ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2023

Legislative Summary

Reginald Byron Jones-Sawyer, Sr.
Chair

Juan Alanis
Vice Chair

Members
Mia Bonta
Isaac G. Bryan
Tom Lackey
Liz Ortega
Miguel Santiago
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LEGISLATIVE SUMMARY 2023

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

ABUSE AND NEGLECT

Child Abuse and Neglect: Nonmandated Reporters

The Child Abuse Neglect and Reporting Act permits any person that is not a mandated reporter, who has knowledge of, or reasonably suspects a child has been a victim of child abuse or neglect, to report the known or suspected instance of child abuse or neglect. Unlike mandated reporters of child abuse or neglect, persons who are not mandated reporters are not required to include their names and contact information in the report.

Anonymous reporting allows individuals to make allegations of child abuse or neglect without disclosing any identifying information, making it easy to falsify a claim. For example, there have been reports of individuals making reports of child abuse or neglect under the shield of anonymity to settle a grudge. Advocates for domestic violence survivors, in particular, have long been concerned about the role such reports play in keeping women in violent relationships and in punishing them when they leave them.

> **AB 391 (Jones-Sawyer), Chapter 434**, requires an agency receiving a report from a nonmandated reporter to ask the reporter to provide specified information including their name, telephone number, and the information that gave rise to the knowledge or reasonable suspicion of child abuse or neglect. Specifically, this new law:
>
> - States that if the reporter refuses to provide their name or telephone number, the agency receiving the report must make an effort to determine the basis for the refusal.
>
> - States that if the reporter refuses to provide their name or telephone number, the agency receiving the report must make an effort to advise the reporter that the identifying information would remain confidential.

Elder Abuse

In 2014-2015, the Santa Clara County Civil Grand Jury received a complaint regarding the alleged failure of law enforcement's use of California's elder abuse laws. The Grand Jury examined its jurisdiction's law enforcement agencies and explored a number of questions, including whether law enforcement manuals adequately discuss elder and dependent abuse laws, whether officers receive adequate training to address such abuse, and whether there was uniformity among law enforcement agencies.

Although it found that overall, law enforcement agencies were competent and committed to the protection of the elder and dependent adult population, there could be improvements. Among the improvements was ensuring greater uniformity for elder abuse policy manuals throughout all agencies. According to some researchers, this issue was not specific to Santa Clara. They stated that, "Most law enforcement policies in California lack appropriate guidance on response to elder

abuse. Elder abuse policies appear to lag decades behind domestic violence and child abuse policies."

Since then two pieces of legislation went into effect that dealt with law enforcement elder abuse policies. SB 1191 (Hueso) Chapter 513, Statutes of 2018, which amended Penal Code Section 368.5, required local law enforcement, when revising their training policies in regards to the crimes of elder and dependent adult abuse, to include information such as a description of elder abuse and false imprisonment, as well as the statutory rules regarding elder abuse investigatory jurisdiction. Subsequently, SB 338 (Hueso) Chapter 641, Statutes of 2019, established the "Senior and Disability Justice Act" which created Penal Code Section 368.6, and required all local law enforcement agencies adopting or amending its senior and disability victimization policies after April 13, 2021, to include specified information, instruction, and protocols. Because of the way SB 1191 and SB 338 were written, a law enforcement agency revising its "elder and dependent adult abuse" policy would mean it would also have to revise its "senior disability and victimization and elder and dependent adult abuse" policy. (Pen. Code, §§ 368.5, subd. (c) & 368.6, subd. (c).)

> **AB 751 (Schiavo), Chapter 18,** clarifies that a law enforcement agency that adopts, revises, or, since April 13, 2021, has adopted or revised a policy regarding elder and dependent adult abuse, must also make revisions that include changes to similar policies, protocols, and trainings.

Medical evidentiary examinations: reimbursement

The federal Violence against Women Act affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report to the assault to law enforcement. The Office of Emergency Services (OES) uses discretionary funds from various federal grants to offset the costs of the examination. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every five years. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances. OES is to provide reimbursement from funds to be made available upon appropriation for this purpose. (Pen. Code, § 13823.95.)

In AB 2185 (Weber), Chapter 557, Statutes of 2022, the Legislature provided domestic violence victims access to medical evidentiary exams, free of charge, by the Sexual Assault Response Team (SART), Sexual Assault Forensic Exam (SAFE) teams, or other qualified medical evidentiary examiners. Each county's board of supervisors is required to authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence. Costs incurred for the medical evidentiary portion of the examination cannot be charged directly or indirectly to the victim. The costs associated with

these medical evidentiary exams are to be funded by the state, subject to appropriation by the Legislature, and require the OES to establish a 60-day reimbursement process within one year upon initial appropriation. (Pen. Code, § 11161.2.)

Existing law does not similarly provide reimbursement for the medical forensic examination of suspected child physical abuse or neglect. This makes it difficult for clinics and providers to offer this service, especially in rural districts where access is scarce.

AB 1402 (Dahle, Megan), Chapter 841, prohibits costs for the medical evidentiary portion of a child abuse or neglect examination from being charged directly or indirectly to the victim. Specifically, this new law:

- Requires the costs associated with the medical evidentiary examination of a victim of child physical abuse or neglect to be separate from diagnostic treatment and procedure costs associated with medical treatment.

- Prohibits costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of child physical abuse or neglect.

- Provides that each county's board of supervisors shall authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through the OES for the performance of medical evidentiary examinations for victims of child physical abuse or neglect and shall notify OES of this designation.

- States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.

- Requires each county's designated SART, SAFE, or other qualified medical evidentiary examiners to submit invoices to OES, who shall administer the program. A flat reimbursement rate shall be established.

- Specifies that within one year upon initial appropriation, OES shall establish a 60-day reimbursement process. OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

- Prohibits reduced reimbursement rates based on patient history or other reasons.

- Allows victims of child physical abuse or neglect to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and requires that county's approved SART, SAFE teams, or qualified medical evidentiary examiners to be reimbursed for the performance of these exams.

Children's advocacy centers: recordings

According to the Children's Advocacy Centers of California, "A children's advocacy center (CAC) is a child-friendly facility in which law enforcement, child protection, prosecution, mental health, medical and victim advocacy professionals work together to investigate abuse, help children heal from abuse, and hold offenders accountable. In the neutral setting of the CAC, team members can collaborate on strategies that will aid investigators and prosecutors without causing further harm to the victim. This innovative approach significantly increases the likelihood of a successful outcome in court and long-term healing for the child. Kids can go on to live full and rich lives, and child advocacy centers help them get there."

Existing law allows each county to use a children's advocacy center to coordinate a multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment. The law sets forth standards that each advocacy center must meet. The law does not, however, set forth a uniform process for releasing recordings that are made of the forensic interviews of children at these centers – i.e., recordings that could be used in criminal or civil cases. (See Pen. Code, § 11166.4.)

By contrast, current law provides that suspected child abuse reports are confidential and specifies how they may be disclosed. (Pen. Code, § 11167.5.) Similarly, current law provides for the confidentiality of forensic medical exams performed on sexual assault suspects and outlines how they may be disclosed. (Pen. Code, § 11160.1.)

SB 603 (Rubio), Chapter 717, creates a process and standards for the release of recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation. Specifically, this new law:

- Provides that recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation are confidential and are not public records.
- Requires a multidisciplinary team associated with a children's advocacy center to include, in the case of an Indian child, a representative from the child's tribe, including, but not limited to, a tribal social worker, tribal social services director, or tribal mental health professional.
- Provides that the children's advocacy center or other identified multidisciplinary team member custodian shall ensure that all recordings of child forensic interviews be released only in response to a court order.
- Requires the court to issue a protective order as part of the release, unless the court finds good cause that the disclosure of the interview should not be subject to such an order.
- Specifies the protective order shall include all the following language:

- That the recording be used only for the purposes of conducting the party's side of the case, unless otherwise ordered by the court;

- That the recording not be copied, photographed, duplicated, or otherwise reproduced except as a written transcript that does not reveal the identity of the child, unless otherwise ordered by the court;

- That the recording not be given, displayed, or in any way provided to a third party, except as otherwise permitted, or as necessary in preparation for or during trial;

- That the recording remain in the exclusive custody of the attorneys, or in the case of an Indian child, the tribal representative of a tribe unrepresented by an attorney, their employees, or agents, including expert witnesses by either party, who shall be provided a copy and instructed to abide by the protective order;

- That, except as specified above, if the party is not represented by an attorney, the party, the party's employees and agents, including expert witnesses, shall not be given a copy of the recording but shall be given reasonable access to view or listen to the recording by the custodian of the recording.

- That in a criminal case involving an in pro per defendant, if the court has appointed an investigator, the court may order a copy of the recording be provided to the investigator with a protective order consistent with these provisions and further order the investigator to return the recording to the court upon conclusion of the criminal case; and,

- That upon termination of representation or upon disposition of the matter, after all appeals and writs of habeas corpus have been exhausted, attorneys promptly return all copies of the recording.

- Provides that notwithstanding the above, the children's advocacy center or other identified multidisciplinary team member custodian shall release or consent to the release or use of any recording, upon request, to both of the following:

    - Law enforcement agencies authorized to investigate child abuse, or agencies authorized to prosecute juvenile or criminal conduct described in the forensic interview; and,

    - County counsel evaluating an allegation of child abuse.

- Provides that in any court proceeding, release of any recording pursuant to the civil, dependency, or criminal discovery process shall be accompanied by a protective order, unless the court finds good cause that disclosure of the recording

should not be subject to such an order.

- Provides that a child advocacy center where a forensic interview is conducted may use the recording for the purposes of supervision and peer review as required to meet national accreditation standards. Recordings that anonymize the child's face or likeness may be used for training.

- Provides that recognizing the inherent privacy interest that a child has with respect to the child's recorded voice and image when describing highly sensitive details of abuse or neglect, any and all recordings of child forensic interviews shall not be subject to a Public Records Act request and are exempt from any such request.

- Provides the recording shall not become a public record in any legal proceeding.

- Provides that the court shall order the recording be sealed and preserved at the conclusion of the criminal proceeding.

- Defines "recording" as including audio, video, digital, or any other manner in which the child's voice or likeness is memorialized.

BODY ARMOR

Body Armor: Prohibition

The term "body armor" is commonly associated with vests or other protective material that provides protection against ballistic impacts, i.e. bullets. According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, but was able continue on due to the body armor.

AB 92 (Connolly), Chapter 232, prohibits a person from purchasing or possessing body armor if state law prohibits them from possessing a firearm. Specifically, this new law:

- Makes it a misdemeanor for a person who is prohibited from possessing a firearm under California law to purchase or possess body armor, except if the person's prohibition is based solely on their status as a minor.

- Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor."

- Requires a court to advise an individual of the body armor prohibition upon advising that person of their firearm prohibition.

- States that a person must relinquish any body armor in their possession.

- Allows a prohibited person to petition a chief of police or sheriff for an exemption if their employment or safety depend on possessing body armor, as specified.

Gun Violence Restraining Orders: Body Armor

The term "body armor" is commonly associated with vests or other materials that can be worn to provide protection against ballistic impacts, i.e. bullets. According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, however, the bullet was stopped by the shooter's body armor.

In California, a Gun Violence Restraining Order (GVRO) will prohibit a person from purchasing or possessing firearms or ammunition, and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession. Currently, a court may, when considering evidence of an individual's increased risk of violence, look into any prior felony arrest history, past violations of certain protective orders, substance abuse issues, and any recent acquisitions of firearms or other deadly weapons. (Pen. Code, § 18155, subd. (b)(2).) Although acquisition of body armor in and of itself may not be indicative of a greater risk for firearm violence, when taking it into account under the totality of the circumstances, such information may be pertinent.

AB 301 (Bauer-Kahan), Chapter 234, provides that, when determining whether grounds for issuing a GVRO exist, a court may consider evidence of the acquisition of body armor as a factor indicative of an increased risk of firearm violence.

CONTROLLED SUBSTANCES

Fentanyl Misuse and Overdose Prevention Task Force.

In California, the number deaths involving fentanyl has increased dramatically in recent years. According to the California Department of Public Health, between 2012 and 2018, fentanyl overdose deaths increased by more than 800%– from 82 to 786. In 2021, there were 5,961 deaths related to fentanyl overdoses.

AB 33 (Baines), Chapter 887, subject to an appropriation, establishes the Fentanyl Misuse and Overdose Prevention Task Force to undertake various duties relating to fentanyl misuse, including, among others, collecting and organizing data on the nature and extent of fentanyl misuse in California and evaluating approaches to increase public awareness of fentanyl misuse. Specifically, this new law:

- States that the task force is co-chaired by the Attorney General and the State Public Health Officer, or their designees.

- Provides that the first meeting of the task force shall take place no later than June 1, 2024, and the task force must meet at least once every 2 months.

- Specifies that the task force is required to submit an interim report to the Governor and the Legislature by July 1, 2025, and to report its findings and recommendations to the Governor and the Legislature by December 1, 2025.

Controlled Substances: Fentanyl.

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Many cases that are reported as involving fentanyl actually involve one of several fentanyl-related substances. Fentanyl-related substances are in the same chemical family as fentanyl and have similar pharmacological effects, but have slight variations in their chemical structure. Fentanyl-related substances are often used by drug traffickers in an attempt to circumvent existing laws regulating controlled substances. In addition, fentanyl-related substances are more challenging to prosecute.

AB 701 (Villapudua), Chapter 540, applies the existing weight enhancements that increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. Specifically, this new law:

- Provides that a person convicted of specified crimes involving possession of a substance containing fentanyl for the purpose of sale/distribution, or for sale/distribution of a substance containing fentanyl, shall receive the following enhanced punishments:

    - If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years;

    - If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years;

    - If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years;

    - If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years;

    - If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years; or,

    - If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

- Provides that the enhancement shall not be imposed unless the allegation that the weight of the substance containing fentanyl and its analogs exceeds the amounts provided is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

- Specifies that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than one kilogram may, in addition, be fined by an amount not exceeding $1,000,000 for each offense.

- Provides that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than four kilograms may, in addition, be fined by an amount not to exceed $4,000,000 for each offense.

- States that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than ten kilograms may, in addition, be fined by an amount not to exceed $8,000,000 for each offense.

Controlled Substances: Probation.

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Because of mixing, people who use or deal drugs may be unaware that a substance contains fentanyl.

Existing law requires a trial court must order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

AB 890 (Patterson, Joe), Chapter 818, requires a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program. Specifically, this new law:

- Requires the fentanyl and synthetic opiate education program to include education on the dangers of fentanyl and other synthetic opiates, including, but not limited to, information on all of the following:
    - How the use of fentanyl and synthetic opiates affects the body and brain;
    - The dangers of fentanyl and other synthetic opiates to a person's life and health;
    - Factors that contribute to physical dependence;
    - The physical and mental health risks associated with substance use disorders;
    - How to recognize and respond to the signs of a drug overdose, including information regarding access to, and the administration of, opiate antagonists and immunity for reporting a drug-related overdose, as specified; and,
    - The legality of drug testing equipment, as specified.
- States that education may also include the criminal penalties for controlled substance offenses regarding fentanyl and other synthetic opiates.

Anti-Fentanyl Abuse Task Force

The Drug Enforcement Agency classifies Fentanyl as a Schedule II drug. Schedule II drugs are considered highly addictive and therefore highly regulated. Drugs on this list are for medical use and require a medical prescription.

In California, the number of overdoses relating to fentanyl are growing at an unprecedented rate. According to the California Department of Public Health (CDPH) "The opioid epidemic is dynamic, complex, and rapidly changing. Between 2012 and 2018, fentanyl overdose deaths increased by more than 800%—from 82 to 786." (In 2021, there were 5,961 deaths related to fentanyl overdoses.

CDPH is at the forefront of the fentanyl crisis in California. According to their website, CDPH works closely with local health departments, opioid safety coalitions, and other local level partners to support local prevention and intervention efforts. Working closely with local health departments, opioid safety coalitions, and other local level partners allows CDPH to support local prevention and intervention efforts that address the specific and unique trends and needs of California's communities.

SB 19 (Seyarto), Chapter 857, creates the Anti-Fentanyl Abuse Task Force to evaluate the nature and extent fentanyl abuse in California and to develop policy recommendations for addressing it. Specifically**, this new law:**

- Establishes the Anti-Fentanyl Abuse Task Force, upon appropriation by the Legislature, to:
    - Collect and organize data on the nature and extent of fentanyl abuse in California;
    - Examine collaborative models between government and nongovernmental organizations for protecting persons who misuse fentanyl or other illicit substances that may contain fentanyl.
    - Develop policy recommendations for the implementation of evidence-based practices to reduce fentanyl overdoses, including, without limitation, overdose prevention centers, fentanyl testing strip distribution, and access to overdose reversal treatments.
    - Measure and evaluate the progress of the state in preventing fentanyl abuse and fatal fentanyl overdoses, protecting and providing assistance to persons who misuse fentanyl or other illicit substances that may contain fentanyl, and prosecuting persons engaged in the illegal manufacture, sale, and trafficking of fentanyl;
    - Evaluate approaches to increase public awareness of fentanyl abuse;

- Analyze existing statutes for their adequacy in addressing fentanyl abuse and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically define and address fentanyl abuse; and,

- Consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent fentanyl abuse and fatal fentanyl overdoses, protect and assist persons who misuse fentanyl or other illicit substances that may contain fentanyl, and prosecute individuals engaged in the illegal manufacture, sale, and trafficking of fentanyl.

- Requires the Attorney General or their designee to chair the task force, and requires the Department of Justice (DOJ) to provide staff and support for the task force, to the extent that resources are available.

- Provides that members of the task force serve at the pleasure of the respective appointing authority, and that reimbursement of necessary expenses may be provided at the discretion of the respective appointing authority or agency participating in the task force.

- Provides that the task force shall be comprised of the following representatives or their designees:

    - The Attorney General;

    - The Chairperson of the Judicial Council of California;

    - The Director of the State Department of Public Health;

    - The Director of the State Department of Health Care Services;

    - One member of the Senate, appointed by the Senate Rules Committee;

    - One member of the Assembly, appointed by the Speaker of the Assembly;

    - One representative from the California District Attorneys Association;

    - One representative from the California Public Defenders Association;

    - One representative from the California Hospital Association;

    - One representative from the California Society of Addiction of Medicine;

- One representative from the County Health Executives Association of California;

- Three representatives of local law enforcement, one selected by the California State Sheriff's Association and one selected by the California Police Chiefs' Association, one selected by the California Highway Patrol;

- One representative from a community organizations representing persons with opioid use disorder, appointed by the Governor;

- One university researcher and one mental health professional, appointed by the Governor;

- A representative of a local educational agency, appointed by the Superintendent of Public Instruction;

- The Speaker of the Assembly shall appoint one representative from an organization that provides services to homeless individuals and one representative from an organization that services persons who misuse fentanyl or other illicit substances that may contain fentanyl in southern California;

- The Senate Rules Committee shall appoint one representative from an organization that provides services to homeless individuals and one representative from an organization that serves persons who misuse fentanyl or other illicit substances that may contain fentanyl in northern California; and,

- The Governor shall appoint one person in recovery from fentanyl or opioid abuse, and one person who has lost a family member to a fatal fentanyl overdose.

- Requires members of the task force, whenever possible, to have experience providing services to persons who misuse fentanyl or other illicit substances that may contain fentanyl, or to have knowledge of fentanyl abuse issues.

- Provides that the task force must meet once every two months.

- Provides that subcommittees may be formed and meet as necessary.

- Requires all meetings to be open to the public.

- Provides that the first meeting of the task force shall be held no later than March 1, 2024.

- Requires the task force, on or before July 1, 2025, to report its findings and recommendations to the Governor, the Attorney General, and the Legislature.

- Provides that, at the request of any member, the report may include minority findings and recommendations.

- Defines "fentanyl abuse" as "the use of fentanyl or produces containing fentanyl in a manner or with a frequency that negatively impacts one or more areas of physical, mental, or emotional health."

- Provides a sunset date of January 1, 2026.

Controlled Substances: Treatment

Existing law requires a trial court to order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

SB 46 (Roth), Chapter 481, requires the county drug program administrator, with input from representatives from the court, the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment.

- Requires a person convicted of a controlled substance offense, for which they are granted probation, to complete successfully an approved controlled substance education or treatment program, as specified, as opposed to requiring that person to secure education and treatment from a local community agency.

- Requires the court, when referring a person to substance education or treatment program, to determine the defendant's ability to pay and to develop a sliding fee schedule for the program based on the defendant's ability to pay, which may relieve a person from paying for the program if they meet specified criteria.

- Requires the county drug program administrator, with input from representatives from the court, the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment programs.

- Requires the controlled substance education and treatment program to be based on the best available current science and evidence and provide education resources on the pathology of addiction and existing treatment modalities.

- Requires the court to recommend in writing that a defendant convicted of a felony for a controlled substance offense, for which the defendant is sentenced to state prison or to county jail under specified circumstances, participate in a controlled substance education or treatment program while imprisoned.

Controlled Substances: Overdose Reporting.

In 1988, Congress created the High Intensity Drug Trafficking Areas (HIDTA) program to provide assistance to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States. There are currently 33 HIDTAs, including four in California: Central Valley, Northern California, Los Angeles, and San Diego/Imperial Valley. In January of 2017, the Washington/Baltimore HIDTA launched the Overdose Detection Mapping Application Program (ODMAP) as a response to the lack of a consistent methodology to track overdoses, which limited the ability to understand and mobilize against the crisis. According to the Washington/Baltimore HIDTA, ODMAP is an overdose mapping tool that allows first responders to log an overdose in real time into a centralized database in order to support public safety and public health efforts to mobilize an immediate response to a sudden increase, or spike, in overdose events. (https://www.hidta.org/odmap/)

According to Emergency Medical Services Agency (EMSA), in July of 2022, the agency entered into a data sharing agreement with ODMAP, including developing an application programming interface to allow data sharing from the California Emergency Medical Services Information System (CEMSIS) reporting system. According to EMSA, the system allows near real-time data sharing: as soon as an EMS provider closes out a call and completes the electronic record, the data is submitted to CEMSIS and if the incident is coded as an overdose, that information is then shared with ODMAP (though without personally identifiable information such as name, exact birth date, and exact address).

SB 67 (Seyarto), Chapter 859, requires coroners and medical examiners to report actual or suspected overdoses to EMSA, which is then required to submit this data to ODMAP. Specifically, this new law:

- Requires the coroner or medical examiner to make the report as soon as possible, but not later than 120 hours after examining the individual who died as the result of an overdose.

- Requires, if the cause of death is still preliminary and pending toxicology screens, the coroner or medical examiner to report the overdose as a preliminary report, and to update the report when the cause of death is confirmed.

- Prohibits overdose information reported to ODMAP by a coroner or medical examiner, or shared with ODMAP by EMSA, from being used for a criminal investigation or prosecution.

Controlled Substances: Punishment

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the increased prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Because of mixing, users are often unaware that the substance they are consuming contains fentanyl. One way for people to protect themselves from unknowingly consuming fentanyl is to test their drugs using fentanyl testing strips. But what should people do when a substance in their possession tests positive for fentanyl?

In recent years, the Legislature has taken steps to create immunity from criminal punishment when a person's conduct could prevent serious injury or death to themselves or another. For example, in 2010, AB 1999 (Portantino), Chapter 245, Statutes of 2010, granted immunity to a person under the age of 21 years who knowingly possesses or consumes alcoholic beverages under specific circumstances relating to the reporting of medical emergencies arising from alcohol consumption. In 2012, AB 472 (Ammiano), Chapter 338, Statutes of 2012, provided that it shall not be a crime to be under the influence of, or in possession of, a controlled substance or drug paraphernalia if that individual seeks medical assistance for himself, herself, or another person for a drug-related overdose. Most recently, AB 1598 (Davies), Chapter 201, Statutes of 2022, excluded from the definition of "drug paraphernalia," any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any analog of fentanyl.

SB 250 (Umberg), Chapter 106, provides that a person is immune from prosecution for possession for personal use of a controlled substance or controlled substance analog, or of drug paraphernalia, if they deliver the substance to a local public health agency or to local law enforcement, and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances.

- Provides that the identity of a person who delivers a controlled substance to the local public health department or to law enforcement shall remain confidential.

- Provides that the person may, but shall not be required to, reveal the identity of the individual from whom the person obtained the controlled substance or controlled substance analog.

Cannabis: Water Resources

Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), adopted by the voters on November 8, 2016, decriminalized the possession of up to one ounce of cannabis, and up to eight grams of cannabis concentrates; decriminalized the cultivation of up to six cannabis plants; reduced the penalties for specified cannabis offenses from felonies to misdemeanors, and from misdemeanors to infractions; and created a statutory framework to regulate the cultivation, distribution, sale and tax of cannabis products.

Under Proposition 64, generally cannabis cultivation of more than six cannabis plants is illegal. Proposition 64, calls for increased penalties for cannabis cultivation in certain circumstances. Individuals 18 years of age or over who cultivate more than six cannabis plants may be guilty of a felony, punishable by a imprisonment in a county jail for 16 months, or two or three years, under certain specified circumstances, including if the offense resulted in violations of the Water Code relating to illegal diversion and discharge of water, violations of the Fish and Game Code relating to water pollution and endangered species, fish and wildlife; violations of the Penal Code relating to pollution and environmental hazards; violations of the Health and/or Safety Code relating to hazardous waste; or, the offence was done intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

> **SB 753 (Caballero), Chapter 504**, makes it a felony for an adult who plants, cultivates, harvests, dries, or processes more than six living cannabis plants to intentionally or with gross negligence cause substantial environmental harm to surface or groundwater.

CORRECTIONS

Board of State and Community Corrections

Between 2006-2020, there were 185 in-custody deaths for San Diego County, 421 deaths in Los Angeles, 104 deaths in Riverside County, and 124 deaths in San Bernardino. Many of these deaths were preventable.

A 2022 State Auditor report on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department notes that "Significant deficiencies in the Sheriff's Department's provision of care to incarcerated individuals likely contributed to the deaths in its jails." (See *San Diego County Sheriff's Department: It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody*, February 3, 2022, Report 2021-109 (ca.gov) <http://auditor.ca.gov/reports/2021-109/index.html>.)

For example, the audit noted that studies on health care at correctional facilities have demonstrated that identifying individuals' medical and mental health needs at intake—the initial screening process—is critical to ensuring their safety in custody. Nonetheless, the auditor's review of deaths in custody found that some of these individuals had serious medical or mental health needs that the sheriff's department's health staff did not identify during the intake process. The audit also revealed multiple instances of individuals who requested or required medical and mental health care, and did not receive it at all or in a timely manner. The audit also found that deputies performed inadequate safety checks to ensure the well-being of incarcerated persons, which is the most consistent means of monitoring for medical distress.

The audit further found that some of the deficiencies of the sheriff's department were the result of statewide corrections standards that are insufficient for maintaining the safety of incarcerated individuals. For example, regulations established by the BSCC do not explicitly require that mental health professionals perform the mental health screenings during the intake process. They also do not describe the actions that constitute an adequate safety check: rather, the regulations simply state that safety checks must be conducted at least hourly through direct visual observation.

The Auditor's report concluded with some key recommendations, including that BSCC should require mental health evaluations to be performed by mental health professionals at intake, and that it should clarify and improve procedures for safety checks.

AB 268 (Weber), Chapter 298, requires the BSCC to develop standards for mental health care in local correctional facilities. Specifically, this new law:

- Requires the BSCC, commencing on July 1, 2024, to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities that either meet or exceed the standards for health care services in jails established by the National Commission on Correctional Health Care. These

standards include:

- Requiring sufficiently detailed safety checks of incarcerated persons to determine their safety and well-being;

- Requiring that correctional officers be certified in cardiopulmonary resuscitation (CPR), and requiring that they begin CPR on a non-responsive person without obtaining approval from a supervisor or medical staff, when safe and appropriate to do so;

- Requiring jail supervisors to conduct random audits of safety checks;

- Requiring no fewer than four hours of mental and behavioral health training annually for correctional officers, with the training to be developed by the BSCC;

- Requiring that a qualified mental health care professional conduct a mental health screening of a person at intake or booking, if available, a mental health screening conducted by anyone aside from a qualified mental health care professional must be reviewed by a qualified mental health care professional as soon as reasonably practicable; and,

- Requiring jail staff to review the medical and mental health records and the county electronic health records of a person booked or transferred to county jail, if they are available.

- Increases the membership on the BSCC to add a licensed health care provider and a licensed mental health care provider, both to be appointed by the Governor, and subject to confirmation by the Senate Rules Committee. Increased membership shall begin July 1, 2024.

Incarcerated Persons: Access to Showers

Incarcerated persons have reported that they are unable to shower daily, despite the fact that outbreaks of diseases such as COVID-19 and norovirus and infestations of bedbugs and scabies are common. Many incarcerated people spend most of their time in "double occupancy—11-foot-by-four-foot cells that leave only three feet between each incarcerated person's two-and-a-half-foot-wide bunk bed and shared sink and toilet, with limitations on flushing. Amid a pandemic, heat, and limited access to showers, some incarcerated individuals have received rule violations for taking showers outside of allotted days and times.

The lack of an opportunity to have a regular shower or otherwise maintain personal hygiene may be psychologically and physically degrading and humiliating. Not only does providing regular showers ensure the hygiene and dignity of people in detention, but it also helps avoid the transmission of certain infectious diseases. Among other things, the probability of transmission

of potentially pathogenic organisms is increased by prison crowding and rationed access to soap, water, and clean laundry. For example, ectoparasites, such as scabies and lice, are common problems in correctional facilities. Appropriate management of suspected cases includes shower access. Liberalizing access to soap, showers, and clean clothing may lead to less opportunity for secondary transmission. Ensuring incarcerated persons have access to shower regularly plays a significant role in public health, infection control and preventing the spread of communicable disease.

AB 353 (Jones-Sawyer), Chapter 429, requires persons incarcerated at CDCR to be permitted to shower at least every other day. Specifically, this new law:

- Provides that, whenever a request for a shower is denied, the facility manager must approve the decision to prohibit an incarcerated person from showering and the reasons for prohibiting the incarcerated person to shower must be documented.

- Requires staff to provide written or electronic notice to incarcerated persons in the affected housing unit if the showers are temporarily unavailable or limited in frequency.

- States that the notice shall include the reason the showers are unavailable or limited and shall be conspicuously posted in the affected housing unit.

The Office of Youth and Community Restoration.

In 2020, with the passage of SB 823 (Committee on Budget and Fiscal Review, Chapter 337, Statutes of 2020), the state planned the closure of the Division of Juvenile Justice (DJJ) run by the California Department of Corrections and Rehabilitation and re-aligned the responsibility for managing all youth under the jurisdiction of the juvenile courts to county probation departments.

SB 823 created a new Office of Youth and Community Restoration (OYCR) which operates within the California Health & Human Services Agency. Supporting the transition of justice involved youth being served in local communities, the OYCR will promote a youth continuum of services that are trauma responsive and culturally informed, using public health approaches that support positive youth development, build the capacity of community-based app Justice Realignment Grants, fulfill statutory obligations of an ombudsperson and develop policy recommendations.

