an "experienced facilitator" as person who has the following qualifications:
  - Documentation on file, approved by the agency, evidencing that the experienced facilitator has the skills to provide supervision and training.
  - Documented experience working with batterers for three years, and a minimum of two years working with batterer's groups.
  - Documentation by January 1, 2003 of coursework or equivalent training that demonstrates satisfactory completion of the 40-hour basic core training.
- Requires a facilitator of a batterer's intervention program to complete a minimum of 16 hours annually of continuing education, with a minimum of 8 hours in domestic violence.
- Provides that a person or agency with a specific hardship may request an extension of time to complete the training or to complete alternative training.

- Exempts from the required training persons employed to provide batterer's treatment through a jail education program.
- Exempts any person from that part of the training requirement for which he or she can present documentation of satisfactorily completed course work or equivalent training.
- Exempts persons who complete training requirements of a county probation department whose training exceeds the specified training requirements.

### **Arrests**

Existing law authorizes a peace officer to make an arrest without a warrant for an offense not committed in the officer's presence when the officer has probable cause to believe that a suspect committed an assault or battery against another person with whom the suspect has a specified personal or domestic relationship.

**AB 2003 (Shelley), Chapter 47**, adds a dating relationship, as defined, to the list of specified personal relationships which allow a peace officer to make an arrest without a warrant when the officer has probable cause to believe an assault or battery has been committed by a suspect against the other person in that relationship.

### **Parole: Battered Woman Syndrome**

In view of the circumstances surrounding crimes committed by battered women against their batterers and the inability of many of these women to present evidence of the abuse they endured as a defense at trial, these women should receive serious and heightened review of their sentences.

**SB 499 (Burton), Chapter 652**, requires the Board of Prison Terms (BPT) in granting or denying parole to consider whether the prisoner had suffered from battered women syndrome (BWS) at the time of the commission of the crime. Specifically, this new law:

- Requires the BPT in considering a prisoner's suitability for parole to consider any evidence that at the time of the commission of the crime the prisoner had suffered from BWS.
- Limits consideration of BWS to cases occurring prior to statutory recognition of BWS in 1991.
- Requires the BPT to state on the record the facts that it considered and the reasons for the parole decision.

- Requires the BPT to report annually to the Governor and the Legislature on cases involving BWS considered during the previous year, including the BPT's decisions involving those cases and the findings of the BPT's investigation of these cases.

### **Aggravated Trespass**

Existing law defines the crime of "stalking" as harassing or following another person in conjunction with the making of a credible threat against that person or his or her immediate family. Intruders who enter a residence to stalk a victim but do not orally threaten the victim or engage in inherently threatening conduct may only be guilty of a misdemeanor trespass.

**SB 1486 (Schiff), Chapter 563**, enhances the sentence for intruders who enter a residence in which the resident or another authorized person is present at any time during the incident by creating the offense of "aggravated trespass". Specifically, this new law:

- Provides that any person who enters or remains in any noncommercial dwelling house, apartment, or other residential place without permission while the owner, or other person authorized to be in the dwelling, is present at any time is guilty of the offense of aggravated trespass.
- Provides that aggravated trespass is punishable by imprisonment in the county jail up to one year or by a fine of not exceeding \$1,000, or by both that fine and imprisonment.
- Permits a court to order a person convicted of the offense to remain on supervised probation up to three years. The court is required to order counseling as a condition of probation.
- Authorizes the court to issue a restraining order, valid for up to three years, as part of the sentence for aggravated trespass.

### **Training: Stalking**

Stalking is a growing phenomenon. Every year, thousands of victims across the state experience the terror of being stalked. The State of California, in the forefront of stalking legislation, was the first to pass an anti-stalking statute in 1990. The statute has been amended almost continuously, expanding the definition of "threat" and increasing the potential penalties. In addition, because stalking is prevalent outside circumstances one would traditionally view as domestic or work related, law enforcement needs on-going training to be aware of changes in the law and in the nature of the offense itself.

**SB 1539 (Lewis), Chapter 564**, requires the Commission on Peace Office Standards and Training (POST) and the California Department of Corrections (CDC) to create and implement a training course about stalking. Specifically, this new law:

- Provides that POST implement by January 1, 2002 a voluntary course of instruction for the training of law enforcement officers in the handling of stalking complaints and also develop guidelines for law enforcement's response to stalking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.
- Provides that the course and guidelines shall stress enforcement of criminal laws, availability of civil remedies, community resources, and protection of the victim.
- Provides that POST develop the course in consultation with appropriate groups and individuals having an interest and expertise in the field of stalking. POST also review existing training programs to determine how stalking training might also be included in the curriculum.
- Requires the CDC to implement by January 1, 2002 a course of instruction in the management of parolees convicted of stalking. The course shall include instruction in the appropriate protocol for notifying and interacting with stalking victims.

### **Domestic Violence**

Under existing law, hearsay evidence is not inadmissible unless it falls with an established exception to the rule. Existing law provides that there is no filing fee for a petition, response, or for a pleading seeking a modification of a protective order filed in a proceeding concerning domestic violence. Existing law provides that the arrest of domestic violence offenders is encouraged and that peace officers shall make reasonable efforts to identify the primary aggressor in a domestic violence incident.

**SB 1944 (Solis), Chapter 1001**, expands an exception to the hearsay rule. In addition, SB 1944 clarifies procedures regarding protective orders in domestic violence cases and how peace officers should investigate incidents of domestic violence. Specifically, this new law:

- Expands an existing hearsay exception by allowing into evidence a statement made to a physician, nurse, or paramedic, explaining the infliction or threat of physical injury upon the victim.

- Provides that no filing fee shall be charged for an application, a responsive pleading or an order to show cause that seeks to obtain, modify or enforce a protective order or other order authorized by this division, when necessary to obtain or give effect to a protective order.
- Provides that peace officers shall make reasonable efforts to identify the "dominant" aggressor, rather than the "primary" aggressor, regarding the arrest of domestic violence offenders.



## ELDER ABUSE

### Elder Abuse: Punishment

Existing law provides that any person under circumstances or conditions other than those likely to cause great bodily injury or death, causes an elder or dependent adult to suffer or inflicts unjustifiable physical pain or mental suffering is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed six months.

Existing law further provides that any person under circumstances or conditions likely to cause great bodily injury or death, causes an elder or dependent adult to suffer or inflicts unjustifiable physical pain or mental suffering is punishable by imprisonment in the county jail by up to one year, or by imprisonment in the state prison for two, three, or four years.

**AB 559 (Nakano), Chapter 214**, increases the penalty for the misdemeanor infliction of pain or suffering on an elder or dependent adult from six months to one year in the county jail, and includes a fine of up to \$6,000 for an alternate felony/misdemeanor violation.

### Elder Abuse Training

Over 2 million Americans over the age of 65 are abused every year, but only 1 in 14 ever report their abuse to authorities. In one year alone in California, there were over 57,000 cases of abuse. California law mandates elder care custodians, medical and non-medical practitioners or employees of elder protective agencies to report suspected abuse. In response to this growing problem, the Commission on Peace Officers Standards and Training (POST) developed and broadcast an elder abuse telecourse.

Sacramento and Yolo Counties have successfully created their own elder abuse campaigns in an effort to educate people about the myriad ways elders may be at risk. Elder abuse reporting has doubled since the inception of these campaigns.

**AB 1819 (Shelley), Chapter 559**, requires existing peace officer elder abuse training to include specific topics relating to physical and psychological abuse of elders and dependent adults. This new law:

- Mandates that the POST advanced elder and dependant adult abuse training include:
  - Relevant laws;

- Recognition of elder abuse;
  - Reporting requirements and procedures;
  - Neglect of elders;
  - Fraud of elders;
  - Physical abuse of elders;
  - Mental health and intimidation of elders; and
  - The role of the local adult protective services and public guardian offices.
- Requires, upon appropriation by the Legislature, the Attorney General's (AG) office in conjunction with the Health and Human Services Agency to establish a statewide elder awareness media campaign.
  - Expands the definition of elder abuse "mental suffering" to include intentionally making false or misleading statements or deceptive acts.
  - Clarifies that deceptive acts or statements must be made with malicious intent to cause specified mental suffering.
  - Prohibits a government or elected official from appearing or being referenced in the media campaign authorized by this new law.
  - Makes other minor technical changes.

### **Conditional Examinations**

The prosecution of elder abuse cases is often hampered by the inability of an elder adult to either remember an incident or the elder adult's rapidly changing health. A conditional examination (an examination based on videotaped testimony with court verification) preserves a witness's testimony for a trial that often occurs months, or even years, later. Often, a victim of elder abuse is competent and otherwise able to testify at the time he or she reports an incident of abuse. However, by the time the trial approaches, the victim's health can rapidly decline and with it, his or her ability to remember and communicate facts. There is no provision to apply for a conditional examination once the victim's condition begins to deteriorate. The net effect is that these cases cannot be prosecuted and must be dismissed.

**AB 1891 (Lowenthal), Chapter 186**, provides that conditional examinations may also be taken of a person 70 years of age or older or dependent adults. Specifically, this new law:

- Provides that either party to a criminal action may apply for an order to conduct a conditional examination of a material witness who is 70 years of age or older or a dependent adult.
- Defines "dependent adult" as any person between the ages of 18 and 70, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. A dependent adult includes any person between the ages of 18 and 70 who is admitted as an inpatient to a 24-hour facility, as specified.



## EVIDENCE

### **Statute of Limitations: DNA Evidence**

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act. The purpose of the legislation was to help law enforcement agencies promptly detect and prosecute individuals responsible for sex offenses and other violent crimes, as well as exclude suspects being investigated for such crimes. However, a number of cases that could be solved through the use of genetic profiling are barred by the current six-year statute of limitations while the State of California is in the process of modernizing its crime laboratories.

**AB 1742 (Correa), Chapter 235**, extends the statute of limitations for sex offenses and creates an exception to the statute where the identity of the offender is established through DNA testing. Specifically, this new law:

- Extends the statute of limitations from six to ten years for sex offenses where the limitation period as specified has not expired as of January 1, 2001 or the offense is committed on or after January 1, 2001.
- Provides that the statute of limitations for specified sex offenses is either 10 years or 1 year from conclusively establishing the identity of the suspect by DNA testing, whichever is later, if either of the following conditions is met:
  - For offenses committed before January 1, 2001, DNA evidence is analyzed no later than January 1, 2004.
  - For offenses committed after January 1, 2001, DNA evidence is analyzed no later than two years from the date of the offense.

### **Peace Officers: False Evidence**

Existing law makes it a misdemeanor or a felony for a peace officer to knowingly file a false police report. However, existing law does not address the planting of physical evidence on a person or in a place under the possession and control of a person, with the specific intent to cause that person to be charged with a crime.

**AB 1993 (Romero), Chapter 620**, makes it a felony for a peace officer, and a misdemeanor for any other person, to intentionally place, or move any physical matter to be wrongfully produced as genuine or true upon any trial, proceeding or inquiry. The felony is punishable by two, three, or five years in state prison. Specifically, this new law:

- Makes it a misdemeanor if any person knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry.
- Makes it a felony if any peace officer knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding or whatever, is guilty of a felony punishable by two, three, or five years in state prison.
- Provides that nothing in this new law shall preclude prosecution under any other provision of existing law.

### **Domestic Violence**

Under existing law, hearsay evidence is not inadmissible unless it falls with an established exception to the rule. Existing law provides that there is no filing fee for a petition, response, or for a pleading seeking a modification of a protective order filed in a proceeding concerning domestic violence. Existing law provides that the arrest of domestic violence offenders is encouraged and that peace officers shall make reasonable efforts to identify the primary aggressor in a domestic violence incident.

**SB 1944 (Solis), Chapter 1001**, expands an exception to the hearsay rule. In addition, SB 1944 clarifies procedures regarding protective orders in domestic violence cases and how peace officers should investigate incidents of domestic violence. Specifically, this new law:

- Expands an existing hearsay exception by allowing into evidence a statement made to a physician, nurse, or paramedic, explaining the infliction or threat of physical injury upon the victim.
- Provides that no filing fee shall be charged for an application, a responsive pleading or an order to show cause that seeks to obtain, modify or enforce a protective order or other order authorized by this division, when necessary to obtain or give effect to a protective order.
- Provides that peace officers shall make reasonable efforts to identify the "dominant" aggressor, rather than the "primary" aggressor, regarding the arrest of domestic violence offenders.

## **GANG PROGRAMS**

### **The Community Law Enforcement and Recovery Demonstration Project**

The Community Law Enforcement and Recovery (CLEAR) Demonstration Project was established in 1997 by AB 863 (Hertzberg), and is a multi-agency gang suppression recovery model that has expanded over the past three years from its initial site in Northeast Los Angeles to six sites throughout Los Angeles County. The areas chosen are specifically selected because of the exceptionally high level of gang violence in those neighborhoods. CLEAR has organized Community Impact Teams, consisting of the CLEAR agencies, residents and stakeholders in the community. The CLEAR project is operative until January 1, 2001, unless the sunset date is extended.

**SB 865 (Hughes), Chapter 653**, extends the sunset date of the CLEAR project until January 1, 2004.



# HATE CRIMES

## Hate Crime Reporting

Hate-related incidents and harassment can adversely affect a student's ability to learn and can escalate into serious school violence. Currently, the State Department of Education receives crime statistics from schools twice a year. However, sufficient data is not collected about hate-motivated incidents such as violence or hostility against a student because of his or her race, religion, disability, or sexual orientation.

**AB 1785 (Villaraigosa), Chapter 955**, requires the Department of Education (DOE) to include the reporting of hate-motivated incidents and hate crimes, as defined, on the standard crime reporting form and revises the state educational curriculum to include human relations education with the aim of fostering an appreciation of California's diversity and discouraging discriminatory attitudes and practices. Specifically, this new law:

- Requires the standard school crime reporting form to include hate crimes and hate-motivated incidents as defined.
- Requires DOE to revise the state curriculum frameworks and guidelines and the moral and civic education curricula to include human relations education with the aim of fostering an appreciation of the diversity of California's population and discouraging the development of discriminatory practices.
- States that it was the intent of the Legislature that public schools have access to supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, and to prevent and respond to acts of hate violence and bias-related incidents.
- Adds a course in human relations as a prerequisite to obtaining a credential to provide services to limited English-proficient children, and defined culture and cultural diversity to mean an understanding of human relations as specified.
- Adds additional goals for school sites receiving funds to include programs and curricula related to bias, stereotyping, and discrimination.

## **Vandalism: Cemeteries**

Existing law provides that any person who knowingly commits an act of vandalism to a church, synagogue, or other place of worship is guilty of a crime punishable as an alternate felony/misdemeanor.

Existing law further provides that any person who knowingly commits any act of vandalism to a church, synagogue, or other place of worship which is shown to have been committed by reason of the race, color, religion, or national origin of another individual for the purpose of intimidating and deterring persons from freely exercising their religious beliefs is guilty of a felony.

**AB 2580 (Cox), Chapter 546**, adds "cemetery" to the current list of religious structures or places for which vandalism subjects a person to prosecution for an alternate felony/misdemeanor, or a felony if the act was "hate" motivated. Additionally, this new law transfers provisions of the Health and Safety Code relating to the mutilation of graves and markers to the Penal Code.

## JUDGES, JURORS, AND WITNESSES

### Conditional Examinations

The prosecution of elder abuse cases is often hampered by the inability of an elder adult to either remember an incident or the elder adult's rapidly changing health. A conditional examination (an examination based on videotaped testimony with court verification) preserves a witness's testimony for a trial that often occurs months, or even years, later. Often, a victim of elder abuse is competent and otherwise able to testify at the time he or she reports an incident of abuse. However, by the time the trial approaches, the victim's health can rapidly decline and with it, his or her ability to remember and communicate facts. There is no provision to apply for a conditional examination once the victim's condition begins to deteriorate. The net effect is that these cases cannot be prosecuted and must be dismissed.

**AB 1891 (Lowenthal), Chapter 186**, provides that conditional examinations may also be taken of a person 70 years of age or older or dependent adults. Specifically, this new law:

- Provides that either party to a criminal action may apply for an order to conduct a conditional examination of a material witness who is 70 years of age or older or a dependent adult.
- Defines "dependent adult" as any person between the ages of 18 and 70, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. A dependent adult includes any person between the ages of 18 and 70 who is admitted as an inpatient to a 24-hour facility, as specified.

### Jury Selection

Before 1990, the questioning of prospective jurors in criminal cases ("voir dire") was conducted by prosecutors and defense attorneys. In 1990, Proposition 115 changed jury selection procedures by having judges conduct voir dire.

**AB 2406 (Migden), Chapter 192**, restores the right to prosecutors and defense attorneys to question prospective jurors in criminal cases within limits prescribed by the court. Specifically, this new law:

- Provides that counsel for both parties, upon completion of the court's initial examination, have the right to question prospective jurors.
- Provides that the court has the discretion to limit the questioning of jurors. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which may be allocated among the prospective jurors by counsel.
- Provides that any limitations on the time allowed for questioning jurors and any determination that a particular question was not for the purpose of exercising a challenge for cause, shall not cause any conviction to be reversed, unless it results in a miscarriage of justice as defined in the California Constitution.

### **Juror Privacy**

Prosecutors and defense lawyers frequently attempt to question jurors after trials, asking for feedback about how to be more effective advocates and often times investigating claims of juror misconduct. Existing law provides that before discharging the jury in a criminal case, the judge must inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with any person.

