ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2009

MEMBERS

Tom Ammiano, Chair
Juan Armabula, Chair
Jose Solorio, Chair
Curt Hagman, Vice Chair
Warren T. Furutani, Member
Danny Gilmore, Member
Hector De La Torre, Member
Jerry Hill, Member
Fiona Ma, Member

COMMITTEE STAFF

Gregory Pagan, Chief Counsel
Kathleen Ragan, Counsel
Kimberly Horiuchi, Counsel
Nicole Hansen, Counsel
Gabriel Caswell, Counsel

Sue Highland, Committee Secretary
Elizabeth V. Potter, Committee Secretary

November 6, 2009

TABLE OF CONTENTS

		Page
Animal Abuse		1
SB 135 (Florez)	Animal Cruelty: Cow Tail Docking	1
Background Checks		3
AB 297 (Solorio)	Criminal History Information: Law Enforcement	3
AB 428 (Fletcher)	State Summary Criminal Information	3
Computer Crime		5
AB 32 (Lieu)	Public Officials: Personal Information	5
Corrections		7
AB 430 (Hagman)	Correctional Citizen Advisory Committee, Chino Valley	7
AB 1166 (Nielson)	Board of Parole Hearings: En Banc Review	7
Court Hearings		9
AB 250 (Miller)	Criminal Procedure: Speedy Trial	9
AB 1516 (Lieu)	Criminal Proceedings: Mental Health Examinations	9
SB 197 (Pavley)	Domestic Violence: Conditional Examination	10
Crime Prevention		11
AB 91 (Feuer)	Driving under the Influence: Ignition Interlock Devices	11
AB 750 (Bass)	Deferred Entry of Judgment	14
AB 1053 (Solorio)	Juveniles: Parole and Interstate Compact	17
SB 121 (Denham)	Central Coast Rural Crime Prevention Program	18
SB 318 (Calderon)	Forfeiture: Dog Fighting	18

TABLE OF CONTENTS (Continued)

		Page
Crime Prevention (Continued)		
SB 325 (Alquist)	State-Authorized Risk Assessment Tool for Sex Offenders	19
SB 431 (Benoit)	Probation: County of Supervision	21
SB 447 (Yee)	Background Clearances: Custodians of Records	22
SB 583 (Hollingsworth)	Sex Offenders: Registration Requirements	23
SB 598 (Huff)	Driving under the Influence: Ignition Interlock Devices	24
SB 748 (Leno)	Witness Relocation and Assistance Program	25
Crime Victims		27
SB 314 (Calderon)	Crime Victims: Restitution	27
Criminal Justice Programs		29
AB 275 (Solorio)	Criminal Justice Programs: DNA	29
AB 305 (Nava)	Hazardous Material Release Response Plans	29
AB 428 (Fletcher)	State Summary Criminal Information	30
AB 430 (Hagman)	Correctional Citizen Advisory Committee, Chino Valley	30
AB 750 (Bass)	Deferred Entry of Judgment	31
AB 1209 (Ma)	Arrest Procedures: Fingerprinting	34
SB 447 (Yee)	Background Clearances: Custodians of Records	34
Criminal Offenses		37
AB 22 (Torres)	Computer Hacking: Financial Institutions	37
AB 27 (Jeffries)	Aggravated Arson	38
AB 58 (Jeffries)	Sports Betting Pools: Penalties	38
AB 242 (Nava)	Dog Fighting: Spectator Penalties	39
AB 388 (Miller)	Firefighter Uniforms	39
AB 412 (Carter)	Hate Crimes: Nooses	40
AB 561 (Carter)	Highway Workers: Assault and Battery	41

TABLE OF CONTENTS (Continued)

Page

Criminal Offenses (Continued)

AB 714 (Feuer)	Weapons: Composite Knuckles	41
AB 1015 (Torlakson)	Sale of Nitrous Oxide	42
SB 18 (Oropeza)	Elder Abuse: Fines	42
SB 24 (Oropeza)	Grand Theft: Cargo	43
SB 135 (Florez)	Animal Cruelty: Cow Tail Docking	43
SB 239 (Pavley)	Mortgage Fraud	44
SB 324 (Calderon)	Counterfeit Goods: Charitable Donations	45
SB 492 (Maldonado)	Loitering: Gang Enhancements	46
SB 717 (Runner)	Boating and Waterways	47

DNA 49

AB 275 (Solorio)	Criminal Justice Programs: DNA	49

Domestic Violence 51

AB 258 (Ma)	Domestic Violence: Protective Orders	51
AB 532 (Lieu)	Search Warrants: Firearms	51
AB 688 (Eng)	Domestic Violence: Release	51
AB 789 (De Leon)	Search Warrants: Firearms	52
AB 1003 (John A. Perez)	Equality in Prevention and Services for Domestic Abuse Fund	52
SB 197 (Pavley)	Domestic Violence: Conditional Examinations	53

Driving Under the Influence 55

AB 91 (Feuer)	Driving under the Influence: Ignition Interlock Devices	55
SB 598 (Huff)	Driving under the Influence: Ignition Interlock Devices	58

TABLE OF CONTENTS (Continued)

		Page
Elder Abuse		59
SB 18 (Oropeza)	Elder Abuse: Fines	59
Gang Programs		61
SB 492 (Maldonado)	Loitering: Gang Enhancements	61
Hate Crimes		63
AB 412 (Carter)	Hate Crimes: Nooses	63
HR 16 (Nava)	Hate Crimes: Perceived Gender, Sexual Orientation and Gender Identity	63
Judges, Jurors and Witnesses		67
AB 1516 (Lieu)	Criminal Proceedings: Mental Health Examinations	67
SB 197 (Pavley)	Domestic Violence: Conditional Examinations	67
SB 748 (Leno)	Witness Relocation and Assistance Program	68
Juveniles		71
AB 870 (Huber)	Weapons on School Grounds	71
AB 1015 (Torlakson)	Sale of Nitrous Oxide	71
AB 1053 (Solorio)	Juveniles: Parole and Interstate Compact	72
Peace Officers		75
AB 671 (Krekorian)	Public Safety Officers: Golden Shield Award	75
AB 955 (De Leon)	Public Safety Officers: Procedural Bill of Rights	75
AB 1129 (Hagman)	Weapons: Concealed Firearms	76
AB 1286 (Huber)	Peace Officer Training: Firearms	77

TABLE OF CONTENTS (Continued)

		Page
Peace Officers (Continued)		
SB 52 (Correa)	Public Safety Officer Medal of Valor Act	77
SB 169 (Benoit)	Honorably Retired Peace Officers	78
Restitution		81
AB 576 (Torres)	Vandalism: Restitution	81
SB 432 (Runner)	Victim Restitution	81
Sex Offenders		83
SB 325 (Alquist)	State-Authorized Risk Assessment Tool for Sex Offenders	83
SB 668 (Hollingsworth)	Sex Offenders: Registration	84
Sex Offenses		87
AB 17 (Swanson)	Human Trafficking	87
SB 583 (Hollingsworth)	Sex Offenders: Registration Requirements	87
Sexually Violent Predators		89
SB 669 (Hollingsworth)	Sexually Violent Predators: Jury Instructions	89
Vehicles		91
AB 91 (Feuer)	Driving under the Influence: Ignition Interlock Devices	91
SB 598 (Huff)	Driving under the Influence: Ignition Interlock Devices	94

TABLE OF CONTENTS (Continued)

		Page
Victims		95
AB 17 (Swanson)	Human Trafficking	95
AB 258 (Ma)	Domestic Violence: Protective Orders	95
AB 316 (Solorio)	Claims for Damages for Erroneous Conviction	96
AB 576 (Torres)	Vandalism: Restitution	96
AB 688 (Eng)	Domestic Violence: Release	96
SB 239 (Pavley)	Mortgage Fraud	97
SB 324 (Calderon)	Counterfeit Goods: Charitable Donations	98
SB 432 (Runner)	Victim Restitution	99
SB 748 (Leno)	Witness Relocation and Assistance Program	100
Weapons		103
AB 532 (Lieu)	Search Warrants: Firearms	103
AB 714 (Feuer)	Weapons: Composite Knuckles	103
AB 789 (De Leon)	Search Warrants: Firearms	104
AB 870 (Huber)	Weapons on School Grounds	104
AB 962 (De Leon)	Ammunition Sales	105
AB 1129 (Hagman)	Weapons: Concealed Firearms	107
AB 1286 (Huber)	Peace Officer Training: Firearms	108
AB 1363 (Davis)	Firearms: Concealed Weapons Permits	109
AB 1390 (Blumenflied)	Weapons: School Grounds	110
SB 449 (Padilla)	Secondhand Dealers: Firearms	110
Miscellaneous		113
AB 32 (Lieu)	Public Officials: Personal Information	113
AB 58 (Jeffries)	Sports Betting Pools: Penalties	114
AB 305 (Nava)	Hazardous Material Release Response Plans	114
AB 316 (Solorio)	Claims for Damages for Erroneous Conviction	115
AB 671 (Krekorian)	Public Safety Officers: Golden Shield Award	115
AB 1003 (John A. Perez)	Equality in Prevention and Services for Domestic Abuse Fund	115
AB 1166 (Nielson)	Board of Parole Hearings: En Banc Review	116
AB 1209 (Ma)	Arrest Procedures: Fingerprinting	117
SB 121 (Denham)	Central Coast Rural Crime Prevention Program	117