OYCR is currently responsible for developing a report on youth outcomes; identifying policy recommendations for improved outcomes and integrated programs and services to best support delinquent youth; identifying and disseminating best practices to help inform rehabilitative and restorative youth practices, including education, diversion, re-entry, religious and victims' services; and providing technical assistance to probation departments, as requested.

AB 505 (Ting), Chapter 528, authorizes the OYCR ombudsperson to access juvenile detention facilities at any time without prior notice and to access juvenile facility records

at all times. Specifically, this new law:

- Authorizes personnel of the OYCR to have access to a juvenile case file for the purpose of carrying out the duties of the office, as provided. Requires that records be provided to OYCR in accordance with established law.

- Provides that any member of a county's juvenile justice coordinating council may be selected as co-chair of the subcommittee using a process determined by the subcommittee.

- Requires the plan developed by a county's juvenile justice coordinating council subcommittee be done with the review and participation of the subcommittee community members. Requires approval of the plan by a majority of the subcommittee.

- Requires the subcommittee meet no less than twice per year to consider the plan and for the plan to update annually in order to receive funding via the Juvenile Justice Realignment Block Grant program.

- Makes the following changes to the role of the OYCR ombudsperson:

    - Grants access to, review, and receive and make copies of any record of a local agency, and contractors with local agencies, including, but not limited to, all juvenile facility records, at all times, except personnel records legally required to be kept confidential. Repeals the 48-hour notice requirement to the agency in control of the records.

    - Provides that the ombudsperson may meet or communicate privately with any youth, personnel, or volunteer in a juvenile facility and premises within the control of a county or local agency, or a contractor with a county or local agency, and may interview any relevant witnesses. Provides that the ombudsperson may interview sworn probation personnel, as provided. Requires the ombudsperson to be granted access to youth at all times, and may take notes, audio or video recording, or photographs during the meeting or communication with youth, to the extent not otherwise prohibited by applicable federal or state law. Authorizes the ombudsperson to be permitted to carry with them and use the equipment necessary to document the meeting or communication with youth to the extent not otherwise prohibited by applicable federal or state law.

- Eliminates the existing notice requirement with respect to the ombudsperson accessing, visiting, and observing juvenile facilities and premises.

- Defines "record" as documents, papers, memoranda, logs, reports, letters, calendars, schedules, notes, files, drawings, and electronic content, including, but not limited to, videos, photographs, blogs, video blogs, instant and text messages,

email, or other items developed or received under law or in connection with the transaction of official business, but does not include material that is protected by privilege.

- Requires ombudsperson staff to conduct a site visit to every juvenile facility and premises within the control of a county or local agency, or a contractor with a county or local agency, no less frequently than once per year.

Rehabilitative Program Providers

According to rehabilitative program providers, the California Department of Corrections and Rehabilitation (CDCR) has a complicated, time-consuming, and costly process for approving security clearances for providers to enter the prisons. Currently, regulations fail to provide a set of guidelines to standardize and simplify the processes that program providers must adhere to in order to gain access to provide their rehabilitative programs.

AB 581 (Carrillo, Wendy), Chapter 335, establishes various clearance levels for rehabilitative program providers in state prisons, including a short-term clearance, an annual program provider clearance, and a statewide program provider clearance. **Specifically, this new law**:

- Creates a procedure for a program provider to receive one of these clearances and an identification card to gain entry into the state prisons and requires CDCR to provide state prisons with forms for program providers to obtain the clearances.

- Requires CDCR to designate a standardized approval process for people who were formerly incarcerated and are applying for these clearances.

- Requires CDCR to submit to the Department of Justice fingerprint images and related information from a program provider applying for an annual clearance, program provider identification card, or statewide program provider clearance, as specified.

Corrections: Population Data

Currently, the California Department of Corrections and Rehabilitation (CDCR) publishes a number of data points regarding incarcerated individuals that include age, gender, type of offense, and ethnicity, among other things. However, when publicly reporting that data, CDCR divides it into four categories: White, Black, Hispanic, and "others." According to the data, in February of this year the incarcerated population totaled 95,460 individuals; of those, 45.7% were Hispanic, 27.8% were Black, 20% were White, and 6.5% were "Other."

AB 943 (Kalra), Chapter 459, requires CDCR to publish its monthly demographic data in a manner disaggregated by race and ethnicity, as specified. Specifically, this new law:

- Requires CDCR to publish its monthly population data disaggregated by race and ethnicity.

- Specifies that when collecting voluntary self-identification information pertaining to race or ethnic origin, CDCR must use separate collection categories and tabulations for American Indian; Alaska Native; major Asian and Pacific Islander groups, including but not limited to Chinese, Japanese, Filipino, Laotian, Cambodian, Vietnamese, Thai, Pakistani, Samoan; major Hispanic groups such as Colombian, Cuban, Guatemalan, and other specified ethnicities.

- Requires that the data, except for personal identifying information, be publicly available on CDCR's website starting January 1, 2025.

Corrections and rehabilitation: sentencing

Prior to the passage of AB 2590 (Weber) Chapter 696, Statutes of 2015-2016, California law declared that the purpose of imprisonment for crime was punishment. AB 2590 (Weber), among other things, amended the law to state that the purpose of sentencing is public safety, which is achieved through punishment, rehabilitation, and restorative justice. Considering that research shows recidivism can be reduced through prison-based rehabilitation programs, and that approximately 95% of prisoners will return to their communities, this change in legislative purpose makes sense.

This remains a pressing matter in California, where, although the number of inmates housed in prisons has decreased in years, the recidivism rates have remained high, hovering at around 50% over the past decade. (These recidivism rates may in part be due to several shortcomings of CDCR’s rehabilitation programs as outlined in detail by the California State Auditor’s Office. The report stated how staffing shortfalls, failures to use evidence-based practices, and failures to properly identify and address rehabilitative needs were all factors leading to little change in recidivism rates.

AB 1104 (Bonta), Chapter 560, states that the deprivation of liberty due to incarceration, in and of itself, satisfies the punishment aspect of sentencing, and that the purpose of incarceration is to rehabilitate a person so they can be successfully reintegrated into the community. Specifically, this new law:

- States that the Legislature finds and declares, in recognition of previous hyper-punitive policies that led to mass incarceration, that effective rehabilitation increases public safety and builds stronger communities, among other things.

- Provides that when a sentence includes incarceration, the deprivation of liberty in and of itself satisfies the punishment aspect of sentencing and that the purpose of incarceration is rehabilitation and successful community reintegration through education, treatment, and restorative justice programs.

- Declares that community-based organizations (CBOs) are integral to ensuring all incarcerated persons in state prisons have access to rehabilitative programs and that CDCR must maintain a mission statement incorporating such and facilitate CBO access for the incarcerated population.

Corrections: Placement of Incarcerated Persons

The California Department of Corrections and Rehabilitation (CDCR) establishes the standard procedures for reception, processing, and transfer of incarcerated persons into CDCR institutions. Decades of research has shown that in-person visitation is beneficial, particularly when it comes to reducing recidivism. Research has also found that visitation is linked to better mental health, including reduced depressive symptoms for incarcerated persons.

AB 1226 (Haney), Chapter 98, requires CDCR place an incarcerated person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child. Specifically, this new law:

- Allows CDCR to place an incarcerated person in a facility near their child, provided that the placement would be suitable and appropriate, would facilitate increased contact between the person and their child, and the incarcerated parent gives their consent to the placement.

- Allows an incarcerated person to request a review of their housing assignment when there is a change in the primary place of residence of the person's child upon which the person's housing assignment was based.

County jails incarcerated persons: Identification Card Pilot Program

For individuals transitioning back into the local communities after a period of incarceration, an official California ID card is often necessary in order to access services, obtain employment, secure housing and seek medical insurance such as Medi-Cal. The Legislature has taken action to make it easier for inmates leaving prison to obtain an ID, with the goal of setting individuals up for success and reducing recidivism.

In 2015, the County of San Diego established a Memorandum of Understanding (MOU) with the Department of Motor Vehicles (DMV) to facilitate the issuance of identification cards for incarcerated persons in San Diego County jails. The paper process to initiate an application takes DMV approximately 120 days from receipt of pre-screening information to the delivery of completed identification cards. Once an identification card is received, the San Diego County Sheriff's Department retains possession of the identification card issued by the DMV until the release of that individual. Since the inception of the MOU, the sheriff's department has issued over 3,500 identification cards to incarcerated individuals.

AB 1329 (Maeinschein), Chapter 472, establishes a pilot program for the San Diego Sheriff's Department and the Department of Motor Vehicles (DMV) to provide incarcerated individuals with a valid identification card or a renewed driver's license. Specifically, this new law:

- Authorizes the San Diego County Sheriff's Department and DMV to implement a pilot program to provide a Cal-ID for eligible incarcerated persons, as defined, so they may have a valid ID card, to the extent administratively feasible and within available resources, when released from a San Diego County detention facility. Provides that the pilot program may also include the issuance of renewed driver's licenses.

- Defines "eligible incarcerated person" to mean an incarcerated person who is applying for an original or replacement Cal-ID and meets the following requirements:

    - For individuals who have previously held a California driver's license or ID card:

        - The incarcerated person has a usable photo on file with the DMV. Requires a new photo to be taken if the photo is deemed unusable.

        - The incarcerated person has provided, and the DMV has verified, all of the following information: the incarcerated person's true full name, date of birth, social security number, legal presence in the United States, and California residency.

    - For individuals who have not previously held a California driver's license or identification card:

        - The incarcerated person has signed and verified their application for an identification card under the penalty of perjury.

        - The incarcerated person has a usable photo taken.

        - The incarcerated person has provided a legible print of their thumb or finger.

        - The incarcerated person has provided acceptable proof of the incarcerated person's true full name, date of birth, social security number, legal presence in the United States, and California residency, and that information is subject to verification by the DMV.

- Provides that upon implementation of provisions of law allowing undocumented immigrants to apply for driver's licenses in California, those provisions will apply

to persons unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

- Requires, to the extent administratively feasible and within available resources, the San Diego County Sheriff's Department to facilitate the process between the incarcerated person and the agencies holding documentation required for an eligible incarcerated person, as defined, to obtain a Cal-ID, such as a birth certificate or social security number, including, but not limited to, the provision of any necessary notary services, assistance with obtaining necessary forms, and correspondence.

- Sets the fee for an original or renewal Cal-ID at the reduced rate of $8 applicable to persons incarcerated within a state correctional facility.

- Authorizes the sheriff's department and the DMV to provide a renewed driver's license instead of a Cal-ID if the incarcerated person had a valid license within the past 10 years, otherwise meets the eligibility criteria for renewing a driver's license by mail, and is otherwise eligible for the issuance of a license.

- Provides that an incarcerated person receiving a driver's license is responsible for paying the difference between the cost of the driver's license and the reduced fee for a Cal-ID.

- Specifies that these provisions do not remove the examination discretion of the DMV for renewing a driver's license.

- Requires the sheriff's department to submit a report by April 1, 2028.

- Specifies that the pilot program is for five years and sunsets on January 1, 2029.

Correctional Facilities: Religious Accommodations

Penal Code section 2601 provides that each person serving a sentence in state prison or county jail for a realigned felony has specified civil rights. Penal Code section 2600 provides that a person serving a sentence in state prison or county jail for a realigned felony may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.

In addition, Penal Code section 5009 declares the intent of the Legislature that all individuals incarcerated in the state’s prisons be afforded reasonable opportunities to exercise religious freedom. Similar language is codified in Penal Code section 4027 which pertains to local detention facilities.

Under federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA) protects the religious rights of all persons “residing in or confined to an institution” including state and local government mental health facilities, correctional facilities, pretrial detention facilities, and

juvenile detention facilities, and private prisons and jails that operated on behalf of states or local governments.

SB 309 (Cortese), Chapter 388, establishes the right of an individual in custody of a state or local detention facility to religious accommodation with respect to grooming, clothing, and headwear, at all times and throughout the facility. Specifically, this new law:

- Permits the denial of religious grooming, clothing, and headwear accommodations only when doing so would be the least restrictive means of furthering specified governmental interests.

- Mandates specific procedures during booking and searches related to religious grooming and garments.

- Requires each sheriff to develop and implement a religious grooming, clothing, and headwear policy.

Parole Hearings

Existing law requires any person, other than the victim, who is entitled to attend a parole hearing and intends to do so, to provide at least 30 days' notice to the Board of Parole Hearings (BPH) of their intent to attend the hearing. Under California Department of Corrections and Rehabilitation (CDCR) regulations, victims must provide at least 15 days' notice and their next of kin, family members, representative, counsel, and support person must provide at least 30 days' notice of their intention to attend parole hearings, regardless of whether they will participate in person or remotely.

SB 412 (Archuleta), Chapter 712, prohibits CDCR and BPH from requiring a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons to give more than 15 days' notice of their intention to attend a parole hearing.

Canteens

Existing law authorizes the California Department of Corrections and Rehabilitation (CDCR) to maintain and operate a canteen at any of the state's prisons where the incarcerated population can purchase toiletries, stationery, snacks, and other personal items. The department sets the prices of the items sold at the canteen, and existing law provides that the sale prices must be set at the amounts that will, as far as possible, render each canteen self-supporting.

Advocates argue that canteen items have unreasonably high prices compared to the prices of the same or similar items available to the general public. A 2020 report published by Initiate Justice found that 60% of the formerly incarcerated individuals surveyed by the organization could not

afford canteen purchases while incarcerated, and some individuals reported that they had resorted to extreme measures to gain access to canteen items such as engaging in gang activity and sexual relationships.

SB 474 (Becker), Chapter 609, requires CDCR to maintain a canteen at any active prison. Specifically, this new law:

- Requires CDCR to provide the necessary facilities, equipment, personnel, and merchandise for the canteen.

- Prohibits the sale prices of the items offered in the canteen from exceeding 10% above the amount paid to the vendors.

Corrections

To promote public disclosure, state law authorizes public access to certain law enforcement and custodial officer records, particularly in situations involving potential misconduct or use-of-force. Under that existing statutory framework, investigative and autopsy reports, interviews, and disciplinary action are publicly available records. However, this framework does not apply to in-custody death records and investigations.

According to the Department of Justice, since the passage of Public Safety Realignment in 2011 - which mandated that individuals sentenced for specific non-violent offenses be housed in county jails rather than state prisons - the share of deaths in custody reported from county sheriff's departments (who manage county jail systems) has grown from 17.1 percent in 2010 to 22.2 percent in 2014 while the California Department of Corrections and Rehabilitation (CDCR) has dropped from 59.3 percent to 47.1 percent during the same timeframe. In 2019, the percentage of county jail deaths grew to 20.6 percent and the percentage of CDCR deaths decreased to 52.8 percent.

SB 519 (Atkins), Chapter 306, makes records relating to an investigation conducted by a local detention facility into a death incident available to the public and creates the position of Director of In-Custody Death Review within the Board of State and Community Corrections to review investigations of any death incident, as defined, occurring within a local detention facility.

CRIMINAL JUSTICE PROGRAMS

Restorative Justice Program.

Existing law provides statutory rights to victims of crimes, including, among other things, the right to be informed of the final disposition of their case; the right to be notified of any pretrial disposition in the case; the right to receive notice that the defendant has been convicted; and the right to receive information about civil recovery and the opportunity to be compensated from the Restitution Fund. (Pen. Code, § 679.02.) Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime. (Pen. Code, § 679.02, subd. (b).)

AB 60 (Bryan), Chapter 513, establishes the statutory right of victims of crimes to be informed that community-based restorative justice programs are available to them. Specifically, this new law:

- Provides that the victim of a crime has a right to be notified of the availability of community-based restorative justice programs and processes available to them, including, but not limited to, programs servicing their community county, county jails, juvenile detention facilities, and the Department of Corrections and Rehabilitation (CDCR).

- Provides that the victim has a right to be notified of such programs as early and often as possible, including during the initial contact, during follow-up investigation, at the point of diversion, throughout the process of the case, and in post-conviction proceedings.

- Requires the Attorney General to include in the "Victim Protections and Resources" card information about the availability of community-based restorative justice programs and processes available to them, including programs serving their community, county, county jails, juvenile detention facilities, and CDCR.

Hope California: Secured Residential Treatment Pilot Program.

Despite widespread implementation of involuntary drug treatment worldwide, there appears to be little available, high-quality research on its effectiveness. A recent report discussing the complexity of the mandated drug treatment model for those involved in the criminal justice system noted "long-standing debate about whether people with substance use disorders who are involved in the legal system should be coerced to enter treatment as an alternative to incarceration or some other sanction." (Stein, et al., *America's Opioid Ecosystem*, RAND Corporation (2023) pp. 245-246.) It added, "Although the risk of overdose after a period of abstinence has always been an issue…it is especially salient given how dangerous and unpredictable street drug markets are today." (*Ibid.*) "Although

forced abstention could lead to long-term recovery for some people, many others will likely resume opioid consumption with a lower tolerance." (*Ibid.*)

Regardless, some policy-makers have supported efforts to compel persons suffering from severe mental illness and substance use disorders into treatment. On March 3, 2022, Governor Gavin Newsom announced a plan to give family-members, county and community-based social services, behavior health provides, or first responders the ability to petition a court to have a person placed into involuntary treatment for up to 24 months. According to the Governor's announcement:

> CARE Court is designed on the evidence that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. It's a long-term strategy to positively impact the individual in care and the community around them. The plan focuses on people with schizophrenia spectrum and other psychotic disorders, who may also have substance use challenges, and who lack medical decision-making capacity and advances an upstream diversion from more restrictive conservatorships or incarceration.

On September 14, 2022, SB 1338 (Umberg), Chapter 319, Statutes of 2022, was signed and the CARE Act was created. Individuals experiencing severe mental illness with a diagnosis of schizophrenia spectrum and other psychotic disorders qualify for the CARE process. Many people who have a substance use disorder (SUD) also struggle with mental disorders. The National Institute on Drug Abuse, Common Comorbidities with SUD Research Report (Apr. 2020) reported that indeed, patients with schizophrenia have higher rates of…drug use disorders than the general population.

> **AB 1360 (McCarty), Chapter 685,** authorizes the Counties of Sacramento and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders who have been convicted of "drug-motivated" felony crimes. Specifically, this new law:
>
> - Authorizes the Counties of Sacramento and Yolo to offer the pilot program to eligible individuals if the program meets specified conditions, including:
>
> - The program facility is licensed by the State Department of Health Care Services (DHCS) as an alcoholism or drug abuse recovery or treatment facility;
>
> - The program facility is a clinical setting managed and staffed by the county's health and human services agency (HHSA), with oversight provided by the county's probation department;
>
> - The program facility is not in a jail, prison, or other correctional setting;
>
> - The program facility is secured but does not include a lockdown setting;

- The individual, upon a judge pronouncing a sentence to be served in a county jail or state prison, must choose and consent to participate in the program in lieu of incarceration;

- The DHCS monitors the program facility to ensure the health, safety, and well-being of program participants;

- The county develops and staffs the program in partnership with relevant community-based organizations and drug treatment services providers to offer support services;

- HHSA ensure that a risk, needs, and psychological assessment, utilizing the Multidimensional Assessment of the American Society of Addiction Medicine (ASAM), as part of the ASAM criteria, be performed for each individual identified as a candidate for the program;

- The participant's treatment, in terms of length and intensity, within the program is based on the findings of the risk, needs, and psychological assessment and the recommendations of treatment providers;

- The program adopts the Treatment Criteria of ASAM;

- The program provides an individualized, medically assisted treatment plan for each resident including, but not limited, medically assisted treatment options and counseling based on the recommendations of a substance use disorder specialist;

- A judge determines the length of the treatment program after being informed by, and based on, the risk, needs, and psychological assessment and recommendations of treatment providers;

- The participant continues outpatient treatment for a period of time and may also be referred to a "step-down" residential treatment facility after leaving the secured residential treatment facility;

- A judge shall also determine that the program will be carried out in lieu of a jail or prison sentence after making a finding that the defendant's decision to choose alternative treatment program is knowing, intelligent, and voluntary;

- If treatment services provided to a participant during the program are not reimbursable under the Medi-Cal program or through the participant's personal health coverage, funds allocated to the state from the 2021 Multistate Opioid Settlement Agreement, subject to an appropriation by the Legislature, may be used to reimburse those treatment services to the extent consistent with the terms of the Settlement Agreement and the Final Judgment;

- The county reports annually to the DHCS and to the Legislature.

- States that eligible drug-motivated crimes include any felony crime except sex crimes requiring sex offender registration, "serious" felonies, or "violent" felonies, as specified, and excluding nonviolent drug possession offenses.

- Requires the judge to offer the defendant voluntary participation in the pilot program as an alternative to a jail or prison sentence that the judge would otherwise impose at the time of sentencing or pronouncement of judgment in which sentencing is imposed.

- Requires that the amount of time, combined with any outpatient treatment or "step-down" residential treatment, does not exceed the term of imprisonment to which the defendant would otherwise be sentenced, not including any additional term of imprisonment for enhancements, for the drug-motivated crime.

- Prohibits the court from placing the defendant on probation for the underlying offense.

- Requires the court to order the participant be released prior to the end of the original order if the treatment providers make a recommendation to the court that the participant no longer needs to be in the secured residential treatment program.

- Requires the court to expunge and seal the conviction from the participant's record, and to expunge the conviction of any previous drug possession or drug use crimes on the participant's record, if the participant successfully completes the court-ordered drug treatment program.

CRIMINAL OFFENSES

Probation: Environmental Crimes

In 2020, the Legislature passed AB 1950 (Kamlager) Chapter 328, which went into effect on January 1, 2021, and reduces the maximum length of probation for both misdemeanor and felony cases (in most cases). For felonies, the term of probation was reduced from five years (where the punishment did not exceed five years) to two years. (Pen. Code, § 1203.1.) For misdemeanors the term of probation was reduced from three years to one year. (Pen. Code, § 1203a.) In both types of cases, there was an exception made if a specific probation length was already dictated in statute describing the punishment for a particular criminal offense. (*Ibid*.)

Since many environmental crimes are classified as misdemeanors, some prosecutors argue that the reduced period of probation is insufficient to hold corporate wrongdoers accountable.

AB 508 (Petrie-Norris), Chapter 264, extends the maximum allowable period of probation for specified environmental crimes when they are committed by an entity with more than 10 employees. Specifically, this new law:

- States that notwithstanding other statutes limiting the length of a probationary term to one year in misdemeanor cases and two years in felony cases, if an entity is granted probation based on conviction of an "environmental crime," the term of probation can be set at up to five years.

- Defines "environmental crimes" for purposes of extending probation as the following:

    - Specified provisions of the Fish and Game Code related to the unlawful taking of birds, mammals, fish, reptiles, or amphibians; the sale, purchase or capture of desert tortoises; the unlawful use of explosives in state waters inhabited by fish; and discharge of specified substances into the waters of the State;

    - Specified provisions of the Food and Agriculture Code related to pesticides;

    - Specified provision of the Harbors and Navigation Code related to discharging cargo overboard from a vessel, and discharging oil upon navigable waters;

    - Specified provisions of the Health and Safety Code known as the Medical Waste Management Act, and the Aboveground Petroleum Storage Act.

    - Specified provisions of the Health and Safety Code relating to non-vehicular air pollution control, hazardous waste control, underground

storage of hazardous substances, and hazardous materials release;

- Specified provisions of the Government Code known as the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act;

- Specified provisions of the Penal Code related to malicious discharge of any substance capable of causing substantial damage or harm to the operation of a public sewer system; illegal dumping; grease waste hauling violations; depositing hazardous substances; animal cruelty; importation, possession for sale, or sale of endangered species; and possession or sale of a dead seal;

- Vehicular transportation of hazardous material, and hazardous material transportation in violation of regulations of the Department of the California Highway Patrol; and,

- Specified provisions of the Water Code mandating compliance with the Federal Clean Water Act.

- Defines "entity" as "a trust, firm, partnership, joint stock company, joint venture, association, limited liability company, corporation, or other legal entity with more than 10 employees."

Controlled Substances: Fentanyl.

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Many cases that are reported as involving fentanyl actually involve one of several fentanyl-related substances. Fentanyl-related substances are in the same chemical family as fentanyl and have similar pharmacological effects, but have slight variations in their chemical structure. Fentanyl-related substances are often used by drug traffickers in an attempt to circumvent existing laws regulating controlled substances. In addition, fentanyl-related substances are more challenging to prosecute.

AB 701 (Villapudua), Chapter 540, applies the existing weight enhancements that increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. Specifically, this new law:

- Provides that a person convicted of specified crimes involving possession of a substance containing fentanyl for the purpose of sale/distribution, or for sale/distribution of a substance containing fentanyl, shall receive the following enhanced punishments:

- If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years;

- If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years;

- If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years;

- If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years;

- If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years; or,

- If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

- Provides that the enhancement shall not be imposed unless the allegation that the weight of the substance containing fentanyl and its analogs exceeds the amounts provided is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

- Specifies that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than one kilogram may, in addition, be fined by an amount not exceeding $1,000,000 for each offense.

- Provides that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than four kilograms may, in addition, be fined by an amount not to exceed $4,000,000 for each offense.

- States that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than ten kilograms may, in addition, be fined by an amount not to exceed $8,000,000 for each offense.

Menace to Public Health: Closure by Law Enforcement

Law enforcement officers and other designated officials may cordon off and close a disaster area to the general public where the disaster has created "a menace to the public health or safety." A person is guilty of a misdemeanor if they willfully and knowingly enter a closed area and willfully remain within the area after receiving notice to evacuate. However, law enforcement may not prevent duly authorized newspersons from entering an area otherwise closed to the general public.

The exception does not prevent law enforcement officers from taking appropriate action to prevent the news media representatives at a disaster site from violating any specific laws. For example, press representatives access may be restricted if police personnel at the scene reasonably determine that their unrestricted access will interfere with emergency operations. However, officers cannot exclude the press on the sole basis of there being a safety hazard. The power to exclude the general public from a disaster site only arises where the disaster creates "a menace to the public health or safety." Thus, the press access exception assumes the existence of an already-determined safety hazard. Notwithstanding such a safety hazard, the Legislature has concluded that the public's right to know is more important.

AB 750 (Rodriguez), Chapter 17, clarifies that, unless for the safety of a person, a duly authorized representative of a news service is not authorized to facilitate the entry of a person into a closed area, if that person is not also a duly authorized representative of a news service.

Animal Cruelty: Probation

Existing law provides that if a defendant is granted probation for an animal cruelty conviction, the court must order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. (Pen. Code, § 597, subd. (h).)

Cases involving animal cruelty can vary significantly in terms of their nature and severity. Some cases involve simple neglect where an animal is not provided proper food or care, while others involve significant intentional acts of cruelty. Current law imposes a mandatory sentencing requirement of counseling. That mandatory sentencing requirement does not necessarily fit the needs or circumstances of all cases of animal cruelty. "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.)

AB 829 (Waldron), Chapter 546, requires a court to consider ordering a defendant who has been granted probation after conviction of specified animal abuse crimes to undergo a mental health evaluation, and requires the defendant to complete mandatory counseling as directed by the court, if the evaluator deems it necessary. Specifically, this new law:

- Requires the court to consider for every defendant who is granted probation for specified animal abuse offenses, whether to order that the person undergo a mental health evaluation by an evaluator chosen by the court. These offenses include:
    - Sexual contact with an animal;

- Willful poisoning of an animal;
- Animal cruelty;
- Keeping an animal in specified places without proper care; and,
- Intentionally causing injury or death to a guide or service dog.

- Specifies that if the mental health evaluator deems a higher level of treatment than general counseling is necessary, the defendant shall complete such treatment as directed by the court.

- Requires the defendant to pay for both any mental health evaluations and any subsequent treatment, but if the court determines that the defendant is unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay.

- Provides that a person who is receiving specified public benefits or whose monthly income is 200% or less of the current federal poverty guidelines shall not be responsible for any costs.

- Specifies that the required counseling is in addition to any other terms and conditions of probation, including any term of imprisonment and fine.

- Makes confidential the finding that the defendant suffers from a mental disorder, as well as any progress reports concerning the defendant's treatment, or any other records created pursuant to these provisions, and prohibits their release or use in connection with any civil or criminal proceeding without the defendant's consent.

Vehicles: Catalytic Converters

A catalytic converter is an exhaust emission control device that converts toxic gases and pollutants in exhaust gas from an internal combustion engine into less-toxic pollutants. Catalytic converter theft has been on the rise because they are coated with precious metals that have a high recycle value. The Bureau of Automotive Repair has made several recommendations to deter theft of catalytic converters, including parking cars in well-lit areas, installing motion-sensing alarm systems, installing theft prevention devices like steel cages, and etching the converter shell with a VIN or license plate number.

AB 1519 (Bains), Chapter 847, makes it a misdemeanor to remove, alter, or obfuscate a VIN that has been added to a catalytic converter. Specifically, this new law:

- Makes it a misdemeanor to knowingly possess three or more catalytic converters that have been so altered.

- Provides that these new offenses are punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both.

Controlled Substances: Punishment

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the increased prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Because of mixing, users are often unaware that the substance they are consuming contains fentanyl. One way for people to protect themselves from unknowingly consuming fentanyl is to test their drugs using fentanyl testing strips. But what should people do when a substance in their possession tests positive for fentanyl?

In recent years, the Legislature has taken steps to create immunity from criminal punishment when a person's conduct could prevent serious injury or death to themselves or another. For example, in 2010, AB 1999 (Portantino), Chapter 245, Statutes of 2010, granted immunity to a person under the age of 21 years who knowingly possesses or consumes alcoholic beverages under specific circumstances relating to the reporting of medical emergencies arising from alcohol consumption. In 2012, AB 472 (Ammiano), Chapter 338, Statutes of 2012, provided that it shall not be a crime to be under the influence of, or in possession of, a controlled substance or drug paraphernalia if that individual seeks medical assistance for himself, herself, or another person for a drug-related overdose. Most recently, AB 1598 (Davies), Chapter 201, Statutes of 2022, excluded from the definition of "drug paraphernalia," any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any analog of fentanyl.

SB 250 (Umberg), Chapter 106, provides that a person is immune from prosecution for possession for personal use of a controlled substance or controlled substance analog, or of drug paraphernalia, if they deliver the substance to a local public health agency or to local law enforcement, and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances.

- Provides that the identity of a person who delivers a controlled substance to the local public health department or to law enforcement shall remain confidential.

- Provides that the person may, but shall not be required to, reveal the identity of the individual from whom the person obtained the controlled substance or controlled substance analog.

Crimes: Aggravated Arson

The aggravated arson statute, Penal Code section 451.5, became effective in 1995 through enactment of SB 1309 (Craven), Chapter 421, Statutes of 1994. The original statute contained a five-year sunset provision which stated that the purpose of the provision was to allow the

Legislature to consider the effects of inflation on the property damage/losses threshold in the law. At the time of the aggravated arson offense's implementation in 1995, the total monetary amount of property damage and other losses was set at $5 million.

Because of this, the cost of inflation is to be considered by the Legislature within five years when extending the sunset on the statute and/or making changes to the monetary threshold. The statute's sunset and monetary threshold has increased several times since 1995. The most recent sunset extension saw the threshold increase in 2014 from $7 million to $8.3 million in 2018 to account for inflation. According to the U.S. Bureau of Labor Statistics, $5 million in 1994 equates to roughly $10.1 million in 2023.