**AB 2567 (Jackson), Chapter 242**, expands the juror privacy admonition to require the defense and prosecution to more fully advise jurors of their rights regarding discussing the deliberation or verdict. Specifically, this new law provides that before discussing the jury deliberation or verdict with a member of the jury more than 24 hours after the verdict, both the prosecution and the defense shall inform the juror of the following:

- The identity of the case.
- The party in the case that the person represents.
- The subject of the interview.
- The absolute right of the juror to discuss or not to discuss the deliberation or verdict with any person.
- The right of the juror to review and have a copy of any declaration filed with the court.

### **Child Witnesses: Closed-Circuit Television**

Existing law authorizes a minor under the age of 13 years to give testimony by way of a closed-circuit television if the minor's testimony will involve a recitation of the facts, and if the testimony relates to an alleged sexual offense on or with the minor, or if the minor is a victim of a "violent" felony. These provisions are operative until January 1, 2001 and on that date are repealed.

**SB 1715 (Ortiz), Chapter 207**, extends the sunset date until January 1, 2003 on the provisions of law which allow a minor under the age of 13 to testify by way of closed-circuit television.



## JUVENILES: FACILITIES AND PROGRAMS

### **Battery: Probation Department Employees**

Under existing law, battery upon a peace officer or other specified officers is a misdemeanor punishable by up to one year in the county jail, by a specified fine, or by both. A battery where injury is inflicted upon a peace officer or other specified officers is an alternate felony/misdemeanor punishable by 16 months, 2 or 3 years, or by up to one year in the county jail.

**AB 1899 (Havice), Chapter 236**, increases the penalty for battery upon a non-sworn employee of a probation department. Specifically, this new law:

- Makes battery upon a non-sworn employee of a probation department engaged in the performance of his or her duty punishable by up to one year in the county jail, by a fine of up to \$2,000, or by both a fine and imprisonment.
- Makes battery, with the infliction of injury, upon a non-sworn employee of a probation department engaged in the performance of his or her duty punishable by imprisonment in the state prison for 16 months, 2 or 3 years; by up to one year in the county jail; by a fine of up to \$2,000, or by both a fine and imprisonment.

### **Juvenile Crime Prevention**

With the passage of Proposition 21, the Juvenile Crime and Gang initiative, the Legislature has focused on increasing crime prevention efforts to keep juvenile offenders out of the criminal justice system.

**AB 1913 (Cardenas), Chapter 353**, appropriates \$242.6 million for local law enforcement programs: \$121.3 million to continue funding of the Citizens Option for Public Safety (COPS) program and \$121.3 million to juvenile justice initiatives to be administered by the Board of Corrections. Specifically, this new law:

- Appropriates \$121.3 million for continued funding for the COPS program, which provides supplemental funds to cities and counties for front-line peace officers.
- Includes \$21 million to guarantee a minimum of \$100,000 to participating cities and/or counties, as specified.

- Provides for additional new components to the COPS program such as requiring the return of unused moneys to the General Fund and an annual report on expenditures to the Legislature.
- Appropriates \$121.3 million for local juvenile justice programs that have demonstrated their effectiveness in reducing delinquency and requires counties to use a multi-agency Juvenile Justice Coordinating Council with specified outcome measures.
- Requires counties or a city or county to which funding has been allocated to provide the Board of Corrections with specified reports on the effectiveness of funded programs. Funding allocated for juvenile justice programs must be used to supplement and not supplant funding by local agencies for existing services.
- Takes effect immediately as an urgency statute with a repeal date of July 1, 2002.

### **Juveniles: Youth Centers**

Existing law establishes the Juvenile and Gang Violence Prevention, Detention, and Public Protection Act of 1998, and authorizes the Department of the Youth Authority to award grants to nonprofit agencies that serve youth for the purpose of acquiring, renovating or constructing youth centers.

**AB 2446 (Wildman), Chapter 59**, adds the California Police Activities League to the nonexclusive list of nonprofit agencies that serve youth and may apply for grants.

### **Juvenile Hearing Officers**

Under existing law, driving under the influence (DUI) offenses committed by juveniles may be disposed of by a juvenile court judge, a referee, or by a juvenile hearing officer. Existing law provides that a probation officer may, in lieu of requesting that a petition be filed by the prosecuting attorney, recommend a program of supervision for the minor. Increasingly, there has been concern that DUI offenses committed by juveniles were not appropriate for disposition by juvenile hearing officers.

**AB 2744 (Oller), Chapter 228**, removes DUI offenses from the jurisdiction of the Informal Juvenile and Traffic Court. Specifically, this new law provides that a juvenile hearing officer may not hear and dispose of any case in which the minor is charged with any DUI, driving with an excessive blood alcohol concentration, and failure to submit to a preliminary alcohol screening test or other chemical test.

## **Abandoned Children**

Existing law provides that any parent of a child under the age of 14 years who intentionally abandons the child is guilty of an alternate felony/misdemeanor. The abandonment of babies is an increasing problem. There have been a number of recent reports nationwide of babies being abandoned in trash bins, restrooms, and parking lots. In Los Angeles alone, the county coroner reports that their office handles 15 to 20 dead, abandoned babies each year. To encourage parents to surrender their children to hospitals instead of abandoning them, several states have enacted statutes exempting parents from prosecution for child abandonment.

**SB 1368 (Brulte), Chapter 824**, creates immunity from prosecution for child abandonment if a parent or lawful custodian voluntarily surrenders physical custody of a child to an employee at a hospital emergency room or an additional location specified by the county board of supervisors. Specifically, this new law:

- Provides immunity from criminal prosecution to a parent or person having lawful custody of a child 72 hours old or younger who delivers the child to a designated employee of a public or private hospital emergency room or to another location designated by a county.
- Requires a person taking physical custody of a child to provide a medical screening and any necessary medical care. The consent of the parent or other relative shall not be required to provide care to the child. As soon as possible, but no later than 48 hours after being taken into custody, the person shall notify Child Protective Services. The child shall be turned over to the county child protective services or child welfare agency as soon as possible.
- Requires issuing a special identification bracelet to the child at the time of surrender. The person who surrenders the child shall be given a matching code number for identification purposes.
- Provides that the parent or other person having lawful custody of the child who surrenders the child may reclaim custody of the child within 14 days of the surrender date by providing the identifying code number, unless a health practitioner knows or reasonably suspects that the child has been the victim of abuse or neglect. The voluntary surrendering of a child is not in and of itself a sufficient basis for reporting abuse or neglect.
- Provides that at the time of surrender, the designated person shall provide or make a good-faith effort to provide a voluntary questionnaire to report on the medical history of the child and parents.

The form may be completed, using only the child's identification code, at the hospital or mailed in later.

- Grants immunity from civil, criminal, or administrative liability to persons or entities for accepting and caring for a child in the good-faith belief that action is required or authorized. The immunity includes, but is not limited to, instances where the child is older than 72 hours or the person surrendering the child did not have lawful custody of the child. There is no immunity from liability for personal injury or wrongful death including, but not limited to, injury resulting from medical malpractice.
- Requires Child Protective Services, the child welfare agency, or the county to assume temporary custody of the child as soon as possible and to report this action to the Department of Social Services (DSS). If custody of the child is not reclaimed within 14 days of surrender, the county agency must file a petition in dependency court and follow the procedures for abused or neglected children outlined in Welfare and Institutions Code Sections 300, et seq.
- Requires DSS to instruct counties as to the process to be used to ensure that each child is determined to be eligible for Medi-Cal benefits.
- Requires DSS to file specified reports to the Legislature as to the effects of its provisions.
- Sunsets on January 1, 2006.

### **Turning Point Academy**

In an effort to combat youth violence, the California Legislature and Governor sought a new approach to dealing with a youth who commits a firearm-related offense on a campus or off campus at a school-related activity. The goal is to begin intervention early, before a youth begins to get into more trouble.

**SB 1542 (Schiff), Chapter 366**, creates a pilot project to establish a boot camp academy for first-time juvenile offenders who are minors, 15 years or older, and use a firearm at a school or during a school activity. Specifically, this new law:

- Requires the Military Department (MD) to establish the Turning Point Academy, consisting of physical training, education, drug screening and counseling services for specified delinquent youth which will become inoperative July 1, 2002.

- Establishes Academy eligibility requirements to include a juvenile 15 years of age or older adjudicated to be delinquent for having possessed, sold or furnished a firearm on a school campus or at a school activity. The minor must be a first-time offender and cannot be mentally ill or otherwise physically or mentally unsuitable.
- Prohibits the use of physical and chemical force or physical or mental intimidation, as specified.
- Creates a Mandatory Advisory Committee consisting of 11 representatives from the MD, the California Youth Authority, the Legislature, the probation department, the office of education, law enforcement, juvenile detention, adolescent development or mental health and a juvenile court judge.
- Requires the MD, pursuant to the recommendations of an Advisory Committee, to adopt policies and procedures on matters relating to cadet and staff safety; staff training; cadet discipline, motivation and mentoring; academic and vocational education assessment and programming; behavior counseling; and cadet graduation planning.
- Requires that all custodial, teaching and mental health staff be appropriately trained, credentialed or licensed, as specified.
- Requires the Board of Corrections (BOC), using existing standards for local juvenile facilities, to oversee the Academy and requires the BOC to prepare and submit a report to the Legislature by July 1, 2002.
- Requires the county board of supervisors of a county seeking to place its ward in the Academy to adopt a resolution indicating that the county's desire to opt-in the Academy program.
- Allows courts to commit eligible youth to the Academy for a commitment for up to six months while retaining jurisdiction over the wards and requires the courts placing wards in the Academy to review their status monthly.
- Mandates that the minor placed in the Academy participate in six months of intensive county probation aftercare upon release from the Academy.
- Appropriates \$9.21 million for the Academy and allows up to five percent of that amount to be used by an independent researcher to conduct an evaluation of the effectiveness and experimental design of the Academy.

- Is an urgency measure which takes effect immediately.

### **Custody Release Requirements**

Existing law specifies differing citation and release procedures for juvenile offenders. In 1999, SB 334 (Alpert), Chapter 996, Statutes of 1999, amended certain custody release requirements that were only effective for 67 days prior to the passage of Proposition 21.

**SB 1603 (Peace), Chapter 663**, streamlines and clarifies the requirements of release for minors from custody. Specifically, this new law:

- Provides that as a condition for the release of a minor on home supervision, a probation officer shall require the minor to sign, and may also require his or her parent, guardian, or relative to sign, a written promise to appear before the probation officer at the juvenile hall or other suitable place designated by the peace or probation officer at a specified time.
- Provides that a minor 14 years of age or older who is taken into custody for a felony offense shall not be released until the minor has signed a written promise to appear or has been given an order to appear at the juvenile court on a date certain. A peace officer may also require the minor's parent, guardian or relative to sign a written promise to appear at the same place.

### **Juvenile Justice Commissions And Juvenile Court Orders**

Existing law provides that a juvenile justice commission may inquire into the operations of a group home serving wards and dependent children of the juvenile court. However, in conducting its inquiry of a group home a commission may not review confidential records of minors. Currently, a juvenile justice commission must seek separate authorization from the court each time the commission wants to access confidential records, including the records of minors. This requirement places some limitations on a commission's ability to investigate the services a minor is receiving in a particular group home.

**SB 1611 (Bowen), Chapter 908**, authorizes a juvenile justice commission to have access to the juvenile court records of a minor and the financial records of a group home. Specifically, this new law:

- Authorizes a juvenile justice commission to review the court or case records of a minor and the commission must keep the identities of the minors confidential.

- Authorizes a juvenile justice commission to review the financial records of a group home. However, the commission may not review the personnel records of employees or the records of donors to the group home.
- Provides that the court may join in juvenile court proceedings a private service provider. A "private service provider" is defined as any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

### **Vandalism: Graffiti Abatement**

Upon a vandalism conviction, existing law provides that the court may order the defendant to clean up, repair, or replace the damaged property if the jurisdiction has adopted a graffiti abatement program. Because many small communities do not have a graffiti abatement program, judges cannot sentence vandals to community service involving graffiti cleanup.

**SB 1616 (Monteith), Chapter 50**, removes the condition that a jurisdiction must have adopted a graffiti abatement program before the court may, as a condition of probation, sentence a defendant to keep specified property free of graffiti. Specifically, this new law deletes the adoption of a graffiti abatement program as a condition for the court to order a person convicted of vandalism to keep the damaged property or another specified property in the community free of graffiti for up to one year.

### **Compulsory Education: Contempt Orders**

Parents, guardians or other persons having control or charge of a student have a duty to send the student to specified educational institutions. It is an infraction to violate compulsory education laws. Existing law is silent as to whether a court may order a parent to enroll his or her habitually truant child in school, after the parent has violated California's compulsory education law.

**SB 1913 (McPherson), Chapter 465**, codifies the ability of judges to legally compel parents to enroll truant children in an educational program. Specifically, this new law:

- Authorizes a court to order, in addition to existing fines or programs, that a person convicted of the infraction of violating compulsory education laws immediately enroll the student in the appropriate school or educational program and provide proof of enrollment to the court.

- Provides that willful violation of such an order is punishable as civil contempt with a fine of up to \$1,000. An order of contempt shall not include imprisonment.
- Provides these provisions are repealed on January 1, 2005.
- Requires the Legislative Analyst, in consultation with the California District Attorneys Association and the Department of Education, to develop a report to be submitted to the Legislature on or before January 1, 2004 regarding the implementation of this new law.

### **Youthful Offenders: Restitution**

Existing law provides that unclaimed money of \$5 or less in an inmate's trust account after he or she has been paroled shall be forfeited, and deposited in the Inmate Welfare Fund of the California Department of Corrections (CDC). The Director of the California Youth Authority is allowed to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of a ward up to a maximum of 50% of the total amount held in trust.

**SB 1943 (Ortiz), Chapter 481**, makes technical changes concerning CYA Trust Accounts, and enhances CYA victim services related to restitution and youthful offender parole hearings. Specifically, this new law:

- Requires the Director of the CYA to deposit any unclaimed offender trust account money of \$5 or less in the Benefit Fund to be used for the benefit of the resident wards.
- Requires the court, in imposing a restitution order upon a minor, to identify each victim and the amount of each victim's loss, unless the court for good cause finds that the order should not identify the victim.
- Provides that when the amount of restitution cannot be determined, the court shall identify each victim and state that the amount of restitution is to be determined; and requires the court, when feasible, to identify on the court order any co-offenders who are jointly and severally liable for victim restitution.
- Reduces the number of joint meetings between the Director of the CYA and the Youthful Offender Parole Board (YOPB) to two times per year for the purpose of discussing classification, transfer, discipline, training and treatment policies and problems.
- Allows the Director of the CYA to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of an adult

held in a youth authority facility, up to a maximum of 50% of the total amount held in trust.

- Allows the Director of the CYA to apply any trust account balance in excess of \$5 to any unpaid victim restitution order or fine if the ward cannot be located after he or she is discharged, escapes, or absconds from supervision. If the restitution order or fine has been satisfied, the remainder of the trust account balance, if any, shall be transferred to the Benefit Fund to be used for the benefit of resident wards.
- Clarifies that it is the responsibility of the CYA, upon request, to notify the victim of a crime that the person who committed the crime is being considered for release on parole.
- Adds the crimes of spousal abuse, child molestation and stalking to the list of offenses for which the Director of the CYA is required to release specific information regarding offenders committed to the CYA to the victim of the offense, the next of kin of the victim, or a representative designated by the victim, upon request.
- Provides that the following persons may appear personally or by counsel at a YOPB hearing:
  - The victim of the offense and one support person of his or her choosing.
  - In the event that the victim is unable to attend the proceeding, two support persons designated by the victim may attend to provide information about the impact of the crime on the victim.
  - If the victim is no longer living, two members of the victim's immediate family may attend.

### **Licensing of California Youth Authority Mental Health Professionals**

A substantial number of psychologists employed by the California Youth Authority (CYA) do not have a license issued by the California Medical Board. Only a few CYA psychiatrists specialize in child and adolescent psychiatry. In 1999, CYA mental health staff distributed significant amounts of psychotropic drugs to treat schizophrenia, depression, and other forms of mental illness. Many of the substances pose substantial risks to patients and have potentially long-lasting side effects.

**SB 2098 (Hayden), Chapter 659**, requires psychologists employed by CYA to be licensed to practice in California. Specifically, this new law:

- Requires psychologists employed by or who contract with CYA to provide services to wards to be licensed to practice in California.
- Exempts psychologists employed by CYA on July 1, 1999, as long as he or she continues employment in the same class.
- Provides that the licensing requirement may be waived in order for a person to gain qualifying expertise for licensure as a psychologist.
- Provides that to the extent that funding is available, CYA in consultation with the Department of Mental Health (DMH) shall develop training in the treatment of children and adolescents for mental health disorders and provide training to all appropriate mental health professionals.
- Requires DMH in consultation with CYA to adopt regulations by December 31, 2001 specifying standards and guidelines for the administration of psychotropic medications to any person under the jurisdiction of CYA. The standards and guidelines shall be consistent with the due process requirements as specified in the Penal Code.

## MURDER, DEATH PENALTY AND CAPITAL PROCEDURES

### Criminal Procedure: Death Penalty

Existing law requires the court to give criminal proceedings, including the setting for trial and hearing of the matter, precedence over any civil matters or proceedings. Death penalty trials are usually longer and more complex than other criminal trials, and should be given precedence.