TABLE OF CONTENTS (Continued)

Page

Miscellaneous (Continued)

SB 169 (Benoit)	Honorably Retired Peace Officers	117
SB 174 (Strickland)	Public Safety: Omnibus Bill	118
SB 318 (Calderon)	Forfeiture: Dog Fighting	120
SB 431 (Benoit)	Probation: County of Supervision	120
SB 676 (Wolk)	Local Fees	121
SB 717 (Runner)	Boating and Waterways	123

Appendices 125

Appendix A – Index by Author 125
Appendix B – Index by Bill Number 129

ANIMAL ABUSE

Animal Cruelty: Cow Tail Docking

Scientific studies have shown that the mutilation of tails causes serious welfare problems for animals, including distress, pain, and increased fly attacks. This practice is inhumane and unnecessary. Tail docking is performed on some California dairy cattle, which results in removing more than one-half of a dairy cow's tail without anesthesia. California law currently prohibits tail docking on horses and should prohibit tail docking on cattle.

SB 135 (Florez), Chapter 344, prohibits tail "docking" of cattle, as specified. Specifically, this new law:

- Provides the prohibition on tail "docking" of cattle shall not apply when the solid part of a cow's tail must be removed in an emergency for the purpose of saving the animal's life or relieving the animal's pain provided that the emergency treatment is performed consistent with the Veterinary Medicine Practice Act, as specified.

- Defines "cattle" as any animal of a bovine species.

BACKGROUND CHECKS

Criminal History Information: Law Enforcement

Existing law requires the Attorney General to furnish state summary criminal history information to specified governmental organizations, entities, or individuals if needed in the course of their duties provided that information is used to assist the agency, officer, or official of state or local government, the public utility, or any other entity in fulfilling employment, certification, or licensing duties. The Department of Justice (DOJ) does not provide information concerning prior applicant fingerprint submissions even when responding to new peace officer and public safety dispatcher applicant fingerprint search requests.

AB 297 (Solorio), Chapter 97, modifies procedures for sharing information and storing data related to pre-employment background checks for applicants to specified law enforcement positions. Specifically, this new law:

- Requires the DOJ to disseminate the date and agency name associated with all retained peace officer or non-sworn law enforcement agency employee pre-employment criminal offender record information requests.

- Requires the DOJ to retain an individual's fingerprint images and related information submitted as part of a peace officer or non-sworn law enforcement agency employee pre-employment criminal offender record information search request.

State Summary Criminal Information

Under existing law, the Department of Justice (DOJ) is required to maintain state summary criminal history information. The DOJ is authorized to furnish to specified entities state summary criminal history information and when specifically authorized the DOJ must provide federal level criminal history information upon a showing of a compelling need.

However, under existing law the DOJ does not have the explicit statutory authority to search for or release this information to individuals or foreign governments to aid in the determination of a current or former California resident's suitability to adopt a minor foreign national.

AB 428 (Fletcher), Chapter 441, adds any foreign government to the list of entities to which the DOJ is authorized to provide criminal history information, if that information is needed in connection with an individual's application to adopt a minor child from that foreign nation. Specifically, this new law:

- Authorizes individuals to submit fingerprint images and related data to the DOJ for the purpose of obtaining state summary criminal information in connection with an attempt to adopt a minor child in a foreign nation.

- Requires the DOJ to disseminate the date and agency name associated with pre-employment criminal offender record information search requests as to peace officers or non-sworn law enforcement agency employees, upon receipt of such requests from specified agencies and organizations for employment and related purposes.

COMPUTER CRIME

Public Officials: Personal Information

California Government Code Section 6254.21 provides for Internet privacy of public safety officials' home addresses and telephone numbers. Specifically, no public agency shall post the private information of a public safety official on the Internet without the written consent of that individual and also prescribes that a public safety official may opt-out of having his or her private information posted on any non-governmental Internet Web site for a period of four years.

However, often the opted-out information is reposted online prior to its intended expiration. Data vendors will purchase public information from a variety of sources, including the county recorder's office and school alumni lists. When data vendors purchase public information, the public safety official's home address and telephone number is posted once again on the Internet. While existing statute allows for injunctive or declaratory relief to prevent re-posting, re-posting occurs so frequently that the court system could be overly burdened with the amount of cases.

AB 32 (Lieu), Chapter 403, requires the removal of personal information of specified officials from the Internet, and permits employers or professional organizations to assert the rights of the official in removing the personal information from the Internet. Specifically, this new law:

- Requires a person, business, or association, upon receiving the written demand of an elected or appointed official, to immediately remove the official's home address or telephone number from public display on the Internet and to continue to ensure that information is not reposted on the Internet or any subsidiary site.
- Permits an elected or appointed official to designate the official's employer or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand or seeking enforcement of these posting requirements.
- Specifies a 48-hour window to remove the information from the Internet.
- Exempts telephone corporations, if necessary, in an emergency to collect a debt owed or as otherwise authorized by law.
- Requires agents of the elected or appointed official to include a statement describing the threat or fear of the official.
- Limits the award of damages for violating an injunction or declaratory relief to $1,000.

CORRECTIONS

Correctional Citizen Advisory Committee, Chino Valley

Existing law requires each state prison to have a citizens' advisory committee and authorizes one citizens' advisory committee to serve every prison located in the same city or community. Under existing law, the citizens' advisory committee shall consist of not more than 15 members appointed by the warden. Nine of these appointments are required to be nominated by specified persons or entities, such as two nominations from the Assembly member representing the prison's district; two nominations by the senator representing the prison's district; two nominations by the city council of the city containing or nearest to the prison; two nominations from the county board of supervisors; and one person nominated by the chief of police of the city containing the prison or nearest to the prison, and the county sheriff of the county containing the prison.

AB 430 (Hagman), Chapter 108, adds a representative of the Chino Valley Independent Fire District to the Citizen Advisory Committee in Chino Valley. Specifically, this new law:

- Adds a representative from the Independent Fire District to citizen's advisory committee responsible for the two correctional facilities in Chino Valley, the California Institution for Men and the California Institution for Women.

- Recognizes that both the California Institution for Men and the California Institution for Women rely heavily on fire and emergency medical services response by the Chino Valley Independent Fire District and it is logical to have a member of the Chino Valley Independent Fire District on the Citizens' Advisory Committee.

Board of Parole Hearings: En Banc Review

SB 737 (Romero), Chapter 10, Statutes of 2005, reorganized what is now the "Department of Corrections and Rehabilitation" and, in doing so, inaccurately labeled the en banc review of a tie vote in a parole hearing as a “hearing” rather than as a “review.” Because the en banc review is merely and properly a review of the hearing that already occurred and which resulted in a tie vote, referring to this review as a “hearing” is problematic as the term "hearing" implies that specific due process rights must occur, which including the inmate's presence. However, at the time of an en banc review, this “hearing” has already occurred, with all appropriate rights afforded to the inmate. Therefore, it is necessary to clarify that that en banc review of a tie vote is not a full “hearing” as defined by the Penal Code; otherwise, a court decision that would force extraordinarily costly and duplicative proceedings could occur.

AB 1166 (Nielson), Chapter 276, authorizes the Board of Parole Hearings (BPH), when sitting en banc to review a tie vote in deciding parole, to review only the record of the parole hearing rather than holding another hearing. Upon en banc review, the BPH shall

vote to either grant or deny parole and render a statement of decision. Specifically, this new law:

- Require an en banc review be conducted in compliance with the following:
    - The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.
    - The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.
    - The BPH shall separately state reasons for its decision to grant or deny parole.
- States a commissioner involved in the tie vote shall be recused from consideration of the matter in the en banc review.

COURT HEARINGS

Criminal Procedure: Speedy Trial

Penal Code Section 1382 describes a defendant's right to a speedy trial. Specifically, Penal Code Section 1382(a)(2)(A) (felony cases) and Section1382(a)(3)(A) (misdemeanor cases) provide that a defendant may enter a general time waiver entitling the court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. The statutes further provide that a defendant who withdraws such a waiver, after proper notice to all parties, shall be brought to trial within 60 days (felony cases) or 30 days (misdemeanor cases) of the date of that withdrawal or the court shall order the action dismissed. The statutes do not specify that the withdrawal must be made in open court nor does statute specify a minimum period of notice before the withdrawal becomes effective.