SB 281 (McGuire), Chapter 706, increases the threshold property damage amount for aggravated arson from $8.3 million to $10.1 million. Specifically, this new law:

- Increases the threshold property damage amount for aggravated arson from $8.3 million to $10.1 million .
- Excludes inhabited dwellings from calculation of the threshold amount.
- Extends the operation of this aggravating factor from January 1, 2024 to January 1, 2029.

Elections: Election Worker Protections

Several provisions of existing law seek to protect election workers and voters from bad actors. For instance, Elections Code section 18502 makes it a felony for a person to interfere with the "officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted." This offense is a felony, punishable by imprisonment in a county jail for 16 months or two or three years.

Also, under current law, Elections Code section 18540 makes it a felony to threaten to use any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election. This offense is punishable by imprisonment in a county jail for 16 months or two or three years.

SB 485 (Becker), Chapter 611, expands the existing felonies of interfering with officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election. Specifically, this new law:

- Provides that "officers holding an election or conducting a canvass," for the purposes of the existing statute prohibiting election interference, include, but are not limited to:
    - The Secretary of State as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the

provisions of the Elections Code; and,

- Elections officials or their staff, including voluntary poll workers and members of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass.

- Provides that: "conducting an election or canvass", for the purposes of the existing statute prohibiting election interference, includes, but is not limited to the election observation process governed by the Elections Code and applicable regulations adopted by the Secretary of State.

- Provides that "voting at an election", for the purposes of the existing statute prohibiting election interference, includes, but is not limited to voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

- Provides that "voting at any election" for the purposes of the existing statute prohibiting threats to induce or compel a person to vote or refrain from voting at any election includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

Cannabis: Water Resources

Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), adopted by the voters on November 8, 2016, decriminalized the possession of up to one ounce of cannabis, and up to eight grams of cannabis concentrates; decriminalized the cultivation of up to six cannabis plants; reduced the penalties for specified cannabis offenses from felonies to misdemeanors, and from misdemeanors to infractions; and created a statutory framework to regulate the cultivation, distribution, sale and tax of cannabis products.

Under Proposition 64, generally cannabis cultivation of more than six cannabis plants is illegal. Proposition 64, calls for increased penalties for cannabis cultivation in certain circumstances. Individuals 18 years of age or over who cultivate more than six cannabis plants may be guilty of a felony, punishable by a imprisonment in a county jail for 16 months, or two or three years, under certain specified circumstances, including if the offense resulted in violations of the Water Code relating to illegal diversion and discharge of water, violations of the Fish and Game Code relating to water pollution and endangered species, fish and wildlife; violations of the Penal Code relating to pollution and environmental hazards; violations of the Health and/or Safety Code relating to hazardous waste; or, the offence was done intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

SB 753 (Caballero), Chapter 504, makes it a felony for an adult who plants, cultivates, harvests, dries, or processes more than six living cannabis plants to intentionally or with gross negligence cause substantial environmental harm to surface or groundwater.

CRIMINAL PROCEDURE

Deferred Entry of Judgment Pilot Program

SB 1004 (Hill) Chapter 865, Statutes of 2016, established the Transitional Age Youth Deferred Entry of Judgment Pilot Program, which authorizes several counties to operate a program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The underlying premise of the pilot program is that although the participants are legally adults, "young offenders…are still undergoing significant brain development and…may be better served by the juvenile justice system with corresponding age appropriate intensive services." (Senate Public Safety Committee, Analysis of SB 1004 (2016) as amended on March 28, 2016.)

The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program, the criminal charges are dismissed. To be eligible, the defendant must be between the ages of 18 and 21, or be under the age of 25 at the time of the commission of the offense and receive approval from a multi-disciplinary team. In addition, the individual must not have a prior or current conviction for a serious, violent, or sex offense. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall. (Pen. Code, § 1000.7.)

The pilot program is set to sunset on January 1, 2024.

AB 58 (Kalra), Chapter 418, extends the operative date of the Transitional Age Youth deferred entry of judgment pilot program to January 1, 2026. Specifically, this new law:

- Extends this young adult deferred entry of judgment pilot program from January 1, 2024 to January 1, 2026.
- Removes Napa and Ventura counties from the pilot program.
- Removes the reporting requirements of the Board of State and Community Corrections (BSCC) and instead requires a county that establishes a pilot program to conduct an evaluation on the impact and effectiveness of the pilot program, as specified, and submit a report to the Assembly and Senate Public Safety Committees by December 31, 2024.
- Prohibits continued participation in the pilot program if the participating county does not comply with the reporting requirement.

Criminal Procedure: Victims' Rights

Generally, a court loses jurisdiction over a sentence when the sentence begins. Once sentenced, the court no longer has the legal authority to increase, reduce, or change the defendant's sentence. However, the Legislature created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment for a felony conviction, the court has the ability to resentence the defendant as if it had never imposed sentence, if the new sentence is no greater than the original sentence. In addition, the California Department of Corrections, Board of Parole Hearings, the county correctional administrator, the district attorney, or the Attorney General can make a recommendation for resentencing at any time.

The recall and resentencing law was recently amended to include procedures such as when a hearing is required. The recall and resentencing process requires a hearing to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties, and requires the court's decision to grant or deny the petition to be stated on the record.

> **AB 88 (Sanchez), Chapter 795,** requires a victim who wishes to be heard regarding the resentencing to notify the prosecution of their request for a hearing within 15 days of being notified that resentencing is being sought, and requires the court to provide an opportunity for the victim to be heard.

Domestic violence: restraining orders.

As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code Section 136.2, subdivision (a)(1), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this portion of the statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When a defendant has been convicted of domestic violence, as defined, and rape, statutory rape, spousal rape, or any crime requiring sex offender registration, the court can issue a protective order lasting up to 10 years. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking and elder abuse cases. (Pen. Code, § 646.9, subd. (k); Pen. Code, § 368(l).)

According to background information provided by the author's office, some courts have decided that although Penal Code section 136.2 enables them to issue a 10-year criminal protective order, the statute does not allow for them to modify the order past the period in which a defendant is serving their sentence or on probation.

> **AB 467 (Gabriel), Chapter 14,** clarifies that a court that sentenced a defendant and issued a 10-year criminal protective order may make modifications to it throughout the duration of the order.

Criminal procedure: resentencing

As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.)

However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. In addition, the Secretary of the California Department of Corrections and Rehabilitation, the Board of Parole Hearings, the county correctional administrator, the district attorney, or the Attorney General (AG) can make a recommendation for resentencing at any time. (Pen. Code, § 1172.1, subd. (a).)

AB 600 (Ting), Chapter 446, allows a court to recall a sentence at any time if applicable sentencing laws are subsequently changed due to new statutes or case law, and makes changes to the procedural requirements to be followed when requests for recall are made. Specifically, this new law:

- Authorizes the court to recall a sentence, on its own motion, at any time if the applicable sentencing laws have subsequently changed due to new statutory or case law authority.

- Specifies that recall and resentencing may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case.

- Eliminates the requirement that the district attorney or AG must concur with resentencing and imposing judgment on any lesser included or lesser related offense.

- Provides that if the court has recalled the sentence on its own motion, the court shall not impose a judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain without the concurrence of both the defendant and the district attorney or the AG if the Department of Justice originally prosecuted the case.

- Requires the court to consider postconviction factors and states that evidence that the defendant's incarceration is no longer in the interest of justice includes, but is not limited to, evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence.

- Clarifies that the presumption in favor of recall and resentencing of the defendant may only be overcome if a court finds the defendant currently poses an

unreasonable risk of danger to public safety.

- States that a defendant is not entitled to file a petition seeking relief form the court and if a defendant requests consideration for relief, the court is not required to respond.

- Requires, after a ruling on a referral for recall and resentencing, the court to advise the defendant of their right to an appeal and the necessary steps and time for taking an appeal.

- Contains legislative findings and declarations.

Criminal History Information

In *Brady v. Maryland* (1963) 373 U.S. 83, the United States Supreme Court held that federal constitutional due process creates an obligation on the part of the prosecution to disclose all evidence within its possession that is favorable to the defendant and material on the issue of guilt or punishment. *Brady* evidence includes evidence that impeaches prosecution witnesses, including a law enforcement officer's testimony, even if it is not inherently exculpatory. Further, the prosecution's disclosure obligation under *Brady* extends to evidence collected or known by other members of the prosecution team, including law enforcement, in connection with the investigation of the case. In order to comply with *Brady*, the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.

Peace officer personnel records include any file maintained under that individual's name by the officer's employing agency and containing records relating to among other things, "appraisal, or discipline" and "complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." Each department or agency that employs peace officers is required to establish a procedure to investigate complaints by members of the public against peace officers employed by these departments or agencies. Complaints and any reports or findings related to the complaints must be kept in the peace officers personnel file. Except for a few limited exceptions, peace officer personnel records, and information obtained from these records are confidential and subject to discovery in a criminal or civil proceeding only pursuant to the procedures set forth in the Evidence Code. Accordingly, peace officers and their employing agency have the right to refuse to disclose any information concerning the officer or investigations of the officer in both criminal and civil proceedings.

These laws somewhat restrict a prosecutor's ability to learn of and disclose certain information regarding law enforcement officers. To address this issue, some law enforcement agencies have created so-called *Brady* lists. These lists enumerate officers whom the agencies have identified as having potential exculpatory of impeachment information in their personnel files. A *Brady* list is any system, index, list, or other record containing the names of peace officers whose personnel

files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office.

The California Supreme Court has unequivocally held that the *Brady* list is confidential to the extent that officers were included on the list because of information obtained from confidential records. There is no serious question that law enforcement agencies review the personnel records of peace officers when creating the *Brady* list. The identities of officers on the *Brady* list constitute information obtained from the personnel records of peace officers. The *Brady* list is a catalog of officers with a particular kind of discipline-related information in their personnel file. Someone can infer information about confidential records from the fact than an officer is on the *Brady* list. As such, a law enforcement agency's disclosure that there may be *Brady* material in an officer's personnel records is, in effect, a disclosure that the officer has been found to have committed misconduct.

The California Supreme Court has held that law enforcement agencies do not violate that confidentially by sharing with prosecutors the identity of officers on the *Brady* list. However, the Court has specifically declined to answer the question of whether it would violate confidentiality for a prosecutor to share a *Brady* list with the defense.

> **AB 709 (McKinnor), Chapter 453**, allows a public prosecutor to provide a list containing the names of the peace officer and defendant and the corresponding case number to a public defender's office, an alternative public defender's office, or a licensed attorney of record in a criminal case to facilitate and expedite notifying counsel representing other criminal defendants whose cases may involve testimony by that peace officer of exculpatory evidence or impeachment evidence involving that peace officer.

Menace to Public Health: Closure by Law Enforcement

Law enforcement officers and other designated officials may cordon off and close a disaster area to the general public where the disaster has created "a menace to the public health or safety." A person is guilty of a misdemeanor if they willfully and knowingly enter a closed area and willfully remain within the area after receiving notice to evacuate. However, law enforcement may not prevent duly authorized newspersons from entering an area otherwise closed to the general public.

The exception does not prevent law enforcement officers from taking appropriate action to prevent the news media representatives at a disaster site from violating any specific laws. For example, press representatives access may be restricted if police personnel at the scene reasonably determine that their unrestricted access will interfere with emergency operations. However, officers cannot exclude the press on the sole basis of there being a safety hazard. The power to exclude the general public from a disaster site only arises where the disaster creates "a menace to the public health or safety." Thus, the press access exception assumes the existence of an already-determined safety hazard. Notwithstanding such a safety hazard, the Legislature has concluded that the public's right to know is more important.

AB 750 (Rodriguez), Chapter 17, clarifies that, unless for the safety of a person, a duly authorized representative of a news service is not authorized to facilitate the entry of a person into a closed area, if that person is not also a duly authorized representative of a news service.

Postconviction bail

Bail is a security given to the court. The purpose is to guarantee a defendant's future court attendance as well as to protect public safety.

Penal Code section 1166 states that if a verdict is rendered against a defendant, the defendant must be remanded to await the court's judgment – i.e., pending sentencing. However, after "considering the protection of the public, the seriousness of the offense charged and proven, the previous criminal record of the defendant, the probability of the defendant failing to appear for the judgment of the court upon the verdict, and public safety," the court may allow the defendant to remain out on bail if it concludes the evidence supports this decision. That being said, Penal Code section 1270.5 provides that a "defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his or her guilt is evident or the presumption thereof great." This language has been read to refer to bail before trial. (*In re Law* (1973) 10 Cal.3d 21, 25.)

Following conviction of a noncapital offense, a defendant who has appealed may request the trial court to release them on bail. Bail is a matter of right in misdemeanor cases and cases where only a fine has been imposed. In all other cases, release on bail is subject to the court's discretion. (Pen. Code, § 1272.) However, the court must release the defendant on bail if the appeal is not for the purpose of delay and raises a substantial legal question that, if decided in the defendant's favor, will likely result in reversal and the defendant demonstrates by clear and convincing evidence both that they do not pose a danger to other persons and are unlikely to flee. (Pen. Code, § 1272.1.)

AB 791 (Ramos), Chapter 545, prohibits post-conviction bail in felony cases punishable by life without parole (LWOP), in addition to those punishable by death. Specifically, this new law:

- Provides that the judicial officer must remand a person into custody who has been found guilty of an offense punishable by LWOP or death, and who is awaiting sentencing.

- Removes the court's discretion to admit a person who has appealed or applied for probation to bail if the conviction is for an offense punishable by LWOP, in addition to offenses punishable by death.

Protective Orders

Law enforcement officers present at the scene of reported domestic violence incident must serve lawful protective orders, upon the request of the petitioner, whether or not the respondent has been taken into custody. Advocates for victims of domestic violence often report that when a victim requests that law enforcement serve a lawful order outside the scene of the domestic violence incident, some agencies refer victims to another law enforcement agency elsewhere.

Under existing law, law enforcement agencies are required to enter firearms that have been reported stolen, lost, found, recovered, held for safekeeping, relinquished, or surrendered into the Automated Firearms System (AFS). The AFS is a repository of firearm records maintained by the DOJ, in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found firearms.

> **AB 818 (Petrie-Norris), Chapter 242**, expands the requirement for law enforcement officers to serve domestic violence orders and specifies that law enforcement must enter a firearm obtained during service of domestic violence restraining order or obtained at the scene of a domestic violence incident into the AFS.

Controlled Substances: Probation.

In California, the number of drug overdoses has increased dramatically over the course of the last decade. The primary driver of this increase is the prevalence of illicit fentanyl in the drug supply. Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetamine, and is widely used in counterfeit prescription opioids. Because of mixing, people who use or deal drugs may be unaware that a substance contains fentanyl.

Existing law requires a trial court must order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

> **AB 890 (Patterson, Joe), Chapter 818,** requires a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program. Specifically, this new law:

- Requires the fentanyl and synthetic opiate education program to include education on the dangers of fentanyl and other synthetic opiates, including, but not limited to, information on all of the following:
    - How the use of fentanyl and synthetic opiates affects the body and brain;
    - The dangers of fentanyl and other synthetic opiates to a person's life and health;
    - Factors that contribute to physical dependence;
    - The physical and mental health risks associated with substance use disorders;
    - How to recognize and respond to the signs of a drug overdose, including information regarding access to, and the administration of, opiate antagonists and immunity for reporting a drug-related overdose, as specified; and,
    - The legality of drug testing equipment, as specified.
- States that education may also include the criminal penalties for controlled substance offenses regarding fentanyl and other synthetic opiates.

Vehicle Code: Infractions

Under current law, if a person has agreed to pay a traffic ticket in installments and fails to keep up with the payments, the court may impound their driver's license and order the person not to drive for up to 30 days. This penalty disproportionately impacts low-income people of color, impeding their ability to take their children to school, buy groceries, and access healthcare and employment –making it even less likely they will be able to make their payments. Many people may have no choice but to continue driving without a valid license, risking more fines, fees and other penalties and making the streets less safe for all.

> **AB 1125 (Hart), Chapter 356**, eliminates the court's authority to suspend a person's driver's license and order the person not to drive for 30 days if they fail to make an agreed upon installment payment for bail or a fine.

Hope California: Secured Residential Treatment Pilot Program.

Despite widespread implementation of involuntary drug treatment worldwide, there appears to be little available, high-quality research on its effectiveness. A recent report discussing the complexity of the mandated drug treatment model for those involved in the criminal justice system noted "long-standing debate about whether people with substance use disorders who are involved in the legal system should be coerced to enter treatment as an alternative to incarceration or some other sanction." (Stein, et al., *America's Opioid*

Ecosystem, RAND Corporation (2023) pp. 245-246.) It added, "Although the risk of overdose after a period of abstinence has always been an issue…it is especially salient given how dangerous and unpredictable street drug markets are today." (*Ibid.*) "Although forced abstention could lead to long-term recovery for some people, many others will likely resume opioid consumption with a lower tolerance." (*Ibid.*)

Regardless, some policy-makers have supported efforts to compel persons suffering from severe mental illness and substance use disorders into treatment. On March 3, 2022, Governor Gavin Newsom announced a plan to give family-members, county and community-based social services, behavior health provides, or first responders the ability to petition a court to have a person placed into involuntary treatment for up to 24 months. According to the Governor's announcement:

> CARE Court is designed on the evidence that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. It's a long-term strategy to positively impact the individual in care and the community around them. The plan focuses on people with schizophrenia spectrum and other psychotic disorders, who may also have substance use challenges, and who lack medical decision-making capacity and advances an upstream diversion from more restrictive conservatorships or incarceration.

On September 14, 2022, SB 1338 (Umberg), Chapter 319, Statutes of 2022, was signed and the CARE Act was created. Individuals experiencing severe mental illness with a diagnosis of schizophrenia spectrum and other psychotic disorders qualify for the CARE process. Many people who have a substance use disorder (SUD) also struggle with mental disorders. The National Institute on Drug Abuse, Common Comorbidities with SUD Research Report (Apr. 2020) reported that indeed, patients with schizophrenia have higher rates of…drug use disorders than the general population.

> **AB 1360 (McCarty), Chapter 685,** authorizes the Counties of Sacramento and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders who have been convicted of "drug-motivated" felony crimes. Specifically, this new law:
>
> - Authorizes the Counties of Sacramento and Yolo to offer the pilot program to eligible individuals if the program meets specified conditions, including:
>
> - The program facility is licensed by the State Department of Health Care Services (DHCS) as an alcoholism or drug abuse recovery or treatment facility;
>
> - The program facility is a clinical setting managed and staffed by the county's health and human services agency (HHSA), with oversight provided by the county's probation department;

- The program facility is not in a jail, prison, or other correctional setting;
- The program facility is secured but does not include a lockdown setting;
- The individual, upon a judge pronouncing a sentence to be served in a county jail or state prison, must choose and consent to participate in the program in lieu of incarceration;
- The DHCS monitors the program facility to ensure the health, safety, and well-being of program participants;
- The county develops and staffs the program in partnership with relevant community-based organizations and drug treatment services providers to offer support services;
- HHSA ensure that a risk, needs, and psychological assessment, utilizing the Multidimensional Assessment of the American Society of Addiction Medicine (ASAM), as part of the ASAM criteria, be performed for each individual identified as a candidate for the program;
- The participant's treatment, in terms of length and intensity, within the program is based on the findings of the risk, needs, and psychological assessment and the recommendations of treatment providers;
- The program adopts the Treatment Criteria of ASAM;
- The program provides an individualized, medically assisted treatment plan for each resident including, but not limited, medically assisted treatment options and counseling based on the recommendations of a substance use disorder specialist;
- A judge determines the length of the treatment program after being informed by, and based on, the risk, needs, and psychological assessment and recommendations of treatment providers;
- The participant continues outpatient treatment for a period of time and may also be referred to a "step-down" residential treatment facility after leaving the secured residential treatment facility;
- A judge shall also determine that the program will be carried out in lieu of a jail or prison sentence after making a finding that the defendant's decision to choose alternative treatment program is knowing, intelligent, and voluntary;
- If treatment services provided to a participant during the program are not reimbursable under the Medi-Cal program or through the participant's personal health coverage, funds allocated to the state from the 2021 Multistate

Opioid Settlement Agreement, subject to an appropriation by the Legislature, may be used to reimburse those treatment services to the extent consistent with the terms of the Settlement Agreement and the Final Judgment;

- The county reports annually to the DHCS and to the Legislature.

- States that eligible drug-motivated crimes include any felony crime except sex crimes requiring sex offender registration, "serious" felonies, or "violent" felonies, as specified, and excluding nonviolent drug possession offenses.

- Requires the judge to offer the defendant voluntary participation in the pilot program as an alternative to a jail or prison sentence that the judge would otherwise impose at the time of sentencing or pronouncement of judgment in which sentencing is imposed.

- Requires that the amount of time, combined with any outpatient treatment or "step-down" residential treatment, does not exceed the term of imprisonment to which the defendant would otherwise be sentenced, not including any additional term of imprisonment for enhancements, for the drug-motivated crime.

- Prohibits the court from placing the defendant on probation for the underlying offense.

- Requires the court to order the participant be released prior to the end of the original order if the treatment providers make a recommendation to the court that the participant no longer needs to be in the secured residential treatment program.

- Requires the court to expunge and seal the conviction from the participant's record, and to expunge the conviction of any previous drug possession or drug use crimes on the participant's record, if the participant successfully completes the court-ordered drug treatment program.

Pretrial Diversion: Borderline Personality Disorder

Pre-trial diversion suspends the criminal proceedings without requiring the defendant to enter a plea. The defendant must successfully complete a program or other conditions imposed by the court. If a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense.

In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the

criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion.

Defendants are eligible for pretrial mental health diversion if they have been diagnosed with a mental disorder identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including but not limited to bipolar disorder, schizophrenia, schizoaffective disorder, or post traumatic stress disorder (PTSD). However, the law specifically excludes individuals with antisocial personality disorder, borderline personality disorder (BPD), and pedophilia from eligibility for mental health diversion.

In the past, treatment of BPD was considered challenging, but interventions have been developed over the past two decades that have dramatically changed the lives of individuals with BPD. There have been advances in our understanding and treatment approaches to BPD, which preclude dismissing BPD as an untreatable condition. For example, psychotherapy is the most important component in the treatment of BPD, which results in large reductions in symptoms that persist over time.

AB 1412 (Hart), Chapter 687, removes BPD as an exclusion for pretrial diversion.

Criminal Procedure: Factual Innocence

Individuals who were erroneously convicted and imprisoned because the charged crime either did not occur or was not committed by them can file a claim for wrongful conviction compensation. The California Victim Compensation Board (CalVCB) is the sole agency responsible for processing claims from persons seeking compensation for wrongful convictions.

Under existing law, whether CalVCB will process a claim without a hearing depends on if a court has found the person factually innocent. If the person has first obtained a declaration of factual innocence from a court, this finding is binding on the CalVCB. No hearing is required; the finding is sufficient grounds for payment of compensation. Similarly, if the court has granted a writ of habeas corpus or vacated a judgment, and in either of those proceedings found that the person is factually innocent, the finding is binding on the CalVCB and is sufficient grounds for payment of compensation without a hearing. Additionally, a person who has had a writ of habeas corpus granted or their judgment vacated can move the court for a finding of factual innocence prior to submitting a compensation claim to CalVCB. If the court grants the motion and finds the person factually innocent, the finding is binding on CalVCB and is sufficient grounds for payment of compensation without a hearing. Otherwise put, a recommendation for compensation by CalVCB is automatically mandated without a hearing if a court has found the claimant to be factually innocent of the challenged conviction.

For all other claims, CalVCB may be required to hold a hearing. In claims where a court has granted a writ of habeas corpus or a motion to vacate, but the court did not find the person factually innocent, CalVCB is required to, without a hearing, approve payment to the claimant,

unless the AG objects to the claim. Upon receipt of the AG's objection, CalVCB must set a hearing of the claim.

SB 78 (Glazer), Chapter 702, allows a person to petition a court for a finding that they are entitled to wrongful conviction compensation, if the court has granted a writ of habeas corpus or vacated a judgment, and the charges against the person were dismissed or the person was acquitted on retrial.

Criminal procedure: writ of habeas corpus

Habeas corpus, also known as "the Great Writ," is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from illegal restraint. The function of the writ is set forth in Penal Code section 1473, subdivision (a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: false evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to their incarceration; false physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty, and which was a material factor directly related to the plea of guilty by the person; new evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial; or a significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial. (Pen. Code, § 1473, subd. (b).)

SB 97 (Wiener), Chapter 381, authorizes broader bases for the prosecution of a writ of habeas corpus when new evidence is discovered after trial, creates a presumption in favor of granting relief if the prosecution stipulates to a factual or legal basis for the relief, and provides for continuity of counsel on retrial. Specifically, this new law:

- Provides that a habeas petition may be prosecuted based on the introduction of material false evidence, rather than false evidence that is substantially material or probative on the issue of guilt or punishment.

- Revises the grounds for prosecuting a habeas petition based on new evidence to include evidence that would have changed the outcome of a case, not just a trial.

- Redefines "new evidence" as evidence that has not previously been presented and heard at trial and has been discovered after trial, removing the requirement that it could not have been discovered prior to trial by the exercise of due diligence and is not merely cumulative, corroborative, collateral, or impeaching.

- Revises the grounds for prosecuting a habeas petition based on a significant dispute having emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic evidence, making it applicable to hearings as well as trials and where it would have affected the outcome of the case, not just a trial.

- Provides that if the court holds an evidentiary hearing and the petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing with a signed or oral waiver on record, or they may appear remotely through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

- Creates a presumption in favor of granting relief if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

- Provides that if after the court grants postconviction relief and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

    - The petitioner and postconviction counsel both agree for postconviction counsel to be appointed; and,

    - Postconviction counsel is qualified to handle trials.

Wiretapping: authorization

In general, California law prohibits wiretapping and other forms of intercepting electronic communications. (Pen. Code, § 631.) Under current law, a judge may authorize an electronic interception if there is probable cause to believe that 1) an individual is going to commit a specified crime such as murder or a gang-related offense; 2) the communication relates to the illegal activity; 3) the communication device will be used by the person whose communications are to be intercepted; and, 4) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed or be too dangerous. (Pen. Code, § 629.52; *People v. Leon* (2007) 40 Cal.4th 376, 384.)

According to the Department of Justice (DOJ), court-authorized electronic interceptions are a vital law enforcement tool. Due to the fact that dangerous individuals and criminal entities, such as drug trafficking organizations and criminal street gangs frequently use telecommunications to advance their criminal objectives, electronic interceptions are critical in identifying, disrupting, and preventing crimes. In 2022, California judges approved 468 interception orders out of 468

applications submitted. Authorized interceptions led to 250 total arrests; these arrests were predominantly for murder (151), narcotics offenses (89), and gang-related offenses (6).

However, California's statutes that authorize wiretapping and other electronic communication interceptions were set to expire on January 1, 2025. (Pen. Code, § 629.98.)

> **SB 514 (Archuleta), Chapter 488,** extends the sunset date for the provisions that authorize law enforcement authorities to wiretap and otherwise intercept electronic communications to January 1, 2030.

Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions.

As California continues to experience severe weather events that result in damage to residential property, the Contractor State Licensing Board conducts outreach with the California Office of Emergency Services to educate homeowners about contractor licensing requirements. However, a consumer cannot protect themselves by checking a license if the unlicensed contractor uses the valid license of another, often with the licensee's permission.

Consumers who are recovering after a disaster often do not file a complaint immediately because they do not have any concerns with their contractor until construction is under way. Investigating complex fraud issues or contractual arrangements can take more than six months. Consequently, the current statute of limitations prevents criminal actions from being pursued in these cases, making the only option administrative disciplinary action, which may not be as effective a deterrent.

> **SB 601 (McGuire), Chapter 403**, requires the courts to impose the maximum fine when a contractor violates home improvement contract requirements in a declared disaster area and extends the statute of limitations to prosecute misdemeanors related to the unlawful use of a professional license. Specifically, this new law:
>
> - Specifies that if a violation of certain provisions of the contractors' law occurs in a location damaged by a natural disaster for which a state of emergency has been declared by the Governor, as specified, or by the President of the United States, the court shall impose the maximum fine.
> - Extends the statute of limitations to prosecute specified misdemeanors by parties licensed or subject to licensure by the board from one year from of the commission of the offense, to three years from discovery or completion of the offense, whichever is later. Those misdemeanors include:
>
> - Lending the person's license to any other person or knowingly permitting the use thereof by another.
>
> - Knowingly permitting any unlawful use of a license issued to the person.

Criminal procedure: sentencing

Proposition 47 authorized defendants who were serving sentences for felonies that are now misdemeanors under the proposition to petition for resentencing, with prohibitions on relief that apply to persons with specified prior sex crimes for which registration is required and especially egregious serious felonies. Persons who had completed a sentence for such an offense were authorized to petition to reduce the convictions to misdemeanors. Felony convictions resentenced or reclassified as misdemeanors under the proposition are considered misdemeanors for all purposes, except that such relief does not permit the person to own, possess, or have in his or her custody or control any firearm. The initiative required persons seeking relief to file a petition within three years of the effective date of the initiative. The deadline specified in the initiative was November 5, 2017.

In 2016, this filing deadline was amended by AB 2765 (Weber), Chapter 767, Statutes of 2016. AB 2765 provided an extended deadline of November 4, 2022, or at a later date upon showing of good cause.

SB 1178 (Bradford), of the 2021-2022 Legislative Session, would have removed the deadline and contained an urgency clause so that it would have gone into effect before the November 4, 2022 deadline lapsed. On Third Reading on the Assembly Floor, the urgency clause was not adopted and no further action was taken on SB 1178.

> **SB 749 (Smallwood-Cuevas), Chapter 633**, removes the deadline to file petitions for relief for persons seeking reduction of prior felony convictions to misdemeanors as authorized by Proposition 47 and contains an urgency clause.

DOMESTIC VIOLENCE

Alternative Domestic Violence Program

AB 372 (Stone), Chapter 290, Statutes of 2018, authorized the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer an alternative program for individuals convicted of domestic violence that does not comply with the requirement for batterer's program under Penal Code section 1203.097. (Pen. Code, § 1203.099.) Whether these alternative programs for domestic violence offenders have achieved better outcomes than the batterer's intervention programs the State Auditor analyzed remains an open question. More recent data on the alternative programs is needed to fully assess their efficacy.

> **AB 479 (Rubio, Blanca), Chapter 86**, extends the sunset on the program authorizing the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer programs for individuals convicted of domestic violence that do not comply with the batterer's program requirements from July 1, 2023, to July 1, 2026.

Criminal procedure: crimes in multiple jurisdictions

The Legislature has created several exceptions to the general rule that a case must be tried in the jurisdiction where the offense was committed if a defendant commits multiple offenses in different jurisdictions. As relevant here, Penal Code section 784.7, subdivision (b), permits more than one violation of specified domestic violence offenses that occur in more than one territorial jurisdiction to be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are all the same. Regarding this provision as set forth in former Penal Code section 784.7, the Supreme Court has stated:

> The Legislature's power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense. Repeated abuse of the same child or spouse in more than one county creates that nexus. [¶] The venue authorized by Penal Code section 784.7 is not arbitrary. It is reasonable for the Legislature to conclude that this pattern of conduct is akin to a continuing offense and to conclude that the victim and other witnesses should not be burdened with having to testify in multiple trials in different counties.