**AB 2125 (Pacheco), Chapter 268**, requires that the court give death penalty cases in which both the defense and the prosecution have informed the court that they are prepared to proceed to trial precedence over other criminal proceedings, unless the court finds in the interest of justice that it is not appropriate.



# PEACE OFFICERS

## Peace Officers

The Los Angeles Unified School District (LAUSD) Police Department is the only school district police department in the country that functions as a full-service police agency. The LAUSD police department provides around-the-clock police services on school campuses and the surrounding communities. This police department is responsible for the safety and protection of 850,000 students and 55,000 district employees. LAUSD police officers deserve to be appropriately classified as full-time peace officers.

**AB 1494 (Wildman), Chapter 96**, requires the Commission on Peace Officer Standards and Training (POST) to study and issue recommendations regarding changing the peace officer designation of LAUSD police officers. Specifically, this new law:

- Authorizes any person or persons designated as peace officers under specific provisions of law who desire a change in their peace officer status to request POST to undertake a study to assess a need for the change.
- Requires that any study to address the change in designation or status shall include:
  - The current and proposed duties and responsibilities of those seeking the change;
  - Their field law enforcement duties and responsibilities; and
  - The extent to which their current duties and responsibilities require additional peace officer powers and authority.
- Requires, as a prerequisite to POST's favorable recommendation for a change in status, that those seeking the change be employed by an agency currently participating in POST.
- Allows POST to charge the LAUSD a fee, not to exceed the actual costs of undertaking the study.

## **Continuing Education: Mental Illness and Developmental Disability**

Under current law, law enforcement officers are required to receive six hours during basic training in how to deal with persons with mental illnesses and developmental disabilities.

**AB 1718 (Hertzberg), Chapter 200**, requires the Commission on Peace Officer Standards and Training (POST) to establish and update a continuing education classroom training course regarding persons with developmental disabilities or mental illness. Specifically, this new law:

- Requires that, on or before June 30, 2001, POST establish and keep updated a continuing education classroom-training course relating to law enforcement intervention with developmentally disabled and mentally ill persons. The training course is to be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability.
- Requires POST to submit a report to the Legislature by October 1, 2003 that includes a description of the process by which the course was established and information on the number of officers that attended the course or other courses certified by the commission relating to mentally ill and developmentally disabled persons.

## **Elder Abuse Training**

Over 2 million Americans over the age of 65 are abused every year, but only 1 in 14 ever report their abuse to authorities. In one year alone in California, there were over 57,000 cases of abuse. California law mandates elder care custodians, medical and non-medical practitioners or employees of elder protective agencies to report suspected abuse. In response to this growing problem, the Commission on Peace Officers Standards and Training (POST) developed and broadcast an elder abuse telecourse.

Sacramento and Yolo Counties have successfully created their own elder abuse campaigns in an effort to educate people about the myriad ways elders may be at risk. Elder abuse reporting has doubled since the inception of these campaigns.

**AB 1819 (Shelley), Chapter 559**, requires existing peace officer elder abuse training to include specific topics relating to physical and psychological abuse of elders and dependent adults. This new law:

- Mandates that the POST advanced elder and dependant adult abuse training include:
  - Relevant laws;
  - Recognition of elder abuse;
  - Reporting requirements and procedures;
  - Neglect of elders;
  - Fraud of elders;
  - Physical abuse of elders;
  - Mental health and intimidation of elders; and
  - The role of the local adult protective services and public guardian offices.
- Requires, upon appropriation by the Legislature, the Attorney General's (AG) office in conjunction with the Health and Human Services Agency to establish a statewide elder awareness media campaign.
- Expands the definition of elder abuse "mental suffering" to include intentionally making false or misleading statements or deceptive acts.
- Clarifies that deceptive acts or statements must be made with malicious intent to cause specified mental suffering.
- Prohibits a government or elected official from appearing or being referenced in the media campaign authorized by this new law.
- Makes other minor technical changes.

### **Court Service Investigators**

Court services investigators have jobs and working conditions similar to district attorney investigators, but they are not classified as peace officers. Since 1989, the Commission on Peace Officer Standards and Training (POST) is required to review all peace officer classification requests prior to legislative consideration of granting peace officer status. The POST feasibility study includes a review of the proposed duties and responsibilities of the person employed in the category seeking peace officer designation.

Further, peace officers are required to satisfactorily complete a basic training course and examination established by POST. POST may adopt regulations relative to alternative means to satisfy required training.

**AB 1928 (Vincent), Chapter 354**, simplifies the "equivalency" testing for peace officers with prior experience and requires POST to issue a study and recommendations regarding Los Angeles County court services investigators and their designation as peace officers. Specifically, this new law:

- Requires POST, for those instances where individuals have acquired prior comparable peace officer training, to adopt regulations providing for alternative means for satisfying the training required by specified provisions of law.
- Require POST to issue a study and its recommendations regarding whether Los Angeles County court services investigators should be granted peace officer status and submit a copy of its study and recommendations to the Legislature.
- Provides that this new law's provisions remain in effect only until January 1, 2002.

### **Peace Officers: False Evidence**

Existing law makes it a misdemeanor or a felony for a peace officer to knowingly file a false police report. However, existing law does not address the planting of physical evidence on a person or in a place under the possession and control of a person, with the specific intent to cause that person to be charged with a crime.

**AB 1993 (Romero), Chapter 620**, makes it a felony for a peace officer, and a misdemeanor for any other person, to intentionally place, or move any physical matter to be wrongfully produced as genuine or true upon any trial, proceeding or inquiry. The felony is punishable by two, three, or five years in state prison. Specifically, this new law:

- Makes it a misdemeanor if any person knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry.
- Makes it a felony if any peace officer knowingly, willfully, and intentionally alters, modifies, plants, manufactures, conceals, or moves any physical matter, with specific intent that the action will result in a

person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon a trial, proceeding or whatever, is guilty of a felony punishable by two, three, or five years in state prison.

- Provides that nothing in this new law shall preclude prosecution under any other provision of existing law.

### **Arrests**

Existing law authorizes a peace officer to make an arrest without a warrant for an offense not committed in the officer's presence when the officer has probable cause to believe that a suspect committed an assault or battery against another person with whom the suspect has a specified personal or domestic relationship.

**AB 2003 (Shelley), Chapter 47**, adds a dating relationship, as defined, to the list of specified personal relationships which allow a peace officer to make an arrest without a warrant when the officer has probable cause to believe an assault or battery has been committed by a suspect against the other person in that relationship.

### **Peace Officers: Welfare Fraud Investigators**

Under existing law, welfare fraud investigators are peace officers and are empowered to perform a full range of law enforcement functions in addition to conducting investigations. California's counties have the option to place their welfare fraud special investigative units within the county department of social services, the district attorney's office, or the sheriff's department. There exists significant variation in the level of training required of welfare fraud investigators.

**AB 2059 (Vincent), Chapter 633**, requires all welfare fraud investigators or inspectors appointed as peace officers on or after January 1, 2001 to attend and complete a specialized course approved by the Commission on Peace Officer Standards and Training (POST) within one year of being hired as a welfare investigator or inspector. Specifically, this new law:

- Requires all welfare fraud investigators or inspectors who are appointed as peace officers on or after January 1, 2001 to attend a specialized investigators basic course approved by POST within one year of being hired as a welfare investigator or inspector. Any welfare fraud investigator or inspector appointed prior to January 1, 2001 shall not be required to attend and complete the training, provided that he or she has been continuously employed in that capacity prior to January 1, 2001 by the county that made the appointment.

- Exempts from the training requirements any welfare fraud investigator or inspector who possesses a valid basic peace officer certificate awarded by POST, or has completed the regular basic course certified by POST, within three years prior to his or her appointment by the county.

### **Personnel Records**

Existing law requires employers to make employee personnel files available for inspection by employees. Specified school districts and public employers are exempt from this requirement.

**AB 2267 (Cedillo), Chapter 209**, requires an employer of a public safety officer to permit an officer to inspect his or her personnel file or a true and correct copy of a personnel file, during usual business hours, with no loss of compensation to the officer. Specifically, this new law:

- Requires every employer, upon request of a public safety officer, to permit the officer to inspect personnel files used to determine the officer's qualifications for employment, during usual business hours, with no loss of pay.
- Requires the employer to keep the officer's personnel file, or a true and correct copy of the personnel file, and to make the file or copy available within a reasonable period of time after a request by the officer.
- Provides that the officer, after reviewing the file, may make a written request that any mistaken or unlawfully placed material be corrected or deleted. This request shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. This statement shall become part of the personnel file.
- Provides that the employer shall grant a request by the officer to inspect his or her file within 30 calendar days or the employer shall give the officer a written statement of the reasons the request was not granted. The written statement shall become part of the personnel file of the officer.

### **Police Personnel Records**

Under current law, peace officer personnel records are confidential. Before a police or sheriff's department can disclose this information, a judge reviews the records in private and decides what is, and what is not, relevant in a criminal or civil case. If the court decides to release records of citizen complaints, it issues

an order to the agency. However, some departments are informally releasing these confidential records.

**AB 2559 (Cardoza), Chapter 971**, clarifies existing law by expressly stating that before an employing agency may release the records, there must be a valid court order.

### **Correctional Peace Officer Training**

The increase in the number of California prisons has resulted in a large cadre of new correctional officers coming on line with substandard training. While California has made a large investment in physical plants, it has not invested in the human resources of the California Department of Corrections (CDC). Correctional peace officers have less training than any other peace officer group in California.

**SB 577 (Peace), Chapter 987**, requires the CDC and the Department of the Youth Authority (CYA) to provide 16 weeks of training to each correctional peace officer candidate and two weeks of training to each newly appointed first-line supervisor. Specifically, this new law:

- Provides that the CDC and the CYA shall provide 16 weeks of training to each correctional peace officer candidate prior to being assigned a post or position as a correctional peace officer.
- Provides that the CDC and the CYA shall provide a minimum of two weeks of training to each newly appointed first-line supervisor.
- Requires that each new cadet or first- or second-line supervisor who attends a training academy after July 1, 2001 shall complete a course of training approved by the Commission on Correctional Peace Officers Standards and Training.
- Takes effect immediately as an urgency statute.

### **Racial Profiling Training**

Existing law provides that the Commission on Peace Officer Standards and Training's (POST) basic training course for law enforcement officers include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. There have been a number of highly publicized incidents nationwide where police officers have allegedly detained motorists for no reason other than the motorists' race or national origin.

**SB 1102 (Murray), Chapter 684**, addresses the issue of racial profiling by police officers. Specifically, this new law:

- Defines "racial profiling" as the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.
- Prohibits racial profiling by law enforcement officers.
- Requires that every law enforcement officer participate in expanded POST training on racial profiling. Each law enforcement officer shall complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary.
- Requires the Legislative Analyst to conduct a study on the data being voluntarily collected by law enforcement agencies on racial profiling, and provide a report and recommendations to the Legislature by July 1, 2002.

### **Training: Stalking**

Stalking is a growing phenomenon. Every year, thousands of victims across the state experience the terror of being stalked. The State of California, in the forefront of stalking legislation, was the first to pass an anti-stalking statute in 1990. The statute has been amended almost continuously, expanding the definition of "threat" and increasing the potential penalties. In addition, because stalking is prevalent outside circumstances one would traditionally view as domestic or work related, law enforcement needs on-going training to be aware of changes in the law and in the nature of the offense itself.

**SB 1539 (Lewis), Chapter 564**, requires the Commission on Peace Office Standards and Training (POST) and the California Department of Corrections (CDC) to create and implement a training course about stalking. Specifically, this new law:

- Provides that POST implement by January 1, 2002 a voluntary course of instruction for the training of law enforcement officers in the handling of stalking complaints and also develop guidelines for law enforcement's response to stalking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.

- Provides that the course and guidelines shall stress enforcement of criminal laws, availability of civil remedies, community resources, and protection of the victim.
- Provides that POST develop the course in consultation with appropriate groups and individuals having an interest and expertise in the field of stalking. POST also review existing training programs to determine how stalking training might also be included in the curriculum.
- Requires the CDC to implement by January 1, 2002 a course of instruction in the management of parolees convicted of stalking. The course shall include instruction in the appropriate protocol for notifying and interacting with stalking victims.

### **San Diego County Deputy Sheriffs**

Counties may choose to staff county jails with correctional personnel not authorized with full peace officer powers. Any county that uses these correctional personnel will have at least some deputy sheriffs assigned to the jail as well. All cities and counties are authorized to employ custodial officers, who are public officers, in their local jail facilities. However, these individuals have specifically limited police powers and are specifically prohibited from carrying weapons in the performance of their duties.

**SB 1762 (Alpert), Chapter 61**, expands the definition of a "peace officer" to include any deputy sheriff of the County of San Diego who performs exclusive or initial custodial duties within a county jail facility. Prior to the enactment of SB 1762, this authority was only granted to custodial deputy sheriffs working in Los Angeles County.

### **Impersonation of a Peace Officer**

Peace officer impersonation has created a serious threat to the public safety of communities. Individuals have used either authorized peace officer badges or convincing imitation badges to masquerade as law enforcement officials, committing home-invasion robberies, as well as crimes against women, children, and the elderly. In just the last few months, police impersonators in Concord, Fresno, San Francisco, Garden Grove, Long Beach, and Fairfield have committed acts ranging from attempted child molestation to the false imprisonment of hapless drivers.

**SB 1942 (Karnette), Chapter 430**, increases the misdemeanor penalty and fine for using an authentic or phony badge to impersonate a peace officer. Specifically, this new law:

- Increases the misdemeanor penalty to up to one year in county jail and/or a fine of up to \$2,000 for using an authentic badge to impersonate a peace officer.
- Increases the misdemeanor penalty to up to one year in county jail and/or a fine of up to \$2,000 for wearing or using a phony badge to impersonate a peace officer.
- Increases the current \$1,000 misdemeanor fine to \$15,000 for any person who makes any phony badge which purports to be authorized for use by a peace officer, or which so resembles the authorized badge of a peace officer that the badge would deceive an ordinary reasonable person into believing that the badge is authorized for use by a peace officer.

### **Firearms: Retention after Seizure**

Following the seizure of a weapon at the scene of a domestic violence incident, or from a person detained for examination of his or her mental condition, law enforcement has 10 days from the date of seizure (domestic violence), and 30 days from the date of the person's release (mental evaluation) in which to file a petition in the superior court to determine if the weapon should be returned to its owner.

Requiring a law enforcement agency to file a petition within 10 or 30 days is an onerous burden for the agency. Returning weapons may also create a significant public danger.

**SB 2052 (Schiff), Chapter 254**, extends the length of time that a law enforcement agency would have to file a petition in the superior court to determine if a firearm or a deadly weapon should be returned to a person involved in a domestic violence incident or detained for examination of his or her mental condition. This new law:

- Provides that a law enforcement agency has 30 days after the seizure of a deadly weapon or firearm from the scene of a domestic violence incident in which to initiate a petition in the superior court to determine if the return of the weapon would likely endanger the victim or the person reporting the crime. Upon a showing of good cause, the period in which to file a petition may be extended to 60 days.
- Provides that a law enforcement agency may, for good cause, extend from 30 to 60 days the time period in which to initiate a petition in the

superior court to determine if the return of a confiscated weapon seized from a person detained for examination of his or her mental condition would likely result in endangering the person or others.

### **Citizen Complaints**

Existing law provides that law enforcement agencies establish procedures to investigate citizen complaints. Agencies accepting allegations of misconduct against a peace officer require the complainant to read and sign an advisory statement that informs the person that it is a misdemeanor to knowingly file a false allegation of misconduct.

**SB 2133 (Polanco), Chapter 289**, requires that the advisory statement informing a citizen that filing a false complaint against a peace officer is a misdemeanor be available in multiple languages.



# RESTITUTION

## **Community Correctional Facilities**

Existing law authorizes the Department of Corrections to administer and operate the state prison system, and provides for the establishment and operation of community correctional and restitution centers.

Restitution has long been a desirable policy, and there is a need to increase the utilization of existing restitution centers enabling more victims to be compensated for their losses.

**AB 1478 (Baugh), Chapter 249**, allows the Director of the California Department of Corrections to commingle inmates assigned to a restitution center with inmates who are in transit for community correctional re-entry center placement. This new law also requires the Judicial Council to provide information to sentencing courts in those areas served by a restitution center to ensure that judges responsible for sentencing are aware of the existence of restitution centers.

## **State Board of Control – Fines**

The Board of Control (BOC) administers the Victims of Crime (VOC) Program, which reimburses victims for losses incurred as a result of a crime. Reimbursable expenses include medical costs, mental health counseling, funeral/burial costs, and wage or support losses not covered by insurance or other sources. The VOC program is funded from the state Restitution Fund and receives its revenue from three offender-based sources.

The BOC Revenue Recovery and Compliance Division (RRCD) conducts revenue enhancement and recovery activities on behalf of the Restitution Fund. RRCD works with the judiciary, district attorneys, court administrators, and probation officers concerning restitution fines and restitution orders on behalf of the VOC Program. The RRCD works collaboratively with the criminal justice system to coordinate, communicate, and analyze the administration of criminal restitution fines and restitution orders on a statewide basis.