In *Arias v. Superior Court of Orange County*, 84 Cal. Rptr.3d 264, the Court granted the petitioner's writ of mandate to compel the trial court to grant his motion to dismiss based on failure to bring the matter to trial within the time specified by Penal Code Section 1382.

Prosecution offices are facing increased workloads due to the filing of more cases and reductions in the number of deputy district attorneys due to fiscal difficulties. For these reasons, vertical prosecution (one deputy is assigned to the case from charging to sentencing) is even more rare than it used to be, especially in "garden-variety" cases. As a result, deputies are assigned large numbers of case files at any given time and they often see the file for the first time only a few days before the next scheduled proceeding. If a general time waiver is filed only in writing and not in open court, the distinct probability exists that it will be placed in the file, only to be seen a few days or hours before the 30- or 60-day period lapses.

> **AB 250 (Miller), Chapter 424,** requires that the withdrawal of a general time waiver be conducted in open court, and that a trial date be set and that all parties be properly notified of the trial date.

Criminal Proceedings: Mental Health Examinations

A recent California Supreme Court Case (*Verdin v. Superior Court*) held that the prosecution is no longer entitled to a court order requiring a defendant to submit to a mental health examination by a prosecution expert after the defendant has claimed a mental defense.

The California Supreme Court in *Verdin* reasoned that a mandatory psychiatric examination is a form of pretrial discovery that is not mentioned or authorized in Penal Code Section 1054.5 *et. seq.* The court held that California case law specifically allowing such orders for mental health examinations have been superseded by California Penal Code Section 1054 *et. seq.* as enacted by Proposition 115 (November 1990 General Election). The court concluded its opinion in *Verdin* by stating in Footnote 9, "The Legislature remains free, of course, to establish such a rule within constitutional limits." Although the Court is limited by Proposition 115, the Legislature is free to amend the law.

AB 1516 (Lieu), Chapter 297, authorizes the court to order, upon timely request of the prosecution, a defendant or juvenile to submit to an examination by a prosecution-retained mental health expert whenever the defendant or respondent, as specified, places his or her mental state in issue at any phase of the criminal action or juvenile proceeding through proposed testimony of any mental health expert.

Domestic Violence: Conditional Examinations

Existing law explicitly lists the instances in which conditional examinations may be ordered in criminal cases. Those instances include when a material witness for the defendant, or for the People, is about to leave California; is so sick or infirm as to afford reasonable grounds to believe he or she will be unable to attend the trial; or is a person 65 years of age or older. When the defendant is charged with a serious felony, a conditional examination may be ordered when there is evidence that the life of a witness is in jeopardy

SB 197 (Pavley), Chapter 567, authorizes the use of conditional examinations by the People or the defendant in specific cases of domestic violence, as specified. Specifically, this new law:

- States when a defendant has been charged in a misdemeanor or felony case of domestic violence, the People or the defendant may have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy, as specified.

- States if a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been dissuaded by the defendant or any person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial the people or the defendant may, have a witness examined conditionally, as specified.

- Defines "domestic violence" as any public offense arising from acts of domestic violence listed in provisions of law related to arrest.

CRIME PREVENTION

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

AB 91 (Feuer), Chapter 217, establishes a three-county pilot program within the Department of Motor Vehicles (DMV) that requires a person convicted pf DUI to install an IID, as specified, on all vehicles he or she owns or operates. This program commences on July 1, 2010 and sunsets on January 1, 2016. Specifically, this new law:

- Requires the DMV to establish a pilot program in Tulare, Los Angeles, and Sacramento, to reduce the number of first-time violations and repeat offenses of DUI and DUI with injury.
- Requires the DMV, upon receipt of the court's abstract conviction for DUI or DUI with injury, to inform the convicted person of his or her duty to install an IID, as specified, including the term for which the person is required to have a certified IID installed and the requirement that he or she participate in a county alcohol and drug problem assessment program, as specified.
- Requires that DMV records reflect the mandatory use of the IID for the term specified and the time when the IID must be installed, as specified. The DMV must advise the person that the installation of an IID does not allow the person to drive without a valid driver's license.
- States that before a driver's license may be issued, reissued or returned to a person after a suspension or revocation of that person's driving privilege where an IID is required, a person notified by the DMV of the IID requirement must complete all of the following:
    - Arrange for each vehicle owned and operated by the person to be fitted with an IID by a certified IID provided, as specified;
    - Notify and provide proof if installation of the IID to the DMV by submitting a "verification of installation" for, as specified; and,
    - Pay the fee determined by the DMV to be sufficient to include the cost of administration.

- Provides that the DMV shall place a restriction on the convicted person's driver's license record that states the driver is restricted to only driving a vehicle equipped with a certified IID.

- States the DMV shall monitor installation and maintenance of the IID, as specified.

- Provides a person required to install an IID as a condition of being issued a restricted driver's license, being reissued a driver's license, or having the privilege to operate a motor vehicle reinstated subsequent to a suspension for driving on a suspended license, as specified, shall be as follows:

  - Upon conviction of a first offense DUI or DUI with injury, a person shall install an IID in all vehicles owned and operated by that person for a mandatory term of five months for a DUI and 12 months for a DUI with injury to begin when he or she has shown proof of installation;

  - Upon conviction for a second offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 12 months for a DUI and 24 months for a DUI with injury;

  - Upon conviction for a third offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 24 months for a DUI and 36 months for a DUI with injury; and,

  - Upon conviction of a fourth or subsequent offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 36 months for a DUI and 48 months for a DUI with injury.

- States existing provisions related to mandatory IIDs are still operative.

- Provides that the mandatory term for which the IID is to be installed shall be reset by the DMV if a person fails to comply with any of the requirements regarding IID installation and maintenance.

- Requires every manufacturer and manufacturer's agent certified by the DMV, as specified, providing IIDs must adopt the following fee schedule that provides for the payment of the costs of the IID by an offender subject to this requirement in amounts commensurate with that person's income relative to the federal poverty level, as specified:

  - A person with an income at 100 percent of the federal poverty level and below is responsible for 10 percent of the fee for the assessment;

  - A person with an income at 101 percent to 200 percent of the federal poverty level is responsible for 10 percent of the fee for the assessment;

  - A person with an income at 201 percent to 300 percent of federal poverty level is responsible for 50 percent of the fee for the assessment;

  - All other offenders are responsible for 100 percent of the fee for the assessment; and,

  - The IID provider is responsible for absorbing the cost of the IID that is not paid by the person.

- States the cost of the IID may only be raised annually equal to the Consumer Price Index and the offender's income may be verified by presentation of that person's federal income tax return or three months of monthly income statements.

- States the requirements of an IID, as specified, are in addition to any other requirement of law.

- Creates an exception from the requirements to install an IID if the person notified by the DMV certifies within 30 days all of the following:

  - The person does not own a vehicle;

  - The person does not have access to a vehicle at his or her residence;

  - The person no longer has access to the vehicle driven by the person when he or she was arrested for DUI that subsequently resulted in a conviction, as specified;

  - The person acknowledges that he or she is only allowed to drive a vehicle fitted with an operating IID and that he or she is required to have a valid driver's license before he or she can drive; and,

  - The person is subject to the requirements of this provision when he or she purchases or has access to a vehicle.

- Mandates the DMV to report to the Legislature on or before January 1, 2014 regarding the effectiveness of the pilot program, as specified, in reducing the number of first-time violations and repeat offenses of DUI and DUI with injury in Tulare, Los Angeles, and Sacramento Counties.

- Defines a "vehicle" as not including a motorcycle until the State certifies an IID that can be installed on a motorcycle. A person subject to an IID restriction shall not operate a motorcycle for the duration of the IID restriction period.

- Mandates the DMV will not implement the IID requirements by this new law if, by January 31, 2010, the DMV fails to obtain non-state funds for the programming costs of the pilot program, as specified.

Deferred Entry of Judgment

Every year, more than 120,000 offenders are released from California prisons. Approximately 70 percent will re-offend within three years of being released and return to prison; thousands more cycle in and out of county jails, getting arrested, jailed, and released, only to commit new crimes again at enormous cost to local criminal justice systems.

Local jurisdictions are increasingly interested in adopting reentry models that prevent recidivism to improve public safety and save dwindling public dollars; however, the California Penal Code does not expressly permit and encourage the establishment of local reentry and recidivism prevention programs. By providing clear recidivism prevention guidance to local jurisdictions, the Penal Code can assist counties to address the costs of criminals cycling in and out of prison and jail.

AB 750 (Bass), Chapter 372, creates a deferred entry of judgment (DEJ) program for first-time, non-violent drug offenders. Specifically, this new law:

- Authorizes a superior court, with the concurrence of the prosecuting attorney of the county, to create a DEJ reentry program aimed at preventing recidivism among first-time, non-violent felony drug offenders. This new law specifies the characteristics of that program and the process for eligibility for the program.