(*Price v. Superior Court*, *supra*, 25 Cal.4th at p. 1075.)

> **AB 806 (Maienschein), Chapter 666**, expands the definition of domestic violence offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses. Specifically, this new law:

- Expands the crimes permitting joinder of offenses occurring in different jurisdictions that can be consolidated in one trial where the victim and the defendant are the same to include "any crime of domestic violence."

- Defines "any crime of domestic violence" as “abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship."

- Specifies "abuse" means "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."

- Specifies the consolidation is subject to a procedural hearing governing charging more than one count or offense.

- Requires written evidence that all district attorneys in the counties with jurisdiction of the offenses agree to the venue.

Domestic violence documentation: victim access

California has established various legal avenues to help protect victims of domestic violence and other similar crimes from further abuse. For example, under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.), a court may issue a protective order to restrain any person for the purpose of preventing a recurrence of domestic violence, abuse, or sexual abuse and ensuring a period of separation of the persons involved (Fam. Code, §§ 6220, 6300). To obtain this legal protection, a court requires evidence of past abuse. (See Fam. Code, § 6300, subd. (a).) Police reports may be evidence for a court to consider when determining whether to issue a protective order for the victim.

AB 403 (Romero), Chapter 1022, Statutes of 1999, created the Access to Domestic Violence Reports Act of 1999. It required that domestic violence victims be provided with an expedited and affordable method for obtaining these reports. Under that legislation, a victim of domestic violence or their representative, must be provided, within 48 hours of request, a copy of the police report at no cost. In 2016, the Legislature broadened this requirement to include victims of sexual assault, stalking, human trafficking, elder or dependent adult abuse, or their representative. (AB 1678 (Santiago), Ch. 875, Stats. of 2016.)

SB 290 (Min), Chapter 71, requires law enforcement agencies to provide victims of specified crimes or their representative, upon request and within a specified time frame, 911 recordings, if any, and any photographs noted in an incident report. Specifically, this new law:

- Requires state and local law enforcement agencies to provide, in addition to a requested incident report and without charging a fee, a copy of any accompanying

or related photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of 911 recordings, related to the following crimes:|

- Domestic violence, as defined;
- Sexual assault, as defined;
- Stalking, as defined;
- Human trafficking, as defined; and,
- Abuse of an elder or dependent adult, as defined.

- Provides that a copy of any photographs specified above as well as a copy of 911 recordings shall be made available to a victim or their representative no later than five working days after being requested, unless the state or local law enforcement agency informs the victim or their representative why, for good cause, the items are unavailable, in which case they shall be made available no later than 10 working days after the request is made. Specifies that a person who is serving a part of their sentence on mandatory supervision is subject to search or seizure as part of the terms and conditions of supervision only by a probation officer or other peace officer.

- Extends the time limit for victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult, and their representatives, to request incident reports from within two years to within five years of the completion of the report. Applies the same time limits to requests for photographs, 911 recordings, and evidence.

FIREARMS

Firearms and Ammunition: Excise Tax

An excise tax is a tax imposed on a specific good or activity, and generally related to the manufacture, sale or consumption of specific commodities, or licenses to pursue certain occupations. This new law imposes a new excise tax on licensed vendors of firearms, ammunition and precursor parts, at a rate of either 10% or 11% depending on the item sold. This tax resembles what is known as a Pigovian tax, a tax intended to correct for the negative externalities caused by a specific market activity – in this case, societal costs related to the sale of firearms, ammunition and precursor parts. Generally, Pigovian taxes are calculated by assessing the marginal costs of these negative externalities, which, in the case of firearms, would be equal to losses – like injury, death, and lost wages – resulting from crimes, accidents, and suicides. This law, however, takes a different approach and sets the rate of the tax imposed on firearm sales to resemble an existing federal tax on firearm and ammunition. That tax, established by the Federal Aid in Wildlife Restoration Act of 1937 (also known as the Pittman-Robertson Act), imposes an 11% levy on firearms, ammunition and archery equipment and distributes the proceeds to state governments for wildlife-related projects. (26 U.S.C. § 4181.) Proceeds from that tax generate tens of millions of dollars annually for conservation efforts across California.

Unlike the Pittman-Robertson Act, this new law seeks to establish a tighter nexus between the tax it imposes and the target of the proceeds it generates. Specifically, the proceeds of the tax imposed under this law would be directed exclusively toward gun violence prevention programs, education, and research. In the context of firearms, the Pittman-Robertson Act has evaded or withstood legal challenge for over 100 years, which pre- *N.Y. State Rifle & Pistol Assn., Inc. v. Bruen*, (2022) 142 S. Ct. 2111 ["*Bruen*"], would have strongly suggested that firearm taxes do not run afoul the Second Amendment, provided they do not make firearm ownership so infeasible as to burden the rights that the amendment protects. Whether excise taxes on firearms will survive in the post-*Bruen* world is an open question.

California currently imposes several fees related to the purchase of a new firearm in the state. The total state fee for a firearm purchase is $37.19, the bulk of which consists of the Dealer Record of Sale (DROS) fee, which covers the costs of the required background check prior to purchase. The DROS fee also funds several firearm-related responsibilities of the Department of Justice (DOJ), including enforcement efforts and management of the Armed Prohibited Persons System. The balance of the state fee consists of a $1.00 Firearms Safety Act Fee and a $5.00 Safety and Enforcement Fee. These fees are imposed on the vendors but are generally paid by the purchasers. Additionally, in the event of a private party transfer, a firearms dealer may charge an additional fee of up to $10.00 per firearm.

> **AB 28 (Gabriel), Chapter 231**, establishes an excise tax on licensed firearms dealers, firearms manufacturers, and ammunition vendors to fund programs that address the causes and harms of gun violence. Specifically, this new law:

- Establishes the Gun Violence Prevention and School Safety Fund within the State Treasury, which will be funded by an excise tax on licensed firearms dealers, firearms manufacturers, and ammunition vendors, as specified.

- Requires all moneys in the fund, including interest or dividends earned by the fund to be distributed annually to designated entities according to the specified allocation formula.

- Imposes, commencing on July 1, 2024, an excise tax on licensed firearm dealers, firearms manufacturers, and ammunition venders at the rate of 11% of the gross receipts from the retail sale of any firearm, firearm precursor part, or ammunition.

- Exempts from the excise tax the gross receipts of any licensed firearms dealer, firearms manufacturer, or ammunition vendor in any quarterly period in which the total gross receipts from the retail sales of firearms, firearm precursor parts, or ammunition by that licensed firearms dealer, firearms manufacturer, or ammunition vendor is less than $5,000.

- Requires the California Department of Tax and Fee Administration (CDTFA) to administer and collect the excise tax.

- Authorizes CDTFA, if any provision of this act or its application is held invalid, to issue guidance or adopt regulations necessary to address the invalidity and to promote the purposes of this act, as specified.

- Requires, by no later than March 31, 2024, and thereafter, by no later than the last day of each calendar quarter, DOJ to provide a list, including the names and business locations of all firearm dealers, firearm manufacturers, and ammunition vendors that are licensed by the DOJ or that are included on any of the centralized lists maintained by the DOJ, as specified, to CDTFA for the purposes of administering the excise tax.

- Requires each licensed firearms dealer, firearms manufacturer, or ammunition vendor subject to the excise tax to register for a certificate of registration with CDTFA using electronic media in a form prescribed by the CDTFA and to set forth the name under which the applicant transacts or intends to transact business, the location of their place or places of business, and any other information as the department may require.

- Requires CDTFA, if a holder of a certificate of registration fails to comply with the law or any rule or regulation of CDTFA, to provide notice in writing to the holder of the certificate in no less than 10 days specifying the time and place of hearing and requiring the holder of the certificate to show cause as to why their certificate of registration should not be revoked.
- Requires CDTFA to notify DOJ in the case of any of the following occurrences:

- If, after providing notice and the opportunity for a hearing, CDTFA has, revoked the certificate of registration of a licensed firearms dealer, ammunition vendor, or firearms manufacturer, as specified;

- If, after providing notice and the opportunity for a hearing, CDTFA has revoked or suspended the seller's permit of a licensed firearms dealer, ammunition vendor, or firearms manufacturer, as specified; or,

- If CDTFA reinstated a certificate of registration or a seller's permit of a licensed firearms dealer, ammunition vendor, or firearms manufacturer.

- Authorizes a holder of a certificate that has had their certificate of registration revoked, as specified, to petition the department for reinstatement of the certificate by paying the amount of unpaid excise tax determined, together with any interest and penalties, demonstrating full compliance, and paying a fee of fifty dollars ($50) to the CDTFA for reinstatement.

Firearms: Unserialized Firearms

In the United States, traditional firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, "ghost guns" are manufactured in parts which can be acquired without a background check and can easily be assembled by an unlicensed buyer. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. Ghost guns are also unserialized, meaning they cannot be traced by law enforcement.

Advances in home firearm manufacturing technology and the general untraceability of ghost guns have made them the weapon of choice for those seeking to commit crime, and California remains at the epicenter of the ghost gun crisis. In Los Angeles alone, the LAPD recovered 1,921 ghost guns in 2021, more than double the amount recovered in 2020. Police in San Francisco seized 1,089 illegal firearms, about 20% of which were ghost guns, whereas just five years prior, ghost guns comprised less than 1% of firearm seizures. In 2022, DOJ agents recovered 54 ghost guns as part of the Armed Prohibited Persons System Program, representing a 575% increase since 2018, when only 8 ghost guns were seized.

AB 97 (Rodriguez), Chapter 233, requires the DOJ to report data on arrests and prosecutions of specified misdemeanor offenses related to unserialized firearms. Specifically, this new law:

- Requires, until January 1, 2029, the DOJ to collect and report data collected from courts on the disposition of specified misdemeanor offense related to unserialized firearms, including the number of cases resulting in each of the following

dispositions:

- An arrest was made, but the arresting law enforcement agency did not submit charges to the district attorney or other prosecuting agency;
- An arrest was made, but no charges were filed by the district attorney or other prosecuting agency;
- The case was dismissed after charging, either by the court or other district attorney;
- The defendant was acquitted; or,
- The defendant was convicted, whether by trial or by plea.

- Requires, after January 1, 2029, the DOJ to collect and report substantially the same data as above but using data compiled pursuant to the Justice Data Accountability and Transparency Act.

Firearms: Prohibited Persons

In 2001, SB 950 (Brulte) Chapter 944, Statutes of 2001 created the APPS system. The purpose of APPS is create a system wherein the Department of Justice (DOJ) can track and disarm persons who possess a firearm, even though are legally prohibited from possessing firearms. (Pen. Code, § 30000 *et seq*.) An individual may become a prohibited person based on a number of different circumstances, such as certain criminal convictions, specified mental illness issues, and restraining orders. (*Ibid*.) APPS tracks subjects who lawfully purchased firearms, but then illegally retained their firearms after falling into a prohibited category. (*Ibid*.) Since its inception, APPS has had a substantial backlog of prohibited persons who are in the system but who have not had their firearms removed. In 2013, the DOJ committed to eliminating the APPS backlog by 2016. Since then, the APPS backlog has generally increased and remained backlogged.

One of the potential factors driving the backlog may be the discrepancy between the number of staff enforcing APPS and the overall number of individuals in APPS. Although the DOJ, in 2022, removed 3,598 prohibited persons from APPS through disassociating all their known firearms, the discrepancy between the number of DOJ agents enforcing APPS and the overall number of prohibited persons in APPS seems quite large. Among other things, the DOJ has recommended to improve existing cooperation and use of LEAs in order to help address the backlog, calling such efforts “force multipliers.” It noted joint efforts such as the Contra Costa County Anti-Violence Support Effort Task Force and the Tulare County Agencies Regional Gun Violence Enforcement Team, as well as funding efforts like the Gun Violence Reduction Program which financed local law enforcement agency APPS operations on their own.

Aside from some of the LEA efforts mentioned above, there seems to be room for improving local law agencies involvement with APPS. According to CalMatters, the DOJ had for years prepared a monthly report for LEAs regarding APPS individuals in their respective jurisdiction. When CalMatters asked 400 LEAs about these monthly reports; 80 of them acknowledged the reports and more than 150 agencies responded saying they didn't have such reports.

AB 303 (Davies), Chapter 161, requires the Attorney General to provide local law enforcement agencies enumerated information related to prohibited persons in the APPS database. Specifically, this new law:

- Requires the Attorney General to provide LEAs the following information regarding prohibited persons in the APPS database:
    - Personal identifying information;
    - Case status;
    - Prohibition type or reason;
    - Prohibition expiration date;
    - Known firearms associated to the prohibited person; and,
    - Information regarding previous contacts with the prohibited person, if applicable.

Firearms: assault weapons: exception for peace officer training

Under current state law, civilians are generally prohibited from possessing assault weapons unless the firearm is registered, subject to certain exceptions. (Pen. Code, § 30600 *et seq*.; Pen. Code, § 30900 *et seq*.) That said, peace officers working in specified law enforcement agencies are exempted from such possession prohibitions. (Pen. Code, § 30630, subd. (a).) Specifically, existing law permits agencies to purchase, import and possess assault weapons, permits sworn peace officers to possess or use assault weapons for law enforcement purposes whether on or off duty, and permits the sale, delivery or transfer of an assault weapon to a sworn peace officer if the peace officer is authorized by their employer. (Pen. Code, §§ 30625, 30630.) However, these exemptions do not apply to cadets enrolled in peace officer training, leading to logistical issues with getting cadets properly trained and certified during the academy before they become peace officers.

AB 355 (Alanis), Chapter 235, exempts persons enrolled in specified peace officer training courses from assault weapon prohibitions while they are engaged in firearms training, being supervised by a firearms instructor, and if they meet specified hiring and employment standards. Specifically, this new law:

- Allows an assault weapon to be possessed by persons enrolled in the basic training course prescribed by POST, or any other course certified by POST, if the following circumstances are met:
    - The enrollee is engaged in firearms training and supervised by a firearms instructor;
    - The loaned assault weapon does not leave the training facility;
    - The enrollee has met minimum peace officer hiring standards, as specified; and,
    - The enrollee is currently employed by either a police department, sheriff's office, marshal's office, the Department of Justice, the California Highway Patrol, or the Department of Fish and Wildlife.

Firearms: Prohibited Persons.

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder, that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion.

Under existing law, the state can, pursuant to a court order, prohibit a person from having a firearm due to their mental health in certain circumstances, including individuals who are under a conservatorship, mental health admission, certified for intensive mental health treatment, have been found incompetent to stand trial, have been found not guilty by reason of insanity, or have been adjudicated as a person with a mental disorder or illness.

> **AB 455 (Quirk-Silva), Chapter 236**, beginning July 1, 2024, authorizes the prosecution to request an order from the court to prohibit a defendant subject to mental health pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion.

Firearms: Dealer Records of Sale

According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Lost and stolen firearms pose a substantial threat to public safety and to law enforcement. Those that steal

firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun… Lost firearms pose a similar threat. Like stolen firearms, they are most often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions." Such lost or stolen firearms may become "crime guns" i.e., firearms used in the perpetration of a crime. Upon recovery of a crime gun, law enforcement officers "trace" it, which involves systematically tracking the movement of a recovered firearm back to its importation into, or manufacture in, the United States through the distribution chain and to the point of its first retail sale.

From a general perspective, tracing a crime gun back to its origins can help law enforcement identify patterns in the supply of gun trafficking by locating, and investigating, the circumstances surrounding a gun that leaves the legal marketplace and enters the illicit secondary market. For individual cases, tracing can help develop potential witnesses, prove ownership, and can generate investigative leads.

Because there are no reporting requirements for private citizens at the federal level, there is significant underreporting; with some estimates indicating only 75% of private gun thefts are reported to law enforcement. This is concerning considering the fact that thefts from private citizens account for nearly 96% of all firearms reported stolen from 2017 to 2021.

Under existing law, California gun owners are required to report a lost or stolen firearm within five days of when they knew, or reasonably should have known, that the firearm was lost. (Pen. Code, § 25250.) According to one study, crime guns originating in states with lost/stolen reporting requirements were 30% less likely to end up in another state, indicating the reporting requirements help reduce interstate gun trafficking.

> **AB 574 (Jones-Sawyer), Chapter 237,** requires individuals in the process of purchasing a firearm, commencing March 1, 2025, to verify on the dealer record of sale whether they have, within the past 30 days, checked and confirmed possession of all firearms they currently own or possess.

Firearms: Safety Certificate Instruction Materials

California's population is constantly growing to include people from different cultural backgrounds. Our firearm safety courses should reflect this diversity by expanding access to important safety training materials.

> **AB 724 (Fong, Vince), Chapter 238,** requires the Department of Justice (DOJ) to develop firearm safety certificate materials and tests in other specified languages besides English and Spanish. Specifically, this new law:
>
> - Requires DOJ to develop an instruction manual for a firearm safety certificate in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, Dari, and

Armenian.

- Requires DOJ to develop audiovisual materials for certified firearm safety instructors in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian.

- Expands the languages of the written and oral test for a firearm safety certificate to include traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian, to be administered by an instructor certified by DOJ.

- Requires DOJ to offer an oral test for a firearm safety certificate, if the person is unable to read in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian to be administered orally by a translator.

Firearms: Reporting Lost or Stolen Firearms

In the United States, most firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, "ghost guns" are manufactured in parts which can be acquired without a background check and can easily be assembled by the purchaser. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. These DIY kits generally included an uncompleted frame or receiver of a gun, or a "precursor part."

In 2022, California enacted AB 1621 (Gipson) Chapter 76, Statutes of 2022, which required, in part, that firearm precursor parts be treated as firearms for various purposes such as prohibitions on carrying in public and manufacturing. According to the findings and declarations in the bill, the intent was to curb the proliferation of unserialized ghost guns built from precursor parts. However, it did not include precursor parts, or completed frames or receivers, in the California statute that requires anyone who owns or possesses a firearm to report when that firearm has been lost or stolen. (Pen. Code, § 25250.)

> **AB 725 (Lowenthal), Chapter 239,** requires that, commencing July 1, 2026, firearm frames, receivers, and precursor parts be defined as a "firearm" for the purpose of reporting a lost or stolen firearm, and makes the failure to do so punishable as an infraction.

Crimes: Relinquishment of Firearms.

Existing law requires the DOJ to maintain a "Prohibited Armed Persons File," also known as the Armed and Prohibited Persons System (APPS) program. APPS went into effect in December 2006. California is the only state in the nation with an automated system for tracking firearm owners who might fall into a prohibited status.

APPS is maintained and enforced by the Bureau of Firearms (BOF) within the DOJ. The BOF is responsible for education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. The purpose of APPS is to disarm individuals who are legally prohibited from possessing a firearm. These individuals include convicted felons and persons convicted of certain misdemeanor offenses for domestic violence, individuals suffering from mental illness, and others. APPS tracks subjects who lawfully purchased firearms, but then illegally retained their firearms after falling into a prohibited category. APPS cross-references firearms owners across the state against criminal history records, mental health records, and restraining orders to identify individuals who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. This is a proactive way to prevent crime and reduce violence.

The APPS backlog has been a well-known and continuously discussed issue dating back close to the creation of APPS. (California State Auditor. *Armed Persons With Mental Illness*. (2013) Since then, the APPS backlog has increased and is currently the highest it has ever been. (DOJ. *Armed and Prohibited Persons System Report 2021*.

One of the potential factors driving the backlog may be the discrepancy between the number of staff enforcing APPS and the overall number of individuals in APPS. According to the most recent DOJ report, there are a total of 76 Special Agent positions allocated for APPS enforcement, and only 53 of those positions are filled. (*Id*. at 21.) Those 53 individuals are primarily responsible for removing firearms from the 24,509 prohibited persons currently in APPS. (*Id*. at 13.) Although the DOJ, in 2021, removed 3,221 prohibited persons from APPS through disassociating all their known firearms, the discrepancy between the number of DOJ agents enforcing APPS and the overall number of prohibited persons in APPS seems quite large. (*Id*. at 15.) Among other things, the DOJ has recommended to improve existing cooperation and use of law enforcement agencies in order to help address the backlog, calling such efforts "force multipliers." (*Id*. at 5, 11, 29-30, 34.)

Law enforcement agencies involvement with APPS seems, at least in part, to be what legislators envisioned when outlining some of the procedural details regarding APPS firearm removals. For example, existing law requires a person convicted of a felony or certain misdemeanor to relinquish all firearms. (Pen. Code § 29810 subd. (a)(1).) The process requires the defendant to submit a form detailing any firearms they possess, be informed of how to relinquish such firearms, and requires a probation officer to check the Automated Firearms System and any credible information for firearms associated to the defendant. (Pen. Code, § 29810 subds. (a)(3), (b)(1)-(7), and (c)(1).) The defendant is allowed a specified amount of time to relinquish their firearms and if they do not do so the court must issue a search warrant for retrieval of the firearm. (Pen. Code, § 29810 subd. (1)-(4).) Unfortunately, this procedure is likely not being followed; the DOJ states that 14,561, or 57%, of prohibited persons in APPS currently fall under these parameters, and the increasing yearly number of such individuals further reinforces the conclusion that the relinquishment procedures are not being enforced. (2021 APPS Report, *supra*, at p. 33.)

AB 732 (Fong, Mike), Chapter 240, reduces the amount of time a defendant who does not remain in custody has to relinquish a firearm following a conviction, and requires the DOJ to provide local law enforcement agencies and district attorneys access through an electronic portal to information identifying persons who have not relinquished their firearms as required by law. Specifically, this new law:

- Requires a probation officer to report to the prosecuting attorney, in addition to the court, whether a defendant has relinquished all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form.

- Requires the court, if the probation officer's report does not confirm relinquishment of firearms registered in the defendant's name, to take one of the following actions:

    - If, after receiving a request for a warrant, the court finds probable cause that the defendant has failed to relinquish any firearms the court shall order a search warrant for, and removal of, any firearms at any location where the judge has probable cause to believe the defendant's firearms are located;

    - If the court finds good cause to extend the time for providing proof of relinquishment, to set a court date within 14 days for the defendant to provide proof of relinquishment; or,

    - If the court finds additional investigation is needed, to refer the matter to the prosecuting attorney and set a court date within 14 days for status review.

- Requires a court, if it orders the search for and removal of defendant's firearms, to set a court date to ensure the warrant has been executed and to review the results of the search.

- Requires, if the court orders the search for and removal of a defendant's firearms, the search warrant to be executed within 10 days of issuance.

- Changes the procedure for relinquishing a firearm after conviction to depend on whether a defendant does or does not remain in custody at any time within the 48-hour period following conviction, instead of within the 5-day period following conviction.

- Reduces, upon conviction of any offense that renders the defendant a prohibited person, as specified, the time a defendant who does not remain in custody at the time of conviction has to relinquish any firearm from within five days to within 48 hours of conviction.

- Requires the DOJ to provide local law enforcement agencies and the district attorney with access through an electronic portal to information regarding prohibited persons in their jurisdictions.

- Requires each local law enforcement agency to designate a person to access or receive the monthly report and to report to DOJ quarterly regarding steps taken to verify that the individuals are no longer in possession of firearms.

- Authorizes law enforcement agencies operating in the same jurisdiction to agree to designate one lead agency for their jurisdiction to report on the steps taken to verify prohibited persons are no longer in possession of firearms.

- Eliminated the authority of law enforcement to sell a relinquished firearm 30-days after the firearm was relinquished.

- Requires that DOJ keep and properly file a complete record of reports or information provided to it by local law enforcement agencies regarding steps taken to verify that prohibited persons are no longer in possession of firearms.

Protective Orders

Law enforcement officers present at the scene of reported domestic violence incident must serve lawful protective orders, upon the request of the petitioner, whether or not the respondent has been taken into custody. Advocates for victims of domestic violence often report that when a victim requests that law enforcement serve a lawful order outside the scene of the domestic violence incident, some agencies refer victims to another law enforcement agency elsewhere.

Under existing law, law enforcement agencies are required to enter firearms that have been reported stolen, lost, found, recovered, held for safekeeping, relinquished, or surrendered into the Automated Firearms System (AFS). The AFS is a repository of firearm records maintained by the DOJ, in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found firearms.

> **AB 818 (Petrie-Norris), Chapter 242**, expands the requirement for law enforcement officers to serve domestic violence orders and specifies that law enforcement must enter a firearm obtained during service of domestic violence restraining order or obtained at the scene of a domestic violence incident into the AFS.

Firearms

Although firearm sales in the U.S. are generally regulated, advances in three-dimensional (3D) printing technology afford criminals the opportunity to covertly build their own firearm at home. 3D printing is an additive manufacturing process which lays down consecutive layers of material

to create objects. This differs from the more traditional method of subtractive manufacturing like wood carving, laser cutting, and computer numerical control (CNC) milling, which all take a block of material and either cut, drill, mill, or machine off parts. Certain 3D printers can also manufacture firearms. In December 2021, the U.S. Office of Inspector General (OIG) conducted an audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in regards to 3D printed firearms and the ATF's response readiness. The report notes that 3D printed firearms became prominent in 2013, when a company released its designs on the Internet for a fully functional, fully 3D printed firearm called the "Liberator."

Since 2013, however, the quality and design of 3D printed firearms have improved significantly. While most commercial-grade polymer 3D printers are unaffordable for most individuals, academic and industry experts state that motivated individuals can use more affordable 3D printers to print and subsequently strengthen the quality and reliability of a 3D printed firearm.

When it comes to 3D firearm blueprint files, that is, the files containing the manufacturing schematics, the US government had for years restricted its dissemination. In 2018, the Trump administration did an about face, agreeing to settle the lawsuit and remove any restrictions limiting 3D firearm blueprints from being disseminated.

According to the OIG's 2021 report, the ATF has not considered 3D printed firearms a priority because few of them have been confirmed to have been used in crimes that the ATF has investigated. However, the ATF has previously failed to stay ahead of the curve when it comes to firearm regulations. It was an ATF decision in 2015 that deemed unfinished firearm receivers as "not firearms," which led to the mass proliferation of ghost guns (firearms without any type of legally required serial number) being used in crimes all over the country. According to the ATF's own numbers, law enforcement recovered 1,758 ghost guns at crimes scenes in 2016; in 2021 that number had jumped to 19,344. (*Ibid*.) That type of proliferation may likely occur with 3D printed ghost guns.

AB 1089 (Gipson), Chapter 243, defines 3D printers and includes the devices in preexisting statutes that regulate the manufacture of firearms, expands civil liability laws to include the use of CNC machines and 3D printers, and prevents the unlawful advertising of CNC machines or 3D printers, as specified. Specifically, this new law:

- Includes a "firearm manufacturing machine" in the definition of a "firearm-related product" for purposes of the Firearm Industry Responsibility Act.

- Defines a "firearm manufacturing machine," in the civil liability context, as a 3D printer or CNC milling machine that is marketed or sold as, or reasonably designed or intended to be used to manufacture or produce a firearm.

- Authorizes civil actions against persons who knowingly distribute, or cause to be distributed, any digital firearm manufacturing code to a non-exempt person, if a firearm produced by such code is used to inflict personal injury or property damage.

- Authorizes civil actions against a person who unlawfully uses, possesses, or otherwise transfers specified CNC milling machines or 3D printers, if a firearm produced by such devices is used to inflict personal injury or property damage.
- States that, in such civil actions, a person shall be strictly liable for any resulting personal injury or property damage, as specified.

- Exempts military members from civil actions for distributing digital firearm manufacturing codes if they distributed the codes while they were acting within the scope of their employment, and also exempts law enforcement agencies, forensic laboratories, and federally-licensed firearm manufacturers.

- Authorizes the Attorney General, county counsel, or a city attorney to bring such civil actions and limits the civil penalty to no more than $25,000.

- Prohibit a person from knowingly or recklessly transferring, advertising, or marketing a CNC machine or 3D printer in a manner that causes or promotes the unlawful manufacturing of firearms.

- Authorize civil actions for individuals who suffer harm due to a person unlawfully transferring, advertising, or marketing a CNC machine or 3D printer, in violation of these provisions.

- Authorize the Attorney General, county counsels, or city attorneys, to bring civil actions on behalf of individuals harmed by the unlawful transfer, advertising, or marketing of CNC machines or 3D printers, as specified.

- Specifies that only state-licensed firearms manufacturers can use CNC milling machines and 3D printer to manufacture firearms.

- Defines a "state-licensed firearms manufacturer" as a person licensed to manufacture firearms under California state law.

- Makes it a crime to sell, transfer, or possess a CNC milling machine or 3D printer that has a sole or primary function of manufacturing firearms, unless it is done by a state-licensed manufacturer.

- Requires a person who possesses a 3D printer that has the sole or primary function of manufacturing a firearm before July 1, 2024, to do the following within 90 days of that date in order to not be in violation of state law:

    - Sell or transfer the device to a state-licensed firearms manufacturer;

    - Sell or transfer the device to a businessperson that sells such devices to state-licensed firearms manufacturers;

- Take the device out of state;
- Give the device to a law enforcement agency; or,
- Otherwise lawfully terminate possession of the device.

Firearms: Waiting Periods

In California, a prospective firearm purchaser must undergo a 10-day waiting period before their firearm can be delivered to them. (Pen. Code, §§ 26815, subd. (a) & 27540, subd. (a).) During this time, the Department of Justice (DOJ) must conduct a background check to ensure the firearm purchaser is not prohibited from possessing a firearm. (Pen. Code, § 28220.)

When the pandemic began in 2020, the DOJ began facing complications in conducting background checks within the usual 10-day period, fell behind in processing their background check applications, and were subsequently sued. (*Campos v. Becerra* (2022) LEXIS 50277.) The court found that statute only provided the DOJ with the authority to extend the 10-day background check period for up to 30 days in three circumstances. (*Id*. at 3-4.) Those circumstances were when a purchaser may be prohibited from possessing a firearm based on their mental health record, criminal record, or based on the fact they previously purchased a handgun within the previous 30 days. (*Id*. at 3, citing Pen. Code, § 28220, subd. (f)(1)(A).) The DOJ argued, in part, that such a strict interpretation of the statute in question was incorrect and would contradict the purpose of the statute; however, the court found that a plain reading of the statute's text confined the DOJ to only those three circumstances. (*Id*. at 3-4.)

AB 1406 (McCarty), Chapter 244, authorizes the DOJ to delay a firearms background check up to 30 days if they are unable to determine a purchaser's eligibility due to certain convictions or mental health confinements, and allows the DOJ to delay a firearm background check period up to 30 days if the Attorney General believes a state of war or emergency type situation prevents the DOJ from completing such background checks. Specifically, this new law:

- Authorize the Attorney General to determine whether a state of emergency or war has caused the DOJ to be unable to process firearm background checks and to notify the dealer to delay a transfer up to 30 days.
- Authorizes the DOJ to notify a firearms dealer to delay a firearms transaction up to 30 days after receiving the transaction application if the purchaser is possibly ineligible to possess a firearm for specified criminal convictions or mental health confinements and the DOJ cannot determine the disposition of the convictions or confinements.
- Authorizes the DOJ to notify a firearms purchaser of a delay by mail or through other means determined by the DOJ, and exempts the DOJ from such notification

requirement if a specified emergency occurs.