**AB 2371 (Lempert), Chapter 545**, authorizes the BOC to work with the Franchise Tax Board (FTB) to collect unsatisfied restitution fines beyond an offender's term of commitment or parole. Specifically, this new law:

- Provides that the FTB may collect restitution fines and orders of \$100 or more as a pilot project, subject to approval of the Director of the Department of Finance, lowering the minimum amount that may be referred to the FTB for collection of restitution fines or orders from \$250 to \$100.
- Provides that restitution fines collected by the FTB on behalf of the counties be deposited directly into the Restitution Fund.
- Requires the board of supervisors to establish priorities of payment first between fines, penalty assessments and reparation or restitution, and then between other reimbursable costs.
- Provides that any portion of a restitution fine that remains outstanding at the end of probation or parole is enforceable by the BOC.
- Requires local governmental entities to forward any information regarding terminated cases to the BOC to assist in the collection of unpaid restitution fines.
- Provides that this pilot program shall remain in effect until January 1, 2002.

### **Victims of Crimes – Indemnification**

The Board of Control (BOC) administers the Victims of Crime Program (VOCP). However, some victims have a difficult time accessing the benefits because they do not know the program is administered by the BOC. Therefore, the BOC requested that its name be changed to more accurately reflect its major functions, responsibilities and duties to ensure that the public has greater access to the program benefits that are available to them.

With the increase of the BOC's Restitution Fund, the BOC has sought to increase the VOCP maximum benefits to help those victims whose reimbursable expenses exceed the current statutory limit of \$46,000.

**AB 2491 (Jackson), Chapter 1016**, makes numerous changes to the VOCP and renames the BOC the "California Victim Compensation and Government Claims Board". This new law:

- Changes the BOC's name to the California Victims Compensation and Government Claims Board.
- Increases the total benefits that the Board may grant to compensate victims from \$46,000 to \$70,000, as specified.

- Extends the time period for which a victim may receive wage or support loss benefits from three to five years and eliminates any time limits for wage loss benefits for victims who become permanently disabled as a result of a crime.
- Authorizes the BOC to reimburse for lost wages for a period of 30 days by parents or guardians of a child victim hospitalized or killed as a result of a crime.
- Specifies that a victim's lost wages includes any commission income as well as base wages, as specified.
- Eliminates the need for victims applying for emergency financial assistance to certify that no additional claims will be made, as specified.
- Clarifies the provisions under which services provided by certified child life specialists may be reimbursed under the VOCP.
- Makes technical changes to Penal and Welfare & Institutions Codes (WIC) sections regarding the imposition of restitution fines and orders against adult and juvenile offenders.
- Clarifies that if the full amount of a restitution order is not known at the time of the disposition hearing of a juvenile offender, the amount may be determined at a later date, similar to existing law pertaining to adult offenders.
- Clarifies that the courts may order restitution to be paid directly to the Restitution Fund, directs probation departments to determine the amounts of restitution orders payable to both the victim and to the Fund, and specifies reference to the VOCP in the WIC authorizing the courts to order restitution to be paid directly to the Fund.
- Requires until January 1, 2005, the BOC to enter into an inter-agency agreement with the University of California, San Francisco, upon adoption of a resolution by the Regents of the University of California, and upon appropriation of funds for that purpose, to establish a victims of crime recovery center at the San Francisco General Hospital to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, subject to conditions set forth by the BOC. AB 2491 requires the BOC to report to the Legislature on the effectiveness of the center no later than May 1, 2004.

- Appropriates \$2.45 million from the Restitution Fund to the BOC for the implementation of the inter-agency agreements.

### **Victims: Restitution Fund**

Under existing law, only a probation officer is required to notify a victim of crime of his or her right to be compensated from the Restitution Fund. This official notification to victims comes late in the criminal justice process and may delay a victim, or other eligible persons, from seeking proper medical, dental, or outpatient mental health counseling. Delayed notification also makes it more difficult to recover lost wages or lost support to eligible family members, or to pay for needed job retraining.

**AB 2685 (Bock), Chapter 444**, requires the Office of Criminal Justice Planning (OCJP) to develop and make available a "notification of eligibility" card for victims and derivative victims of crime. Specifically, this new law:

- Requires that OCJP develop a "notification of eligibility" card that includes information regarding payment from the California State Restitution Fund for losses directly resulting from a crime.
- Requires that OCJP develop a template available for downloading on its Internet website.
- Authorizes the district attorney and the law enforcement officer with primary responsibility for investigating the crime against the victim to provide this card to the victims and derivative victims.

### **Victims of Crime**

Recently, the United States Supreme Court decided that a California law prohibiting the dissemination of police record information solely for commercial purposes is valid, reversing two lower court rulings that found the law invalid under the First Amendment. (Los Angeles Police Dept. v. United Reporting Publishing Corp. (1999) 120 S.Ct. 483.) The Supreme Court considered the constitutionality of Government Code Section 6254, which limited public access to the addresses of individuals arrested for crimes and of crime victims. While the amended law permitted dissemination of the addresses to those who declared under penalty of perjury that the information would be used for scholarly, journalistic, political or governmental purposes, or by licensed private investigators, it could not be used directly or indirectly to sell a product or service.

**SB 1802 (Chesbro), Chapter 198**, provides privacy and confidentiality protections for specified records submitted by crime victims to obtain assistance and compensation from the Victims of Crime Program (VCP).

The new law:

- Provides a specific exemption to the California Public Records Act for VCP records.
- Provides that a victim does not waive his or her medical provider/patient privilege by submitting bills and treatment records to VCP in order to qualify for payments.
- Creates a presumption that in lieu of disclosure of information provided about payments made by the VCP Restitution Fund, such amounts shall be included in the amount of restitution ordered against a defendant by the court.

### **Youthful Offenders: Restitution**

Existing law provides that unclaimed money of \$5 or less in an inmate's trust account after he or she has been paroled shall be forfeited, and deposited in the Inmate Welfare Fund of the California Department of Corrections (CDC). The Director of the California Youth Authority is allowed to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of a ward up to a maximum of 50% of the total amount held in trust.

**SB 1943 (Ortiz), Chapter 481**, makes technical changes concerning CYA Trust Accounts, and enhances CYA victim services related to restitution and youthful offender parole hearings. Specifically, this new law:

- Requires the Director of the CYA to deposit any unclaimed offender trust account money of \$5 or less in the Benefit Fund to be used for the benefit of the resident wards.
- Requires the court, in imposing a restitution order upon a minor, to identify each victim and the amount of each victim's loss, unless the court for good cause finds that the order should not identify the victim.
- Provides that when the amount of restitution cannot be determined, the court shall identify each victim and state that the amount of restitution is to be determined; and requires the court, when feasible, to identify on the court order any co-offenders who are jointly and severally liable for victim restitution.

- Reduces the number of joint meetings between the Director of the CYA and the Youthful Offender Parole Board (YOPB) to two times per year for the purpose of discussing classification, transfer, discipline, training and treatment policies and problems.
- Allows the Director of the CYA to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of an adult held in a youth authority facility, up to a maximum of 50% of the total amount held in trust.
- Allows the Director of the CYA to apply any trust account balance in excess of \$5 to any unpaid victim restitution order or fine if the ward cannot be located after he or she is discharged, escapes, or absconds from supervision. If the restitution order or fine has been satisfied, the remainder of the trust account balance, if any, shall be transferred to the Benefit Fund to be used for the benefit of resident wards.
- Clarifies that it is the responsibility of the CYA, upon request, to notify the victim of a crime that the person who committed the crime is being considered for release on parole.
- Adds the crimes of spousal abuse, child molestation and stalking to the list of offenses for which the Director of the CYA is required to release specific information regarding offenders committed to the CYA to the victim of the offense, the next of kin of the victim, or a representative designated by the victim, upon request.
- Provides that the following persons may appear personally or by counsel at a YOPB hearing:
  - The victim of the offense and one support person of his or her choosing.
  - In the event that the victim is unable to attend the proceeding, two support persons designated by the victim may attend to provide information about the impact of the crime on the victim.
  - If the victim is no longer living, two members of the victim's immediate family may attend.

## SEX OFFENSES

### Parole: High-Risk Sex Offenders

Approximately one-half of the 7,300 adult sex offenders now under state parole supervision are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders have received any treatment while in prison to curb their pattern of criminal activities, and only a fraction receive intensive supervision, treatment and control after they are released. Two out of three offenders fail on parole by committing new crimes or parole violations. A program to address the concerns of the public by sending such offenders to state mental hospitals is proving costly and is holding relatively few offenders.

**AB 1300 (Rod Pacheco), Chapter 142**, requires the California Department of Corrections (CDC) to the maximum extent practicable and feasible to ensure that by July 1, 2001 all parolees under active supervision deemed to be high-risk sex offenders, be placed on intensive and specialized parole supervision, and extends the period of parole to five years for persons convicted of specified sex offenses. Specifically, this new law:

- Requires the CDC to the extent feasible and subject to a legislative appropriation to ensure by July 1, 2001 that all parolees under parole supervision deemed to be high-risk sex offenders be placed in intensive and specialized parole supervision.
- Requires the CDC to develop a specialized sex offender treatment program, subject to an appropriation and at the discretion of the director. This program may include a plan of relapse prevention treatment in conjunction with intensive parole supervision.
- Requires the CDC to study the effects of intensive parole supervision and specialized sex offender treatment on the rate of recidivism of parolees, and requires that 2 two-year analyses be submitted to the Legislature on or before January 1, 2004 and January 1, 2006.
- Provides that for any inmate sentenced for conviction of specified sex offenses, the period of parole shall not exceed five years.
- Provides that any inmate sentenced under the "one-strike" sex law be on parole for a period of five years which, under specific conditions, may be extended for an additional five-year period.

- States that this new law is an urgency statute to take effect immediately.
- States that this new law shall only remain in effect until July 1, 2006, and, as of that date, is repealed.

### **Parole: Sex Offenders**

Existing law allows the Board of Prison Terms (BPT) to impose conditions of parole on any prisoner granted parole and gives the BPT the power to revoke or suspend a parole and return a parolee to custody.

**AB 1302 (Thomson), Chapter 484**, requires the parole authority to report to local law enforcement the circumstances of any conduct that was the basis of a parole revocation if that conduct upon a criminal conviction would require a parolee to register as a sex offender. This new law:

- Requires on or after January 1, 2001 whenever any paroled person has his or her parole revoked for conduct which would require the paroled person to register as a sex offender, the paroling authority must report the circumstances which were the basis for the revocation to the law enforcement agency and the district attorney who has jurisdiction over the community where the circumstances occurred.
- Requires the Department of Corrections to report the circumstances to the same agencies upon release of the paroled person, or to law enforcement or the district attorney in the county where the person is paroled, if different.

### **"Megan's Law"**

Since "Megan's Law" took effect, law enforcement agencies have received numerous requests from parents to allow their children to view the CD-ROM containing sex offender registration information. Current law requires that a person applying to view the CD-ROM be at least 18 years of age. "Megan's Law" is scheduled to be repealed as of January 1, 2001.

**AB 1340 (Honda), Chapter 648**, allows a person 18 years of age or younger accompanied by a parent or guardian to view the CD-ROM containing sex offender registration information, requires persons convicted of the attempted commission of specified sex offenses to be listed on the Department of Justice's (DOJ) "900" telephone number and CD-ROM, and extends the sunset date on "Megan's" law until January 1, 2004. Specifically, this new law:

- Provides that a person under 18 years of age may accompany an applicant who is that person's parent or guardian for the purpose of viewing the CD-ROM or other electronic medium that contains sex offender registration information.
- Authorizes persons and entities who receive information regarding high-risk sex offenders to disclose the information to additional persons and identifies the appropriate scope of further disclosure.
- Includes the Department of Corrections and the Department of the Youth Authority in the definition of "law enforcement agency" for the purposes of immunity from liability for good-faith conduct in the disclosure of sex offender registration information.
- Requires persons convicted of the attempted commission of specified sex offenses who are required to register as convicted sex offenders to be included in DOJ's "900" telephone number and CD-ROM distributed to local law enforcement.
- Requires the DOJ to submit an annual report to the Legislature on the operation of the public notification program.
- Extends the sunset date on "Megan's" law until January 1, 2004.

### **Confidential Records**

Existing law requires law enforcement agencies to make public specified information relating to crimes while providing confidentiality to victims of certain offenses.

**AB 1349 (Correa), Chapter 184**, adds victims of unlawful sexual intercourse to the list of victims of sexual assault, domestic violence, and stalking whose identity may be protected by law enforcement agencies. Specifically, this new law:

- Authorizes a law enforcement agency to withhold the name of a victim of unlawful sexual intercourse upon request of the victim, or upon request of the parents or guardian of the victim.
- Provides that the current address of a victim of unlawful sexual intercourse shall remain confidential.

### **Statute of Limitations: DNA Evidence**

In 1998, the Legislature enacted the DNA and Forensic Identification Data Base and Data Bank Act. The purpose of the legislation was to help law enforcement

agencies promptly detect and prosecute individuals responsible for sex offenses and other violent crimes, as well as exclude suspects being investigated for such crimes. However, a number of cases that could be solved through the use of genetic profiling are barred by the current six-year statute of limitations while the State of California is in the process of modernizing its crime laboratories.

**AB 1742 (Correa), Chapter 235**, extends the statute of limitations for sex offenses and creates an exception to the statute where the identity of the offender is established through DNA testing. Specifically, this new law:

- Extends the statute of limitations from six to ten years for sex offenses where the limitation period as specified has not expired as of January 1, 2001 or the offense is committed on or after January 1, 2001.
- Provides that the statute of limitations for specified sex offenses is either 10 years or 1 year from conclusively establishing the identity of the suspect by DNA testing, whichever is later, if either of the following conditions is met:
  - For offenses committed before January 1, 2001, DNA evidence is analyzed no later than January 1, 2004.
  - For offenses committed after January 1, 2001, DNA evidence is analyzed no later than two years from the date of the offense.

### **Placement of Paroled Sex Offenders**

Existing law prohibits parolees who are registered sex offenders from living within one-quarter mile of any school, K-6.

**AB 1988 (Strickland), Chapter 153**, clarifies existing law relating to inmates released on parole for any violation of child molestation or continuous sexual abuse of a child. Specifically, this new law provides that the prohibition against placement or residency within one-quarter mile of a school remains effective during the entire period of parole and is not limited to the initial placement of the parolee.

### **Luring Minors From Their Homes**

With the creation of the Internet and other technological advances, sexual predators have potentially limitless access to unsuspecting children. Individuals are using the Internet to meet and pursue children in chat rooms, with the goal of luring minors out of their homes.

**AB 2021 (Steinberg), Chapter 621**, protects children from such dangers by making it a crime for an adult to lure a child out of his or her home

without the permission of the child's parent or legal guardian. Specifically, this new law:

- Provides that an adult stranger who is 21 years of age or older who knowingly contacts or communicates with a minor 12 years of age or younger, who knew or reasonably should have known that the minor was 12 years of age or younger, for the purpose of persuading, transporting, or luring the minor away from his or her home or known location, without the express consent of the parent or legal guardian, and with the intent to avoid the consent of the parent or guardian is guilty of either an infraction or a misdemeanor.
- Creates an exemption where the contact or communication occurred in an emergency situation where the minor was threatened with imminent bodily, emotional, or psychological harm.
- States that it is not the Legislature's intent to criminalize acts of persons contacting minors within the scope and course of their employment or status as volunteers of recognized civic or charitable organizations.
- Defines "contact or communication" as including, but not limited to, using a telephone or the Internet as defined in the Business and Professions Code.
- Defines "stranger" as a person of casual acquaintance with whom no substantial relationship existed, or an individual with whom a relationship had been established or promoted for the primary purpose of victimization.

### **Sex Offenders: Criminal Record Expungement**

Existing law allows a person who has successfully completed probation to have the accusations or information against him or her dismissed, and except as noted, shall be released from all penalties and disabilities resulting from the conviction of the offense.

**AB 2320 (Dickerson), Chapter 226**, prohibits any person convicted of a felony violation of being a person over the age of 21 and engaging in unlawful sexual intercourse with a minor under the age of 16 from having the accusatory pleading against him or her dismissed, and from being relieved from all penalties and disabilities as a result.

### **Sex Offenders: Duty to Register**

Under existing law, the probation department is required to pre-register convicted sex offenders, who are granted either summary or supervised probation or

discharged upon payment of a fine. However, any person granted summary or unsupervised probation is not referred by the court to the probation department. This makes it impossible for the probation department to fulfill its legal responsibility to inform the person of his or her duty to register, and to obtain the necessary signatures on forms required by the Department of Justice (DOJ).

**AB 2502 (Romero), Chapter 240**, requires the court to notify a person convicted of specified sex offenses and released on summary probation, of his or her duty to register as a convicted sex offender. Specifically, this new law:

- Requires that any person convicted of specified sex offenses and granted conditional release without supervised probation, or discharged upon payment of a fine, be informed of his or her duty to register as a convicted sex offender by the court in which the person had been convicted.
- States that the court shall require the convicted person to read and sign any form that may be required by DOJ stating that the duty to register as a convicted sex offender had been explained.
- Requires the court to obtain the address where the person expects to reside upon release or discharge and to report that address within three days to the DOJ, and requires that copies of the form be sent to the appropriate law enforcement agency.
- Allows the court, in the interest of efficiency, to assign a bailiff to assist a person in reading and signing required forms.