- Permits a superior court, with the concurrence of the prosecuting attorney of the county, to create a "Back on Track" DEJ reentry program aimed at preventing recidivism among first-time, non-violent felony drug offenders. No defendant convicted of a sex offense violation requiring registration, serious felonies, or violent felonies shall be eligible for the program established, as specified. When creating this program, the prosecuting attorney, together with the presiding judge and a representative of the criminal defense bar selected by the presiding judge of the superior court, may agree to establish a Back on Track DEJ program pursuant to this new law. The agreement shall specify which low-level, non-violent felony drug offenses under the Health and Safety Code will be eligible for the program and a process for selecting participants. The program shall have the following components:

  - A dedicated calendar.

  - Leadership by a superior court judicial officer assigned by the presiding judge.

  - Clearly defined eligibility criteria to enter the program and clearly defined criteria for completion of the program.

- Legal incentives for defendants to successfully complete the program, including dismissal or reduction of criminal charges upon successful completion of the program.

- Close supervision to hold participants accountable to program compliance, including the use of graduated sanctions and frequent, ongoing appearances before the court regarding participants' program progress and compliance with all program terms and conditions. The court may use available legal mechanisms, including return to custody if necessary, for failure to comply with the supervised plan.

- Appropriate transitional programming for participants, based on available resources from county and community service providers and other agencies. The transitional programming may include, but is not limited to, any of the following:

  - Vocational training, readiness, and placement.

  - Educational training, including assistance with acquiring a General Education Development or high school diploma and assistance with admission to college.

  - Substance abuse treatment.

  - Assistance with obtaining identification cards and driver's licenses.

  - Parenting skills training and assistance in becoming compliant with child support obligations.

- The program may develop a local, public-private partnership between law enforcement, government agencies, private employers, and community-based organizations for the purpose of creating meaningful employment opportunities for participants and to take advantage of incentives for hiring program participants.

* States that the prosecuting attorney shall determine whether a defendant is eligible for participation in the DEJ reentry program.

* Provides if the prosecuting attorney determines that DEJ may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include the following:

  - A full description of the DEJ procedures.

  - A general explanation of the role and authority of the prosecuting attorney, the program, and the court in the process.

- A clear statement that in lieu of trial, the court may grant DEJ with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment; and that upon the defendant's successful completion of the program and the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the provisions of clearing records shall apply.

- A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided, as specified.

- An explanation of criminal record retention and disposition resulting from participation in the DEJ program and the defendant's rights relative to answering questions about his or her arrest and DEJ following successful completion of the program.

- Provides that if the prosecuting attorney determines that the defendant is eligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the DEJ hearing at the arraignment.

- States that if the prosecuting attorney determines that the defendant is ineligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant found ineligible for DEJ is a post-conviction appeal. If the prosecuting attorney does not deem the defendant eligible or the defendant does not consent to participate, the proceedings shall continue as in any other case.

- States that upon a motion by the prosecuting attorney for an entry of judgment, before entering a judgment of guilty the court may hold a hearing to determine whether the defendant has failed to comply with the program and should be terminated from the program.

- Provides that a defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered as specified.

- States that counties that opt to create a DEJ reentry program pursuant, as specified, shall not seek state reimbursement for costs associated with the implementation, development, or operation of that program.

- Specifies that to the extent county resources beyond those of the superior court and the district attorney are needed to implement the program, those agencies shall

consult with the county board of supervisors and other impacted county agencies to assess resources before program implementation.

- States that local law enforcement agencies and counties administering the programs may seek federal or private funding for the purpose of implementing the provisions of this chapter.

- Makes legislative findings that any limitation on the public's right of access to the writings of public officials and agencies made by its provisions is necessary to provide an incentive for program participants to complete the diversion program and to prevent recidivism among nonviolent offenders.

Juveniles: Parole and Interstate Compact

The Department of Juvenile Justice (DJJ) incarcerates the state's most troubled young offenders. Under its existing indeterminate sentencing law, the DJJ retains hundreds of youth in custody each year until the youth either "age out" or reach maximum confinement time. As a result, many youth are released back to their communities with minimal, or without any, supervision or transitional services. Failure to provide support during the transition period diminishes youths' chances of success and increases the likelihood that they will commit new crimes. A significant number of youth released from the DJJ are without homes. An estimated 70 percent of DJJ wards have mental health treatment needs and 80 percent have histories of substance abuse. Most DJJ youth have gang affiliations and only 11 percent have passed the California High School Exit Exam. Moreover, formerly incarcerated youth, particularly those with certain convictions, are restricted from educational financial aid; public housing; food stamps; and certain types of employment, such as childcare and education.

Youth who age out from DJJ institutions are not entitled to receive any services or supervision upon release. Youth who age out from DJJ facilities are not eligible for parole and cannot receive the reentry services attached to parole because the juvenile justice system does not have jurisdiction over the youth. According to the DJJ, there were 254 such youth released from DJJ facilities in 2007. Additionally, parole officers provide little, if any, assistance to youth who have reached maximum confinement time. Since, by law, those youth may not be returned to custody, parole officers have little incentive for youth to comply and, likewise, youth are less likely to follow parole plans.

Additionally, California is not a member of the new Interstate Compact for juveniles, replacing a compact that has been in place in California since 1955. Thirty-nine states have adopted this new compact to date. The purpose of the compact centers on ensuring adequate supervision and services for juvenile offenders; ensuring that the public safety interests of citizens and victims are adequately protected; and providing systems, procedures and equitably allocated costs and benefits for addressing these interests between compacting states.

The existing juvenile compact is over 50 years old. Unlike the existing compact, where the actual terms of the compact are codified, the new compact would enact and thereby commit

California to a multi-state process for promulgating and enforcing rules and regulations governing the interstate movement of juveniles under the jurisdiction of the juvenile court.

AB 1053 (Solorio), Chapter 268, requires DJJ wards who have either reached maximum age or maximum time in custody to be placed on supervised parole 90 to 120 days prior to the expiration of jurisdiction to assist in reentry into the community. Specifically, this new law:

- Specifies this new law does not apply when a petition or order for further detention has been requested.
- Specifies that wards who have been released under these provisions shall be subject to revocation of parole for alleged violations committed during the release period.
- Enacts a new "Interstate Compact for Juveniles," as specified.
- Requires that the Executive Director of the Corrections Standards Authority (CSA) to convene an executive steering committee to review and make recommendations regarding the compact, as specified.
- Requires the CSA to present the committee's final report to the Legislature by January 1, 2011.

Central Coast Rural Crime Prevention Program

SB 44 (Denham), Chapter 18, Statutes of 2003, encouraged the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo to develop and implement a Central Coast Rural Crime Prevention Program for the purpose of preventing rural crime.

SB 121 (Denham), Chapter 31, extends the sunset date on the Central Coast Rural Crime Prevention Program until July 1, 2013.

Forfeiture: Dog Fighting

Existing law permits forfeiture for any tangible or intangible property interest acquired through a pattern of criminal profiteering activity. Criminal profiteering activity includes any act committed or attempted or any threat made for financial gain or advantage which may be charged as a crime under specified enumerated felony sections. Existing law establishes procedures for forfeiture upon a conviction of a pattern of criminal profiteering. "A pattern of criminal profiteering" is defined as engaging in at least two incidents of criminal profiteering.

Existing law also permits the seizure of any animals used in fighting, as well as all paraphernalia, implements or other property or things used or employed, or about to be employed, in violation of any bird or animal fighting statute. Upon conviction, the items seized shall be deemed forfeited.

SB 318 (Calderon), Chapter 302, provides that any property interest, whether tangible or intangible, acquired through the commission of any of specified dog fighting crimes shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by dog fighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting dogs, and persons who steal or illegally obtain dogs or other animals for fighting, including bait and sparring animals.

State-Authorized Risk Assessment Tool for Sex Offenders

Existing law authorizes the use of a State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to the legislative finding that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. Current law also establishes a "SARATSO Review Committee," comprised of a Department of Mental Health (DMH) representative, in consultation with a California Department of Corrections and Rehabilitation (CDCR) representative and a representative of the Attorney General's Office.

SB 325 (Alquist), Chapter 582, provides additional protocol for an agency administering the SARATSO and believing that a score does not represent the person's true risk level to submit the case to experts, as specified, for possible override. Specifically, this new law:

- Provides that if the agency responsible for scoring the SARATSO believes an individual's score does not represent the person’s true risk level based on factors in the offender’s record, the agency may submit the case to the experts retained by the SARATSO Review Committee to monitor the SARATSO scoring.

- Requires the experts, as specified, be guided by empirical research in determining whether to raise or lower the risk level. Agencies scoring the SARATSO shall develop a protocol for the submission of risk-level override requests to the experts retained in accordance with provisions of law, as specified.