- Requires the DOJ, when examining its records while processing a firearms transfer and determining the firearm is has been reported stolen, to do the following:
    - Reject the purchase;
    - Notify the reporting law enforcement agency, which must retrieve the firearm, as specified; and,
    - Notify the dealer that the firearm is stolen and instruct the dealer to retain the firearm until law enforcement retrieves it. A law enforcement agency may arrange to have another local or state law enforcement agency retrieve the firearm on their behalf.
- Authorizes the DOJ to notify a minor seeking to purchase a firearm pursuant to a hunting license of a delay by mail or through other means determined by the DOJ.

Firearms

Firearm dealers in California are subject to numerous state and federal laws that they must abide by in order to remain in operation. (Pen. Code, §§ 26500 *et seq*.) Such laws specify the manner in which firearm dealers must keep their records, deliver a firearm, secure and store their inventory, obtain security measures, and so on. (Pen. Code, §§ 17110, 26815, 26890, 28100.) Firearm dealers who do not comply with such laws have been linked to a greater likelihood that firearms from their inventory will be recovered in a crime.

In California, current law requires the Department of Justice (DOJ) to conduct inspections of firearm dealers every three years to ensure compliance with Penal Code Section 16575 specifically. That Penal Code section lists out a number of other sections in the Penal Code that impose requirements on firearm dealers. However, not all sections that impose requirements on firearms dealers are listed in Penal Code Section 16575. For example, Section 21628.2 of the Business & Professions Code, which requires certain firearm dealer to keep copies of certain firearm consignments or trades, is not listed. Therefore, the DOJ is technically unable by law to inspect those records.

AB 1420 (Berman), Chapter 245, expands the authority of the DOJ to conduct firearm dealer inspections to ensure compliance with all applicable state laws and to assess fines for their non-compliance. Specifically, this new law:

- Authorizes the DOJ to conduct firearm dealer inspections to ensure compliance with specified statutes, as well as any other applicable state laws.

- Expands the statute requiring the DOJ to maintain and make available specified information regarding firearm dealers found to have violated specified statutes, as well as any other applicable state laws.

- Authorizes the DOJ to assess civil fines against firearm dealers not only for breaches of specified statutes, but also for any other applicable state laws.

- Requires the dealer record of sale form to include a firearm purchaser's email address starting September 1, 2025.

Firearms: Purchases

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), since 1975 firearms dealers have been required to report all transactions in which an unlicensed person acquired two or more handguns at one time or during any five consecutive business days. This circumstance is referred to as "multiple sales" or "multiple purchases" and was implemented to monitor and deter firearms trafficking. The ATF states that if one or more firearms recovered from a crime are part of a multiple purchase, it could be an indicator of potential firearms trafficking.

A 2007 research report to the U.S. National Institute of Justice (NIJ) that examined firearms sales in Maryland, Baltimore, and the D.C. area over a period of five to ten years found that guns sold in multiple sales were up to 64% more likely to be used in a crime and accounted for roughly a quarter of recovered guns. More recent national data from the ATF indicates that approximately 9% of guns used in a crime, i.e. "crime guns," were part of a multiple sale transaction. The ATF states that the yearly number of crime guns traced to a purchaser that were part of a multiple sale transaction increased by almost 89% from 2017 to 2021. Crime guns that were part of a multiple sale had a considerably shorter median time-to-crime average than crime guns that were not part of a multiple sale (time-to-crime referring to the period of time between when a firearm was purchased and when it was recovered at a crime scene).

California started restricting multiple sales in 1999, it started out as a restriction for concealable firearms only, and has since evolved to include all firearms. (AB 202 (Knox), Chapter 128, Statutes of 1999; SB 61 (Portantino) Chapter 737, Statutes of 2019; AB 1621 (Gipson) Chapter 76, Statutes of 2022.) However, among the exemptions to the rule, there remained an exemption for private party transactions. (Pen. Code, § 27535, subd. (b)(8).) This meant that a person could buy one firearm within a 30-day period if they were buying it directly from a firearm dealer, but they could purchase as many firearms as they wanted within a 30-day period from a private party transaction.

AB 1483 (Valencia), Chapter 246, eliminates the exemption that allows private persons to purchase more than one firearm a month if it is a private party transaction except in specified circumstances. Specifically, this new law:

- Prohibits a private person, commencing January 1, 2025, from purchasing more than one firearm a month in a private party transaction except in circumstances where the seller is any of the following:

    - A personal representative of a decedent's estate who is transferring the firearms to the beneficiaries of the decedent's estate pursuant to a will or intestate succession;

    - A holder of the decedent's property who is transferring the firearms to the successor or survivor of the decedent; or,

    - The trustee of a trust transferring the firearms to one or more of the settlor's beneficiaries.

Gun Violence: Firearm Safety Education

Beginning in 1993, possession of a handgun safety certificate was required to transfer firearms. The DOJ was required to create the requisite process to obtain a handgun safety certificate. Exemptions were provided for specific classes of individuals who did not need to obtain a firearm safety certificate, such as peace officers and persons with concealed carry permits, and for specific firearm transfers. SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme. SB 52 provided that, effective January 1, 2003, no person may purchase, transfer, receive, or sell a handgun without a handgun safety certificate. SB 1080, Chapter 711, Statutes of 2010, required the DOJ to prepare a pamphlet that summarizes California firearms laws as they pertain to a person other than law enforcement officers or members of the armed services. This pamphlet included, but was not limited to, the following: lawful possession, licensing procedures, transportation and use of firearms, the acquisition of hunting licenses, and other provisions as specified. (Pen. Code, § 34205 subds. (a) & (b).) SB 683 (Block), Chapter 761, Statutes of 2013, required the DOJ to develop an instruction manual in both English and Spanish and available to licensed firearms dealers who must provide the manual to the general public.

AB 1598 (Berman), Chapter 248, requires DOJ to prepare a firearm-safety-certificate study guide, separate from the current instruction manual, explaining information covered on the firearm safety certificate test, and to develop a new pamphlet on the risk and benefits of firearm ownership.

- Expanded the information that the written firearms safety certificate test must cover to include: the increased risk of homicide and unintentional injury as a result of bringing a firearm into the home, and current law as it relates to eligibility to own or possess a firearm, gun violence restraining orders, domestic violence restraining orders, and privately manufactured firearms.

- Required DOJ to update the test to reflect the added testing requirements during the first regularly scheduled update after January 1, 2024.

- Required DOJ to prepare a firearm-safety-certificate study guide, in English and in Spanish, that explains the information covered in the test.

- Required DOJ to prepare a pamphlet in English and in Spanish that explains the reasons for and risks of owning a firearm and brining a firearm into the home, including the increased risk of death to someone in the household by suicide, homicide, or unintentional injury.

- Required a licensed firearm dealer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the most current version of the firearm pamphlet as found on the DOJ's website in PDF or another imaging format at the start of the 10-day waiting period.

Firearms

In many states throughout the U.S., people are generally prohibited from carrying a concealed firearm in public unless they have a concealed carry weapons license (CCW license). States vary in what requirements need to be met in order to obtain a CCW license. In *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 142 S.Ct. 2111, the United States Supreme Court found a New York state requirement that CCW applicants demonstrate a specific safety reason (i.e. "good cause") as to why they need to carry a concealed firearm to be unconstitutional. In finding the requirement unconstitutional, the Court held that the Second Amendment protects, "an individual's right to carry a handgun for self-defense outside the home." (*Id*. at 2122.) The Court stated that there was, "no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." (*Id*. at 2156.)

Although it invalidated the New York statute, and by its reasoning had the same effect on California's similar CCW statute, the Court made clear that regulations consistent with historical precedent, such as those that prohibit weapons in "sensitive places," would likely pass constitutional muster. (*Bruen, supra*, 142 S.Ct. at 2124, 2133-34.) However, the Court gave little guidance on what constitutes a sensitive place, beyond stating that "expanding the category of 'sensitive places' to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly." (*Id*. at 2133-34.)

Furthermore, the Court intimated that CCW regimes can still require applicants to undergo a background check or pass firearm safety courses, and that these requirements are suitable to ensure only "law-abiding, responsible citizens" are granted CCWs. (*Id*. at 2138, fn. 9.) The Court chose not to undertake an exhaustive historical analysis of what is constitutional and what is not when it comes to CCWs. (*Id*. at 1234.) As such, it acknowledged that applying constitutional principles to novel modern conditions is difficult, but nevertheless concluded that judges are equipped with the proper decision-making skills to answer such questions. (*Ibid*.) In reaching its decision, the Court also recognized that California is among the limited number of states that

have an analogue to New York's "proper cause" standard in their concealed carry laws. (*Bruen, supra*, 142 S.Ct. at 2124.)

SB 2 (Portantino), Chapter 249, removes the 'good cause' requirement for concealed CCW licenses and creates a new issuing process for CCW licenses following the United States Supreme Court ruling in *New York Rifle and Pistol Association v. Bruen*. Specifically, this new law:

- Provides that when a person applies for a new or renewed CCW license to carry a pistol, revolver, or other firearm capable of being concealed on the person, the sheriff or police chief of a jurisdiction shall issue or renew the CCW license upon proof that the applicant is not a disqualified person, as specified, is at least 21 years of age, is the recorded owner of the firearm, has completed a training course, as provided, and is a resident of, or employed in, the jurisdiction.

- States that, for new CCW applicants, the required course of training must be no less than 16 hours in length, include instruction on firearm storage and other applicable laws, and include a mental health component, among other specified criteria.

- Provides that, for renewal CCW applicants, the required course of training shall be no less than 8 hours and shall satisfy the other minimum criteria above.

- Requires the Attorney General to convene a committee to revise the standard application form for licenses.

- Provides that the committee convened by the Attorney General shall consist of one representative each from the California State Sheriffs Association, California Police Chiefs Association, and the Department of Justice (DOJ).

- Sets forth a procedure by which the design standards for licenses issued by local agencies, which may be used as proof of licensure throughout the state, may be issued and subsequently revised.

- States that, among other things, a standard application form for a CCW license must require information regarding an applicant's prior detentions, arrests, criminal convictions, prior specified court orders, prior mental health commitments, whether the applicant has been previously denied a license to carry a firearm, or has had it revoked, three character references, including at least one cohabitant or specified domestic companion, if applicable, and other information sufficient to make a determination as to whether the applicant is a disqualified person.

- Mandates that a CCW license contain a licensee's picture, fingerprint, date of birth, an issuance and expiration date, the model of firearm, and a Criminal

Identification and Information number, among other things.

- Permits a licensing authority to collect CCW license processing and enforcement related fees and states that the fees must reflect reasonable costs incurred by the authority.

- Provides that local fees may be increased to reflect increases in the licensing authority's reasonable costs, but in no case shall they exceed those reasonable costs.

- Provides that a CCW license shall be revoked if at any time the licensing authority determines or is notified by the DOJ of any of the following:

    - A licensee is prohibited by state or federal law from owning or purchasing a firearm;

    - A licensee has breached any of the conditions or restrictions relating to concealed carry licenses, as specified;

    - The licensee provided inaccurate or incomplete information on their application; or,

    - The licensee has become a disqualified person, as specified.

- Prohibits a licensee from doing any of the following while carrying a firearm as authorized by a CCW license:

    - Consume an alcoholic beverage or controlled substance, as specified;

    - Be in a place having a primary purpose of dispensing alcoholic beverages for onsite consumption;

    - Be under the influence of any alcoholic beverage, medication, or controlled substance, as specified;

    - Carry a firearm not listed on the license or a firearm for which they are not the recorded owner, unless they are a peace officer and have their service firearm;

    - Falsely represent to a person that the licensee is a peace officer;

    - Engage in an unjustified display of a deadly weapon;

    - Fail to carry the license on their person;

    - Impede a peace officer;

- Refuse to display the license or to provide the firearm to a peace officer upon demand; and,

- Violate any federal, state, or local criminal law.

- States that a licensing authority may include additional reasonable restrictions or conditions as to the time, place, manner, and circumstances under which a CCW firearm may be carried.

- Prohibits a CCW licensee from carrying more than two firearms under their control at one time.

- Provides that unless a court makes a contrary determination, an applicant shall be deemed to be a disqualified person to receive or renew a license if the applicant is reasonably likely to be a danger to themselves or others, has engaged in an unlawful or reckless use or display of a firearm, or has engaged in other specified conduct.

- States that in order to determine whether an applicant is a disqualified person to receive or renew a license, the licensing authority shall conduct an investigation that meets, but is not limited to, specified minimum requirements.

- Provides that if a new license or license renewal is denied or revoked based on a determination that the applicant is not a qualified person for such a license, the notice of this determination shall state the reason as to why the determination was made and also inform the applicant that they may request a hearing from a court to review the denial or revocation.

- Provides that an applicant who has requested a hearing due to a denial or revocation shall be given a court hearing, after first exhausting any appeals required by the licensing authority, and specifies various procedural rules governing the court hearings.

- Specifies that, in the appeal hearings, the district attorney shall bear the burden of showing, by a preponderance of the evidence, that the applicant is not a qualified person, and specifies how the court must rule if the district attorney meets, or does not meet, their burden.

- Enumerates places in which CCW licensees are not allow to carry, including: schools, courts, government buildings, correctional institutions, hospitals and other medical service facilities, airports, public transportation, specified public gatherings, businesses where liquor is sold for onsite consumption, public parks or athletic facilities, casinos, sports arenas, libraries, churches, zoos, museums, amusement parks, banks, voting centers, and any other privately-owned commercial establishment open to the public unless that establishment has a sign

indicating licensees are allowed to possess their firearm, or if the firearm is transported as authorized by law.

- States that the DOJ may enter into contracts on a bidding or negotiated basis for updating information technology systems in order to implement these provisions, and exempts such actions from any review under the California State Contracts Register, the State Personnel Board's authority under the Personal Services Contracts statutes, the Department of Technology's supervisorial authority under the Acquisition of Information Technology Goods and Services statutes, and any review or approval from the Department of General Services or the Department of Technology.

- Adds specified firearm-possession offenses to the list of misdemeanors which, upon conviction, prohibit a person from possessing a firearm for a period of 10 years if the conviction occurs on or after January 1, 2024.

- Corrects cross-references to regarding the Dealers' Record of Sale fund.

Firearms: dealer requirements

Existing California law makes it illegal for any corporation, person or dealer to sell, loan or transfer a firearm to anyone they know or have cause to believe is not the actual purchaser or the person actually being loaned the firearm, if they know that the firearm is to be subsequently sold or transferred in violation of various requirements. (Pen. Code, § 27515.) Existing law also prohibits a person from acquiring a firearm with the intention of selling, loaning, or transferring it in violation of the requirement that private sales or transfers be conducted through a licensed dealer. (Pen. Code, § 27520(b).) While existing law does impose certain requirements on firearm dealers, it does not require firearm dealers to take trainings that would assist them in further securing inventory or determining when a prospective purchaser may intend to break the law.

SB 241 (Min), Chapter 250, requires the Department of Justice (DOJ) to create a firearm-sales training course and certification that firearm dealers, and their employees must complete annually. Specifically, this new law:

- Requires the DOJ to develop and implement a training course by February 1, 2026, for firearm dealers and their employees.

- Requires, commencing, July 1, 2026, that firearm dealers and their employees who regularly process the sale, loan, or transfer of a firearm or ammunition, to annually complete the DOJ's firearm-sales training course.

- States that firearm dealers must maintain records of their firearm-sales course certification on their business premise and make such records available for inspection.

- Provides that the firearm-sales training course must include, at minimum, training on the following subjects:
    - Applicable state and federal laws governing firearm and ammunition transfers;
    - Identifying straw purchasers and fraudulent activity;
    - Indicators a person is attempting to illegally purchase a firearm;
    - Indicators a person intends to use the firearm for unlawful purposes or self-harm;
    - Preventing burglaries or theft of firearms and ammunition;
    - Reporting requirements and how to otherwise respond to the above-mentioned circumstances;
    - How to teach purchasers firearm safety rules;
    - How to accurately complete applicable state and federal forms related to the sale of firearms, firearms accessories, and ammunition; and,
    - Other reasonable business practices the DOJ determines suitable to further deter the unlawful use of firearms.
- States that the training course shall include an examination of no less than 20 questions to test the participant's understanding of the material, and provides answering 70% or more of the questions correctly shall result in receiving a one-year certificate of completion.
- States that the supplemental written materials must include, at minimum, the following indicators of firearm trafficking or straw purchasing:
    - A purchaser buying multiple firearms;
    - A purchaser being accompanied by another person;
    - A purchaser communicating with others via phone or other means;
    - A purchaser being the subject of a crime gun trace;
    - A purchaser having purchased another firearm in the preceding 30 days;
    - A purchaser indicating the firearm is for another person;

- How to determine the firearm is being legally purchased, including by asking the purchaser questions; and,

- How to report suspected fraud.

- Requires the DOJ to regularly review and update the training materials as needed.

- Authorizes the DOJ to adopt regulations to implement these provisions.

Firearms: Requirements for licensed dealers

According to statistics gathered from the Centers for Disease Control and Prevention (CDC) in 2021, there were 48,830 gun-related deaths in the United States, of those, 26,328 were suicides. Although there is no difference in the rate of mental illness or suicidal ideation in households with and without firearms, the risk of completed suicide is especially high for people in firearm-owning households. Some studies have noted that the increased risk for suicide is due to the availability of a particularly lethal method of suicide such as a firearm. As a result, helping people survive periods of suicidal ideation by reducing their access to a lethal method, such as a firearm, can likely help many people survive. One way to do this is to lower barriers in transferring a firearm, as many states require that firearms generally only be transferred through a firearms dealer.

SB 368 (Portantino), Chapter 251, establishes a process by which firearms can be temporarily transferred to licensed firearm dealers for storage in order to prevent them from being accessed or used to cause significant danger of personal injury to self or others. Specifically, this new law:

- Requires a firearm dealer to store a firearm under the following circumstances:

    - The firearm is voluntarily and temporarily transferred to prevent it from being accessed or used by the transferor, or other persons that may gain access to it in the transferor's household, to cause significant danger of personal injury to themselves or others;

    - The firearm dealer only stores it and does not otherwise use it; and,

    - The duration of the loan is limited to the time necessary to reasonably prevent the significant danger of personal injury.

- Exempts firearm dealers who do not operate retail premises open to the general public.

- Specifies that a firearm dealer who sells only handguns is not required to accept any long gun for storage, and that a firearm dealer who sells only long guns is not

required to accept handguns for storage.

- Provides that a firearm dealer may charge a reasonable fee for the storage of the firearm, as specified.

- Clarifies that a firearm dealer can still accept storage of a firearm for other lawful purposes.

- Specifies the manner in which the firearm is required to be returned, including situations in which the firearm dealer is unable to return the firearm, as specified.

- Requires a dealer taking possession of a firearm pursuant to these provisions to notify the Department of Justice within 48 hours, as specified.

- Prohibits a firearm dealer from offering an opportunity to win a firearm in a game dominated by chance unless they are a nonprofit public benefit or similar corporation, as specified.

- Provides that any person convicted a specified firearm prohibition who subsequently possesses a firearm may be punished by one year in county jail or three years in state prison, and by an additional 10 year firearm prohibition.

Firearms: Licensed Dealers

It is a popular belief that having a firearm in the home provides a form of security against potential intruders, however, that benefit may be overstated. One study of the National Crime Victimization Survey of 14,000 incidents indicates that firearms are used for self-protection in less than one percent of all crimes that take place in the presence of a victim. In turn, there has been a growing body of research demonstrating that owning a firearm in a home actually increases the chance of a firearm-related injury or death occurring that are not related to self-defense situations. Specific to California, one study spanning from 2004 to 2016 of approximately 18 million Californians, found that living with a handgun owner was associated with a substantially elevated risk for dying by homicide. Existing law requires firearm dealers to post numerous signs, including a sign on suicide prevention. Warning signs in relation to cigarettes have been proven more or less effective ensuring purchasers make an informed decision before making a purchase. Presumably, warning signs that educate prospective firearm purchasers of the potential dangers related to owning a firearm will also help ensure they make an informed decision.

SB 417 (Blakespear), Chapter 252, modifies one of the signs that firearm dealers are required to post on their premises so that it includes a statement regarding the risks of access to a firearm in the home. Specifically, this new law:

- Requires the warning sign to contain a statement regarding how access to a firearm in a home significantly increases the risk of suicide, death, injury during domestic violence disputes, the unintentional death and traumatic injury to individuals in the house, and to provide the Suicide and Crisis Lifeline number.

- Requires that firearm dealers post the sign in a conspicuous location on the counter of one of their main gun displays or within five feet of the cash register.

- States that, if it is impossible to post the sign on the counter of a main gun display or within five feet of the cash register, the firearm dealer must otherwise post the sign in a conspicuous location.

- Prohibits the sign from being posted on the floor or ceiling, and requires that it be on a contrasting background.

- Specifies that the word "Warning" must be on the sign and must be on a separate line above the other text.

- Specifies that the informational statement regarding suicide must be placed below the word "Warning" and above the other text on the sign.

Firearms

In 1999, California, passed the “Unsafe Handgun Act,” (UHA) which generally made it illegal to manufacture, import, or sell an “unsafe handgun.” (SB 15 (Polanco) Chapter 248, Statutes of 1999.) A not unsafe handgun was defined, in part, as a pistol that can be fired in a reliable manner, can be dropped from a height without misfiring, and had a manual safety, as specified. Furthermore, commencing January 1, 2001, the Department of Justice (DOJ) was required to make a roster of all handguns that were determined to meet the requirements (or in other words, were “not unsafe”) and that could be sold in the state.

In 2007, a microstamping requirement was added. (AB 1471 (Feuer) Chapter 572, Statutes of 2007.) Microstamping is a device that places a miniature stamp on a bullet when it is fired so that authorities can, upon finding the bullet, more easily determine what gun it was fired from. There is a fierce debate regarding the viability of microstamping, with gun control advocates stating that it is reliable, and gun rights advocates saying it is absolutely not. The overall evidence seems to be in-between. The largest part of the debate is on the legibility of the codes on the casings. An initial study from 2004 by forensic scientist Lucien Haag concluded that the codes were legible on nearly every cartridge after firing some firearms approximately 1,200 times. However, the study was not peer-reviewed, and Haag did not publish it in a journal, stating that his observations were not definitive. Two years later, a peer-reviewed study was published by George Krivosta, and he found that after 100 shots, only 54 of the codes were fully legible. Two subsequent peer-reviewed and published studies demonstrated the technology was more reliable than what Krivosta’s study indicated, but still varied. The legibility of the codes varied depending on the firearm, with one gun being more than 90% legible over 3,000 rounds,

and another gun only being approximately 70% legible. The technology's creator acknowledged that some microstamped codes will be illegible due to the unpredictable nature of the inner workings of firearms. The creator did add though, that even if close to half of the codes are partially illegible, it would still provide more information than law enforcement currently has. (*Ibid*.)

SB 452 (Blakespear), Chapter 253, authorizes handguns to be manufactured without being equipped with microstamping technology; but, commencing January 1, 2028, requires handguns to be equipped with microstamping technology before a firearms dealer can otherwise sell or transfer them at retail, if the DOJ determines that microstamping technology is viable and commercially available. Specifically, this new law:

- Defines "microstamp" as a microscopic array of character used to identify the specific serial number of a firearm from spent cartridge casings discharged by that firearm.

- Defines a "microstamping component" as a firing pin or other part of a semiautomatic pistol that will produce a microstamp on a part of an expended cartridge each time the pistol is fired.

- Defines "microstamping-enabled" to mean either of the following:

    - The firearm's manufacturer has certified that the firearm contains a DOJ-compliant microstamping component; or,

    - A licensed firearms dealer or gunsmith has certified in writing that they have installed a DOJ-compliant microstamping component.

- Removes semiautomatic pistols without a microstamping component from the definition of an "unsafe handgun," and repeals the requirement that pistols manufactured in the state contain microstamping technology.

- States that, commencing January 1, 2028, if microstamping has been determined to be technologically viable, it is unlawful for a firearms dealer to sell or otherwise transfer a semiautomatic pistol unless it has been certified as a microstamping-enabled pistol.

- Punishes a first violation of the microstamping transfer requirement with a fine of up to $1,000. Punishes a second violation with a fine of up to $5,000 and possible license revocation. Makes a third violation a misdemeanor and requires that the dealer's license be revoked.

- States that a firearm dealer may sell or otherwise transfer pistols not equipped with microstamping technology if they were manufactured or delivered prior to January 1, 2028; are part of a private party transaction; or were transferred to a gunsmith or other specified entity for service or repair.

- Requires the DOJ, on or before March 1, 2025, to determine whether microstamping technology is viable and specifies that such determination must include input from relevant stakeholders.

- Provides that if microstamping has been determined to be technologically viable, then the DOJ must provide guidance on performance standards for entities engaged in producing microstamping components on or before September 1, 2025.

- Provides that if microstamping has been determined to be technologically viable, then on or before July 1, 2026, the DOJ must give grants or enter into contracts with entities to produce DOJ-compliant microstamping components to be available for sale.

- States that if microstamping has been determined to be technologically viable, then on or before July 1, 2027, the DOJ must determine whether the entities contracting with the DOJ are making their microstamping components commercially available at reasonable prices, or that options of microstamping-enabled firearms are otherwise readily available for purchase in the state.

- States that a person who modifies a microstamping component of a firearm with the intent to prevent production of a microstamp is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine of not more than $1,000, or by both. The punishment for second or subsequent violations is imprisonment in the county jail for not more than one year, by a fine of not more than $2,000, or by both. Exempts pistols manufactured prior to the effective date of these provisions.

- Provides that it is unlawful to knowingly or recklessly provide a false certification that a firearm is microstamping enabled and that a violation can result in a civil penalty of $10,000 for each firearm and possible injunctive relief, as specified.

Firearms: Constitutional Amendment

The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." For much of early American jurisprudential history, the Second Amendment was not often discussed. In the 20th century, the Supreme Court's major Second Amendment case seemed to imply that the Second Amendment was only tied to state militia use of certain types of firearms. (*United States v. Miller* 307 U.S. 174 (1939).) Then, in 2008, the Supreme Court decided *District of Columbia v. Heller* 554 U.S. 570, in which it conducted a lengthy historical analysis of the Second Amendment before concluding that it protect an individual's right to possess firearms for historically lawful purposes not necessarily tied to a militia. (*Ibid*.)

Last year, the Supreme Court considered the constitutionality of a New York State law requiring applicants for a license to carry a concealed pistol on their person to show "proper cause," or a

special need distinguishable from the general public, as well as good moral character, when applying for license. (*New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S. Ct. 2111 (2022).) In a 6-3 decision along ideological lines, the Supreme Court ruled that the New York law's "proper cause" requirement was an unconstitutional violation of the Second Amendment. (*Ibid*.) The Court held that the "Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home," effectively establishing a constitutional right to publicly carry a firearm under the Second Amendment. (*Id*. at 2122.)

According to the *Giffords Law Center*, there have been an unprecedented number of lawsuits filed that challenge various local, state, and federal gun laws since *Bruen* was decided. (There have been more than double the number of cases challenging laws under the Second Amendment under the first year of *Bruen* than under the first year of *Heller*. *Giffords* asserts that despite the unprecedented number of challenges, the majority of courts are upholding gun laws even under *Bruen's* rigid standard.

That said, there have been cases successfully challenging firearm laws that were once considered to be well established and in conformity with the Second Amendment. In *United States v. Rahimi*, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was also charged with being involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.) This resolution points out that this case has been granted review by the Supreme Court, even though such a firearm prohibition is generally considered to be a longstanding and commonsense gun safety regulation.

Although the Supreme Court has expanded the scope of the Second Amendment and impeded the government's ability to impose stricter gun regulations, the evidence generally indicates that certain gun safety laws are proven to lessen gun violence. A meta-analysis of several different firearm policies by the RAND Corporation substantiates these claims. For example, the meta-analysis has found moderate evidence that minimum age requirements lessen suicide rates, that background checks reduce violent crime rates, that waiting periods lessen both suicide and violent crime rates, and that there is supportive evidence that concealed-carry laws reduce violent crime rates. The RAND Corporation cautions that while there is an increasingly robust literature on the effect of many gun laws, there still remains a limited amount of rigorous scientific evidence on the effects of many gun policies, and that "weak evidence" does not mean a policy is ineffective, it simply means there is currently an absence of evidence examining those policies.

> **SJR 7 (Wahab), Chapter 175,** requests Congress to call for a constitutional convention to propose a constitutional amendment affirming that federal, state, and local governments may adopt firearms regulations consistent with the Second Amendment, or impose national firearm regulations related to background checks, assault weapons, age limits, and waiting periods, or both of the above. Specifically, this new resolution:
>
> - Contains several findings and declarations, including the following:
>
> - That approximately 49,000 Americans died in 2021 as a result of gun violence, and firearms are the leading cause of death for children under the

age of 18 in the United States and the most common method of both homicide and suicide;

- There are approximately 393,000,000 firearms in civilian hands in the United States, meaning that there are more firearms than people in our country;

- That gun safety laws are proven to lessen the scourge of gun violence, as evidenced by the fact that since some of California's most significant gun safety laws took effect in the early 1990s, California has cut its rate of gun death in half, and the State's gun death rate is 39 percent lower than the national average as of 2023;

- That precedents of the Supreme Court of the United States, including its decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*,142 S. Ct. 2111 (2022), have limited the ability of the States to enact and enforce reasonable restrictions on public carry of firearms, and prompted challenges to many other common-sense regulations, such as those allowing law enforcement officials to assess the potential dangerousness of individuals seeking to obtain firearms and prohibit possession of firearms by those deemed dangerous, and those restricting possession of certain particularly dangerous weapons, including weapons of war;

- That modern technology and capabilities, including semi-automatic firing mechanisms, capacity, range, accuracy, and use of specialized ammunition, of the firearms commercially available today make them far more lethal than anything the Founders could have imagined in the 18th century, when most weapons needed to be reloaded after every shot;

- That common sense public safety regulations limiting aspects of firearms acquisition, possession, public carry, and use by individuals, including, but not limited to, the types of firearms and ammunition that private individuals may possess, categories of private individuals who may not acquire or possess firearms, and locations where private individuals may carry firearms, as well as procedures to ensure that individuals possessing or seeking to acquire or publicly carry firearms will not pose a threat to the safety of themselves or others or use a firearm in furtherance of otherwise unlawful conduct, are proven to save lives;

- That, since the introduction of this resolution, the United States Supreme Court has granted review in a case in which a court struck down a commonsense gun safety regulation, the scourge of gun violence has continued unabated, with recent mass shootings bringing tragedy to communities across the country, all of which underscore the need for urgent action;

- That amending the United States Constitution as described in the resolution will ensure that federal, state, and local government can effectively pursue common-sense solutions to this deadly nationwide problem, consistent with the understanding that throughout American history private individuals have possessed firearms for home defense, hunting, and recreational purposes; and,

- That Article V of the Constitution requires the federal Congress to call a constitutional convention upon application of two-thirds of the state legislatures for proposing amendments to the Constitution.