### **Sexually Violent Predators**

Since the enactment of the Sexually Violent Predator (SVP) Act, there has been some ambiguity as to whether a conviction resulting in an inmate serving an indeterminate term after 1997 can be considered for purposes of a SVP evaluation. Another issue has been whether a conviction resulting in a grant of probation may be considered under the SVP Act.

**AB 2849 (Havice), Chapter 643**, recasts existing law defining "sexually violent predator" to include all those serving indeterminate sentences and, among other things, enumerates what constitutes a "conviction" for purposes of these provisions. Specifically, this new law:

- Provides that a conviction which resulted in an indeterminate sentence or probation may be a qualifying sexually violent offense for the purposes of the SVP law.

- Provides that the provisions of the SVP law apply to any commitment proceeding initiated on or after January 1, 1996.

### **Sex Offender Registration**

Existing law requires the Department of Justice (DOJ) to continually compile information on persons required to register as convicted sex offenders. The DOJ maintains and distributes a CD-ROM, on a monthly basis, to local law enforcement containing information, including photographs, related to persons required to register.

**SB 446 (Dunn), Chapter 649**, requires that a current photograph be forwarded to the Department of Justice (DOJ) prior to the release from custody of any person required to register as a convicted sex offender. Specifically, this new law:

- Requires the official in charge of a jail, state or federal prison, or other facility where a person is confined because of the commission of a specified sex offense to forward to DOJ a current photograph of the offender prior to release from custody.
- Requires, upon incarceration, placement, commitment, or prior to release on probation, a person required to register as a convicted sex offender to pre-register and the pre-registering official must forward a current photograph to DOJ.
- States legislative intent that photographs available to the public of any person required to register as a convicted sex offender pursuant to Penal Code Section 290 be current.

### **Child Molestation**

Under existing law, child molestation, in violation of Penal Code Section 647.6, is a misdemeanor. However, the crime is punishable as a felony if the defendant previously has been convicted of child molestation, lewd or lascivious conduct with a child (Penal Code 288), or a felony violation of employing a minor to perform prohibited acts when the minor was under the age of 14 years.

**SB 1784 (Figueroa), Chapter 657**, expands the list of prior felony offenses, which make a conviction for annoying or molesting a child under the age of 18 punishable as a felony. Specifically, this new law adds rape, rape in concert, incest, sodomy, oral copulation, continuous sexual abuse of a child, forcible sexual penetration, and aggravated sexual assault of a child, any of which involved a minor under the age of 16, to the list of prior

felony offenses which make a conviction for annoying or molesting a child under the age of 18 punishable by two, four, or six years in the state prison.

# SEXUALLY VIOLENT PREDATORS

## **Mentally Disordered Offenders (MDO)**

California's MDO law requires a district attorney to annually re-litigate every MDO case where individuals have been placed in mental health treatment programs even though many of these individuals are not held in in-patient treatment facilities. These cases are in addition to the new MDO cases filed each year. In Los Angeles County, the District Attorney's office has seen over a 700% increase in MDO cases over the past three years.

**AB 1881 (Gallegos), Chapter 324**, makes several changes to California's MDO law. Specifically, this new law:

- Requires recommitment hearings only upon the request of a MDO where he or she is civilly committed on an out-patient status.
- Requires the court to determine if the MDO continues to suffer from a severe mental disorder.
- Tolls the time that a prisoner is placed on out-patient status from counting as actual custody or credited toward the maximum term or extended term of commitment.
- Provides that district attorneys are only required to automatically re-litigate MDO cases where the defendant is confined in an in-patient mental health treatment facility, unless the defendant or his/her physician believe that the defendant no longer poses a danger to society.

## **Victims of Crimes: Witnesses**

Existing law provides that victims of specified types of crimes may be reimbursed for expenses related to certain types of services, including mental health counseling, as an immediate and direct result of the crime. Often times, victims of crime are also impacted at a later date as a direct result of the prior crime because they are called back as witnesses. However, under current law, these victims are not eligible to be reimbursed.

**AB 2683 (Bock), Chapter 974**, provides that under specified circumstances a victim or a derivative victim of certain crimes may seek reimbursement for pecuniary losses from the Victims of Crime Program (VCP) when later called to testify in a proceeding against a defendant. Specifically, this new law:

- Authorizes the Board of Control to grant an additional extension for good cause beyond three years for an individual who is called to testify in a proceeding against a defendant as a victim of prior acts of the defendant and for a victim of a sexually violent offense who is called to testify in the trial of a person identified a possible sexually violent predator, subject to the following conditions:
  - The person made a claim for reimbursement within one year of the subsequent testimony;
  - The prosecuting attorney recommended that the claim be accepted; and,
  - The claim included a copy of the crime report or other official documentation.
- Makes an appropriation by extending the period of time for which moneys from a continuously appropriated fund may be made available.
- Prohibits reimbursement of any expense submitted more than three years after it is incurred by the victim or derivative victim.

### **Sexually Violent Predators**

Since the enactment of the Sexually Violent Predator (SVP) Act, there has been some ambiguity as to whether a conviction resulting in an inmate serving an indeterminate term after 1997 can be considered for purposes of a SVP evaluation. Another issue has been whether a conviction resulting in a grant of probation may be considered under the SVP Act.

**AB 2849 (Havice), Chapter 643**, recasts existing law defining "sexually violent predator" to include all those serving indeterminate sentences and, among other things, enumerates what constitutes a "conviction" for purposes of these provisions. Specifically, this new law:

- Provides that a conviction which resulted in an indeterminate sentence or probation may be a qualifying sexually violent offense for the purposes of the SVP law.
- Provides that the provisions of the SVP law apply to any commitment proceeding initiated on or after January 1, 1996.

## **Commitment Petitions**

Existing law authorizes the Board of Prison Terms to order a person referred to the Department of Mental Health to remain in custody for a full evaluation for no more than 45 days, unless his or her scheduled date of release falls more than 45 days after referral. That person may be committed after a probable cause hearing and after a trial where he or she is found to be a sexually violent predator (SVP). Existing law was unclear as to whether a person could be detained beyond his or her scheduled date of release until a probable cause hearing was completed.

**SB 451 (Schiff), Chapter 41**, clarifies existing law and authorizes the Board of Prison Terms to order a person referred to the Department of Mental Health to remain in custody for no more than 45 days beyond the person's scheduled release date and remain in custody pending the completion of the probable cause hearing. Specifically, this new law:

- Provides that a SVP may remain in custody for no more than 45 days beyond his or her scheduled release date for a full evaluation.
- Provides that upon filing a petition, and after a judicial finding of probable cause, the judge shall order that the SVP be detained until a probable cause hearing can be completed and the hearing shall commence within 10 calendar days of the judge's order.
- Provides that upon the commencement of the probable cause hearing, the SVP shall remain in custody pending the completion of the hearing.

## **Sexually Violent Predator Commitment Evaluations**

The Sexually Violent Predator (SVP) Act became effective January 1, 1996. The Act created a new civil commitment for SVPs for the purpose of providing treatment to mentally disordered individuals who cannot control sexually violent criminal behavior.

Occasionally, it is necessary to prepare updated evaluations to support the filing of a SVP commitment or recommitment petition, where an evaluation has become stale with the passage of time or because the treating doctor is no longer available to testify in court. Without the update, the petition could be denied, or at least delayed, until a new evaluation is obtained. The Department of Mental Health (DMH) and prosecuting attorneys have requested that the law clearly state the updated evaluations shall include review of available medical and psychological records, consultation with current treating clinicians, and interviews with the person being evaluated.

**SB 2018 (Schiff), Chapter 420**, makes changes in the SVP Act relative to examinations, notice of release and SVP commitments. Specifically, this new law:

- Provides that a district attorney may request the DMH to perform updated evaluations for evidence at commitment and recommitment hearings.
- Provides that the updated evaluations shall include a review of all available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated either voluntarily or by court order.
- Allows a court to order the disclosure of confidential medical and psychological records where the SVP objects to disclosure for the purpose of updating or replacing evaluations.
- Clarifies that the term of an extended commitment shall commence from the date of the termination of the previous commitment.
- Provides that in conformity with the existing practice and interpretation of the governing law, the term of subsequent commitments shall be for two years.
- Removes the sunset on the existing provision set to expire on July 1, 2001, which provides that the two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment.
- Requires DMH to report every 10 days to the California Law Enforcement Telecommunications System (CLETS) updated information pertaining to persons released under the Forensic Conditional Release Program.
- Provides a six-month delay period from the date of enactment of this bill for the Department of Justice to incorporate the new DMH information into CLETS.
- Is an urgency statute which takes effect immediately.

## VEHICLES

### **Disabled Persons' Parking: Violations: Fines And Penalties**

Mobility and access are critical to disabled individuals. The misuse of disabled placards for parking is significant and illegal parking in disabled parking spots has become a blatant and widespread practice in California.

**AB 1792 (Villaraigosa), Chapter 524**, makes changes in the application process for disabled placards, increases the penalty for misuse of a placard, and authorizes the State Department of Motor Vehicles (DMV) to conduct a specified audit of placard applications. Specifically, this new law:

- States legislative intent that DMV do the following: (1) strengthen the disabled person license plate and placard application and certification process, and review existing policies governing the investigation of placard misuse and fraud; (2) update disabled person's license plate and placard forms and program publications to ensure that applicants are aware of their rights, responsibilities and the penalties imposed for fraudulently obtaining or misusing placards; and, (3) provide adequate information regarding the appropriate use of parking spaces for the disabled.
- Requires the DMV to conduct an annual random audit of applications for disabled person's or disabled veteran's placards in order to verify the authenticity of the information submitted in support of those applications. The audit applies only to applications submitted after January 1, 2001.
- Makes the unauthorized lending or display of any disabled person's placard or a special identification license plate a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, or by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.
- Makes it a misdemeanor, punishable in the same manner as above, to park in parking stalls or spaces designated for disabled persons unless transporting a disabled person and displaying the special identification license plate or placard.
- Requires the DMV to require the applicant for a disabled person's license plate or placard (either temporary or permanent) to submit a certificate signed by a physician or surgeon substantiating the disability and delivered directly by the applicant to the DMV. The applicant shall

not be required to provide a certificate from a physician or surgeon if the applicant's disability is readily observable and uncontested.

- Requires the person signing the certificate verifying the disability to keep records sufficient to substantiate that certificate and, upon request by the DMV, shall make that information available for inspection by the Medical Board of California.

### **Driving Under The Influence: Alcohol And Drug Programs: Ignition Interlock Device**

Existing law provides that the Department of Alcohol and Drug Programs (DADP) is the sole licensing authority for driving under the influence (DUI) programs. Existing law requires each county to develop and administer an alcohol and drug problem assessment program for specified individuals who have been convicted of DUIs. However, existing law does not specify what entity within the county has the responsibility for fulfilling that requirement

Existing law authorizes the court-mandated use of a certified ignition interlock device (IID) upon conviction of a DUI. However, a plea bargain to a lesser related offense may result in the loss the sanction of a mandatory IDD.

**AB 2227 (Torlakson), Chapter 1064**, requires any licensed DUI alcohol and drug treatment program that provides treatment services to participants, in accordance with the terms and conditions of probation, to have the county's approval as to the particular treatment service provided to program participants. Specifically, this new law:

- Provides that licensed alcohol and drug treatment programs are limited to the county in which the particular board of supervisors has provided the recommendation to DADP.
- Provides that after determining a need, a county board of supervisors may place one or more limitations on the services to be provided by a DUI alcohol and drug treatment program or the area the program may operate within the county when it initially recommends a program to the DADP. The restrictions may include a three-month program for a first DUI offense and an 18-month program for a subsequent DUI offense. If a board of supervisors fails to place any limitations on a program, the DADP may license that program to provide any DUI program services allowed by law within that county.
- Requires that DADP adopt regulations for satellite offices of DUI programs, including any limitations on where a satellite office may be

located, the minimum and maximum number of clients the office may serve, and an appropriate licensing procedure for these offices.

- Provides that DADP shall approve all fee schedules for the programs, requires that each program be self-supporting from the participants' fees, and that each program provide for the payment of the costs of the programs by participants at times and amounts commensurate with their ability to pay. Provides that each DUI program licensed by DADP under this new law may request an increase in fees.
- Requires the Department of Motor Vehicles to ensure that an IID certified according to the requirements of this section continue to meet certification requirements.
- Provides that when the prosecution agrees to a plea of guilty or nolo contendere to a charge of driving when that driving privilege is suspended for reckless driving in satisfaction of, or as a substitute for, an original charge of driving when that privilege is suspended or revoked for DUI, or when that privilege is revoked or suspended for other reasons, the court shall require the person convicted, in addition to any other requirements, to install a certified IID on any vehicle that the person owns or operates for a period of up to three years, unless the court finds that it is in the interest of justice that the IID not be installed.
- Increases from 200,000 to 250,000 the population of counties required to expend the money allocated by the comptroller exclusively for the prosecution of vehicle theft crime programs and for the prosecution of crimes involving DUI, or vehicular manslaughter, or any combination of those crimes.

### **Vehicles: Driver's License Violations: Referral Program**

Existing law imposes minimum terms of imprisonment and fines upon persons convicted of driving with a suspended or revoked license. With jail overcrowding a serious problem in many counties, alternatives to jail for non-violent offenses are needed.

**AB 2506 (Romero), Chapter 401**, clarifies the home detention program option of the pilot project which allows home detention for a person who is convicted of an offense involving driving without a license. Specifically, this new law requires that persons participating in the pilot project complete a home detention program utilizing an electronic monitoring program and equipment that meet acceptable standards. The electronic monitoring program shall be provided under the auspices of the district attorney or his or her designee.

## **Insurance Fraud**

Organized crime rings operate illegal medical mills that defraud insurers by encouraging the filing of fraudulent personal injury claims. Sometimes, these mills are set up and operated by corrupt medical or legal professionals, who typically employ people known as "cappers" to recruit fraudulent accident victims. The existing penalty structure allows fines for first offenses, but not for subsequent offenses.

**AB 2594 (Cox), Chapter 843**, increases the potential fines for the related criminal offenses of insurance fraud and illegal referral fee payments to obtain the referral of patients. Specifically, this new law:

- Increases the potential fine for a first offense to an amount up to \$50,000.
- Adds a potential fine of up to \$50,000 as an additional or alternative punishment for a second or subsequent conviction.

## **Driving Education And Offenses: Road Rage**

Aggressive driving or road rage can result in violence on streets and highways. A 1997 American Automobile Association nationwide survey indicates that aggressive driving incidents increased by seven percent each year from 1990 through 1996. Existing law specifies the topics to be covered in an automobile driver education course.

**AB 2733 (Wesson), Chapter 642**, addresses driver education and authorizes the suspension of the driving privilege of a person convicted of assault on another motorist. Specifically, this new law:

- Requires the Department of Education (DOE) to prepare materials regarding reducing driving violations with particular emphasis on aggressive driving and road rage.
- Requires the DOE to make these materials available to school districts for use in connection with driving education programs, at the option of the school district.
- Authorizes the Director of Motor Vehicles to prescribe rules and regulations regarding driving school and traffic violator school curricula that include a component focusing on aggressive driving behavior and road rage.

- Authorizes the court to order the suspension of the driving privilege of any operator of a motor vehicle who commits an assault on an operator or passenger of another motor vehicle, an operator of a bicycle, or a pedestrian, where the offense occurs on a highway. The period of the suspension shall be six months for a first offense and one year for a second or subsequent offense. The suspension shall commence, at the discretion of the court, either on the date of the person's conviction, or upon the person's release from imprisonment.
- Authorizes the court to order the convicted person to complete a court-approved anger management or road rage course, in lieu of or in addition to the suspension of the driving privilege.

### **Theft by Fraud**

Recently, a special statewide law enforcement task force chaired by the Commissioner of the California Highway Patrol looked at ways to speed recovery of stolen property. The task force found that gas tampers, generators and air compressors are some of the equipment targeted by rental thieves. These popular rental items cost thousands of dollars. The longer the rental company waits to contact law enforcement for help, the less chance there is that the equipment will be returned.

**SB 1867 (Speier), Chapter 176**, provides that where a renter fails to return personal property within a specified period after a written demand has been made, theft by fraud will be rebuttably presumed. This new law:

- Provides that where a person leased or rented the personal property of another person pursuant to a written contract, and that property has a value greater than \$1,000 and is not a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 10 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.
- Provides that where a person has leased or rented the personal property of another person pursuant to a written contract, and where the property has a value no greater than \$1,000, or where the property is a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.

## **Insurance Fraud**

Recently, the Legislature investigated the rise in criminal organizations that specialize in vehicle theft and fraud. It has been estimated that there may be as many as 7,000 staged accidents per year resulting in substantial costs to insurers and consumers.