- Clarifies that the CDCR assess every eligible person on parole if that person was not assessed prior to release from state prison.

- Mandates that the CDCR and DMH record in a database the risk assessment scores of persons assessed, as specified, and any risk assessment score submitted to CDCR by a probation officer, as required in existing law.

- Provides that beginning January 1, 2010, the CDCR and DMH shall send the risk assessment scores to the Department of Justice's (DOJ) Sex Offender Tracking Program not later than 30 days after the date of the assessment. The risk assessment

score of an offender shall be made part of his or her file maintained by DOJ's Offender Tracking Program as soon as possible without financial impact, but no later than January 1, 2012.

- Provides that eligible persons not assessed by CDCR while incarcerated may be assessed as follows:

  - A person may be assessed upon request of the law enforcement agency in the jurisdiction in which the person is required to register as a sex offender. The law enforcement agency may enter into a memorandum of understanding (MOU) with a probation department to perform the assessment. In the alternative, the law enforcement agency may arrange to have personnel trained to perform the risk assessment in accordance with existing law.

  - Eligible persons not assessed may request that a risk assessment be performed. A request form shall be available at registering law enforcement agencies. The person requesting the assessment shall pay a fee for the assessment that shall be sufficient to cover the cost of the assessment. The risk assessment so requested shall be performed either by the probation department, if a MOU is established between the law enforcement agency and the probation department, or by personnel who have been trained to perform risk assessment in accordance with existing law.

- States that for purposes relating to administering the SARATSO, an "eligible person" is defined as a registered sex offender eligible for assessment pursuant to the official Coding Rules designated for use with the risk assessment instrument by the author of any SARATSO selected by the Review Committee, as specified.

- Eliminates from the definition of "eligible person" an offender who has not been assessed within the previous five years.

- Provides that persons authorized to perform risk assessments pursuant to existing law shall be immune from liability for good-faith conduct, as specified.

- Requires persons acting under authority from the SARATSO Review Committee as an expert, as specified, to have access to all relevant records concerning the offender.

- Provides that if the probation officer has recommended that the minor be transferred to the CDCR's Division of Juvenile Justice pursuant to an adjudication for an offense requiring him or her to register as a sex offender, the selected SARATSO shall be used to assess the minor and the court shall receive that risk assessment score into evidence.

- Retains a DMH representative on the SARATSO Review Committee but states the Review Committee shall be staffed by CDCR and any agreed changes to the SARATSO are to be posted by CDCR rather than DMH.

Probation: County of Supervision

Under existing law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. The probation department supervises the probationer residing in the probation department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

However, currently there are an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium-size counties, up to 40 percent of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

SB 431 (Benoit), Chapter 588, requires the county of a probationer's residence to accept transfer of jurisdiction over the case from the county in which the probationer is convicted, with specified exceptions. Specifically, this new law:

- Requires that when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the superior court in the county in which that person permanently resides unless the transferring court determines that the transfer would be inappropriate.
    - Specifies that the court must state its reasons on the record.
    - Provides that upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer following procedures set forth in rules of court developed by the Judicial Council.
- States that the same provisions shall be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36, the Substance Abuse and Crime Prevention Act of 2000.
    - Provides that the Judicial Council shall promulgate rules of court for procedures by which the proposed receiving county shall receive notice and the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council shall adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including but not limited to the following:
        - Permanency of residence of the offender;

- Local programs available for the offender; and,
- Restitution orders and victim issues.

Background Clearances: Custodians of Records

Existing law provides that criminal offender record information shall be disseminated only to such agencies as are, or may subsequently be, authorized access to such record by statute. The Attorney General is responsible for the security of criminal offender record information and existing regulations require that record checks be conducted on all personnel hired after July 1, 1975 who have access to criminal offender record information.

Agencies that apply to the Department of Justice (DOJ) for access to state summary criminal offender record information (CORI) are required by DOJ to designate a person to function as the "custodian of records." The custodian of records is responsible for ensuring compliance with statutory and regulatory requirements regarding the security, storage, dissemination and destruction of the criminal records furnished to the agency. The CORI response to determine the eligibility of the agency's custodian of records position is returned to the custodian of records applicant. Under such procedures, it is possible a custodian of records applicant could have a criminal record involving violence or crimes against children and approve himself or herself for the custodian of records position while others in the agency are unaware of the applicant's criminal history.

SB 447 (Yee), Chapter 50, requires the DOJ to create a process for obtaining background clearances on custodians of records for agencies whose employees or volunteers must have criminal background checks. Specifically, this new law:

- Provides that, commencing January 1, 2011, DOJ shall establish, implement, and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by agencies as custodians of records.
- States that, commencing January 1, 2011, no person shall serve as an agency custodian of records unless confirmed by DOJ. This new law states that this shall not apply to criminal justice agency personnel who have undergone a state and federal background check.
- Requires DOJ to charge a fee of $30 to cover the costs of the confirmation program.
- Requires DOJ to charge an additional fee sufficient to cover the cost of processing the appropriate state and federal level criminal record background check.
- Provides that each agency must designate at least one custodian of records and submit to DOJ his or her fingerprints for a state and federal background check.

- Requires that subsequent arrest notification shall be given for the designated custodian of records.

- Provides that every person confirmed as a custodian of records shall be at least 18 years of age and have been determined by DOJ to possess the required honesty, credibility, truthfulness and integrity to fulfill the responsibilities of the position.

- States that DOJ shall not confirm as a custodian of records any person who has been convicted of a felony offense or other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties and responsibilities of a custodian of records.

- Provides that any confirmation shall be revoked if at any time the person is convicted of any such offense.

- States that DOJ may refuse to confirm or revoke or suspend the confirmation of a person as a custodian of records if the person has done any of the following:

    - Made a substantial and material misstatement or omission in the application to DOJ.

    - Been convicted of an offense of a nature incompatible with the duties of a custodian of records.

    - Failed to discharge fully and faithfully any of the duties or responsibilities required of a custodian of records.

    - Been adjudged liable for damages in any lawsuit grounded in fraud, misrepresentation, in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully the duties of a custodian of records.

    - Committed any act involving dishonesty, fraud or deceit.

    - Failed to submit any remittance payable upon demand by DOJ under this law, or failed to satisfy any court-ordered money judgment, including restitution.

Sex Offenders: Registration Requirements

Under existing law, the Sex Offender Registration Act requires that any person found to have committed certain sexual offenses must register with certain regional entities as a sex offender while residing in California. State law generally requires the Department of Corrections and Rehabilitation (CDCR) to return paroled a sex offender to his or her county of last legal residence unless circumstances call for a different placement. Such an individual is required to register (provide an address) with the local law enforcement agency that has jurisdiction over his or her place of residence within five working days of moving there and upon each anniversary of his or her birth. The law enforcement agency forwards the registration information to the

Department of Justice (DOJ), which maintains a database of sex offenders. While not responsible for determining where a paroled sex offender resides, CDCR may help facilitate placement. Further, state law requires DOJ to maintain a registry to track certain information (including the addresses of sex offenders), but does not require DOJ to monitor compliance; rather, state law holds the sex offender responsible for ensuring compliance with registration requirements. Restrictions apply as to how many paroled sex offenders can live at the same address.

DOJ's database contains addresses of registered sex offenders, but DOJ does not identify whether the addresses are private residences, a licensed residential facility, or a hotel as there is no requirement to report this information.

SB 583 (Hollingsworth), Chapter 55, requires the DOJ to record the type of residence at which a sex offender resides and provide the information to state agencies for law enforcement purposes related to investigative responsibilities regarding sex offenders. Specifically, this new law:

- States that DOJ shall record the address at which a registered sex offender resides with a unique identifier for the address.

- Provides that the identifier shall consist of a description of the nature of the dwelling, with the choices of a single-family residence, an apartment/condominium, a motel/hotel, or a licensed facility.

- Specifies that each address and its association with any specific registered sex offender shall be stored by DOJ in the same database as the registration data recorded pursuant to Penal Code Section 290.015.

- States that the DOJ shall make that information available to the Department of Social Services or any other state agency when the agency needs the information for law enforcement purposes relating to investigative responsibilities relative to sex offenders.

- Provides that this section shall become operative on January 1, 2012.

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

SB 598 (Huff), Chapter 193, provides that the Department of Motor Vehicles advise a person convicted of a second or third DUI offense with a blood alcohol content of 0.08 percent or more that he or she may receive a restricted license, as specified, if he or she

shows verification of installation of a certified IID and pays a fee sufficient to include the costs of administration, as specified.

Witness Relocation and Assistance Program

The Witness Relocation and Assistance Program (WRAP) is administered by the Attorney General. Under WRAP, in any California criminal proceeding when the action is brought by local or state prosecutors where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services. Existing law provides that the Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, human trafficking, and creating a high degree of risk to the witness. Special regard shall be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped and victims of hate incidents.