- Resolves that the California Legislature applies to the United States Congress to call a constitutional convention under Article V of the U.S. Constitution for the purpose of proposing a constitutional amendment that would do either, or both, of the following:

    - Affirm that federal, state, and local governments may adopt public safety regulations limiting firearm acquisition, possession, public carry and use by individuals, and that such regulations are consistent with the Second Amendment and America's history of private individuals possessing firearms for home defense, hunting, and recreational purposes; or,

    - Impose the following regulations: 1) universal background checks for firearm acquisitions; 2) a prohibition on the sale or other transfer of a firearm to those under 21 years old; 3) a minimum waiting period before a firearm can be delivered to a buyer or acquirer; and, 4) a prohibition on the sale or other transfer of assault weapons and weapons of war to private civilians.

- Resolves, that this application is for a limited constitutional convention, and voids this application should it be used to consider any constitutional amendments on subjects other than those specified herein.

- Resolves, that this application is to be considered as covering the same subject matter as similar applications from other states and that this application shall be aggregated with those applications for the purpose of attaining the application threshold needed to call a limited convention on each respective subject, but shall not be aggregated with other applications on any other subjects.

- Resolves, that this application constitutes a continuing application, to be considered with any other state applications on the respective subject covered herein, until the necessary application threshold has been met.

Human Trafficking

Serious felonies: human trafficking

California is one of the largest sites of human trafficking in the United States, with 12,696 human trafficking cases and 24,046 victims identified by the Human Trafficking Hotline since 2007. In California law, human trafficking of a minor occurs when a person causes, induces, or persuades a minor to engage in a commercial sex act with the intent to commit specified crimes including pimping, pandering, or child pornography. Under existing law, a felony conviction for trafficking of a minor is punishable by a prison term of five, eight, or 12 years and a fine of up to $500,000. An instance of trafficking of a minor that involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another person is designated a "serious" felony, counts as a strike under the Three Strikes Law, and is punishable by a prison term of 15 years to life and a fine of up to $500,000.

SB 14 (Grove), Chapter 230, makes all human trafficking of a minor for purposes of a commercial sex act a "serious" felony subject to enhanced penalties, including under California's Three-Strikes Law, except in specified circumstances where the person who committed the offense was a victim of human trafficking at the time of the offense. Specifically, this new law:

- Makes human trafficking of a minor for purposes of a commercial sex act a "serious" felony subject to enhanced penalties, including under California's Three-Strikes Law.
- Specifies that the enhanced penalties do not apply where the person who committed the offense was a victim of sex trafficking at the time of the offense, and the offense did not involve force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.
- Makes legislative findings and declarations.

Human Trafficking: Victim Rights

According to the Department of Justice (DOJ), human trafficking, also known as modern-day slavery, is a crime involving the coercion or compelling of a person to provide labor or services, or to engage in commercial sex acts. It is among the world's fastest growing criminal enterprises and is estimated to be a $150 billion-a-year worldwide industry. The International Labor Organization estimates that there are approximately 24.9 million human trafficking victims globally at any given time.

The California Trafficking Victims Protection Act, enacted in 2006, established human trafficking for forced labor or services as a felony crime. (See Pen. Code, § 236.1) Since the California Trafficking Victims Protection Act, a number of additional laws have been passed in

California related to human trafficking. According to a report from the Judicial Council, as the research around human trafficking has evolved, experts have found that "[c]ollaborative approaches to treating victims as victims rather than as criminals have been identified as successful practices. Victim-centered approaches to prosecution ensure that victims are treated as victims and not as criminals, and that they have access to adequate services, assistance, and benefits."

SB 376 (Rubio), Chapter 109, grants victims of human trafficking the right to have a human trafficking advocate and support person at an interview by law enforcement authorities, district attorneys, or the suspect's defense attorney, and be advised of such right. Specifically, this new law:

- States that a human trafficking victim, as defined, has the right to have a human trafficking advocate and a support person of the victim's choosing present at an interview by a law enforcement authority, prosecutor, or a suspect's defense attorney.

- Authorizes law enforcement or a prosecutor to exclude the support person from the interview if they believe the support person's presence would be detrimental to the interview process.

- Defines a "human trafficking advocate" as a person employed by a human trafficking victim service organization, who has a specified degree or license, and meets other specified qualifications.

- Defines a "support person" as a family member or friend of the victim, not including the human trafficking advocate.

- Requires human trafficking advocates, prior to an interview, to advise the victim of applicable limitations to the confidentiality of their communications.

- Requires law enforcement authorities or a prosecutor, prior to commencement of the interview, to notify the human trafficking victim, either orally or in writing, that they have the right to the presence of a human trafficking advocate and a support person.

- Requires law enforcement authorities or a prosecutor to also notify the victim that the right extends to an interview by the suspect's defense attorney or their investigators or agents.

- Specifies that an initial investigation into a crime by law enforcement does not constitute an "interview" for the purposes of these provisions.

Juveniles

Juveniles: informal supervision

Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges that the juvenile committed criminal offenses and is brought by the district attorney.

Alternatively, the Welfare and Institutions Code provides an opportunity for pre-petition informal supervision, also known as diversion. Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court. (Welf. & Inst. Code, § 654.) Importantly, the court cannot require a minor to admit the truth of the petition before granting informal supervision. (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

Under current law, a number of circumstances render a minor presumptively ineligible for informal supervision. For example, a minor is presumptively ineligible for informal supervision where the petition alleges that the minor has committed an offense in which victim restitution exceeds $1,000. (Welf. & Inst. Code, § 654.3, subd. (a)(5).)

Further, probation is required to refer certain types of cases to the prosecutor within 48 hours. These include cases in which it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds $1,000. (Welf. & Inst. Code, § 653.5, subd. (b)(7).)

These dollar limits were established in 1989 – AB 332 (Nolan), Chapter 930, Statutes of 1989 and SB 1275 (Presley), Chapter 1117, Statutes of 1989. They have not been updated since.

> **AB 1643 (Bauer-Kahan), Chapter 850**, increases the threshold amount of victim restitution which makes a minor presumptively ineligible for a program of informal supervision from $1,000 to $5,000. Specifically, this new law:
>
> - Provides that a minor is not eligible for a program of informal supervision, except where the interests of justice would best be served and the court specifies on the record the reasons for its decision, if it appears that the minor has committed an offense in which victim restitution exceeds $5,000, instead of $1,000.
>
> - Raises the amount which requires the probation officer to commence proceedings within 48 hours if the minor is alleged to have committed an offense in which victim restitution is owed, from exceeding $1,000 to exceeding $5,000.

Juveniles: Detention Hearings

When a minor is taken into custody, the minor must be taken before a juvenile court judge or referee for a hearing to determine whether they should continue to be detained. (Welf. & Inst. Code, § 632, subd. (a).) The detention hearing must take place as soon as possible and no later than the next judicial day after a petition has been filed with the court. (*Ibid*.) At the detention hearing, the court must consider the probation officer's report, and any other evidence. (Welf. & Inst. Code, § 635, subd. (a).)

The court is required to order the release of the minor from custody unless it finds that the prosecutor has made a prima facie case that the minor has committed a crime and that one of the following is true: the minor has violated a juvenile court order; the minor has escaped from the commitment of the juvenile court; that it is a matter of immediate and urgent necessity for the protection of the minor; that it is reasonably necessary for the protection of the person or property of another that the minor be detained; or that the minor is likely to flee to avoid the jurisdiction of the court. (Welf. & Inst. Code, § 635, subds. (a), (c).) The court may consider the circumstances and gravity of the alleged offense, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained. (Welf. & Inst. Code, § 635, subd. (b)(1).) If the minor is a dependent of the court under section 300, the court is prohibited from basing the decision to detain on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor. (Welf. & Inst. Code, § 635, subd. (b)(2).)

Some argue that argue that youth who are accused of committing crimes outside of their county of residence are regularly being detained solely due to their out-of-county status when they otherwise would not be detained and instead, would be placed on home detention or subject to electronic monitoring.

> **SB 448 (Becker), Chapter 608**, prohibits the juvenile court from detaining a minor in custody solely because of the minor's county of residence and requires the court to give equal consideration to release on home supervision, regardless of the minor's county of residence. Specifically, this new law:
>
> - Prohibits the juvenile court from detaining a minor in custody solely because of the minor's county of residence.
>
> - Requires the juvenile court to give a minor equal consideration for release on home supervision, rather than detention, irrespective of whether the minor lives in the same county in which the offense occurred.
>
> - Authorizes the juvenile court to order a minor placed on home supervision with or without electronic monitoring regardless of the minor's county of residence.

Juveniles: Transfer to Court of Criminal Jurisdiction

Youth transferred to adult court may have worse post-release outcomes than youth who receive treatment in the juvenile system, which is inconsistent with the goal of improving public safety. As has been noted by the California Supreme Court, the certification of a juvenile offender to an adult court has been accurately characterized as "the worst punishment the juvenile system is empowered to inflict."(Separating the Criminal from the Delinquent: Due Process in Certification Procedure (1967) 40 So.Cal.L.Rev. 158, 162; *People v. Ramona* (1985) 37 Cal.3d 802, 810.) The Centers for Disease Control has also concluded: "[T]ransfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among youth who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good."

Children who are trafficked or sexually abused and fight back against their abusers deserve our understanding and empathy, not harsh prison sentences. Many of these children come from difficult backgrounds, full of neglect or trauma, which can make them easy targets for adults with sinister intentions. And unfortunately, when some of these children fight back against the adults who abuse them, they find themselves trapped in a new system of trauma because they are often tried as adults in criminal court and sent to prison.

SB 545 (Rubio), Chapter 716, requires consideration of a minor's status as a victim of human trafficking or sexual abuse when determining whether to transfer a case from juvenile court to adult criminal court, or remand back to the juvenile court in cases where the case had previously been transferred to the criminal court. Specifically, this new law:

- Requires the court to consider whether the minor was involved in the child welfare or foster care system, as well as whether the minor was a victim of human trafficking, sexual abuse, or sexual battery when determining whether to transfer a matter from the juvenile court to a court of criminal jurisdiction.

- Makes consideration of other specified factors mandatory, rather than permissive, when the juvenile court is making a determination as to whether to transfer a minor from juvenile court to criminal court.

- Specifies that when determining whether to transfer a matter from the juvenile court to a court of criminal jurisdiction, in evaluating the circumstances and gravity of the charged offense, the court must consider evidence offered that indicates the minor committed the alleged offense against the person who trafficked or sexually abused the minor.

- Prohibits transfer of a juvenile matter to the criminal court if the court receives evidence that the minor committed the alleged offense against the person who trafficked or sexually abused them, except if there is clear and convincing evidence that the alleged victim did in fact not traffic or sexually abuse the minor.

- Requires reverse transfer of a case from the criminal court back to the juvenile court for disposition if the court receives evidence that the minor committed the alleged offense against the person who trafficked or sexually abused them, except if there is clear and convincing evidence that the alleged victim did in fact not traffic or sexually abuse the minor.

Mental Health

Victims Compensation: Emotional Injuries.

The California Victims Compensation Program provides compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. Compensation is available for a range of qualified expenses, including, but not limited to, medical and dental expenses, outpatient mental health treatment and counseling, in-patient psychiatric costs, funeral/burial costs, support loss for legal dependents, wage or income loss, job retraining, crime scene clean-up, relocation expenses, veterinarian fees, mileage reimbursements, and home renovation and security improvements.

Generally, victims must be physically injured as a direct result of the crime to receive victim compensation. In limited circumstances, victims can receive compensation for their emotional injuries. For example existing law also allows victims to receive compensation for emotional injuries for specific violations including: human trafficking, rape, child abandonment, child endangerment, child abuse, incest, sodomy, oral copulation, lewd and lascivious acts with a child, continuous sexual abuse of a minor, forcible penetration with an object, cyber harassment, coercing a minor to appear in child pornography, child neglect, statutory rape, child abduction, and deprivation of child custody.

> **AB 56 (Lackey), Chapter 512**, expands eligibility for victim compensation to include emotional injuries from specified felony violations including attempted murder, kidnapping, stalking, and sexual assault.

Board of State and Community Corrections

Between 2006-2020, there were 185 in-custody deaths for San Diego County, 421 deaths in Los Angeles, 104 deaths in Riverside County, and 124 deaths in San Bernardino. Many of these deaths were preventable.

A 2022 State Auditor report on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department notes that "Significant deficiencies in the Sheriff's Department's provision of care to incarcerated individuals likely contributed to the deaths in its jails."

For example, the audit noted that studies on health care at correctional facilities have demonstrated that identifying individuals' medical and mental health needs at intake—the initial screening process—is critical to ensuring their safety in custody. Nonetheless, the auditor's review of deaths in custody found that some of these individuals had serious medical or mental health needs that the sheriff's department's health staff did not identify during the intake process. The audit also revealed multiple instances of individuals who requested or required medical and mental health care, and did not receive it at all or in a timely manner. The audit also found that

deputies performed inadequate safety checks to ensure the well-being of incarcerated persons, which is the most consistent means of monitoring for medical distress.

The audit further found that some of the deficiencies of the sheriff's department were the result of statewide corrections standards that are insufficient for maintaining the safety of incarcerated individuals. For example, regulations established by the BSCC do not explicitly require that mental health professionals perform the mental health screenings during the intake process. They also do not describe the actions that constitute an adequate safety check: rather, the regulations simply state that safety checks must be conducted at least hourly through direct visual observation.

The Auditor's report concluded with some key recommendations, including that BSCC should require mental health evaluations to be performed by mental health professionals at intake, and that it should clarify and improve procedures for safety checks.

AB 268 (Weber), Chapter 298, requires the BSCC to develop standards for mental health care in local correctional facilities. Specifically, this new law:

- Requires the BSCC, commencing on July 1, 2024, to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities that either meet or exceed the standards for health care services in jails established by the National Commission on Correctional Health Care. These standards include:
    - Requiring sufficiently detailed safety checks of incarcerated persons to determine their safety and well-being;
    - Requiring that correctional officers be certified in cardiopulmonary resuscitation (CPR), and requiring that they begin CPR on a non-responsive person without obtaining approval from a supervisor or medical staff, when safe and appropriate to do so;
    - Requiring jail supervisors to conduct random audits of safety checks;
    - Requiring no fewer than four hours of mental and behavioral health training annually for correctional officers, with the training to be developed by the BSCC;
    - Requiring that a qualified mental health care professional conduct a mental health screening of a person at intake or booking, if available, a mental health screening conducted by anyone aside from a qualified mental health care professional must be reviewed by a qualified mental health care professional as soon as reasonably practicable; and,
    - Requiring jail staff to review the medical and mental health records and the county electronic health records of a person booked or transferred to

county jail, if they are available.

- Increases the membership on the BSCC to add a licensed health care provider and a licensed mental health care provider, both to be appointed by the Governor, and subject to confirmation by the Senate Rules Committee. Increased membership shall begin July 1, 2024.

Firearms: Prohibited Persons.

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder, that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion.

Under existing law, the state can, pursuant to a court order, prohibit a person from having a firearm due to their mental health in certain circumstances, including individuals who are under a conservatorship, mental health admission, certified for intensive mental health treatment, have been found incompetent to stand trial, have been found not guilty by reason of insanity, or have been adjudicated as a person with a mental disorder or illness.

AB 455 (Quirk-Silva), Chapter 236, beginning July 1, 2024, authorizes the prosecution to request an order from the court to prohibit a defendant subject to mental health pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion.

California Victim Compensation Board: reimbursement for personal or technological safety devices or services

The California Victims Compensation Program provides compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. Compensation is available for a range of qualified expenses, including, but not limited to, outpatient mental health treatment and counseling and in-patient psychiatric costs. The California Victim Compensation Board assists in bill payment and reimbursement for expenses incurred by victims that are the result of violent crimes including mental health services

AB 1187 (Quirk-Silva), Chapter 468, authorizes the California Victim Compensation Board to reimburse the expense of counseling services provided by a Certified Child Life

Specialist, certified by the Association of Child Life Professionals, who provides counseling under the supervision of a licensed provider.

Pretrial Diversion: Borderline Personality Disorder

Pre-trial diversion suspends the criminal proceedings without requiring the defendant to enter a plea. The defendant must successfully complete a program or other conditions imposed by the court. If a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense.

In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion.

Defendants are eligible for pretrial mental health diversion if they have been diagnosed with a mental disorder identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including but not limited to bipolar disorder, schizophrenia, schizoaffective disorder, or post traumatic stress disorder (PTSD). However, the law specifically excludes individuals with antisocial personality disorder, borderline personality disorder (BPD), and pedophilia from eligibility for mental health diversion.

In the past, treatment of BPD was considered challenging, but interventions have been developed over the past two decades that have dramatically changed the lives of individuals with BPD. There have been advances in our understanding and treatment approaches to BPD, which preclude dismissing BPD as an untreatable condition. For example, psychotherapy is the most important component in the treatment of BPD, which results in large reductions in symptoms that persist over time.

AB 1412 (Hart), Chapter 687, removes BPD as an exclusion for pretrial diversion.

Peace Officers

California Law Enforcement Telecommunications System: Tribal Police

The California Law Enforcement Telecommunications System (CLETS) is a communications network that provides public safety agencies access to databased information, such as domestic violence restraining orders, criminal history, warrants, and driver license and vehicle registration information databases within California, other states on a national level, and federal databases sponsored by the Federal Bureau of Intelligence (FBI). CLETS is extensively used by law enforcement entities, and other criminal justice agencies, such as California courts, may also apply for and receive access privileges. According to the Department of Justice (DOJ), agencies desiring access to the system must submit an application for service to DOJ. The committee reviews and approves the applications.

Facing the crisis of murdered and missing indigenous people tribal police are limited in their investigative and arrest authority over these crimes. Without access to CLETS, tribal law enforcement cannot enter domestic violence protective person's information or receive vital officer safety information while tribal police officers are in the field. Tribal law enforcement and courts are therefore unable to search and access in real-time the criminal history, outstanding warrants and/or restraining orders related to specific individuals and cases.

In addition, native victims report that sometimes law enforcement officers will not enforce a tribal protective order unless it can be verified though CLETS. Currently most tribal courts and law enforcement agencies in California do not have access to CLETS, despite the fact that federal and state law require that tribal protection orders be accorded full faith and credit.

> **AB 44 (Ramos), Chapter 638**, requires DOJ to grant access to CLETS to the law enforcement agency or tribal court of a federally recognized Indian tribe meeting certain qualifications.

Peace officers: determination of bias

Existing law contains several provisions intended to minimize and respond to bias among peace officers. For example, AB 846 (Burke) Chapter 322, Statutes of 2020, established a requirement that peace officers be free from any bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer. Further, POST currently provides mandatory training for peace officers on implicit bias, which must "stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment." (Pen. Code, § 13519.4.)

In 2022, the California State Auditor's Office (State Auditor) audited five law enforcement departments (including LA Sheriff, San Jose Police Department, and the California Department of Rehabilitation and Corrections (CDCR)) for peace officer bias, and uncovered a number of

bias-related issues. As part of the audit, the State Auditor reviewed a selection of five internal investigations at each department, reviewed the public social media accounts of approximately 450 officers, and examined agency responses to incidents and allegations of biased conduct.

The State Auditor pointed out that although the biased conduct they found was generated by a small number of officers at each department, concluding that bias is not a significant problem on that basis alone would be incorrect for a number of reasons. Their review was not designed to catalogue every instance of biased conduct, their work only encompassed a limited number of internal investigations and publicly shared views by a selection of officers. Furthermore, because they found that the departments they reviewed did not have strong safeguards against bias in place, there is a high risk of departments being unaware of and unable to effectively address the ways in which officers exhibit bias.

AB 443 (Jackson), Chapter 439, requires POST to establish a definition of biased conduct and to develop guidance for law enforcement agencies when screening applicant social media accounts for bias. Specifically, this new law:

- Requires POST to establish a definition for biased conduct that, at a minimum, includes all of the following:
    - That the conduct may include bias against a person's actual or perceived class or characteristic protected under the Unruh Civil Rights Act;
    - Biased conduct may occur in an encounter with the public, employees of criminal justice agencies, or online;
    - Biased conduct includes conduct resulting from implicit and explicit biases;
    - That conduct is biased if a reasonable person with the same training and experience would look at the facts and conclude that the conduct resulted from bias due to membership in a specified class; and,
    - An officer need not admit biased or prejudiced intent for conduct to reasonably appear biased.
- States that law enforcement agencies must use POST's definition of bias for peace officer decertification purposes and in other specified circumstances.
- Requires POST to develop "best-practices" guidance for law enforcement agencies when they screen applicant social media accounts for bias.
- Requires law enforcement agencies, when investigating specified law enforcement activity, to determine if racial profiling occurred.

Hate Crimes: Law Enforcement Policies.

The DOJ is required to report hate crime statistics on their website by July 1st of each year. The DOJ sources the report with data from local law enforcement agencies, which the DOJ receives on a monthly basis. Monthly reporting is required to comply with federal standards imposed by the Federal Bureau of Investigation (FBI).

Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. Nevertheless, hate crimes are still underreported by law enforcement. A 2018 report by the California State Auditor found that law enforcement had not taken sufficient action to identify, report, and respond to hate crimes. (California State Auditor, *Hate Crimes in California* (May 2018)

Previously, the law authorized law enforcement agencies to adopt a hate crimes policy, but it does not require one.

AB 449 (Ting), Chapter 524, requires state or local law enforcement agencies to adopt a hate crime policy by July 1, 2024, and to report that policy to the DOJ. Also requires POST to update its model hate crimes policy framework. Specifically, this new law:

- Makes the adoption of a hate crimes policy by local law enforcement agencies mandatory rather than permissive, and extends the requirement to include state law enforcement agencies.

- Requires state and local law enforcement agencies to adopt a hate crimes policy, as specified, by July 1, 2024.

- Adds that the hate crimes policy adopted by a state and local law enforcement agency must include the POST supplemental hate crime report, and a schedule of POST's required hate crime training, as specified, and any other hate crime or related training the state or local law enforcement agency may conduct.

- Requires state and local law enforcement agencies to report to their formal polices the formal policies on hate crimes adopted by the agencies on or before 2024 and in any year thereafter.

- Requires the DOJ to review policies and brochures for compliance with applicable laws and instructs any agency that did not submit a policy or brochure, or that submitted a legally noncompliant policy or brochure, to submit compliant documents.

- Requires all law enforcement agencies, including special districts, to produce to the Attorney General's office their hate crime materials on the specified date and then every four years thereafter in perpetuity.

- Require the DOJ to instruct any agency that submitted no policy or brochure, or that submitted a legally noncompliant policy or brochure, to submit compliant documents.

- Requires guidelines developed by POST to include a model hate crimes policy framework for use by law enforcement agencies in adopting a hate crimes policy, as specified.

Law Enforcement: Social Media

Social media mug shots have been compared to a modern-day scarlet letter. They have been used as a tool for public shaming. They become a public record used by other organizations like newspapers. And they can have long-term consequences because they can be revealed much later by an internet search of a person's name.

In recent years the Legislature has taken steps to curb the invasive use and commercial exploitation of booking photos. In 2014, the Legislature passed SB 1027 (Hill, Ch. 194, Stats. 2014), which prohibited a person from publishing or otherwise disseminating a booking photograph to solicit payment of a fee or other consideration from a subject to remove, correct, modify, or to refrain from publishing or otherwise disseminating the photo. In 2017, this Legislature also passed AB 1008 (McCarty, Ch. 789, Stats. 2017), a so-called "ban the box" law, which prohibited an employer from inquiring about an applicant's conviction history, and from considering, distributing, or disseminating information about arrests not followed by conviction, referral to or participation in pre- or post-trial diversion programs. More recently, the Legislature passed AB 1475 (Low, Ch. 126, Stats. of 2021), which prohibited law enforcement agencies from sharing booking photos on social media of individuals arrested for non-violent offenses, except under specific circumstances.

AB 994 (Jackson), Chapter 224, requires a police department or sheriff's office to remove a booking photo shared on the department's social media page within 14 days unless the subject of the image is a fugitive or an imminent threat to public safety, or continuing to share the image is otherwise justified by a legitimate law enforcement interest. Specifically, this new law:

- Requires a police department or sheriff's office sharing a booking photo of an individual on social media to use the name and pronouns given by the individual.

- Allows a police department or sheriff's office to include other legal names or known aliases of an individual, if using the names or aliases will assist in locating or apprehending the individual or in reducing or eliminating an imminent threat to an individual or to public safety, or if an exigent circumstance exists that necessitates their use due to an urgent and legitimate law enforcement interest.

- Requires the removal of a booking photo from the department's social media page within 14 days regardless of the crime, unless the person is a fugitive or an

imminent threat, or there exists a legitimate law enforcement purpose for not removing the photo.

- Eliminates the requirement that the individual who is the subject of a social media post, or their representative, request and make a showing, as specified, in order to have their booking photo removed from a police department's or sheriff's department's social media page.

Peace officers: Peace Officer Standards Accountability Advisory Board.

In 2021, the Legislature passed sweeping legislation requiring the Commission on Peace Officer Standards and Training (POST) to create a new, mandatory certification process for peace officers. (SB 2 (Bradford), Chapter 409, Statutes of 2021.) Under SB 2, POST was directed to create a certification program for peace officers, who must receive a proof of eligibility and a basic certificate in order to serve in that capacity. (Pen. Code, § 13510.1.) Additionally, SB 2 provided a new mechanism by which POST may investigate and review allegations of "serious misconduct" against an officer. The measure empowered POST to make a determination on whether, at the conclusion of that investigation, to suspend or revoke the officer's certification.

Under existing law, when the Peace Officer Standards Accountability Division ("Division") finds reasonable grounds for revocation or suspension of an officer's certification after conducting a serious misconduct investigation, and the officer appeals that determination, the Peace Officer Standards Accountability Advisory Board ("Board") is required to review the Division's determination. (Pen. Code, § 13510.85, subd. (a)(1).) Existing law requires the Board to meet at least four times per year to conduct these reviews in public hearings and make recommendations to POST on appropriate sanctions, if warranted. (Pen. Code, § 13510.85, subd. (a)(3) & (4).) Existing law expressly provides that hearings of the Board and review of decertification recommendations by POST, and any records introduced during those proceedings, are public. (Pen. Code, § 13510.85, subd. (b).)

SB 449 (Bradford), Chapter 397, imposes limitations on the release of specified information in peace officer decertification proceedings and makes other clarifying changes to the peace officer certification process.

- Clarifies that POST's authority to suspend, revoke, or cancel peace officer certification extends to any certificate or proof of eligibility issued by the commission, including any certificate or proof of eligibility that is invalid, inactive, expired, or canceled.

- Clarifies POST is not prohibited from considering a peace officer's prior conduct and service record in determining whether suspension is appropriate for serious misconduct.

- Authorizes the Division to redact any records introduced during the hearings of the Board and the review by the POST.

- Provides that neither the Board nor POST are precluded from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken.

- Clarifies that an agency employing peace officers is required to make available for inspection or duplication by POST any investigation into any matter reported, as specified.

- Provides that if POST determines that disclosure of information may jeopardize an ongoing investigation, put a victim or witness at risk of any form of harm or injury, or may otherwise create a risk of any form of harm or injury that outweighs the interest in disclosure, POST may withhold that information from the peace officer that is the subject of the investigation until the risk of harm is ended or mitigated so that the interest in disclosure is no longer outweighed by the interest in nondisclosure.

Post-Conviction Relief

Criminal Procedure: Victims' Rights

Generally, a court loses jurisdiction over a sentence when the sentence begins. Once sentenced, the court no longer has the legal authority to increase, reduce, or change the defendant's sentence. However, the Legislature created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment for a felony conviction, the court has the ability to resentence the defendant as if it had never imposed sentence, if the new sentence is no greater than the original sentence. In addition, the California Department of Corrections, Board of Parole Hearings, the county correctional administrator, the district attorney, or the Attorney General can make a recommendation for resentencing at any time.

The recall and resentencing law was recently amended to include procedures such as when a hearing is required. The recall and resentencing process requires a hearing to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties, and requires the court's decision to grant or deny the petition to be stated on the record.

> **AB 88 (Sanchez), Chapter 795,** requires a victim who wishes to be heard regarding the resentencing to notify the prosecution of their request for a hearing within 15 days of being notified that resentencing is being sought, and requires the court to provide an opportunity for the victim to be heard.

Criminal records: relief

In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 1076, as relevant here, established a procedure in which persons could have certain convictions dismissed and have such information withheld from disclosure, all without having to file a petition with the court. (Pen. Code, § 1203.425.) The purpose of AB 1076 was to remove barriers to housing and employment for convicted and arrested individuals in order to foster their successful reintegration into the community.

AB 200 (Budget Committee), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023. SB 731 (Durazo), Chapter 814, Statutes of 2022, expanded automatic arrest record and conviction relief to additional felony offenses, and delayed the effective date to July 1, 2023. The effective date was delayed again, to July 1, 2024, by AB 134 (Budget Committee), Chapter 47, Statutes of 2023.

Under existing law effective July 1, 2024, automatic relief applies to a defendant who was convicted of a felony on or after January 1, 2005, and who has successfully completed their sentence (including any term of probation) after having had their probation revoked.

AB 567 (Ting), Chapter 444, extends, commencing July 1, 2024, automatic conviction record relief to misdemeanor convictions where the sentence has been successfully completed following a revocation of probation, and requires the Department of Justice to provide confirmation that relief was granted if requested by the subject of the record.

Criminal procedure: discrimination

In 2020, the Legislature passed AB 2542 (Kalra), Statutes of 2020, the California Racial Justice Act (CRJA), which prohibits the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity or national origin and allows a defendant to seek relief if their case was impacted by such bias. As originally enacted, the CRJA applied only to judgments of conviction occurring on or after January 1, 2021. AB 256 (Kalra), Chapter 739, Statutes of 2022, created a timeline for retroactive application of the CRJA.

AB 1118 (Kalra), Chapter 464, clarifies that a defendant can raise a CRJA claim alleging a violation of the CRJA on direct appeal. Specifically, this new law:

- Provides that CRJA claims based on the trial record may be raised on direct appeal from the conviction or sentence.
- Specifies that the defendant may also move to stay the appeal and request remand to the superior court to file a CRJA motion.
- Clarifies that a CRJA motion, which must be filed in a court of competent jurisdiction, does not have to be filed during trial.
- Corrects an erroneous cross-reference.

Criminal Procedure: Factual Innocence

Individuals who were erroneously convicted and imprisoned because the charged crime either did not occur or was not committed by them can file a claim for wrongful conviction compensation. The California Victim Compensation Board (CalVCB) is the sole agency responsible for processing claims from persons seeking compensation for wrongful convictions.