**SB 1988 (Speier), Chapter 867**, creates the Anti-Auto Theft and Insurance Fraud Act of 2000. Specifically, this new law:

- Makes legislative findings that auto insurance fraud and theft in California costs approximately \$9 billion annually and that more needs to be done to curtail these illegal activities.
- Requires a person licensed under the Medical Practice and Chiropractic Acts to have his or her license to practice revoked for a period of 10 years upon the second conviction, or upon convictions of multiple counts of certain insurance fraud offenses. SB 1988 provides that engaging in any conduct prohibited under specified provisions related to false or fraudulent insurance claims or statements shall constitute cause for disbarment or suspension of an attorney from the State Bar. The applicable licensing boards shall investigate a licensee against whom an information or indictment has been filed that alleges a violation of specified provisions prohibiting conduct involving false or fraudulent insurance claims or statements, if the district attorney does not otherwise object to initiating an investigation.
- Increases the fine for conviction of insurance fraud from \$10,000 to \$15,000.
- Restricts ownership of businesses that practice medicine, except for hospitals and clinics, to licensed physicians and surgeons; and allows the Department of Health Services to exempt a business from this restriction upon application to the director and proof that an exemption would be in the public interest.
- Directs BAR to establish a pilot program involving the inspection of completed auto body work on insured vehicles until June 30, 2003, and also provides for the following:
  - Establishes a system for how these vehicles will be selected.
  - Requires the Bureau of Automotive Repair (BAR) to report the results of the program to the Legislature by September 1, 2003.

- Is repealed on January 1, 2004.
- Prohibits an insurer from requiring an auto body shop to pay for rental vehicles charges or towing charges of an insured as a condition of participating in the insured's direct repair program (DRP), but allows such charges if the insurer and the shop concur in writing to terms that include instances when repairs are not completed within an agreed-upon time.
- Requires an insurer to put in writing reasons why a shop is denied participation in the insurer's DRP within 60 days of a request to participate.
- Raises the annual insurer assessment by Department of Insurance (DOI) for support of the Bureau of Fraudulent Claims from \$1,000 to \$1,300.
- Requires the DOI to develop a standardized Auto Body Repair Consumer Bill of Rights covering specified issues and requires insurers to present this form either at the time of applying for insurance or following an accident that is reported to the insurance company.
- Allows the Insurance Commissioner (IC) to declare any region of California an auto insurance fraud crisis area and allows the IC to do any of the following:
  - Require insurers to report auto insurance claims to a licensed insurance claims analysis bureau in a format to be specified by DOI.
  - Requires an insurer to report all claims to the Bureau of Fraudulent Claims when the claim was filed within 90 days of issuance of the policy with discretion given to the IC to adjust the reporting standard.
  - Doubles fines imposed for insurance fraud if committed in a fraud crisis area.
  - Repeals the above on January 1, 2006.
- Requires provisions relating to the powers and duties of the Board of Chiropractic Examiners, which were created by initiative statute be submitted to the voters.

- Adds a representative of a labor organization which has members in the auto repair business to the Bureau of Fraudulent Claims Advisory Committee.
- Allows the Insurance Commissioner to develop a public education campaign to deter participation in auto insurance fraud and to encourage reporting of fraudulent claims.

## VICTIMS

### **Confidential Records**

Existing law requires law enforcement agencies to make public specified information relating to crimes while providing confidentiality to victims of certain offenses.

**AB 1349 (Correa), Chapter 184**, adds victims of unlawful sexual intercourse to the list of victims of sexual assault, domestic violence, and stalking whose identity may be protected by law enforcement agencies. Specifically, this new law:

- Authorizes a law enforcement agency to withhold the name of a victim of unlawful sexual intercourse upon request of the victim, or upon request of the parents or guardian of the victim.
- Provides that the current address of a victim of unlawful sexual intercourse shall remain confidential.

### **Great Bodily Injury: Children**

Existing law provides that any person who personally inflicts great bodily injury (GBI) during the commission of a felony shall be punished by an additional and consecutive term of three years in state prison. If the victim is 70 years of age or older, pregnant, or is rendered comatose or permanently paralyzed, the additional and consecutive prison term is five years in state prison. Small children who are the victims of serious physical abuse sustain injuries that may result in brain damage, seizures, loss of vision and other problems.

**AB 1789 (Zettel), Chapter 919**, increases the sentence enhancement for serious injury when the victim is a child under the age of five years. Specifically, this new law provides that any person who personally inflicted GBI on a child under the age of five years shall be punished by an additional and consecutive term of four, five or six years in state prison.

### **Criminal Identity Theft Database**

Numerous information brokers now offer easily accessible information about people by linking thousands of names to public records databases, such as court records databases, which include criminal records. The information brokers perform criminal background searches for employers or any other person seeking such information. Unfortunately, the information they provide may be wrong, either due to error or because an individual in their database has been the victim of identity theft. An individual might have a criminal history wrongly

connected to his or her name and personal identifiers when another person steals his or her identity and fraudulently uses the victim's name.

**AB 1862 (Torlakson), Chapter 634**, establishes a database of victims of identity theft and has the Department of Justice (DOJ) maintain a toll-free number to assist victims in clearing their names in criminal records, public records, employment histories and credit files, and other records, beginning September 1, 2001. This new law:

- Provides that a victim of identity theft may submit a court order, obtained pursuant to any provisions of law, along with fingerprints and other prescribed information to the DOJ. DOJ is then required to verify this information against information maintained by the Department of Motor Vehicles.
- Requires DOJ to establish and maintain a data base to record information concerning victims of criminal identity theft and to allow criminal justice agencies, the victim, and other individuals and agencies authorized by the victim to access the data base, as specified.
- Requires DOJ to establish and maintain a toll-free number to provide access to this information.
- Provides for a September 1, 2001 effective date.

### **Identity Theft: Remedies**

The crime of identity theft is sharply on the rise. According to the Privacy Rights Clearinghouse, there are at least 500,000 victims of identity theft each year, many of which involve credit fraud. However, criminal identity theft cases have also increased over the years. Criminal identity theft happens when a victim's name and personal information is used by an imposter during an arrest or prosecution. Currently, a criminal identity theft victim has no convenient and fully effective way to correct criminal records created by the imposter. It may take years for a victim to correct his or her records, during which time a victim may be wrongfully apprehended or finding employment.

**AB 1897 (Davis), Chapter 956**, creates a judicial process whereby a victim of identity theft can clear his or her name. This new law:

- Allows a person who suspects that he or she is a victim of identity theft to initiate an investigation at a local law enforcement agency and to obtain a police report to document the fact of the identity theft.

- Provides that a victim of suspected identity theft may petition the court for an "expedited" judicial determination of factual innocence under the following circumstances and pursuant to the following procedures:
  - Where the perpetrator of the identity theft was convicted of a crime under the victim's identity.
  - Where the identity theft victim's name has been mistakenly associated with a record of criminal conviction.
  - Judicial determination of these issues shall be made after consideration of declarations, affidavits, police report and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense.
  - Where the court finds the petitioner factually innocent, the court shall issue an order certifying that fact. The Judicial Council is required to develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation of fraud.

### **State Board of Control – Fines**

The Board of Control (BOC) administers the Victims of Crime (VOC) Program, which reimburses victims for losses incurred as a result of a crime. Reimbursable expenses include medical costs, mental health counseling, funeral/burial costs, and wage or support losses not covered by insurance or other sources. The VOC program is funded from the state Restitution Fund and receives its revenue from three offender-based sources.

The BOC Revenue Recovery and Compliance Division (RRCD) conducts revenue enhancement and recovery activities on behalf of the Restitution Fund. RRCD works with the judiciary, district attorneys, court administrators, and probation officers concerning restitution fines and restitution orders on behalf of the VOC Program. The RRCD works collaboratively with the criminal justice system to coordinate, communicate, and analyze the administration of criminal restitution fines and restitution orders on a statewide basis.

**AB 2371 (Lempert), Chapter 545**, authorizes the BOC to work with the Franchise Tax Board (FTB) to collect unsatisfied restitution fines beyond an offender's term of commitment or parole. Specifically, this new law:

- Provides that the FTB may collect restitution fines and orders of \$100 or more as a pilot project, subject to approval of the Director of the Department of Finance, lowering the minimum amount that may be referred to the FTB for collection of restitution fines or orders from \$250 to \$100.
- Provides that restitution fines collected by the FTB on behalf of the counties be deposited directly into the Restitution Fund.
- Requires the board of supervisors to establish priorities of payment first between fines, penalty assessments and reparation or restitution, and then between other reimbursable costs.
- Provides that any portion of a restitution fine that remains outstanding at the end of probation or parole is enforceable by the BOC.
- Requires local governmental entities to forward any information regarding terminated cases to the BOC to assist in the collection of unpaid restitution fines.
- Provides that this pilot program shall remain in effect until January 1, 2002.

### **Victims of Crimes – Indemnification**

The Board of Control (BOC) administers the Victims of Crime Program (VOCP). However, some victims have a difficult time accessing the benefits because they do not know the program is administered by the BOC. Therefore, the BOC requested that its name be changed to more accurately reflect its major functions, responsibilities and duties to ensure that the public has greater access to the program benefits that are available to them.

With the increase of the BOC's Restitution Fund, the BOC has sought to increase the VOCP maximum benefits to help those victims whose reimbursable expenses exceed the current statutory limit of \$46,000.

**AB 2491 (Jackson), Chapter 1016**, makes numerous changes to the VOCP and renames the BOC the "California Victim Compensation and Government Claims Board". This new law:

- Changes the BOC's name to the California Victims Compensation and Government Claims Board.
- Increases the total benefits that the Board may grant to compensate victims from \$46,000 to \$70,000, as specified.
- Extends the time period for which a victim may receive wage or support loss benefits from three to five years and eliminates any time limits for wage loss benefits for victims who become permanently disabled as a result of a crime.
- Authorizes the BOC to reimburse for lost wages for a period of 30 days by parents or guardians of a child victim hospitalized or killed as a result of a crime.
- Specifies that a victim's lost wages includes any commission income as well as base wages, as specified.
- Eliminates the need for victims applying for emergency financial assistance to certify that no additional claims will be made, as specified.
- Clarifies the provisions under which services provided by certified child life specialists may be reimbursed under the VOCP.
- Makes technical changes to Penal and Welfare & Institutions Codes (WIC) sections regarding the imposition of restitution fines and orders against adult and juvenile offenders.
- Clarifies that if the full amount of a restitution order is not known at the time of the disposition hearing of a juvenile offender, the amount may be determined at a later date, similar to existing law pertaining to adult offenders.
- Clarifies that the courts may order restitution to be paid directly to the Restitution Fund, directs probation departments to determine the amounts of restitution orders payable to both the victim and to the Fund, and specifies reference to the VOCP in the WIC authorizing the courts to order restitution to be paid directly to the Fund.
- Requires until January 1, 2005, the BOC to enter into an inter-agency agreement with the University of California, San Francisco, upon adoption of a resolution by the Regents of the University of California, and upon appropriation of funds for that purpose, to establish a victims of crime recovery center at the San Francisco General Hospital to demonstrate the effectiveness of providing comprehensive and

integrated services to victims of crime, subject to conditions set forth by the BOC. AB 2491 requires the BOC to report to the Legislature on the effectiveness of the center no later than May 1, 2004.

- Appropriates \$2.45 million from the Restitution Fund to the BOC for the implementation of the inter-agency agreements.

### **Victims of Crimes: Witnesses**

Existing law provides that victims of specified types of crimes may be reimbursed for expenses related to certain types of services, including mental health counseling, as an immediate and direct result of the crime. Often times, victims of crime are also impacted at a later date as a direct result of the prior crime because they are called back as witnesses. However, under current law, these victims are not eligible to be reimbursed.

**AB 2683 (Bock), Chapter 974**, provides that under specified circumstances a victim or a derivative victim of certain crimes may seek reimbursement for pecuniary losses from the Victims of Crime Program (VCP) when later called to testify in a proceeding against a defendant. Specifically, this new law:

- Authorizes the Board of Control to grant an additional extension for good cause beyond three years for an individual who is called to testify in a proceeding against a defendant as a victim of prior acts of the defendant and for a victim of a sexually violent offense who is called to testify in the trial of a person identified a possible sexually violent predator, subject to the following conditions:
  - The person made a claim for reimbursement within one year of the subsequent testimony;
  - The prosecuting attorney recommended that the claim be accepted; and,
  - The claim included a copy of the crime report or other official documentation.
- Makes an appropriation by extending the period of time for which moneys from a continuously appropriated fund may be made available.
- Prohibits reimbursement of any expense submitted more than three years after it is incurred by the victim or derivative victim.

## **Victims: Restitution Fund**

Under existing law, only a probation officer is required to notify a victim of crime of his or her right to be compensated from the Restitution Fund. This official notification to victims comes late in the criminal justice process and may delay a victim, or other eligible persons, from seeking proper medical, dental, or outpatient mental health counseling. Delayed notification also makes it more difficult to recover lost wages or lost support to eligible family members, or to pay for needed job retraining.

**AB 2685 (Bock), Chapter 444**, requires the Office of Criminal Justice Planning (OCJP) to develop and make available a "notification of eligibility" card for victims and derivative victims of crime. Specifically, this new law:

- Requires that OCJP develop a "notification of eligibility" card that includes information regarding payment from the California State Restitution Fund for losses directly resulting from a crime.
- Requires that OCJP develop a template available for downloading on its Internet website.
- Authorizes the district attorney and the law enforcement officer with primary responsibility for investigating the crime against the victim to provide this card to the victims and derivative victims.

## **Stalking: Victim Notification**

Existing law requires the California Department of Corrections (CDC), county sheriff, or director of the local department of corrections to give notice not less than 15 days prior to the release from the state prison or a county jail of any person convicted of stalking or a felony offense involving domestic violence.

**SB 580 (Lewis), Chapter 561**, Requires that victims of stalking or felony domestic violence be notified of any change in the parole status or location of the convicted person, or if the convicted person absconds from local supervision, and requires correctional authorities to make reasonable attempts to locate a person who has requested notification but for whom a current address is not available. Specifically, this new law:

- Requires the CDC, county sheriff, or director of the local department of corrections to notify a victim of stalking or a felony offense involving domestic violence of any change in the parole status or parole location of the person convicted, or if the convicted person absconds from supervision.

- Requires the county sheriff or chief of police to make all reasonable attempts to locate a person who has requested notification but whose address and telephone number are incorrect or not current.
- Provides that an inmate released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and there is a finding that there is a need to protect the life, safety, or well-being of the victim.
- Requires the CDC to notify by mail at least 45 days prior to the scheduled release date of any person convicted of stalking, the county sheriff, chief of police and district attorney in the jurisdiction where the person was convicted or scheduled to be released.

### **Parole: Family Notification**

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

**SB 1343 (Monteith), Chapter 314**, requires the CDC or the BPT to notify the immediate family of a parolee who requests notification of the scheduled release date whenever a person convicted of child abuse or any sex offense against a child is paroled. This new law:

- Provides that notice of the terms of the inmate's parole shall be provided to the immediate family of the parolee if the member of the family requests notification.
- Defines "immediate family of the parolee" as parents, siblings, and spouse of the parolee.
- Requires that notification be made by mail at least 45 days before the scheduled release date. The notification shall include the name of the person to be paroled, the terms of that person's parole, whether or not that person is required to register as a convicted sex offender, and the community in which that person will reside.

- Provides that when notification cannot be provided within 45 days as a result of an unanticipated release date change, as specified, the CDC shall provide notice as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

### **Training: Stalking**

Stalking is a growing phenomenon. Every year, thousands of victims across the state experience the terror of being stalked. The State of California, in the forefront of stalking legislation, was the first to pass an anti-stalking statute in 1990. The statute has been amended almost continuously, expanding the definition of "threat" and increasing the potential penalties. In addition, because stalking is prevalent outside circumstances one would traditionally view as domestic or work related, law enforcement needs on-going training to be aware of changes in the law and in the nature of the offense itself.

**SB 1539 (Lewis), Chapter 564**, requires the Commission on Peace Officer Standards and Training (POST) and the California Department of Corrections (CDC) to create and implement a training course about stalking. Specifically, this new law:

- Provides that POST implement by January 1, 2002 a voluntary course of instruction for the training of law enforcement officers in the handling of stalking complaints and also develop guidelines for law enforcement's response to stalking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.
- Provides that the course and guidelines shall stress enforcement of criminal laws, availability of civil remedies, community resources, and protection of the victim.
- Provides that POST develop the course in consultation with appropriate groups and individuals having an interest and expertise in the field of stalking. POST also review existing training programs to determine how stalking training might also be included in the curriculum.
- Requires the CDC to implement by January 1, 2002 a course of instruction in the management of parolees convicted of stalking. The course shall include instruction in the appropriate protocol for notifying and interacting with stalking victims.

## **Unidentified Bodies and Human Remains**

Existing law requires a coroner to conduct a postmortem examination or autopsy under specified circumstances, and allows the coroner to engage the services of a dentist to assist in the identification of a body or human remains. Although existing law requires the coroner to forward the result of the dental examination of unidentified persons to the Department of Justice (DOJ), it has become clear that there is no consistent collection of evidence procedure.

**SB 1736 (Rainey), Chapter 284**, establishes a standardized protocol for the collection of evidence from an unidentified body, and requires that specific evidence be maintained and stored. This new law:

- Requires any postmortem examination or autopsy conducted upon an unidentified body to include, but not be limited to, the following procedures:
  - Taking all available fingerprints and palm prints.
  - A dental examination consisting of dental charts and dental X-rays of the deceased person's teeth which may be conducted by a qualified dentist as determined by the coroner.
  - The collection of tissue, including a hair sample or body fluid samples, for future DNA testing, if necessary.
  - Frontal and lateral facial photographs with the scale indicated.
  - Notation and photographs, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body.
  - Notations of observations pertinent to the estimation of the time of death.
  - Precise documentation of the location of the remains.
- Requires the coroner to prepare a final report of the investigation in a format established by the DOJ, and the final report shall list and describe the above collected information.