SB 748 (Leno), Chapter 613, provides further protection to persons participating in the Witness Relocation and Assistance Program by prohibiting their addresses and telephone numbers from being posted on the Internet. This new law additionally provides for injunctive and declaratory relief, including court costs and attorneys' fees, as well as the ability to bring a civil action for damages, and various criminal penalties. This new law also:

- Makes it a misdemeanor for any person or private entity to post on the Internet the home address, telephone number, or personal identifying information that discloses the location of any witness or witness family member participating in WRAP with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member.

- Provides that upon admission to WRAP, local or state prosecutors shall give each participant a written "opt-out" form for submission to relevant Internet search engine companies or entities. This form shall notify the entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public Internet search databases.

- States that a business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant shall remove the participant's personal information from public display on the Internet within two business days of delivery of the opt-out form, and shall continue to ensure that this information is not re-posted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form.

- Provides that no business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant.

- States that a violation of the above requirements is subject to a civil penalty in the amount of $5,000.

- Provides that an action for the civil penalty may be brought by any public prosecutor, and the penalty imposed shall be enforceable as a civil judgment.

- Provides that any witness whose home address or telephone number is made public as a result of a violation of the above requirements may bring an action for injunctive or declaratory relief. This new law states that if a violation is found by a court or a jury, injunctive or declaratory relief may be granted in addition to court costs and reasonable attorneys' fees.

- Provides that, notwithstanding any other provision of law, a witness whose home address or telephone number is solicited, sold, or traded in violation of the above requirements may bring an action in any court of competent jurisdiction.

- States that if a jury or court finds that a violation has occurred, it shall award damages to that witness in an amount up to a maximum of three times the actual damages, but in no case less than $4,000.

CRIME VICTIMS

Crime Victims: Restitution

Existing law requires the State Controller to offset specified financial obligations, listed in order of priority, against the amount of a personal income tax refund. Existing law also provides that crime victims and derivative victims may be awarded compensation by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for the pecuniary losses they suffer as a direct result of criminal acts. The Board is authorized to grant an award not to exceed $2,000 to a victim for expenses of relocation determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the personal safety or emotional well-being of the victim.

SB 314 (Calderon), Chapter 578, directs the State Controller to deduct unpaid restitution fines from a person's income tax refund; and authorizes the Victims Compensation and Government Claims Board to authorize reimbursement of more than $2,000 for a victim's relocation expenses, where the additional money is appropriate due to the unusual, dire, or exceptional circumstances of a particular claim.

CRIMINAL JUSTICE PROGRAMS

Criminal Justice Programs: DNA

Existing law requires the Department of Justice (DOJ) to create a database for all cases involving the report of an unidentified deceased person or a high-risk missing person. This database compares the DNA of missing persons or their relatives with the DNA of unidentified deceased persons. The sole purpose of the confidential data samples is to identify missing persons. This database is funded by a $2 increase on each death certificate issued by a local government agency or by the State of California. Until January 1, 2010, the issuing agency may retain up to five percent of the funds from the fee increase for administrative costs.

AB 275 (Solorio), Chapter 228, eliminates the January 1, 2010 sunset date for the $2 fee increase on death certificates issued by a local government agency or by the State of California. Specifically, this new law:

- Eliminates the advisory committee formed to prioritize case analysis.
- Clarifies the procedure for identifying the backlog of unidentified remains or donated familial samples.
- States that identification of any backlog may be outsourced to other laboratories at the discretion of the DOJ.
- Provides that the DOJ shall give priority to cases involving children and homicide victims.

Hazardous Material Release Response Plans

Under existing law, owners or operators of hazardous material facilities must develop hazardous material release response plans (business plans) and report any release or threatened release of a hazardous material to the appropriate agency and to the Office of Emergency Services. Existing law establishes a one-year statute of limitations for violations of the requirement for the development of business plans.

AB 305 (Nava), Chapter 429, extends the statute of limitations for business plan violations and authorizes the imposition of a jail sentence for the violation of oil spill prevention reporting requirements. Specifically, this new law:

- Increases from one to five years the statute of limitations on civil penalty actions related to business plans.

- Makes a failure to report an oil spill or to knowingly make a false or misleading report on an oil spill occurring in waters of the state punishable, upon conviction, by imprisonment in a county jail.

- Assists environmental prosecutors by conforming the statute of limitations for civil actions for violations of business plan requirements to the statute of limitations for civil actions for other hazardous materials and wastes.

State Summary Criminal Information

Under existing law, the Department of Justice (DOJ) is required to maintain state summary criminal history information. The DOJ is authorized to furnish to specified entities state summary criminal history information and when specifically authorized the DOJ must provide federal level criminal history information upon a showing of a compelling need.

However, under existing law the DOJ does not have the explicit statutory authority to search for or release this information to individuals or foreign governments to aid in the determination of a current or former California resident's suitability to adopt a minor foreign national.

> **AB 428 (Fletcher), Chapter 441,** adds any foreign government to the list of entities to which the DOJ is authorized to provide criminal history information, if that information is needed in connection with an individual's application to adopt a minor child from that foreign nation. Specifically, this new law:

- Authorizes individuals to submit fingerprint images and related data to the DOJ for the purpose of obtaining state summary criminal information in connection with an attempt to adopt a minor child in a foreign nation.

- Requires the DOJ to disseminate the date and agency name associated with pre-employment criminal offender record information search requests as to peace officers or non-sworn law enforcement agency employees, upon receipt of such requests from specified agencies and organizations for employment and related purposes.

Correctional Citizen Advisory Committee, Chino Valley

Existing law requires each state prison to have a citizens' advisory committee and authorizes one citizens' advisory committee to serve every prison located in the same city or community. Under existing law, the citizens' advisory committee shall consist of not more than 15 members appointed by the warden. Nine of these appointments are required to be nominated by specified persons or entities, such as two nominations from the Assembly member representing the prison's district; two nominations by the senator representing the prison's district; two nominations by the city council of the city containing or nearest to the prison; two nominations from the county board of supervisors; and one person nominated by the chief of police of the city containing the prison or nearest to the prison, and the county sheriff of the county containing the prison.

AB 430 (Hagman), Chapter 108, adds a representative of the Chino Valley Independent Fire District to the Citizen Advisory Committee in Chino Valley. Specifically, this new law:

- Adds a representative from the Independent Fire District to citizen's advisory committee responsible for the two correctional facilities in Chino Valley, the California Institution for Men and the California Institution for Women.

- Recognizes that both the California Institution for Men and the California Institution for Women rely heavily on fire and emergency medical services response by the Chino Valley Independent Fire District and it is logical to have a member of the Chino Valley Independent Fire District on the Citizens' Advisory Committee.

Deferred Entry of Judgment

Every year, more than 120,000 offenders are released from California prisons. Approximately 70 percent will re-offend within three years of being released and return to prison; thousands more cycle in and out of county jails, getting arrested, jailed, and released, only to commit new crimes again at enormous cost to local criminal justice systems.

Local jurisdictions are increasingly interested in adopting reentry models that prevent recidivism to improve public safety and save dwindling public dollars; however, the California Penal Code does not expressly permit and encourage the establishment of local reentry and recidivism prevention programs. By providing clear recidivism prevention guidance to local jurisdictions, the Penal Code can assist counties to address the costs of criminals cycling in and out of prison and jail.

AB 750 (Bass), Chapter 372, creates a deferred entry of judgment (DEJ) program for first-time, non-violent drug offenders. Specifically, this new law:

- Authorizes a superior court, with the concurrence of the prosecuting attorney of the county, to create a DEJ reentry program aimed at preventing recidivism among first-time, non-violent felony drug offenders. This new law specifies the characteristics of that program and the process for eligibility for the program.

- Permits a superior court, with the concurrence of the prosecuting attorney of the county, to create a "Back on Track" DEJ reentry program aimed at preventing recidivism among first-time, non-violent felony drug offenders. No defendant convicted of a sex offense violation requiring registration, serious felonies, or violent felonies shall be eligible for the program established, as specified. When creating this program, the prosecuting attorney, together with the presiding judge and a representative of the criminal defense bar selected by the presiding judge of the superior court, may agree to establish a Back on Track DEJ program pursuant to this new law. The agreement shall specify which low-level, non-violent felony drug offenses under the Health and Safety Code will be eligible for the program and a

process for selecting participants. The program shall have the following components:

- A dedicated calendar.

- Leadership by a superior court judicial officer assigned by the presiding judge.

- Clearly defined eligibility criteria to enter the program and clearly defined criteria for completion of the program.

- Legal incentives for defendants to successfully complete the program, including dismissal or reduction of criminal charges upon successful completion of the program.

- Close supervision to hold participants accountable to program compliance, including the use of graduated sanctions and frequent, ongoing appearances before the court regarding participants' program progress and compliance with all program terms and conditions. The court may use available legal mechanisms, including return to custody if necessary, for failure to comply with the supervised plan.