Under existing law, whether CalVCB will process a claim without a hearing depends on if a court has found the person factually innocent. If the person has first obtained a declaration of factual innocence from a court, this finding is binding on the CalVCB. No hearing is required; the finding is sufficient grounds for payment of compensation. Similarly, if the court has granted a writ of habeas corpus or vacated a judgment, and in either of those proceedings found that the person is factually innocent, the finding is binding on the CalVCB and is sufficient grounds for payment of compensation without a hearing. Additionally, a person who has had a writ of habeas corpus granted or their judgment vacated can move the court for a finding of factual innocence prior to submitting a compensation claim to CalVCB. If the court grants the motion and finds the

person factually innocent, the finding is binding on CalVCB and is sufficient grounds for payment of compensation without a hearing. Otherwise put, a recommendation for compensation by CalVCB is automatically mandated without a hearing if a court has found the claimant to be factually innocent of the challenged conviction.

For all other claims, CalVCB may be required to hold a hearing. In claims where a court has granted a writ of habeas corpus or a motion to vacate, but the court did not find the person factually innocent, CalVCB is required to, without a hearing, approve payment to the claimant, unless the AG objects to the claim. Upon receipt of the AG's objection, CalVCB must set a hearing of the claim.

> **SB 78 (Glazer), Chapter 702**, allows a person to petition a court for a finding that they are entitled to wrongful conviction compensation, if the court has granted a writ of habeas corpus or vacated a judgment, and the charges against the person were dismissed or the person was acquitted on retrial.

Criminal procedure: writ of habeas corpus

Habeas corpus, also known as "the Great Writ," is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from illegal restraint. The function of the writ is set forth in Penal Code section 1473, subdivision (a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: false evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to their incarceration; false physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty, and which was a material factor directly related to the plea of guilty by the person; new evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial; or a significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial. (Pen. Code, § 1473, subd. (b).)

> **SB 97 (Wiener), Chapter 381**, authorizes broader bases for the prosecution of a writ of habeas corpus when new evidence is discovered after trial, creates a presumption in favor of granting relief if the prosecution stipulates to a factual or legal basis for the relief, and provides for continuity of counsel on retrial. Specifically, this new law:
>
> - Provides that a habeas petition may be prosecuted based on the introduction of material false evidence, rather than false evidence that is substantially material or probative on the issue of guilt or punishment.

- Revises the grounds for prosecuting a habeas petition based on new evidence to include evidence that would have changed the outcome of a case, not just a trial.

- Redefines "new evidence" as evidence that has not previously been presented and heard at trial and has been discovered after trial, removing the requirement that it could not have been discovered prior to trial by the exercise of due diligence and is not merely cumulative, corroborative, collateral, or impeaching.

- Revises the grounds for prosecuting a habeas petition based on a significant dispute having emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic evidence, making it applicable to hearings as well as trials and where it would have affected the outcome of the case, not just a trial.

- Provides that if the court holds an evidentiary hearing and the petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing with a signed or oral waiver on record, or they may appear remotely through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

- Creates a presumption in favor of granting relief if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

- Provides that if after the court grants postconviction relief and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

    - The petitioner and postconviction counsel both agree for postconviction counsel to be appointed; and,

    - Postconviction counsel is qualified to handle trials.

Parole Hearings

Existing law requires any person, other than the victim, who is entitled to attend a parole hearing and intends to do so, to provide at least 30 days' notice to the Board of Parole Hearings (BPH) of their intent to attend the hearing. Under California Department of Corrections and Rehabilitation (CDCR) regulations, victims must provide at least 15 days' notice and their next of kin, family members, representative, counsel, and support person must provide at least 30 days' notice of their intention to attend parole hearings, regardless of whether they will participate in person or remotely.

SB 412 (Archuleta), Chapter 712, prohibits CDCR and BPH from requiring a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons to give more than 15 days' notice of their intention to attend a parole hearing.

Search and Seizure

Search and Seizure: Wiretapping Sunset Date Extension

In general, California law prohibits wiretapping and other forms of intercepting electronic communications. (Pen. Code, § 631.) Under current law, a judge may authorize an electronic interception if there is probable cause to believe that 1) an individual is going to commit a specified crime such as murder or a gang-related offense; 2) the communication relates to the illegal activity; 3) the communication device will be used by the person whose communications are to be intercepted; and, 4) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed or be too dangerous. (Pen. Code, § 629.52; *People v. Leon* (2007) 40 Cal.4th 376, 384.)

According to the Department of Justice (DOJ), court-authorized electronic interceptions are a vital law enforcement tool. Due to the fact that dangerous individuals and criminal entities, such as drug trafficking organizations and criminal street gangs frequently use telecommunications to advance their criminal objectives, electronic interceptions are critical in identifying, disrupting, and preventing crimes. In 2022, California judges approved 468 interception orders out of 468 applications submitted. Authorized interceptions led to 250 total arrests; these arrests were predominantly for murder (151), narcotics offenses (89), and gang-related offenses (6).

However, California's statutes that authorize wiretapping and other electronic communication interceptions were set to expire on January 1, 2025. (Pen. Code, § 629.98.)

> **SB 514 (Archuleta), Chapter 488,** extends the sunset date for the provisions that authorize law enforcement authorities to wiretap and otherwise intercept electronic communications to January 1, 2030.

Serches: supervised persons

In 2017, the Legislature clarified that federal Immigration and Customs Enforcement (ICE) officers and Customs and Border Protection officers are not California peace officers. (Pen. Code, § 830.85.) The impetus behind that legislation, AB 1440 (Kalra), Chapter 116, Statutes of 2017, was to prevent ICE agents from misrepresenting themselves as licensed peace officers in order to compel or coerce individuals into cooperating with them under false pretenses.

Despite this clarification, ICE agents continue to pose as peace officers. For example, a lawsuit filed by the ACLU of Southern California alleges that ICE conducts immigration enforcement operations at homes without a warrant or valid consent by using unlawful ruses where ICE officers impersonate police or misrepresent their governmental identity or purpose to residents.

> **SB 852 (Rubio), Chapter 218**, clarifies that only a probation officer or other peace officer may conduct a search or a seizure of a person on specified forms of supervised

release. Specifically, this new law:

- Specifies that a person who is granted probation is subject to search or seizure as part of the terms and conditions of probation only by a probation officer or other peace officer.

- Specifies that a person participating in a home detention or electronic monitoring program is subject to verification of compliance with conditions of detention only by a probation officer or other peace officer.

- Specifies that a person who is serving a part of their sentence on mandatory supervision is subject to search or seizure as part of the terms and conditions of supervision only by a probation officer or other peace officer.

Sex Offenses

Unlawful sexual intercourse with a minor

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.)

> **AB 1371 (Low), Chapter 838**, prohibits a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

Criminal Law: Rights of Victims and Witnesses of Crimes.

After a possible sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a "sexual assault evidence kit" (SAE kit). Analyzing forensic evidence from SAE kits assists in linking the perpetrator to the sexual assault. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS, the national database that stores the genetic profiles of sexual assault offenders. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender.

There are a number of reasons why law enforcement authorities may not submit a SAE kit to a crime lab. For example, the identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety for reasons, or a guilty plea may be entered rendering further investigation moot.

A 2020 report by the California Attorney General Division of Law Enforcement Bureau of Forensic Service found that the backlog for analyzing sexual assault evidence kits continues. It is important to note that just because a kit goes untested does not necessarily mean that the suspect's DNA profile was never uploaded to CODIS in order to potentially link the suspect to other crimes. If, for example, a person is convicted of certain qualifying offenses, a DNA sample is collected pursuant to and the DNA profile uploaded to the Arrestee Index or the Convicted

Offender Index in CODIS. (Pen. Code, § 296.)

SB 464 (Wahab), Chapter 715, requires specified agencies and facilities to participate in an audit of all untested sexual assault kits in their possession and to submit the results of those audits to the Department of Justice (DOJ). Specifically, this new law:

- Requires, no later than July 1, 2026, each law enforcement agency and public crime laboratory, as specified, to create a record in the SAFE-T database for every victim sexual assault kit in their possession that has not had DNA testing completed as of July 1, 2026.

- Requires, if a medical facility submitted selected evidence samples directly to a crime laboratory under a rapid turnaround DNA program, and those samples have been taken through the DNA testing process, the entire sexual assault kit to be considered tested.

- Prohibits a kit that has only undergone biological screening from being considered tested.

- Provides that the SAFE-T database shall only contain records for sexual assault evidence kits collected from victims.

- Provides that sexual assault evidence kits collected from suspects shall also be subject to the audit, as specified, but they shall not be entered into the SAFE-T database.

- Provides that a sexual assault victim may request that a kit collected from them not be tested, and prohibits a kit for which this request has been made from being tested.

- Requires specified information to be reported separately by each entity in a format prescribed by the DOJ.

- Requires, no later than July 1, 2026, each medical facility and other non-law enforcement entity, as specified, to report specified information to DOJ, in the format prescribed by DOJ.

Supervision

Unlawful sexual intercourse with a minor

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.)

> **AB 1371 (Low), Chapter 838**, prohibits a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

Juveniles: informal supervision

Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges that the juvenile committed criminal offenses and is brought by the district attorney.

Alternatively, the Welfare and Institutions Code provides an opportunity for pre-petition informal supervision, also known as diversion. Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court. (Welf. & Inst. Code, § 654.) Importantly, the court cannot require a minor to admit the truth of the petition before granting informal supervision. (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

Under current law, a number of circumstances render a minor presumptively ineligible for informal supervision. For example, a minor is presumptively ineligible for informal supervision where the petition alleges that the minor has committed an offense in which victim restitution exceeds $1,000. (Welf. & Inst. Code, § 654.3, subd. (a)(5).)

Further, probation is required to refer certain types of cases to the prosecutor within 48 hours. These include cases in which it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds $1,000. (Welf. & Inst. Code, § 653.5, subd. (b)(7).)

These dollar limits were established in 1989 – AB 332 (Nolan), Chapter 930, Statutes of 1989 and SB 1275 (Presley), Chapter 1117, Statutes of 1989. They have not been updated since.

AB 1643 (Bauer-Kahan), Chapter 850, increases the threshold amount of victim restitution which makes a minor presumptively ineligible for a program of informal supervision from $1,000 to $5,000. Specifically, this new law:

- Provides that a minor is not eligible for a program of informal supervision, except where the interests of justice would best be served and the court specifies on the record the reasons for its decision, if it appears that the minor has committed an offense in which victim restitution exceeds $5,000, instead of $1,000.

- Raises the amount which requires the probation officer to commence proceedings within 48 hours if the minor is alleged to have committed an offense in which victim restitution is owed, from exceeding $1,000 to exceeding $5,000.

Supervised Release: Searches

In 2017, the Legislature clarified that federal Immigration and Customs Enforcement (ICE) officers and Customs and Border Protection officers are not California peace officers. (Pen. Code, § 830.85.) The impetus behind that legislation, AB 1440 (Kalra), Chapter 116, Statutes of 2017, was to prevent ICE agents from misrepresenting themselves as licensed peace officers in order to compel or coerce individuals into cooperating with them under false pretenses.

Despite this clarification, ICE agents continue to pose as peace officers. For example, a lawsuit filed by the ACLU of Southern California alleges that ICE conducts immigration enforcement operations at homes without a warrant or valid consent by using unlawful ruses where ICE officers impersonate police or misrepresent their governmental identity or purpose to residents.

SB 852 (Rubio), Chapter 218, clarifies that only a probation officer or other peace officer may conduct a search or a seizure of a person on specified forms of supervised release. Specifically, this new law:

- Specifies that a person who is granted probation is subject to search or seizure as part of the terms and conditions of probation only by a probation officer or other peace officer.

- Specifies that a person participating in a home detention or electronic monitoring program is subject to verification of compliance with conditions of detention only by a probation officer or other peace officer.

- Specifies that a person who is serving a part of their sentence on mandatory supervision is subject to search or seizure as part of the terms and conditions of supervision only by a probation officer or other peace officer.

Victims

California Victim Compensation Board: reimbursement for personal or technological safety devices or services

The California Victims Compensation Program provides compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. Compensation is available for a range of qualified expenses, including, but not limited to, outpatient mental health treatment and counseling and in-patient psychiatric costs. The California Victim Compensation Board assists in bill payment and reimbursement for expenses incurred by victims that are the result of violent crimes including mental health services

> **AB 1187 (Quirk-Silva), Chapter 468**, authorizes the California Victim Compensation Board to reimburse the expense of counseling services provided by a Certified Child Life Specialist, certified by the Association of Child Life Professionals, who provides counseling under the supervision of a licensed provider.

Serious felonies: human trafficking

California is one of the largest sites of human trafficking in the United States, with 12,696 human trafficking cases and 24,046 victims identified by the Human Trafficking Hotline since 2007. In California law, human trafficking of a minor occurs when a person causes, induces, or persuades a minor to engage in a commercial sex act with the intent to commit specified crimes including pimping, pandering, or child pornography. Under existing law, a felony conviction for trafficking of a minor is punishable by a prison term of five, eight, or 12 years and a fine of up to $500,000. An instance of trafficking of a minor that involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another person is designated a “serious” felony, counts as a strike under the Three Strikes Law, and is punishable by a prison term of 15 years to life and a fine of up to $500,000.

> **SB 14 (Grove), Chapter 230**, makes all human trafficking of a minor for purposes of a commercial sex act a “serious” felony subject to enhanced penalties, including under California's Three-Strikes Law, except in specified circumstances where the person who committed the offense was a victim of human trafficking at the time of the offense. Specifically, this new law:
>
> - Makes human trafficking of a minor for purposes of a commercial sex act a “serious” felony subject to enhanced penalties, including under California's Three-Strikes Law.
>
> - Specifies that the enhanced penalties do not apply where the person who committed the offense was a victim of sex trafficking at the time of the offense, and the offense did not involve force, fear, fraud, deceit, coercion, violence,

duress, menace, or threat of unlawful injury to the victim or to another person.

- Makes legislative findings and declarations.

Crime Victims: Resource Center

While California has some of the broadest crime victims' rights in the United States, without guidance, many victims struggle to understand these rights and the complicated legal process which they often face alone. This law requires that information is easier to access, providing clarity and relief to those dealing with trauma associated with being the victim of a crime.

The Victims Resource Center was created in 1984, and put into law by AB 1176 (Calderon), Chapter 1443, Statutes of 1985. According to the California Victims Resource Center, the California Victims Resource Center is located in Sacramento, California. The Center has operated the State of California's confidential, toll-free 1-800-VICTIMS line since 1984. Students at the McGeorge School of Law, under attorney supervision, provide information and referrals statewide to victims, their families, victim service providers, and victim advocates.

Callers receive information on such matters as victims' compensation, victims' rights in the justice system, restitution, civil suits, right to speak at sentencing and parole board hearings, as well as information on specific rights of victims of domestic violence, elder abuse, child abuse, and abuse against disabled.

The Center is mandated by legislation, California Penal Code Section 13897, and is funded through the California Governor's Office of Emergency Services.

The Victims Resource Center currently has a fully functioning website with a variety of resources for victims, families, and providers. The website also includes live chat options as well as an escape option for a user to exit the website discreetly. This law updates the code section by requiring the website statutorily.

SB 86 (Seyarto), Chapter 105, requires the California victim resource center to provide an internet website. Specifically, this new law:

- States that a victim resource center must provide legal and other information to crime victims, their families, and providers of services through an internet website.

- Requires that the website contain information on the following:

    - Information about victims' rights, including specified disclosures;

    - Links to victim resources offered by the state and by each county;

- Additional links or resources from public or private entities that the center determines are relevant and appropriate;
- A summary of the California criminal justice process;
- Information on obtaining restitution from the California Victim Compensation Board; and,
- Information on obtaining legal protections for victims and their families.

- Makes technical, non-substantive changes.

Domestic violence documentation: victim access

California has established various legal avenues to help protect victims of domestic violence and other similar crimes from further abuse. For example, under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.), a court may issue a protective order to restrain any person for the purpose of preventing a recurrence of domestic violence, abuse, or sexual abuse and ensuring a period of separation of the persons involved (Fam. Code, §§ 6220, 6300). To obtain this legal protection, a court requires evidence of past abuse. (See Fam. Code, § 6300, subd. (a).) Police reports may be evidence for a court to consider when determining whether to issue a protective order for the victim.

AB 403 (Romero), Chapter 1022, Statutes of 1999, created the Access to Domestic Violence Reports Act of 1999. It required that domestic violence victims be provided with an expedited and affordable method for obtaining these reports. Under that legislation, a victim of domestic violence or their representative, must be provided, within 48 hours of request, a copy of the police report at no cost. In 2016, the Legislature broadened this requirement to include victims of sexual assault, stalking, human trafficking, elder or dependent adult abuse, or their representative. (AB 1678 (Santiago), Ch. 875, Stats. of 2016.)

SB 290 (Min), Chapter 71, requires law enforcement agencies to provide victims of specified crimes or their representative, upon request and within a specified time frame, 911 recordings, if any, and any photographs noted in an incident report. Specifically, this new law:

- Requires state and local law enforcement agencies to provide, in addition to a requested incident report and without charging a fee, a copy of any accompanying or related photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of 911 recordings, related to the following crimes:|
  - Domestic violence, as defined;

- Sexual assault, as defined;
- Stalking, as defined;
- Human trafficking, as defined; and,
- Abuse of an elder or dependent adult, as defined.

- Provides that a copy of any photographs specified above as well as a copy of 911 recordings shall be made available to a victim or their representative no later than five working days after being requested, unless the state or local law enforcement agency informs the victim or their representative why, for good cause, the items are unavailable, in which case they shall be made available no later than 10 working days after the request is made. Specifies that a person who is serving a part of their sentence on mandatory supervision is subject to search or seizure as part of the terms and conditions of supervision only by a probation officer or other peace officer.

- Extends the time limit for victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult, and their representatives, to request incident reports from within two years to within five years of the completion of the report. Applies the same time limits to requests for photographs, 911 recordings, and evidence.

Children's advocacy centers: recordings

According to the Children's Advocacy Centers of California, "A children's advocacy center (CAC) is a child-friendly facility in which law enforcement, child protection, prosecution, mental health, medical and victim advocacy professionals work together to investigate abuse, help children heal from abuse, and hold offenders accountable. In the neutral setting of the CAC, team members can collaborate on strategies that will aid investigators and prosecutors without causing further harm to the victim. This innovative approach significantly increases the likelihood of a successful outcome in court and long-term healing for the child. Kids can go on to live full and rich lives, and child advocacy centers help them get there."

Existing law allows each county to use a children's advocacy center to coordinate a multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment. The law sets forth standards that each advocacy center must meet. The law does not, however, set forth a uniform process for releasing recordings that are made of the forensic interviews of children at these centers – i.e., recordings that could be used in criminal or civil cases. (See Pen. Code, § 11166.4.)

By contrast, current law provides that suspected child abuse reports are confidential and specifies how they may be disclosed. (Pen. Code, § 11167.5.) Similarly, current law provides for the

confidentiality of forensic medical exams performed on sexual assault suspects and outlines how they may be disclosed. (Pen. Code, § 11160.1.)

SB 603 (Rubio), Chapter 717, creates a process and standards for the release of recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation. Specifically, this new law:

- Provides that recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation are confidential and are not public records.

- Requires a multidisciplinary team associated with a children's advocacy center to include, in the case of an Indian child, a representative from the child's tribe, including, but not limited to, a tribal social worker, tribal social services director, or tribal mental health professional.

- Provides that the children's advocacy center or other identified multidisciplinary team member custodian shall ensure that all recordings of child forensic interviews be released only in response to a court order.

- Requires the court to issue a protective order as part of the release, unless the court finds good cause that the disclosure of the interview should not be subject to such an order.

- Specifies the protective order shall include all the following language:

    - That the recording be used only for the purposes of conducting the party's side of the case, unless otherwise ordered by the court;

    - That the recording not be copied, photographed, duplicated, or otherwise reproduced except as a written transcript that does not reveal the identity of the child, unless otherwise ordered by the court;

    - That the recording not be given, displayed, or in any way provided to a third party, except as otherwise permitted, or as necessary in preparation for or during trial;

    - That the recording remain in the exclusive custody of the attorneys, or in the case of an Indian child, the tribal representative of a tribe unrepresented by an attorney, their employees, or agents, including expert witnesses by either party, who shall be provided a copy and instructed to abide by the protective order;

    - That, except as specified above, if the party is not represented by an attorney, the party, the party's employees and agents, including expert witnesses, shall not be given a copy of the recording but shall be given reasonable access to view or listen to the recording by the custodian of the

recording.

- That in a criminal case involving an in pro per defendant, if the court has appointed an investigator, the court may order a copy of the recording be provided to the investigator with a protective order consistent with these provisions and further order the investigator to return the recording to the court upon conclusion of the criminal case; and,

- That upon termination of representation or upon disposition of the matter, after all appeals and writs of habeas corpus have been exhausted, attorneys promptly return all copies of the recording.

- Provides that notwithstanding the above, the children's advocacy center or other identified multidisciplinary team member custodian shall release or consent to the release or use of any recording, upon request, to both of the following:

    - Law enforcement agencies authorized to investigate child abuse, or agencies authorized to prosecute juvenile or criminal conduct described in the forensic interview; and,

    - County counsel evaluating an allegation of child abuse.

- Provides that in any court proceeding, release of any recording pursuant to the civil, dependency, or criminal discovery process shall be accompanied by a protective order, unless the court finds good cause that disclosure of the recording should not be subject to such an order.

- Provides that a child advocacy center where a forensic interview is conducted may use the recording for the purposes of supervision and peer review as required to meet national accreditation standards. Recordings that anonymize the child's face or likeness may be used for training.

- Provides that recognizing the inherent privacy interest that a child has with respect to the child's recorded voice and image when describing highly sensitive details of abuse or neglect, any and all recordings of child forensic interviews shall not be subject to a Public Records Act request and are exempt from any such request.

- Provides the recording shall not become a public record in any legal proceeding.

- Provides that the court shall order the recording be sealed and preserved at the conclusion of the criminal proceeding.

- Defines "recording" as including audio, video, digital, or any other manner in which the child's voice or likeness is memorialized.

Miscellaneous

Body Armor: Prohibition

The term "body armor" is commonly associated with vests or other protective material that provides protection against ballistic impacts, i.e. bullets. According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, but was able continue on due to the body armor.

AB 92 (Connolly), Chapter 232, prohibits a person from purchasing or possessing body armor if state law prohibits them from possessing a firearm. Specifically, this new law:

- Makes it a misdemeanor for a person who is prohibited from possessing a firearm under California law to purchase or possess body armor, except if the person's prohibition is based solely on their status as a minor.
- Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor."
- Requires a court to advise an individual of the body armor prohibition upon advising that person of their firearm prohibition.
- States that a person must relinquish any body armor in their possession.
- Allows a prohibited person to petition a chief of police or sheriff for an exemption if their employment or safety depend on possessing body armor, as specified.

Homeless Death Review Committees

Local Child Death Review Teams have been functioning since the early 1980s, with Los Angeles County starting in 1978. Some California counties maintain child death review teams, however while they are formally authorized in statute, they are not mandated. (Pen. Code, §11174.32.)

Elder and dependent adult death review teams were authorized in statute in 2001 (Pen. Code, § 11174.5). According to the Sacramento District Attorney's Office "In July 1999, the District Attorney's Office partnered with Sacramento County Department of Health and Human Services to form the Elder Death Review Team (EDRT). EDRT is a multidisciplinary team with members representing law enforcement, social services, the coroner and community based organizations. Their purpose is to conduct in-depth reviews of elder and dependent adult abuse and neglect cases that resulted in death. They identify systemic needs, develop strategies, policies and

procedures to improve communication between the organizations, and work toward preventing elder abuse and neglect. EDRT meets six times a year, and produces a report of findings for the Board of Supervisors." This team has reports on its website dating back to 2004.

On average, approximately over 129,000 people experience homelessness throughout the state of California. According to the National Alliance on Homelessness, "in Los Angeles alone, 49,995 people fall under the definition homeless on daily basis." Given the affordable housing shortage throughout the state, this number could be higher.

This law would allow counties to establish homeless death review committees, modeled after Child Death Review Teams and elder Death Review Teams, with specific protocols and guidelines.

AB 271 (Quirk-Silva), Chapter 135, allows counties to establish homeless death review committees. Specifically, this new law:

- Allows each county to establish a homeless death review committee to assist local agencies in identifying the root causes of death of homeless individuals.

- Allows each county to develop an autopsy protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on homeless individuals in the identification of the cause and mode of death for the individual.

- Provides that written or oral communication, or, a document shared within or produced by a homeless death review committee information is confidential and not subject to third party discovery or disclosure.

- Permits the homeless death review committee to share recommendations upon the completion of a review at the discretion of a majority of the members on the committee.

- Allows an organization represented on the homeless death review committee to share with other members of the committee information that may be pertinent to review. Any information shared is confidential.

- States that an individual or agency that has information governed by these provisions is not required to disclose information; the intent is to allow the voluntary disclosure of information by the individual or agency that has the information.

- Allows an individual or agency that has information requested by the homeless death review committee to reply on the committee's request as a basis for disclosing the information.

- Permits the following information to be disclosed to a homeless death review committee:

- Medical information, unless disclosure is prohibited by federal law;
- Mental health information;
- State summary criminal history information, criminal offender record information, and local summary criminal history information, as specified;
- Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct;
- Information provided to probation officers in the course of the performance of their duties, including, but not limited to reports and the information on which these reports are base;
- Public services information for which grant-in-aid are received by this state from the federal government, as specified;
- Medi-Cal information, as specified;
- General relief information, as specified; and,
- Reports of suspected elder or dependent adult abuse and information contained therein, and information relevant to the incident of abuse, except the identity of persons who have made reports, as specified.

- States that written or oral information may disclosed, notwithstanding the following:
  - Willful, unauthorized violations of professional confidences which constitute unprofessional conduct;
  - Confidential communications between a psychologist and client;
  - Confidential communications between a licensed marriage and family therapists and client
  - Attorney-client privilege;
  - Lawyer-client privilege;
  - Physician-patient privilege; and,
  - Psychotherapist-patient privilege.

- Requires any information and recommendations gathered by the homeless death review committee be used by the county to develop education and prevention strategies that will lead to improved coordination of services for the homeless population.

Gun Violence Restraining Orders: Body Armor

The term "body armor" is commonly associated with vests or other materials that can be worn to provide protection against ballistic impacts, i.e. bullets. According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, however, the bullet was stopped by the shooter's body armor.

In California, a Gun Violence Restraining Order (GVRO) will prohibit a person from purchasing or possessing firearms or ammunition, and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession. Currently, a court may, when considering evidence of an individual's increased risk of violence, look into any prior felony arrest history, past violations of certain protective orders, substance abuse issues, and any recent acquisitions of firearms or other deadly weapons. (Pen. Code, § 18155, subd. (b)(2).) Although acquisition of body armor in and of itself may not be indicative of a greater risk for firearm violence, when taking it into account under the totality of the circumstances, such information may be pertinent.

> **AB 301 (Bauer-Kahan), Chapter 234,** provides that, when determining whether grounds for issuing a GVRO exist, a court may consider evidence of the acquisition of body armor as a factor indicative of an increased risk of firearm violence.

Excited delirium

"Excited delirium" has been characterized as a state of extreme mental and physiological excitement, featuring agitation, aggression, hyperthermia, exceptional strength and endurance without fatigue. However, this condition "is not listed in the World Health Organization's International Classification of Diseases nor the Diagnostic and Statistical Manual of Mental Disorders (DMS-5), tools seen as the standard for medical diagnosis across the world."

The diagnosis is controversial as the term is generally attributed to sudden unexplained deaths of individuals while in police custody, which may be used as a justification for excessive police force. (https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis) For example, it was relied on by the defense for former Minneapolis police officer Derek Chauvin as a contributing factor in George Floyd's death. A 2020 review in Florida Today showed that nearly two-thirds of the deaths in the state listing the cause of death as

“excited delirium” over the past decade occurred while the person who died was either in police custody or had some other interaction with law enforcement. Similarly, an Austin American-Statesman investigation into non-shooting deaths people in police custody in Texas since 2005 revealed that more than one in six of the 289 such deaths have been attributed to “excited delirium.”.

In California, the term was used as the cause of death after the December 2020 death of Antioch resident Angelo Quinto, who died in police custody while suffering a mental health episode. Quinto’s family alleged that on the night he was taken into custody, officers knelt on Quinto’s neck for nearly five minutes until he became unresponsive, a claim disputed by police. Quinto died in the hospital three days later, and the Contra Costa County Sheriff-Coroner’s Office ruled that the death was a result of “excited delirium.”

AB 360 (Gipson), Chapter 430, provides that "excited delirium" is not a validly recognized medical diagnosis or cause of death in this state. Specifically, this new law:

- Defines excited delirium as a term used to describe a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium includes, but is not limited to, excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

- Provides that a state or local government entity, or employee or contractor of a state or local government entity, shall not document, testify to, or otherwise use in any official capacity or communication excited delirium as a recognized medical diagnosis or cause of death.

- Provides that a coroner, medical examiner, physician or physician's assistant shall not state on the certificate of death, or in any report, that the cause of death was excited delirium. The coroner or medical examiner may list and describe the contributing causes of death, but shall not describe the underlying cause as excited delirium.

- Provides that a peace officer shall not use the term excited delirium to describe an individual in an incident report completed by a peace officer. A peace officer may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as excited delirium.

- Provides that evidence that a person suffered or experienced excited delirium is inadmissible in any civil action. A party or witness may describe the factual circumstances surrounding the case, including a person's demeanor, conduct, and physical and mental condition at issue, including, but not limited to, a person's

state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain, but shall not describe or diagnose such demeanor, conduct, or condition as excited delirium, or attribute such demeanor, conduct, or physical and mental condition to excited delirium.

California Violence Intervention and Prevention Grant Program

The California Violence Intervention Program grant program (CalVIP) was established in 2017 and replaced the California Gang Reduction Intervention and Prevention grant program. According to the Board of State and Community Corrections (BSCC), "In October 2019 Governor Newsom signed the Break the Cycle of Violence Act (AB 1603). AB 1603 codified the establishment of CalVIP and defined its purpose: to improve public health and safety by supporting effective violence reduction initiatives in communities that are disproportionately impacted by violence, particularly group-member involved homicides, shootings, and aggravated assaults. The Break the Cycle of Violence act specifies that CalVIP grants shall be used to support, expand and replicate evidence-based violence reduction initiatives, including but not limited to:

- Hospital-based violence intervention programs,
- Evidence-based street outreach programs, and
- Focused deterrence strategies.

"These initiatives should seek to interrupt cycles of violence and retaliation in order to reduce the incidence of homicides, shootings, and aggravated assaults and shall be primarily focused on providing violence intervention services to the small segment of the population that is identified as having the highest risk of perpetrating or being victimized by violence in the near future." This law changes the purpose of the CalVIP. Rather than focusing on various forms of violence, including shootings but also assaults and homicides in general, this bill would limit the purpose of CalVIP to community gun violence. This law defines community gun violence as intentional acts of interpersonal violence involving a firearm, generally committed in public areas by individuals who are not intimately related to the victim, and which result in physical injury, emotional harm, or death.

AB 762 (Wicks), Chapter 241, changes the purpose of CalVIP, as well as the eligibility requirements for the grant, and makes the program permanent. **Specifically, this bill:**

- Changes the purpose of CalVIP from reducing violence in the form of homicides, shootings, and aggravated assaults to reducing community gun violence.