- Prohibits the cremation or burial of an unidentified deceased person until the jaws (maxilla and mandible with teeth) and other tissue samples are retained for possible future use, and requires that jaws and other tissue samples be retained for one year after positive identification.
- Requires a coroner who is unable to identify a body or human remains to submit to the DOJ the dental charts and dental X-rays within 45 days of the date the body or human remains were discovered, and requires that the final report be forwarded within 180 days.
- Requires a law enforcement agency investigating the death of an unidentified person to report the death to the DOJ no later than 10 calendar days after the date the body or human remains were discovered.
- Requires the DOJ to act as a repository for dental examination records and the final report of investigation as specified in this bill, and requires the DOJ to compare these records to the missing persons registry in the Violent Crimes Information Center.

### **Victims of Crime**

Recently, the United States Supreme Court decided that a California law prohibiting the dissemination of police record information solely for commercial purposes is valid, reversing two lower court rulings that found the law invalid under the First Amendment. (Los Angeles Police Dept. v. United Reporting Publishing Corp. (1999) 120 S.Ct. 483.) The Supreme Court considered the constitutionality of Government Code Section 6254, which limited public access to the addresses of individuals arrested for crimes and of crime victims. While the amended law permitted dissemination of the addresses to those who declared under penalty of perjury that the information would be used for scholarly, journalistic, political or governmental purposes, or by licensed private investigators, it could not be used directly or indirectly to sell a product or service.

**SB 1802 (Chesbro), Chapter 198**, provides privacy and confidentiality protections for specified records submitted by crime victims to obtain assistance and compensation from the Victims of Crime Program (VCP). The new law:

- Provides a specific exemption to the California Public Records Act for VCP records.

- Provides that a victim does not waive his or her medical provider/patient privilege by submitting bills and treatment records to VCP in order to qualify for payments.
- Creates a presumption that in lieu of disclosure of information provided about payments made by the VCP Restitution Fund, such amounts shall be included in the amount of restitution ordered against a defendant by the court.

### **Youthful Offenders: Restitution**

Existing law provides that unclaimed money of \$5 or less in an inmate's trust account after he or she has been paroled shall be forfeited, and deposited in the Inmate Welfare Fund of the California Department of Corrections (CDC). The Director of the California Youth Authority is allowed to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of a ward up to a maximum of 50% of the total amount held in trust.

**SB 1943 (Ortiz), Chapter 481**, makes technical changes concerning CYA Trust Accounts, and enhances CYA victim services related to restitution and youthful offender parole hearings. Specifically, this new law:

- Requires the Director of the CYA to deposit any unclaimed offender trust account money of \$5 or less in the Benefit Fund to be used for the benefit of the resident wards.
- Requires the court, in imposing a restitution order upon a minor, to identify each victim and the amount of each victim's loss, unless the court for good cause finds that the order should not identify the victim.
- Provides that when the amount of restitution cannot be determined, the court shall identify each victim and state that the amount of restitution is to be determined; and requires the court, when feasible, to identify on the court order any co-offenders who are jointly and severally liable for victim restitution.
- Reduces the number of joint meetings between the Director of the CYA and the Youthful Offender Parole Board (YOPB) to two times per year for the purpose of discussing classification, transfer, discipline, training and treatment policies and problems.
- Allows the Director of the CYA to deduct the balance owing on court-ordered restitution and fines from the trust account deposits of an adult held in a youth authority facility, up to a maximum of 50% of the total amount held in trust.

- Allows the Director of the CYA to apply any trust account balance in excess of \$5 to any unpaid victim restitution order or fine if the ward cannot be located after he or she is discharged, escapes, or absconds from supervision. If the restitution order or fine has been satisfied, the remainder of the trust account balance, if any, shall be transferred to the Benefit Fund to be used for the benefit of resident wards.
- Clarifies that it is the responsibility of the CYA, upon request, to notify the victim of a crime that the person who committed the crime is being considered for release on parole.
- Adds the crimes of spousal abuse, child molestation and stalking to the list of offenses for which the Director of the CYA is required to release specific information regarding offenders committed to the CYA to the victim of the offense, the next of kin of the victim, or a representative designated by the victim, upon request.
- Provides that the following persons may appear personally or by counsel at a YOPB hearing:
  - The victim of the offense and one support person of his or her choosing.
  - In the event that the victim is unable to attend the proceeding, two support persons designated by the victim may attend to provide information about the impact of the crime on the victim.
  - If the victim is no longer living, two members of the victim's immediate family may attend.



# WEAPONS

## Concealed Firearm Licenses

A county sheriff or a chief of police has the discretion to issue a license to carry a concealed weapon to a citizen if he or she demonstrates good moral character, completes a course of firearm training, and demonstrates good cause for the issuance of the license. Both new license and renewal applicants must show completion of an approved training course that includes instruction on firearm safety and the law regarding the permissible use of a firearm.

**AB 719 (Briggs), Chapter 123**, provides that persons certified as firearms trainers are exempt from the requirement of completing a training course for purposes of renewing a license to carry a concealed firearm.

## Ballistic Identification Systems

Technology currently exists that enables law enforcement to trace bullets and cartridges to the guns that fired them. Every gun makes unique markings on the bullets and cartridges that are fired from it; thus, there is essentially a 'fingerprint' for each gun. Since the two federal ballistic tracing systems were established, police have linked a significant number of weapons to particular crimes when no other evidence existed.

**AB 1717 (Hertzberg), Chapter 271**, improves the ability of California law enforcement agencies to use this emerging technology to investigate firearm-related crimes and to prosecute violent offenders by requiring the Attorney General to conduct a study evaluating other states and the federal ballistics identification systems. Specifically, this new law:

- Requires the Department of Justice (DOJ) to conduct a study to evaluate ballistics identification systems to determine the feasibility and potential benefits to law enforcement of using a statewide ballistics identification system capable of maintaining a database of ballistic images and information from test fired and sold firearms.
- Requires the DOJ to submit a report to the Legislature by June 1, 2001. The report shall include consideration of the following: whether it is feasible to maintain a handgun database for the entire State of California, the degree of compatibility between systems and the potential for information sharing, whether any potential benefits to law enforcement justify projected costs, and evidentiary issues regarding ballistic identification information.

### **Machinegun: Definition**

In May and July 1999, the Department of Justice's Bureau of Narcotic Enforcement Violence Suppression Unit from the Los Angeles Regional Office conducted an investigation into weapons violation at the Great Western Gun Show held at the Los Angeles County Fairgrounds. This undercover operation resulted in the filing of state and federal firearm charges on several vendors at this event. During subsequent court proceedings, two cases involving the sale of a machine gun were dismissed at the preliminary hearing. The defendants sold trigger mechanisms that enabled the weapons to fire in "full auto" mode.

**AB 1961 (Machado), Chapter 668**, revises California law to essentially conform to the federal definition of a machine gun by:

- Including a trigger mechanism in the definition of a machine gun.
- Defining "trigger mechanism" as used in this section as a part designed to convert a weapon into a machine gun.
- Defining "part designed and intended for use in competing" as used in this section as any part that will convert a semiautomatic firearm to a machine gun that was done without altering the semiautomatic receiver.
- Defining "machinegun" to include any weapon deemed by the federal Bureau of Alcohol, Tobacco, and Firearms as readily convertible to a machinegun under Chapter 53 (commencing with section 5801) of Title 26 of the United States Code.

### **Firearms: Restrictions On Possession And Ownership**

Under existing law, any person who has been convicted of specified misdemeanor violations and who, within 10 years of the conviction, owns or possesses any firearm is guilty of a felony.

**AB 1989 (Dickerson), Chapter 400**, adds two misdemeanor violations to those already specified regarding restrictions on the ownership and possession of firearms. Specifically, this new law adds the following offenses:

- Preventing or dissuading any witness or victim from attending or giving testimony at any court proceeding.
- Threatening another person with death or great bodily injury.

## **Imitation Firearms**

Existing law limits the types of toy guns and imitation firearms that can be sold, manufactured, or distributed in California. Since 1988, there have been a number of accidental police shootings nationwide involving children playing with toy guns. Children are purchasing toy guns and removing the safety tips or markings in order to create more realistic looking imitations.

**AB 2053 (Wesson), Chapter 275**, clarifies existing law regarding the purchasing and selling of imitation firearms. Specifically, this new law:

- Clarifies the prohibition concerning imitation firearms by specifying that the civil fine applies to activities for commercial purposes, and states that any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives by mail order or in any other manner an imitation firearm shall be liable for a civil fine in an action brought by the city attorney of a city or district attorney of a county of not more than \$10,000 for each violation.
- Provides that any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives a firearm, where the coloration of the entire exterior surface of the firearm is bright orange or bright green, either singly, in combination, or as the predominant color in combination with other colors in any pattern is liable for a civil fine in an action brought by the city attorney of a city or the district attorney for a county of not more than \$10,000 for each violation.
- Excludes an imitation firearm where the coloration of the entire exterior surface of the device is bright orange or bright green, either singly or in combination, from the prohibitions specified in this new law.

## **Manufacture, Import and Sale of Weapons**

Last year, SB 23 (Perata), Chapter 129, Statutes of 1999, was passed into law which banned the possession of several assault weapons, including some Olympic-style pistols. Further, SB 15 (Polanco), Chapter 248, Statutes of 1999, established strict safety standards for handguns sold after January 1, 2001, that many Olympic-style pistols could not meet. As a result, a young woman from the San Diego area who participated in Olympic-style competition was prohibited from possessing the pistol she used to compete in the sport.

**AB 2351 (Zettel), Chapter 967**, exempts listed Olympic-style pistols from the existing restrictions in law on both unsafe handguns and assault weapons, as specified. This new law:

- States legislative intent that this new law simplifies the application of its provisions by the Department of Justice and ensures that these provisions only have the effect of allowing access to, and use of, pistols for Olympic-style shooting, without affecting other firearms regulated under existing law.
- Adds a list of Olympic-style pistols exempt from the unsafe handgun restrictions in law with a statement of legislative intent that the Legislature finds a significant public purpose in exempting firearms designed expressly for use in Olympic target shooting events.
- Adds a list of Olympic-style pistols exempt from the assault weapons restrictions in law with a statement of legislative intent that the Legislature finds a significant public purpose in exempting firearms designed expressly for use in Olympic target shooting events.
- Enacts an uncodified severability clause which states that if any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity may not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

### **Displaying A Handgun In Public**

The severity of the penalty for displaying or brandishing a deadly weapon depends on the circumstances of the offense. Existing law provides for an increased penalty if a person displays a weapon upon the grounds of a youth or day-care center during business hours or in the presence of a peace officer.

**AB 2523 (Thomson), Chapter 478**, increases the misdemeanor penalty for brandishing a handgun from six months to one year in the county jail if the offense occurred in a public place. Specifically, this new law:

- Provides that every person, in the presence of another person in a public place, except in self-defense, who draws or exhibits any handgun, whether loaded or unloaded, in a rude, angry, or threatening manner, or uses the handgun in any fight or quarrel, is guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than three months and not more than one year, by a fine not to exceed \$1,000, or by both that fine and imprisonment.
- Defines "public place" as any of the following:
  - A public place in an incorporated city;

- A public street in an incorporated city; or,
- A public street in an unincorporated area.
- Changes a punishment provision to conform to existing sentencing statutes.

### **Crime Prevention Program**

In 1999, the Legislature passed and Governor Davis signed into law eight bills placing new regulations on firearms. During legislative hearings, public hearings, and meetings with law enforcement and firearm dealers, several people expressed a need to provide training to inform law enforcement, firearm dealers, and the public in the area of the recent changes in California firearm laws.

**AB 2536 (Scott), Chapter 479**, requires the Department of Justice (DOJ) to produce public service announcements relative to the newly enacted gun legislation. This new law:

- Requires that the DOJ produce public service announcements in both English and Spanish to inform the public on:
  - Changes in firearms laws and how to obtain more information on current laws.
  - A gun owner's responsibilities for the safe storage of a firearm as included in the DOJ Basic Firearms Safety Course and Penal Code Section 12080.
- Provides that no publicly elected official shall be identified with or involved in the public service announcements, but allows DOJ to be identified as the producer of the Public Service Announcements (PSA).
- Requires DOJ to seek PSA airtime once the PSAs have been produced. Nothing in this new law precludes DOJ from seeking funds to purchase airtime for the PSAs.
- Appropriates, on a one-time basis, \$125,000 to DOJ for the purpose of implementing this new law.

### **Gun Control**

With the increase of gun violence nationwide, California legislators have enacted several gun control laws over the past few years. Each year, hundreds of thousands of firearm-related crimes are reported to the police. This year on Mother's Day, the "Million Mom March" was held in Washington, D.C., where

mothers and others around the country urged the United States Congress to protect children by passing sensible gun control laws.

**AJR 53 (Jackson, Scott, and Villaraigosa), Chapter 70**, memorializes Congress and the President to pass common-sense gun legislation. Specifically, this joint resolution urges Congress and the President to pass gun legislation to:

- Limit handgun purchases to one purchase per person per month;
- Require background checks for all firearms;
- Reinstate a three-day waiting period for guns;
- Require child safety locks be sold with every handgun; and,
- Ban assault weapons and high-capacity magazines.

### **Turning Point Academy**

In an effort to combat youth violence, the California Legislature and Governor sought a new approach to dealing with a youth who commits a firearm-related offense on a campus or off campus at a school-related activity. The goal is to begin intervention early, before a youth begins to get into more trouble.

**SB 1542 (Schiff), Chapter 366**, creates a pilot project to establish a boot camp academy for first-time juvenile offenders who are minors, 15 years or older, and use a firearm at a school or during a school activity. Specifically, this new law:

- Requires the Military Department (MD) to establish the Turning Point Academy, consisting of physical training, education, drug screening and counseling services for specified delinquent youth which will become inoperative July 1, 2002.
- Establishes Academy eligibility requirements to include a juvenile 15 years of age or older adjudicated to be delinquent for having possessed, sold or furnished a firearm on a school campus or at a school activity. The minor must be a first-time offender and cannot be mentally ill or otherwise physically or mentally unsuitable.
- Prohibits the use of physical and chemical force or physical or mental intimidation, as specified.
- Creates a Mandatory Advisory Committee consisting of 11 representatives from the MD, the California Youth Authority, the

Legislature, the probation department, the office of education, law enforcement, juvenile detention, adolescent development or mental health and a juvenile court judge.

- Requires the MD, pursuant to the recommendations of an Advisory Committee, to adopt policies and procedures on matters relating to cadet and staff safety; staff training; cadet discipline, motivation and mentoring; academic and vocational education assessment and programming; behavior counseling; and cadet graduation planning.
- Requires that all custodial, teaching and mental health staff be appropriately trained, credentialed or licensed, as specified.
- Requires the Board of Corrections (BOC), using existing standards for local juvenile facilities, to oversee the Academy and requires the BOC to prepare and submit a report to the Legislature by July 1, 2002.
- Requires the county board of supervisors of a county seeking to place its ward in the Academy to adopt a resolution indicating that the county's desire to opt-in the Academy program.
- Allows courts to commit eligible youth to the Academy for a commitment for up to six months while retaining jurisdiction over the wards and requires the courts placing wards in the Academy to review their status monthly.
- Mandates that the minor placed in the Academy participate in six months of intensive county probation aftercare upon release from the Academy.
- Appropriates \$9.21 million for the Academy and allows up to five percent of that amount to be used by an independent researcher to conduct an evaluation of the effectiveness and experimental design of the Academy.
- Is an urgency measure which takes effect immediately.

### **Ex-Felons: Firearms**

Existing law provides that any person convicted of a felony who owns, or has in his or her possession, a firearm is guilty of a felony punishable by imprisonment in the state prison for 16 months, 2 or 3 years, or by up to one year in the county jail. There is a lack of data concerning the disposition of cases involving ex-felons in possession of firearms.

**SB 1608 (Brulte), Chapter 624**, requires the Department of Justice (DOJ) to conduct a study on the arrests and penalties pertaining to ex-felons in possession of firearms. Specifically, this new law:

- Requires DOJ to study and report to the Legislature by January 1, 2002 state-wide information identifiable by county, about the enforcement of Penal Code Sections 12021 and 12021.1, including, but not limited to, the following, for the period of at least three years prior to January 1, 2001:
  - The number of arrests identified by the number of arrests solely for violations of those sections and the number of arrests for violations of those sections as well as other violations of law.
  - The number of prosecutions - and convictions – that were identified by the number solely for violations of those sections and the number for violations of those sections, as well as other violations of law.
  - The number of persons who had previous convictions for serious or violent felonies and the number sentenced pursuant to Penal Code Sections 1170.12, 12022.5, 12022.53, or 667(b)-(i).
  - The number and lengths - lower, middle, or upper term - of sentences imposed where the Penal Code Sections 12021 or 12021.1 violation was the principal term of imprisonment and where it was the subordinate term of imprisonment.
  - The number persons granted probation or suspension of the imposition of sentence.
  - The length of time between the arrest and the previous felony convictions that made those sections apply to those persons.
- Is repealed on January 1, 2002.