- Appropriate transitional programming for participants, based on available resources from county and community service providers and other agencies. The transitional programming may include, but is not limited to, any of the following:

  - Vocational training, readiness, and placement.

  - Educational training, including assistance with acquiring a General Education Development or high school diploma and assistance with admission to college.

  - Substance abuse treatment.

  - Assistance with obtaining identification cards and driver's licenses.

  - Parenting skills training and assistance in becoming compliant with child support obligations.

- The program may develop a local, public-private partnership between law enforcement, government agencies, private employers, and community-based organizations for the purpose of creating meaningful employment opportunities for participants and to take advantage of incentives for hiring program participants.

- States that the prosecuting attorney shall determine whether a defendant is eligible for participation in the DEJ reentry program.

- Provides if the prosecuting attorney determines that DEJ may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include the following:

    - A full description of the DEJ procedures.

    - A general explanation of the role and authority of the prosecuting attorney, the program, and the court in the process.

    - A clear statement that in lieu of trial, the court may grant DEJ with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment; and that upon the defendant's successful completion of the program and the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the provisions of clearing records shall apply.

    - A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided, as specified.

    - An explanation of criminal record retention and disposition resulting from participation in the DEJ program and the defendant's rights relative to answering questions about his or her arrest and DEJ following successful completion of the program.

- Provides that if the prosecuting attorney determines that the defendant is eligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the DEJ hearing at the arraignment.

- States that if the prosecuting attorney determines that the defendant is ineligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant found ineligible for DEJ is a post-conviction appeal. If the prosecuting attorney does not deem the defendant eligible or the defendant does not consent to participate, the proceedings shall continue as in any other case.

- States that upon a motion by the prosecuting attorney for an entry of judgment, before entering a judgment of guilty the court may hold a hearing to determine whether the defendant has failed to comply with the program and should be terminated from the program.

- Provides that a defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered as specified.

- States that counties that opt to create a DEJ reentry program pursuant, as specified, shall not seek state reimbursement for costs associated with the implementation, development, or operation of that program.

- Specifies that to the extent county resources beyond those of the superior court and the district attorney are needed to implement the program, those agencies shall consult with the county board of supervisors and other impacted county agencies to assess resources before program implementation.

- States that local law enforcement agencies and counties administering the programs may seek federal or private funding for the purpose of implementing the provisions of this chapter.

- Makes legislative findings that any limitation on the public's right of access to the writings of public officials and agencies made by its provisions is necessary to provide an incentive for program participants to complete the diversion program and to prevent recidivism among nonviolent offenders.

Arrest Procedures: Fingerprinting

Under current law, when a person is arrested for an infraction or misdemeanor, law enforcement officers are required to verify a person's identification (ID) through a driver's license or other satisfactory evidence for citation purposes. Additionally, when an arrestee is cited and released for certain offenses, he or she required to appear a later date for booking and fingerprinting. So long as the arresting officer determines that the arrestee will not continue to endanger the public, an arrestee, with proper identification, is cited, released, and agrees to appear in court at a later date for booking and fingerprinting, instead of being transported to a facility to be booked. When an arrestee does not have proper ID, the arrestee provides fingerprints on the citation, agrees to appear in court, and is then released. The arrestee must arrange to provide preliminary fingerprints before court arraignment.

> **AB 1209 (Ma), Chapter 278,** authorizes an officer to book an arrested person at the scene or at the arresting agency prior to being cited and released, as specified.

Background Clearances: Custodians of Records

Existing law provides that criminal offender record information shall be disseminated only to such agencies as are, or may subsequently be, authorized access to such record by statute. The Attorney General is responsible for the security of criminal offender record information and existing regulations require that record checks be conducted on all personnel hired after July 1, 1975 who have access to criminal offender record information.

Agencies that apply to the Department of Justice (DOJ) for access to state summary criminal offender record information (CORI) are required by DOJ to designate a person to function as the "custodian of records." The custodian of records is responsible for ensuring compliance with statutory and regulatory requirements regarding the security, storage, dissemination and destruction of the criminal records furnished to the agency. The CORI response to determine the eligibility of the agency's custodian of records position is returned to the custodian of records applicant. Under such procedures, it is possible a custodian of records applicant could have a criminal record involving violence or crimes against children and approve himself or herself for the custodian of records position while others in the agency are unaware of the applicant's criminal history.

SB 447 (Yee), Chapter 50, requires the DOJ to create a process for obtaining background clearances on custodians of records for agencies whose employees or volunteers must have criminal background checks. Specifically, this new law:

- Provides that, commencing January 1, 2011, DOJ shall establish, implement, and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by agencies as custodians of records.
- States that, commencing January 1, 2011, no person shall serve as an agency custodian of records unless confirmed by DOJ. This new law states that this shall not apply to criminal justice agency personnel who have undergone a state and federal background check.
- Requires DOJ to charge a fee of $30 to cover the costs of the confirmation program.
- Requires DOJ to charge an additional fee sufficient to cover the cost of processing the appropriate state and federal level criminal record background check.
- Provides that each agency must designate at least one custodian of records and submit to DOJ his or her fingerprints for a state and federal background check.
- Requires that subsequent arrest notification shall be given for the designated custodian of records.
- Provides that every person confirmed as a custodian of records shall be at least 18 years of age and have been determined by DOJ to possess the required honesty, credibility, truthfulness and integrity to fulfill the responsibilities of the position.
- States that DOJ shall not confirm as a custodian of records any person who has been convicted of a felony offense or other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties and responsibilities of a custodian of records.

- Provides that any confirmation shall be revoked if at any time the person is convicted of any such offense.

- States that DOJ may refuse to confirm or revoke or suspend the confirmation of a person as a custodian of records if the person has done any of the following:

  - Made a substantial and material misstatement or omission in the application to DOJ.

  - Been convicted of an offense of a nature incompatible with the duties of a custodian of records.

  - Failed to discharge fully and faithfully any of the duties or responsibilities required of a custodian of records.

  - Been adjudged liable for damages in any lawsuit grounded in fraud, misrepresentation, in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully the duties of a custodian of records.

  - Committed any act involving dishonesty, fraud or deceit.

  - Failed to submit any remittance payable upon demand by DOJ under this law, or failed to satisfy any court-ordered money judgment, including restitution.

CRIMINAL OFFENSES

Computer Hacking: Financial Institutions

Under existing law, any person who, among other things, knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, as defined, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network, is punishable by a fine not exceeding $10,000, or by imprisonment in the state prison for 16 months, or 2 or 3 years, or by both that fine and imprisonment, or by a fine not exceeding $5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

AB 22 (Torres), Chapter 70, raises the maximum fines related to computer hacking as follows:

- Raises the maximum felony fine from $10,000 to $12,000 for a person who knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to devise or execute any scheme or artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data.

- Raises the maximum felony fine from $10,000 to $12,000 for a person who knowingly accesses and without permission takes, copies or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

- Raises the maximum felony fine from $10,000 to $12,000 where a person knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

- Raises the maximum felony fine from $10,000 to $12,000 for a person who knowingly and without permission disrupts or causes the disruption of computer services or who denies or causes the denial of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

- Raises the maximum felony fine from $10,000 to $12,000 for a person who knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network that results in a victim expenditure in an amount greater than $5,000.

- Raises the maximum felony fine from $10,000 to $12,000 for a person who knowingly and without permission accesses or causes to be accessed any computer, computer system or computer network that results in a victim expenditure in an amount greater than $5,000.

- Raises the maximum misdemeanor or felony fine from $10,000 to $12,000 for any person who knowingly introduces any computer contaminant into any computer, or computer system, or computer network that results in injury, or for a second or subsequent violation.

- Raises the maximum fine from $5,000 to $12,000 for any person who knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and who thereby causes injurious damage to a computer or computer system. This crime is a misdemeanor.

- Raises the maximum fine from $5,000 to $12,000 for any person who is convicted for a second or subsequent time of knowingly and without permission using the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages. This crime is a misdemeanor. The prior conviction for using another's Internet domain name can be an infraction.

Aggravated Arson

California's aggravated arson statute is due to sunset on January 1, 2005. This statute provides law enforcement and prosecutors with a tool when dealing with the most dangerous arsonists in California. Aggravated arsons are those intended to cause great bodily injury to persons or damage to multiple structures, which caused more than $5.65 million in damage, or were committed by a recidivist arsonist.

> **AB 27 (Jeffries), Chapter 71,** extends the sunset date until January 1, 2014 on the threshold amount of property damage required under provisions of the aggravated arson statute, and increases the amount of damage required from $5.65 million to $6.5 million.