- States that, for the purposes of CalVIP, "community gun violence" means intentional acts of interpersonal violence involving a firearm, generally committed in public areas by individuals who are not intimately related to the victim, and which result in physical injury, emotional harm, or death.

- Expands CalVIP to counties that have one or more cities disproportionately impacted by community gun violence, and to tribal governments.

- Requires the BSCC to take input from tribal governments on how to determine "compelling need", in the context of tribal governments.

- Revises CalVIP grant proposal requirements to include, but not limited, to the following:

    - A statement describing how the applicant proposes to use the grant to implement an evidence-based community gun violence reduction initiative, including how the applicant will identify, engage, and provide violence intervention services to individuals at right of perpetrating or being victimized by community gun in the near future;

    - For city and county applicants, a statement demonstrating support for the proposed violence reduction initiative from one or more community-based organizations, or from a public agency or department other than a law enforcement agency that is primarily dedicated to community safety or violence prevention; and,

    - Require a CalVIP grant proposal statement regarding enhancing coordination of existing programs to include, where relevant, a description of efforts to coordinate with tribal governments located near or within the planned service delivery area.

- States that in awarding CalVIP grants, the board shall give preference to applicants whose grant proposals demonstrate the greatest likelihood of reducing the incidence of community gun violence, in the applicant's community within the grant period, rather than reducing the incidence of homicides, shootings, and aggravated assaults generally.

- Allows the BSCC to award competitive grants in amounts not to exceed $2.5 million per applicant per year. The length of the grant cycle shall be at least three years.

- Requires the BSCC to award at least two grants to cities or counties with populations of 200,000 or less.

- Eliminates the requirement that grant recipients must commit a cash or in-kind contribution equivalent to the amount of the grant awarded.

- Requires the BSCC, upon making CalVIP grant awards, to make at least 20% of approved grantee's total grant award available to the grantee at the start of the grant period or as soon as possible thereafter, in order to enable grantees to immediately utilize such funds to support violence reduction initiatives.

- States that a city or county that receives a CalVIP grant shall distribute no less than 50% of the grant to one or more of any of the following types of entities, including tribal governments, as specified.

- Requires the BSCC to form an executive steering committee including, without limitation:

    - Persons who have been impacted by community gun violence;

    - Formerly incarcerated persons;

    - Subject matter experts in community gun violence prevention and intervention;

    - The director of the California Office of Gun Violence Prevention or the director's designee; and,

    - At least three persons with direct experience in implementing evidence-based community gun violence reduction initiatives, including initiatives that incorporate public health and community-based approaches focused on providing violence intervention services to the small segment of the population identified as high risk perpetrating or being victimized by community gun violence in the near future.

- Allows the BSCC to reserve up to $2 million of the funds appropriated for CalVIP each year for the costs of administering and promoting the effectiveness of the program rather than the existing 5% allowed for administrative purposes.

- Allows the BSCC, with the advice and assistance of CalVIP executive steering committee, to reserve up to 5% of the funds appropriated for CalVIP each year for the purpose of supporting programs and activities designed to build and sustain capacity in the field of community gun violence intervention and prevention, and to support detailed community gun violence problem analyses that help service providers and other stakeholders inform and develop community gun violence reduction initiatives by identifying individuals in their community who are at high risk of perpetrating or being victimized by community gun violence in the near future and highest need for violence intervention services.

- Provides that activities to build and sustain capacity in the field of community-based gun violence intervention and prevention may include, without limitation:

    - Contracting with or providing grants to organizations that provide training, certification, or continued professional development to community-based gun violence intervention and prevention professionals, including frontline professionals and technical assistance providers;

- Contracting with or providing grants to nonprofit intermediary organizations that foster the development and growth of community-based organizations dedicated to community gun violence intervention and prevention;

- Providing mental health support and other supportive services to frontline community gun violence intervention professionals in order to recruit, retain, and sustain these professionals in their field; and,

- Providing mental health services or financial assistance to family members of frontline community gun violence intervention professionals who are killed or violently injured in the performance of their work.

- Changes the reporting requirements the Legislature from 90 days following the close of each grant cycle, to 120 days.

- Requires evaluations of CalVIP-supported initiatives be made available to the public.

- States that these provisions shall only apply to CalVIP grant applications and awards made after January 1, 2024, and shall not be construed to affect grant applications or awards made prior to this date.

- Removes the sunset date of January 1, 2025 and allows the CalVIP to operate indefinitely.

Law Enforcement: Social Media

Social media mug shots have been compared to a modern-day scarlet letter. They have been used as a tool for public shaming. They become a public record used by other organizations like newspapers. And they can have long-term consequences because they can be revealed much later by an internet search of a person's name.

In recent years the Legislature has taken steps to curb the invasive use and commercial exploitation of booking photos. In 2014, the Legislature passed SB 1027 (Hill, Ch. 194, Stats. 2014), which prohibited a person from publishing or otherwise disseminating a booking photograph to solicit payment of a fee or other consideration from a subject to remove, correct, modify, or to refrain from publishing or otherwise disseminating the photo. In 2017, this Legislature also passed AB 1008 (McCarty, Ch. 789, Stats. 2017), a so-called "ban the box" law, which prohibited an employer from inquiring about an applicant's conviction history, and from considering, distributing, or disseminating information about arrests not followed by conviction, referral to or participation in pre- or post-trial diversion programs. More recently, the Legislature passed AB 1475 (Low, Ch. 126, Stats. of 2021), which prohibited law enforcement agencies from sharing booking photos on social media of individuals arrested for non-violent offenses, except under specific circumstances.

AB 994 (Jackson), Chapter 224, requires a police department or sheriff's office to remove a booking photo shared on the department's social media page within 14 days unless the subject of the image is a fugitive or an imminent threat to public safety, or continuing to share the image is otherwise justified by a legitimate law enforcement interest. Specifically, this new law:

- Requires a police department or sheriff's office sharing a booking photo of an individual on social media to use the name and pronouns given by the individual.

- Allows a police department or sheriff's office to include other legal names or known aliases of an individual, if using the names or aliases will assist in locating or apprehending the individual or in reducing or eliminating an imminent threat to an individual or to public safety, or if an exigent circumstance exists that necessitates their use due to an urgent and legitimate law enforcement interest.

- Requires the removal of a booking photo from the department's social media page within 14 days regardless of the crime, unless the person is a fugitive or an imminent threat, or there exists a legitimate law enforcement purpose for not removing the photo.

- Eliminates the requirement that the individual who is the subject of a social media post, or their representative, request and make a showing, as specified, in order to have their booking photo removed from a police department's or sheriff's department's social media page.

Criminal Justice Realignment

AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state prison, required that more felons serve their sentences in county jails, and affected parole supervision after release from custody.

There have been several reports published by the Plublic Policy Institute of California (PPIC) which studied the impacts of realignment. For example, PPIC produced a report evaluating the impact of Realignment after the first several years. Subsequently, in 2017, PPIC produced a report on Realignment and Recidivism In 2015, the RAND Corporation studied county responses to realignment in 12 counties. But there does not seem to be a report evaluating the longer term effects of realignment.

It is likely that we will never know for sure what those effects may have been because there have been other significant criminal justice reforms not foreseen at the time which would have affected the impact of realignment. For example, Proposition 47, passed by the voters in November 2014 that reduced low-level drug and property crimes from felonies to misdemeanors.

In addition to criminal justice reforms, there was the completely unanticipated effect of a worldwide pandemic, COVID-19. In March of 2020, Governor Newsom issued an executive order directing CDCR to temporarily halt the intake and/or transfer of convicted adult offenders and youth into the state's 35 prisons and four youth correctional facilities in order to reduce the risks of COVID-19 in correctional settings. This of course affected jail populations because defendants who had been sentenced to prison could not be transferred. Meanwhile, both state and local correctional facilities had COVID-19 outbreaks, and released incarcerated individuals early. In addition, the Judicial Council issued a series of emergency orders which delayed arraignments, preliminary hearings, and jury trials statewide. The Judicial Council also adopted a statewide COVID-19 emergency bail schedule that set bail at $0 for most people accused–but not yet tried–of misdemeanors and lower-level felonies. These orders also affected jail populations because a significant number of the individuals held in jails are pre-trial detainees.

Because of the pandemic, coupled with new criminal justice reforms, it may never be possible to know the true effects of criminal justice realignment. Nevertheless, it would be beneficial to take a long-term look at realignment policies and their effects. Since realignment provided the counties with flexibility not only on how to treat criminal offenders, but also on how to spend their funding, such a study will provide counties with a tool to learn best practices that they might adopt.

AB 1080 (Ta), Chapter 96, requires the Legislative Analyst's Office (LAO) to prepare a report evaluating the results of the Criminal Justice Realignment Legislation over the previous ten years. Specifically, this new law:

- States that the LAO report evaluating Realignment must include, but is not limited to, the following:
    - The amount of funding received per county and how that funding was allocated, including but not limited to, the following categories: funding received by department or agency; all types of facilities construction; the number and type of additional personnel; rehabilitative programming; and, any other services.
    - Information on sentencing practices, including the use of straight sentencing, split sentencing, probation, diversion, and any other alternatives to custody.
    - The impact on the county jail population, as based on changes to the average monthly jail population, whether there were changes in jail release policies, and whether the county jail was under any court-ordered population cap.
    - Information on post-release community supervision practices, including caseload of probation officers; responses to supervision violations; describing the sanctions used and particularly the use of flash

incarceration; and programming and services offered.

- Recidivism outcomes, as defined by rearrest and reconviction rates after release from custody for offenders sentenced under realignment, and those released on post-release community supervision.

- Provides that the report may be based on data from every county, or alternatively, a multi-county study using data from at least 15 counties representative of the state.

- Establishes a submission date for the report of June 30, 2026.

Crime: witnesses and informants

The S-Visa program is for noncitizen criminal informants/witnesses who have reliable information about a criminal/terrorist organization and cooperate with law enforcement. Only law enforcement agencies can initiate S-Visas. Law enforcement agencies use Form 1-854A to request an S visa for a noncitizen witness/criminal informant. After a noncitizen informant has fulfilled their obligation (cooperation), law enforcement agencies can use Form I-854B to authorize an S-visa holder to apply for an adjustment in status to become a lawful permanent resident. (https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-an-informant-s-nonimmigrant [as of April 4, 2023].)

To be eligible for an S-Visa, the noncitizen must, among other things, possess critical reliable information concerning a criminal organization or enterprise, or a terrorist organization or operation, and must have supplied, or be willing to supply, that information to law enforcement authorities. (8 U.S.C. § 1101 (a)(15)(S).) The two most common types of S-Visas are the S5-Visa and the S6-Visa. The S5-Visa may be granted to a foreign national who has been determined by the Attorney General to possess critical and reliable information concerning a criminal organization or enterprise and who provides that information to federal or state law enforcement or a federal or state court. In contrast, the S6-Visa classification may be granted to a noncitizen who the Attorney General and Secretary of State have determined possesses critical and reliable information concerning terrorism and who is willing to supply, or has supplied, information to federal law enforcement authorities or to a federal court.

While there are codified state procedures for non-citizen victims of crime to obtain T-Visas and U-Visas, there are no codified procedures for non-citizen criminal informants and witnesses to obtain an S5-Visa.

AB 1261 (Santiago), Chapter 679, codifies the procedures for a noncitizen qualified criminal informant to obtain certification from a certifying entity for purposes of obtaining an S-Visa. Specifically, this new law:

- Authorizes a certifying entity to certify Form I-854 for a qualified criminal informant to obtain an S-Visa.

- Requires the certifying official to fully complete and sign the Form I-854 certification and to include specific details regarding the qualified criminal informant's helpfulness, including the nature of the crime investigated or prosecuted and a detailed description of the qualified criminal informant's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

- Provides that a qualified informant does not have to be present in the United States for certification of a Form I-854.

- Prohibits a certifying official from disclosing the immigration status of the qualified criminal informant for whom Form I-854 certification has been completed, except to comply with federal law or legal process, or if authorized by the informant.

- Provides that a certifying entity may only withdraw the certification if the qualified criminal informant refuses to provide information and assistance when reasonably required.

- Defines a "certifying entity" as specified.

- Defines "qualified criminal informant" as an individual who meets the following requirements:

    - The informant must have reliable information about an important aspect of a crime or pending commission of a crime;

    - The informant must be willing to share that information with United States law enforcement officials or become a witness in court; and,

    - The informant's presence in the United States is important and leads to the successful investigation or prosecution of that crime.

- Provides that for the purposes of rebutting the presumption that a victim has been helpful the refusal for cooperation cannot be used if the victim reasonably asserts they were unaware of a request for cooperation.

- Provides that if a certifying entity does not certify a Form I-918 Supplement B certification, they shall provide a written explanation for the denial in writing with specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate.

- Specifies that apprehension of the suspect who committed the qualifying crime is not required for the victim to request and obtain the Form I-914, or Form I-918, Supplement B certification.

- Provides that a victim who submits a Form I-918 Supplement B to a certifying entity does not have to be present in the United States at the time of submitting the certification or filing a petition.

- Allows certifying entities to certify a Form I-918 not only for direct victims, but also "indirect victims," and "bystander or witness victims," as defined.

Hope California: Secured Residential Treatment Pilot Program.

Despite widespread implementation of involuntary drug treatment worldwide, there appears to be little available, high-quality research on its effectiveness. A recent report discussing the complexity of the mandated drug treatment model for those involved in the criminal justice system noted “long-standing debate about whether people with substance use disorders who are involved in the legal system should be coerced to enter treatment as an alternative to incarceration or some other sanction

Regardless, some policy-makers have supported efforts to compel persons suffering from severe mental illness and substance use disorders into treatment. On March 3, 2022, Governor Gavin Newsom announced a plan to give family-members, county and community-based social services, behavior health provides, or first responders the ability to petition a court to have a person placed into involuntary treatment for up to 24 months. According to the Governor’s announcement:

> CARE Court is designed on the evidence that many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. It's a long-term strategy to positively impact the individual in care and the community around them. The plan focuses on people with schizophrenia spectrum and other psychotic disorders, who may also have substance use challenges, and who lack medical decision-making capacity and advances an upstream diversion from more restrictive conservatorships or incarceration.

On September 14, 2022, SB 1338 (Umberg), Chapter 319, Statutes of 2022, was signed and the CARE Act was created. Individuals experiencing severe mental illness with a diagnosis of schizophrenia spectrum and other psychotic disorders qualify for the CARE process. Many people who have a substance use disorder (SUD) also struggle with mental disorders. The National Institute on Drug Abuse, Common Comorbidities with SUD Research Report (Apr. 2020) reported that indeed, patients with schizophrenia have higher rates of…drug use disorders than the general population.

> **AB 1360 (McCarty), Chapter 685,** authorizes the Counties of Sacramento and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals

suffering from substance use disorders who have been convicted of "drug-motivated" felony crimes. Specifically, this new law:

- Authorizes the Counties of Sacramento and Yolo to offer the pilot program to eligible individuals if the program meets specified conditions, including:
    - The program facility is licensed by the State Department of Health Care Services (DHCS) as an alcoholism or drug abuse recovery or treatment facility;
    - The program facility is a clinical setting managed and staffed by the county's health and human services agency (HHSA), with oversight provided by the county's probation department;
    - The program facility is not in a jail, prison, or other correctional setting;
    - The program facility is secured but does not include a lockdown setting;
    - The individual, upon a judge pronouncing a sentence to be served in a county jail or state prison, must choose and consent to participate in the program in lieu of incarceration;
    - The DHCS monitors the program facility to ensure the health, safety, and well-being of program participants;
    - The county develops and staffs the program in partnership with relevant community-based organizations and drug treatment services providers to offer support services;
    - HHSA ensure that a risk, needs, and psychological assessment, utilizing the Multidimensional Assessment of the American Society of Addiction Medicine (ASAM), as part of the ASAM criteria, be performed for each individual identified as a candidate for the program;
    - The participant's treatment, in terms of length and intensity, within the program is based on the findings of the risk, needs, and psychological assessment and the recommendations of treatment providers;
    - The program adopts the Treatment Criteria of ASAM;
    - The program provides an individualized, medically assisted treatment plan for each resident including, but not limited, medically assisted treatment options and counseling based on the recommendations of a substance use disorder specialist;

- A judge determines the length of the treatment program after being informed by, and based on, the risk, needs, and psychological assessment and recommendations of treatment providers;

- The participant continues outpatient treatment for a period of time and may also be referred to a "step-down" residential treatment facility after leaving the secured residential treatment facility;

- A judge shall also determine that the program will be carried out in lieu of a jail or prison sentence after making a finding that the defendant's decision to choose alternative treatment program is knowing, intelligent, and voluntary;

- If treatment services provided to a participant during the program are not reimbursable under the Medi-Cal program or through the participant's personal health coverage, funds allocated to the state from the 2021 Multistate Opioid Settlement Agreement, subject to an appropriation by the Legislature, may be used to reimburse those treatment services to the extent consistent with the terms of the Settlement Agreement and the Final Judgment;

- The county reports annually to the DHCS and to the Legislature.

- States that eligible drug-motivated crimes include any felony crime except sex crimes requiring sex offender registration, "serious" felonies, or "violent" felonies, as specified, and excluding nonviolent drug possession offenses.

- Requires the judge to offer the defendant voluntary participation in the pilot program as an alternative to a jail or prison sentence that the judge would otherwise impose at the time of sentencing or pronouncement of judgment in which sentencing is imposed.

- Requires that the amount of time, combined with any outpatient treatment or "step-down" residential treatment, does not exceed the term of imprisonment to which the defendant would otherwise be sentenced, not including any additional term of imprisonment for enhancements, for the drug-motivated crime.

- Prohibits the court from placing the defendant on probation for the underlying offense.

- Requires the court to order the participant be released prior to the end of the original order if the treatment providers make a recommendation to the court that the participant no longer needs to be in the secured residential treatment program.

- Requires the court to expunge and seal the conviction from the participant's record, and to expunge the conviction of any previous drug possession or drug use crimes on the participant's record, if the participant successfully completes the court-ordered drug treatment program.

Medical evidentiary examinations: reimbursement

The federal Violence against Women Act affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report to the assault to law enforcement. The Office of Emergency Services (OES) uses discretionary funds from various federal grants to offset the costs of the examination. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every five years. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances. OES is to provide reimbursement from funds to be made available upon appropriation for this purpose. (Pen. Code, § 13823.95.)

In AB 2185 (Weber), Chapter 557, Statutes of 2022, the Legislature provided domestic violence victims access to medical evidentiary exams, free of charge, by the Sexual Assault Response Team (SART), Sexual Assault Forensic Exam (SAFE) teams, or other qualified medical evidentiary examiners. Each county's board of supervisors is required to authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence. Costs incurred for the medical evidentiary portion of the examination cannot be charged directly or indirectly to the victim. The costs associated with these medical evidentiary exams are to be funded by the state, subject to appropriation by the Legislature, and require the OES to establish a 60-day reimbursement process within one year upon initial appropriation. (Pen. Code, § 11161.2.)

Existing law does not similarly provide reimbursement for the medical forensic examination of suspected child physical abuse or neglect. This makes it difficult for clinics and providers to offer this service, especially in rural districts where access is scarce.

AB 1402 (Dahle, Megan), Chapter 841, prohibits costs for the medical evidentiary portion of a child abuse or neglect examination from being charged directly or indirectly to the victim. Specifically, this new law:

- Requires the costs associated with the medical evidentiary examination of a victim of child physical abuse or neglect to be separate from diagnostic treatment and procedure costs associated with medical treatment.

- Prohibits costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of child physical abuse or neglect.

- Provides that each county's board of supervisors shall authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through the OES for the performance of medical evidentiary examinations for victims of child physical abuse or neglect and shall

notify OES of this designation.

- States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.

- Requires each county's designated SART, SAFE, or other qualified medical evidentiary examiners to submit invoices to OES, who shall administer the program. A flat reimbursement rate shall be established.

- Specifies that within one year upon initial appropriation, OES shall establish a 60-day reimbursement process. OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

- Prohibits reduced reimbursement rates based on patient history or other reasons.

- Allows victims of child physical abuse or neglect to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and requires that county's approved SART, SAFE teams, or qualified medical evidentiary examiners to be reimbursed for the performance of these exams.

Pupil Transportation: driver qualification

In California, it is not compulsory for districts to provide transportation services to students. Rather, the governing board of each district has discretion to provide transportation services if they deem it advisable and if good reasons exist. (Ed. Code, § 39800.) However, federal law mandates that districts must provide transportation to students with disabilities if it is required by their Individualized Education Plan (IEP), as well as to homeless students. Many districts in California provide home-to-school transportation for students if they have a disability, are homeless, or are otherwise low-income. Schools can provide school transportation in a variety of ways, some have their own transportation departments, others contract with other local educational agencies (LEAs), some use private companies, and others use a mix of these options.

There are several statutory requirements that an individual must meet to be a schoolbus driver, including, as relevant to this committee, undergoing a background check, being subjected to drug testing, and being a mandated reporter. (Ed. Code, §§ 45125, 45125.1; Veh. Code, § 34520.3; Pen. Code, § 11165.7.) However, when it comes to other drivers that LEAs contract with to transport youth such as Transportation Network Companies or Charter-Party Carriers, there may be some rules regulating a portion of those drivers, but there was no clear set of rules specifically governing the overall transportation of students to and from school.

SB 88 (Skinner), Chapter 380, establishes requirements for drivers, whether employed by an LEA, contracted by an LEA, or contracted by an entity with funding from an LEA who provide school-related transportation services to students for compensation. Specifically, this new law:

- Establishes new requirements of drivers who transport students in vehicles, as specified, including:
    - Passing a criminal background check, including fingerprint clearance;
    - Having a satisfactory driving record; complying with specified drug and alcohol testing;
    - Completing a specified medical examination;
    - Submitting and clearing a tuberculosis risk assessment;
    - Completing initial and subsequent student transportation training;
    - Maintaining a daily log sheet and completing the daily pretrip inspection of the vehicle; and,
    - Completing a specified first aid training.
- Requires that any vehicle used to provide student transportation for compensation be inspected every 12 months or every 50,000 miles, pass inspections, and be equipped with a first aid kit and fire extinguisher.
- Requires an LEA contracting with a private entity to provide student transportation to obtain from the private entity a written attestation that the entity: does not have any applicable law violations at the time of applying for the LEA contract, will maintain compliance with applicable laws for the duration of the contract, will only enlist drivers who meet the requirements listed above to work under the contract, and will have on file all specified reports and documents.
- Provides specified exemptions to the requirements of drivers, including parents and relatives who drive their own children, school employees who provide transportation to pupils they supervise, other government or foster care agencies providing services to homeless and foster youth, and for field trips when the destination is more than 200 miles from the transported pupil's California's school campus.
- Requires, the LEA to inform the parent, guardian, or court-appointed educational rights holder of the pupil if the LEA is unable to secure a driver that does not meet specified driver requirements, unless the notice would jeopardize the pupil's privacy rights.
- Specifies the requirements imposed by these provisions on drivers shall become operative on July 1, 2025.

- Specifies that to the extent the requirements conflict with a contract entered into before January 1, 2024, the specified requirements will not apply until the expiration or renewal of the contract.

- Defines LEA to mean a school district, county office of education, charter school, entity providing services under a school transportation joint powers agreement, or regional occupational center or program.

Health Care Services: Legally Protected Health Care Activities.

Roe v. Wade (1973) 410 U.S. 113 (overruled by *Dobbs v. Jackson Women's Health* (2022) 142 S. Ct. 2228) was the landmark U.S. Supreme Court decision that held that the implied constitutional right to privacy extends to a person's decision whether to terminate a pregnancy. Specifically, the Court found for the first time that the constitutional right to privacy is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Last year, in *Dobbs v. Jackson Women's Health*, *supra*, the U.S. Supreme Court overturned *Roe v. Wade* holding that, contrary to 50 years of precedent, there is no fundamental constitutional right to have an abortion. (*Dobbs*, 142 S. Ct. at 2242.) The majority opinion further provided that states should be allowed to decide how to regulate abortion and that a strong presumption of validity should be afforded to those state laws. (*Id*. at 2283-2284.)

In California, before *Roe v. Wade* was decided by the U.S. Supreme Court, the California Supreme Court held in 1969 that the state constitution's express right to privacy extends to an individual's decision about whether or not to have an abortion. (*People v. Belous* (1969) 71 Cal.2d 954*.)* Existing California statutory law provides, under the Reproductive Privacy Act, that the Legislature finds and declares every individual possesses a fundamental right of privacy with respect to personal reproductive decisions; therefore, it is the public policy of the State of California that every individual has the fundamental right to choose or refuse birth control and the right to choose to bear a child or to choose to obtain an abortion. (Health & Saf. Code, § 123462, subds. (a)-(b).)

In the 2022 general election, two-thirds of California voters voted to approve Proposition 1 amending the state constitution to guarantee the right to abortion and contraception. Last year, several bills were enacted to further protect reproductive rights in California. For example, AB 1242 (Bauer-Kahan), Chapter 627, Statutes of 2022, protects reproductive digital information handled by companies incorporated or headquartered in California and prevents the arrest of individuals or the disclosure by law enforcement of information in an investigation related to any abortion that is legal in California.

Relatedly, in response to a series of laws and executive orders adopted in other states that impose civil and/or criminal liability on transgender youth, their parents and medical providers who assist them in obtaining gender-affirming care, last year California enacted protections for such individuals obtaining care in this state. The new law, among other things, prohibits the sharing of medical records regarding the receipt of gender-affirming care; the enforcement of out-of-state subpoenas seeking information regarding the receipt of gender-affirming medical care in

California; and the enforcement of laws of another state that authorize the removal of a child from their parent or guardian and enforcement of out-of-state criminal laws related to gender-affirming health care. (SB 107 (Wiener), Chapter 810, Statutes of 2022.)

Similar to the issue raised by medication abortion, gender-affirming health care can entail a regimen of hormones and treatment that is legal in California, however patients who take these hormones out of state may subject themselves or their medical provider to another state's laws banning such care.

SB 345 (Skinner), Chapter 260, enacts various safeguards against the enforcement of out-of-state anti-abortion and anti-transgender laws to protect individuals seeking and providing gender-affirming health care in California.

- States that California law governs in any action, whether civil, administrative, or criminal, against any person who provides, receives, aids or abets in providing or receiving, or attempts to provide or receive, by any means, including telehealth, reproductive health care services and gender-affirming health care services, including gender-affirming mental health care services, if the care was legal in the state in which it was provided at the time of the challenged conduct.

- Clarifies that the abortion exemption to murder includes an act or omission by a person pregnant with the fetus.

- Prohibits a magistrate from issuing a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location.

- Provides that a bondsman or person authorized to apprehend, detain, or arrest a fugitive admitted to bail in another state who takes into custody a fugitive admitted to bail in another state whose alleged offense or conviction is for the violation of the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care if it is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license issued as specified, and shall forfeit any license already obtained as specified.

- Prohibits a bail fugitive recovery agent from apprehending, detaining, or arresting a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care if it is lawful

under the laws of this state, regardless of the recipient's location.

- Provides that a bail fugitive recovery agent who violates the above prohibition is guilty of an infraction punishable by a fine of $5,000, is ineligible for a license, as specified, and shall forfeit any license already obtained pursuant to those laws.

- Authorizes a person who is taken into custody by a bail agent in violation of the above prohibition to institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bail fugitive recovery agent within three years after the cause of action accrues.

- Prohibits a judge from issuing an order directing a witness to appear if the criminal prosecution is based on the laws of another state that authorize a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care.

- Prohibits a state or local government employee, person, or entity contracted by a state or local government, or person or entity acting on behalf of a local or state government from cooperating with or providing information to any individual to apprehend, detain, or arrest a fugitive admitted to bail in another state, or out-of-state agency or department regarding any legally protected health care activity that occurred in this state or that would be legal if it occurred in this state.

- Requires any out-of-state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request from any law enforcement agent or entity to include an affidavit or declaration under penalty of perjury that the discovery is not in connection with an out-of-state proceeding relating to any legally protected health care activity except as specified.

- Prohibits a state court, judicial officer, court employee or clerk, or authorized attorney to issue a subpoena pursuant to any other state's law unless it includes the affidavit or declaration, as specified.

- Prohibits a California corporation that provides electronic communication services or remote computing services to the general public from complying with an out-of-state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request by a law enforcement agent or entity seeking specified records unless the out-of-state subpoena, warrant, wiretap order, pen register trap and trace order, other legal process, or request from law enforcement includes the affidavit or declaration, as specified.

- Authorizes an aggrieved person or entity, including a "family planning center," as specified, to institute and prosecute a civil action against any person or business who violates the prohibition on selling or sharing personal information for injunctive and monetary relief and attorney's fees within three years of discovery of the violation.

Trespass

Under existing law, owners of private property may request law enforcement assistance in ejecting trespassers from their property. If the property is not posted as being closed to the public, the property owner must request law enforcement assistance each time assistance is needed, subject to an exception under which a single request may be valid for 30 days when the owner is absent from the property and there is a fire hazard or the owner is absent. If the property is posted as closed to the public, a single request for law enforcement assistance in ejecting trespassers is effective for 12 months. The request for assistance expires upon transfer of ownership or upon a change in lawful possession of the property. The request for law enforcement assistance in enforcing trespass laws is generally made via a "Trespass Letter of Authority." These letters – also known as "602 Letters" – authorize local authorities to enter the premises to enforce trespass laws in the owner's absence.

SB 602 (Archuleta), Chapter 404, extends the operative timeframe for trespass letters of authorization from 30 days to 12 months.

Public Safety Omnibus

Existing law often contains technical and non-substantive errors due to newly enacted legislation. These provisions need to be updated in order to correct those deficiencies. The provisions make only technical or minor substantive but non-controversial changes to the law; and, there is no opposition by any member of the Legislature or recognized group to the proposal.

SB 883 (Comm. on Public Safety), Chapter 311, makes technical and non-controversial changes to various code sections relating to criminal justice laws. Specifically, this new law:

- Removes the term "exhibition of speed" from the definition of "gross negligence" for purposes of vehicular manslaughter and adds "engaging in a motor vehicle speed contest," as defined.

- Specifies that participation in an institutional firehouse must also be successful, as specified, to be qualifying for record expungement and makes other nonsubstantive clarifying changes to the existing provision.

- Clarifies that a violation of the ghost gun prohibition is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000 or both.

- Makes the report required by the State Public Defender with recommendations on appropriate workloads for public defenders and indigent defense attorneys due January 1, 2025, and extends the repeal of the law to January 1, 2029.

- Provides that a defendant may demur to the accusatory pleading at any time prior to the entry of a plea when the statutory provision alleged in the accusatory pleading is constitutionally invalid.

- Requires the California Rehabilitation Oversight Board to submit an annual report to the Governor and Legislature on October 15 regarding incarcerated persons and parolee support services, rather than on September 15.

- States that any act enacted by the Legislature during the 2023 calendar year that amends this bill shall prevail over this bill, whether the bill is enacted before, or subsequent to, the enactment of this bill.

- Makes technical or corrective changes.

APPENDIX A- INDEX BY AUTHOR

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