### **Firearms: Retention after Seizure**

Following the seizure of a weapon at the scene of a domestic violence incident, or from a person detained for examination of his or her mental condition, law enforcement has 10 days from the date of seizure (domestic violence), and 30 days from the date of the person's release (mental evaluation) in which to file a petition in the superior court to determine if the weapon should be returned to its owner.

Requiring a law enforcement agency to file a petition within 10 or 30 days is an onerous burden for the agency. Returning weapons may also create a significant public danger.

**SB 2052 (Schiff), Chapter 254**, extends the length of time that a law enforcement agency would have to file a petition in the superior court to determine if a firearm or a deadly weapon should be returned to a person involved in a domestic violence incident or detained for examination of his or her mental condition. This new law:

- Provides that a law enforcement agency has 30 days after the seizure of a deadly weapon or firearm from the scene of a domestic violence incident in which to initiate a petition in the superior court to determine if the return of the weapon would likely endanger the victim or the person reporting the crime. Upon a showing of good cause, the period in which to file a petition may be extended to 60 days.
- Provides that a law enforcement agency may, for good cause, extend from 30 to 60 days the time period in which to initiate a petition in the superior court to determine if the return of a confiscated weapon seized from a person detained for examination of his or her mental condition would likely result in endangering the person or others.



## MISCELLANEOUS

### **Ballistic Identification Systems**

Technology currently exists that enables law enforcement to trace bullets and cartridges to the guns that fired them. Every gun makes unique markings on the bullets and cartridges that are fired from it; thus, there is essentially a 'fingerprint' for each gun. Since the two federal ballistic tracing systems were established, police have linked a significant number of weapons to particular crimes when no other evidence existed.

**AB 1717 (Hertzberg), Chapter 271**, improves the ability of California law enforcement agencies to use this emerging technology to investigate firearm-related crimes and to prosecute violent offenders by requiring the Attorney General to conduct a study evaluating other states and the federal ballistics identification systems. Specifically, this new law:

- Requires the Department of Justice (DOJ) to conduct a study to evaluate ballistics identification systems to determine the feasibility and potential benefits to law enforcement of using a statewide ballistics identification system capable of maintaining a database of ballistic images and information from test fired and sold firearms.
- Requires the DOJ to submit a report to the Legislature by June 1, 2001. The report shall include consideration of the following: whether it is feasible to maintain a handgun database for the entire State of California, the degree of compatibility between systems and the potential for information sharing, whether any potential benefits to law enforcement justify projected costs, and evidentiary issues regarding ballistic identification information.

### **Continuing Education: Mental Illness and Developmental Disability**

Under current law, law enforcement officers are required to receive six hours during basic training in how to deal with persons with mental illnesses and developmental disabilities.

**AB 1718 (Hertzberg), Chapter 200**, requires the Commission on Peace Officer Standards and Training (POST) to establish and update a continuing education classroom training course regarding persons with developmental disabilities or mental illness. Specifically, this new law:

- Requires that, on or before June 30, 2001, POST establish and keep updated a continuing education classroom-training course relating to law enforcement intervention with developmentally disabled and

mentally ill persons. The training course is to be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability.

- Requires POST to submit a report to the Legislature by October 1, 2003 that includes a description of the process by which the course was established and information on the number of officers that attended the course or other courses certified by the commission relating to mentally ill and developmentally disabled persons.

### **Trespass: Registered Process Servers**

Existing law makes it a trespass punishable as a misdemeanor for a person to drive any vehicle on specified real property without consent. Existing law exempts from this provision a registered process server who is making lawful service of process. However, existing law does not expressly authorize the server to leave the vehicle to complete the service of process.

**AB 1787 (Maddox), Chapter 149**, allows a registered process server, while on the real property of another person, to exit his or her vehicle in order to attempt the service of process. The person must proceed immediately to attempt the service of process and leave immediately upon completing the service of process or upon request of the owner of the real property.

### **Indemnification: Erroneously Convicted Persons**

There are those rare instances where imprisoned individuals have been found factually innocent. Under existing law, the restitution for wrongful imprisonment is limited to \$10,000. Presently, the Department of Corrections (CDC) compensates an individual kept beyond his or her release date at the rate of \$100 per day.

**AB 1799 (Baugh), Chapter 630**, removes the \$10,000 limitation on the recommended appropriation for a person wrongly convicted, provides that the recommended compensation is a sum equivalent to \$100 per each day of incarceration, and excludes compensation from gross income provisions of law.

### **Discharging Dangerous Fireworks**

Existing law provides that it is unlawful for any person to place, throw, discharge or ignite, or fire dangerous fireworks at any person or group of persons where there is a likelihood of injury to any such person. Recently, at a county fair, an

individual discharged firecrackers among unsuspecting patrons. Any person who discharges firecrackers and other dangerous fireworks at a gathering poses a threat to the public.

**AB 1998 (Dutra), Chapter 274**, expands the existing prohibition surrounding the discharge of dangerous fireworks to instances when a person willfully places, throws, discharges, ignites, or fires the fireworks with the intent of creating chaos, fear, or panic. These prohibitions do not apply to any person 21 years of age or older who holds a fireworks license. Specifically, this new law:

- Expands existing law by making it a misdemeanor to discharge dangerous fireworks at or near any person or group of persons where there is either a likelihood of injury to that person or group of persons or willfully discharges the fireworks with the intent of creating chaos, fear, or panic.
- Exempts any person holding a fireworks license issued pursuant to Chapter 5 of the Health and Safety Code from the prohibitions in this new law.

### **Suspect DNA**

Existing law restricts the use of a legally drawn DNA sample taken from a criminal suspect by permitting its use only in the criminal investigation in which he or she is a suspect. Most states permit using DNA samples to investigate other unsolved crimes in the same way fingerprints currently are used.

Expanding the use of available biological information will expedite the detection and prosecution of violent criminals, prevent the commission of future violent crimes, and exonerate innocent suspects.

**AB 2814 (Machado), Chapter 823**, permits DNA samples legally obtained from suspects to be compared to evidence from other crime scenes upon order of the court. Specifically, this new law:

- Provides that a biological sample taken in the course of a criminal investigation from a person who has not been convicted may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from other investigations without a court order.
- Defines "suspect" to mean a person against whom an information or indictment has been filed for a specified offense. A person remains a suspect for two years from the date of filing or until the DNA laboratory is notified of an acquittal or the dismissal of charges.

- Requires the Department of Justice (DOJ) to purge DNA profiles and samples of persons stored in the suspect data base within two years of the date of the filing of the information or indictment or when the DNA lab receives notice that the suspect was acquitted or the charges were dropped, whichever occurs earlier.
- Requires DOJ's DNA laboratory to be accredited by the American Society of Crime Laboratory Directors Accreditation Board (ASCLD/LAB) as well as meet national standards for data banks as required by federal law.
- Makes technical changes to provisions requiring samples from persons convicted of enumerated offenses in federal or other state courts.

### **Outstanding Warrants**

There are an estimated 2.6 million outstanding arrest warrants for persons wanted for the commission of crimes in California, and approximately 25 percent of these can be cleared by the payment of fines. The ability of wanted persons to evade apprehension undermines respect for the criminal justice system, threatens public safety and officer safety, and denies the state monies.

**SB 1310 (Vasconcellos), Chapter 940** allows all outstanding arrest warrants to be entered into the Department of Justice's (DOJ) Wanted Persons System, and requires the DOJ and other specified agencies to examine ways to integrate existing offset and collection procedures with the Automated Wanted Persons System. Specifically, this new law:

- Requires DOJ in consultation with the Controller, the Franchise Tax Board (FTB), and the Lottery Commission to examine ways to effectively integrate specified offset provisions with the DOJ's Wanted Persons System, and requires a report to the Legislature on or before January 1, 2002. States that this section shall sunset as of January 1, 2003.
- Allows law enforcement agencies, on or after June 30, 2001, upon the issuance of any arrest warrant to enter the warrant information in the DOJ's Wanted Persons System.
- Requires any state or local government agency, upon request, to provide the DOJ, a court, or any California law enforcement agency with the address of any person for whom there is an outstanding arrest warrant.
- Provides that for the period of January 1, 2001 to December 31, 2002, the FTB may limit referrals for collection to 17 counties, and requires

that a previously authorized report to the Legislature examine the feasibility of the FTB accepting referrals from all 58 counties.

- Requires the DOJ, in consultation with the FTB, to examine ways to integrate existing collection procedures with the DOJ's Wanted Persons System, and to report the findings and recommendations to the Legislature on or before January 1, 2002.
- Authorizes, specifically, the FTB to provide the DOJ and the court, or a law enforcement agency, with the address of any person for whom there is an outstanding arrest warrant.
- States that no reimbursement shall be made from the State Mandates Claim Fund for the costs mandated by the state for the purposes of this act, but local agencies may pursue any other available reimbursement.

### **Crimes Involving Alcohol Or Substance Abuse: Drug and Alcohol Assessment Programs**

Substance abuse is a significant factor contributing to criminal behavior. Persons arrested with alcohol or drugs in their system are not adequately being assessed or monitored for substance abuse.

**SB 1386 (Alpert), Chapter 165**, authorizes a county to develop and administer an alcohol and drug problem assessment program for a person convicted of a crime that involves alcohol or substance abuse, and allows a report from the assessment program to be used by the court at sentencing. Specifically, this new law:

- Provides that each county may develop and administer an alcohol and drug problem assessment program for a person convicted of a crime in which the court finds that alcohol or substance abuse was substantially involved in the commission of the crime. This program shall include a face-to-face interview with each program participant, and may be operated in coordination with a county alcohol and drug problem assessment program for driving under the influence (DUI) or DUI-related offenses.
- Provides that an alcohol and drug problem assessment report shall be prepared for each participant in the program. The report may be used to determine the appropriate sentence for the participant.

- Provides that a court may order any person convicted of a crime that involved the use of drugs or alcohol, or who was found to be under the influence of drugs or alcohol during the commission of the crime, to participate in the assessment program.
- Provides that there shall be levied an assessment of not more than \$150, where the court orders the defendant to participate in a county alcohol and drug problem assessment program. The court shall determine if the defendant has the ability to pay the assessment.
- Excludes persons convicted of a DUI or a DUI-related offense from participation in any program established by this new law.

### **Secondhand and Coin Dealers – Reporting**

Currently, pawnbrokers and secondhand dealers are required to report daily on forms approved or provided by the Department of Justice (DOJ), all personal property purchased, taken in trade, or taken in pawn to local law enforcement. In an effort to save limited investigative resources, this new law implements an electronic system to report pawn, loan and consignment transactions, replacing the cumbersome triplicate paper forms now used for reporting.

**SB 1520 (Schiff), Chapter 994**, streamlines the reporting system for pawned and secondhand property to an electronic system that uses specified reporting categories for law enforcement. This new law:

- Requires the DOJ, in consultation with local law enforcement, to develop descriptive categories for pawned or secondhand personal property.
- Requires DOJ, in consultation with local law enforcement, to develop a standard format for use in a statewide electronic reporting system.
- Requires dealers to use the electronic reporting system within 12 months of the development of the categories and electronic reporting system.
- Provides an exemption to the electronic reporting requirement for coin dealers who engage in less than 10 transactions, consisting of no more than one item per week and allows them to continue manual reporting to local law enforcement.

### **Ex-Felons: Firearms**

Existing law provides that any person convicted of a felony who owns, or has in his or her possession, a firearm is guilty of a felony punishable by imprisonment

in the state prison for 16 months, 2 or 3 years, or by up to one year in the county jail. There is a lack of data concerning the disposition of cases involving ex-felons in possession of firearms.

**SB 1608 (Brulte), Chapter 624**, requires the Department of Justice (DOJ) to conduct a study on the arrests and penalties pertaining to ex-felons in possession of firearms. Specifically, this new law:

- Requires DOJ to study and report to the Legislature by January 1, 2002 state-wide information identifiable by county, about the enforcement of Penal Code Sections 12021 and 12021.1, including, but not limited to, the following, for the period of at least three years prior to January 1, 2001:
  - The number of arrests identified by the number of arrests solely for violations of those sections and the number of arrests for violations of those sections as well as other violations of law.
  - The number of prosecutions - and convictions – that were identified by the number solely for violations of those sections and the number for violations of those sections, as well as other violations of law.
  - The number of persons who had previous convictions for serious or violent felonies and the number sentenced pursuant to Penal Code Sections 1170.12, 12022.5, 12022.53, or 667(b)-(i).
  - The number and lengths - lower, middle, or upper term - of sentences imposed where the Penal Code Sections 12021 or 12021.1 violation was the principal term of imprisonment and where it was the subordinate term of imprisonment.
  - The number persons granted probation or suspension of the imposition of sentence.
  - The length of time between the arrest and the previous felony convictions that made those sections apply to those persons.
- Is repealed on January 1, 2002.

### **Unidentified Bodies and Human Remains**

Existing law requires a coroner to conduct a postmortem examination or autopsy under specified circumstances, and allows the coroner to engage the services of a dentist to assist in the identification of a body or human remains. Although existing law requires the coroner to forward the result of the dental examination

of unidentified persons to the Department of Justice (DOJ), it has become clear that there is no consistent collection of evidence procedure.

**SB 1736 (Rainey), Chapter 284**, establishes a standardized protocol for the collection of evidence from an unidentified body, and requires that specific evidence be maintained and stored. This new law:

- Requires any postmortem examination or autopsy conducted upon an unidentified body to include, but not be limited to, the following procedures:
  - Taking all available fingerprints and palm prints.
  - A dental examination consisting of dental charts and dental X-rays of the deceased person's teeth which may be conducted by a qualified dentist as determined by the coroner.
  - The collection of tissue, including a hair sample or body fluid samples, for future DNA testing, if necessary.
  - Frontal and lateral facial photographs with the scale indicated.
  - Notation and photographs, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body.
  - Notations of observations pertinent to the estimation of the time of death.
  - Precise documentation of the location of the remains.
- Requires the coroner to prepare a final report of the investigation in a format established by the DOJ, and the final report shall list and describe the above collected information.
- Prohibits the cremation or burial of an unidentified deceased person until the jaws (maxilla and mandible with teeth) and other tissue samples are retained for possible future use, and requires that jaws and other tissue samples be retained for one year after positive identification.
- Requires a coroner who is unable to identify a body or human remains to submit to the DOJ the dental charts and dental X-rays within 45 days of the date the body or human remains were discovered, and requires that the final report be forwarded within 180 days.

- Requires a law enforcement agency investigating the death of an unidentified person to report the death to the DOJ no later than 10 calendar days after the date the body or human remains were discovered.
- Requires the DOJ to act as a repository for dental examination records and the final report of investigation as specified in this bill, and requires the DOJ to compare these records to the missing persons registry in the Violent Crimes Information Center.

### **Victims of Crime**

Recently, the United States Supreme Court decided that a California law prohibiting the dissemination of police record information solely for commercial purposes is valid, reversing two lower court rulings that found the law invalid under the First Amendment. (Los Angeles Police Dept. v. United Reporting Publishing Corp. (1999) 120 S.Ct. 483.) The Supreme Court considered the constitutionality of Government Code Section 6254, which limited public access to the addresses of individuals arrested for crimes and of crime victims. While the amended law permitted dissemination of the addresses to those who declared under penalty of perjury that the information would be used for scholarly, journalistic, political or governmental purposes, or by licensed private investigators, it could not be used directly or indirectly to sell a product or service.

**SB 1802 (Chesbro), Chapter 198**, provides privacy and confidentiality protections for specified records submitted by crime victims to obtain assistance and compensation from the Victims of Crime Program (VCP). The new law:

- Provides a specific exemption to the California Public Records Act for VCP records.
- Provides that a victim does not waive his or her medical provider/patient privilege by submitting bills and treatment records to VCP in order to qualify for payments.
- Creates a presumption that in lieu of disclosure of information provided about payments made by the VCP Restitution Fund, such amounts shall be included in the amount of restitution ordered against a defendant by the court.

### **Reporting Threats Against Public Officials**

Existing law makes it a crime to threaten certain public officials, appointees, judges, staff, or their immediate family. Law enforcement agencies are required to report all such threats to the Department of Justice (DOJ) and all threats

against state officials to the California Highway Patrol (CHP). Threats against local and state officials, estimated at about 100 reported crimes annually, are currently analyzed and investigated by local law enforcement and the CHP, respectively.

- **SB 1859 (Chesbro), Chapter 233**, eliminates the duty imposed on local law enforcement to notify the DOJ of threats against public officials. Specifically, this new law deletes the requirement that any law enforcement agency that has knowledge of a threat against a public official shall immediately report that information to the DOJ.

### **Omnibus Penal Code Revisions**

The annual omnibus bill is introduced by the Senate Committee on Public Safety.

**SB 1955 (Senate Committee on Public Safety), Chapter 287**, makes technical, corrective changes to various sections of the Penal Code, Vehicle Code, Evidence Code and Welfare & Institutions Code (WIC). This new law:

- Provides that a reserve peace officer who has a three-year break in service must complete current Commission on Peace Officer Standards and Training (POST) requirements before receiving a new appointment.
- Makes a technical correction providing that the district attorney must demonstrate by a preponderance of the evidence that a minor is not a fit and proper subject to be dealt with under the juvenile court law based upon specified circumstances.
- Extends the sunset date to January 1, 2005 to arraign a defendant in custody in Nevada County in that county when an accusatory pleading is filed in Sierra County.
- Deletes the court reporter assignment requirement imposed on courts in non-capital criminal, juvenile, or civil commitment cases.