Sports Betting Pools: Penalties

In 2006, Margaret Hamblin, 73, and Cari Gardner, 39, both of Wildomar in Riverside County, were charged with operating a $50 football pool at the Wildomar Elks Lodge. Vital law enforcement resources were expended to investigate charge and prosecute these two women of participating in an activity as common as speeding. In a 1999 Society for Human Resource Management survey, 58 percent of the human resources professionals who participated in the survey said their company's employees have participated in Super Bowl pools; 55 percent said employees have participated in regular-season football pools; one-in-ten said employees have participated in fantasy football leagues; and 30 percent said employees bet in college basketball tournament office pools. According to the 2008 Spherion Workplace Snapshot, 44 percent of American workers have participated in office betting pools.

AB 58 (Jeffries), Chapter 72, changes the penalty for participation in a "sports betting pool", as specified, from a misdemeanor to an infraction, punishable by a fine not to exceed $250, for a person not acting for gain, hire, or reward, other than that at stake under conditions available to every participant, to participate in a bet, wager, or betting pool with another person or group of persons who are not acting for gain, hire, or reward other than that at stake under conditions available to every participant, on the result of any contest or event, including a sporting event, as specified, or where the bet or wager of not more than $2,500.

Dog Fighting: Spectator Penalties

The Humane Society of the United States states that dog fighting is a "sadistic contest" in which two dogs – specifically bred, conditioned and trained to fight – are placed in a pit (generally a small arena enclosed by plywood walls) to fight each other for the spectators' entertainment and gambling. Fights average nearly an hour in length and often last more than two hours. Dogfights end when one of the dogs will not or cannot continue. Unfortunately, dogs used in fights often die of blood loss, shock, dehydration, exhaustion or infection hours or even days after the event.

It is estimated that 40,000 people are involved in dog fighting, resulting in injury or death to nearly 250,000 dogs annually. Law enforcement projects that at least 100,000 additional persons participate in "street-level" dogfights. In fact, there have already been two dog fighting cases prosecuted in 2008 in California alone – one in Los Angeles and one in Fresno – involving over 30 dogs between them.

AB 242 (Nava), Chapter 225, increases the penalty from a misdemeanor punishable by up to six months in a county jail to imprisonment in a county jail not to exceed one year, or by a fine not to exceed $5,000, or by both, for any person to be knowingly present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at that exhibition.

Firefighter Uniforms

Under current law, a police officer is required to submit identification when purchasing a police uniform in order to verify that he or she is an employee or authorized member of the department. There have been numerous cases where an unauthorized individual has impersonated a firefighter and purchased a uniform.

AB 388 (Miller), Chapter 100, requires vendors of uniforms to verify that the purchaser of a uniform identifying a firefighting agency or department is an employee of the agency or department identified on the uniform. Specifically, this new law:

- Provides that vendors of uniforms shall verify that that the purchaser of a uniform identifying a firefighting agency or department is an employee of the agency or department identified on the uniform.

- States that examination of a valid photo identification card issued by a firefighting agency or department that designates the person as an employee or authorized member of the agency or department identified on the uniform shall be sufficient verification.

- Provides that if a person purchasing a uniform does not have a valid photo card issued by a firefighting agency, that person shall present an official letter of authorization from the firefighting agency or department. That person shall also present a government issued photo identification card bearing the same name as listed in the letter of authorization issued by the agency or department.

- Provides that any uniform vendor that sells a uniform identifying a firefighting agency or department without verifying that the purchaser is an employee of the agency is guilty of a misdemeanor, punishable by a fine not to exceed $1,000.

- Exempts uniforms used solely as a prop for a motion picture, television, video production, or a theatrical event, and prior written permission has been obtained from the identified agency or department.

Hate Crimes: Nooses

Existing law does not provide a deterrent to hanging a noose, a well known symbol that represents a terrorist threat to life. According to the Attorney General's (AG) *Hate Crime Report, 2007*, there were 1,426 hate crimes in California, which included 1,931 offenses; 1,764 victims; and 1,627 known suspects. Hate crime events increased 9.2 percent from 1,306 in 2006 to 1,426 in 2007. Hate crime offenses increased 13.5 percent from 1,702 in 2006 to 1,931 in 2007. The number of victims of reported hate crimes increased 9.5 percent from 1,611 in 2006 to 1,764 in 2007. The number of known suspects of reported hate crimes increased 0.9 percent from 1,612 in 2006 to 1,627 in 2007. Anti-black hate crime events increased 15.3 percent from 432 in 2006 to 498 in 2007. Race/ethnicity/national origin hate crime offenses have consistently been the largest bias motivation category of hate crimes reported since and account for at least 60 percent of all hate crime offenses. Within this category, anti-black hate crimes continue to be the largest bias motivation accounting for at least 26 percent of all hate crime offenses annually since 1998.

AB 412 (Carter), Chapter 106, provides that any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park or place of employment for the purpose of terrorizing any person who attends or works at the school, park or place of employment or who is otherwise associated with the school, park or place of employment, shall be punished by imprisonment in the county

jail not to exceed one year, by a fine not to exceed five $5,000, or by both the fine and imprisonment for the first conviction and by imprisonment in the county jail not to exceed one year, by a fine not to exceed $15,000, or by both the fine and imprisonment for any subsequent conviction.

Highway Workers: Assault and Battery

Local street and road workers construct and maintain the infrastructure for local streets and roads, in many cases working in close proximity to fast moving traffic. With increasing regularity, these workers report being the victims of assault and battery by motorists ranging from verbal abuse to having objects thrown at them or actually being struck by vehicles.

While assault and battery are already criminal offenses, current penalties do not appear to be sufficient to deter dangerous, and in some cases potentially deadly, assaults on local streets and roads workers. Due to the nature of their work environment, these employees' safety can be at risk even under the best of circumstances.

AB 561 (Carter), Chapter 116, revises the definition of "highway worker" to include a contractor or employee of a contractor while under contract with the California Department of Transportation; an employee of a city, or county, or city and county who performs maintenance, repair, or construction of highways; or local streets and road infrastructure for the purpose of enhanced penalties for assault or battery upon a "highway worker."

Weapons: Composite Knuckles

The current language contained in Penal Code Section 12020 (c) (7) referring exclusively to "metal knuckles" is insufficient to protect law enforcement and other public safety officers from similar weapons constructed from composite materials. Metal knuckles are even more dangerous than their metal or brass counterparts as they are undetectable in metal detectors, creating the potential for these weapons to be smuggled onto airplanes, into courthouses and other public buildings, and into prisons. The loophole allowing these dangerous weapons should be closed.

AB 714 (Feuer), Chapter 121, makes the possession, manufacture, importation, or sale of composite knuckles, as defined, a misdemeanor punishable by up to six months in a county jail, a fine of up to $1,000, or by both. Specifically, this new law:

- Provides that any person that possesses, manufactures, imports into California, or offers for sale any composite knuckles is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed $1,000, or by both imprisonment and a fine.

- Defines "composite knuckles" as any device or instrument made wholly or partially of composite materials, other than a medically prescribed prosthetic, that is not a metal knuckle, as defined, and which either protects the wearer's hand while striking a

blow or increases the force of impact from the blow or injury to the individual receiving the blow.

Sale of Nitrous Oxide

Under existing law, possession of nitrous oxide with the intent to ingest the substance for the purpose of intoxication or to intentionally be under the influence of nitrous oxide, except pursuant to legitimate medical or dental use, is a misdemeanor.

AB 1015 (Torlakson), Chapter 266, makes it a misdemeanor for a person to sell or furnish to a person under the age of 18 years a canister or device containing nitrous oxide or a chemical compound mixed with nitrous oxide. Specifically, this new law:

- Establishes the punishment for violation as imprisonment in a county jail not to exceed six months.
- Adds a provision that the court shall consider ordering a person convicted of this offense to perform community service as a condition of probation.
- Requires the suspension of the business license for a period of up to one year for repeated violations for knowingly selling nitrous oxide to a minor.
- Provides that it is a defense to this crime that the defendant reasonably believed that the minor was at least 18 years of age.
- Adds to the defense of reasonable belief that the minor was at least 18 years of age the requirement that the defendant also honestly so believed.
- Imposes a requirement that the defendant shall bear the burden of establishing, by a preponderance of the evidence, the defense of honest and reasonable belief that the minor involved in the offense was at least 18 years of age.
- States that for the purpose of preventing a violation of this new law, any person may refuse to sell or furnish a device or receptacle containing nitrous oxide or a chemical compound mixed with nitrous oxide to a person who is unable to produce adequate proof of age of majority.

Elder Abuse: Fines

Under existing law, the maximum fine for placing an elderly or dependent adult into a harmful position in a manner likely to produce great bodily injury or death is $6,000 for a first or subsequent offense. Additionally, under existing law, the maximum fine for placing an elderly or dependent adult into a harmful position in a manner not likely to produce great bodily injury or death is $2,000 for a first or subsequent offense.

In 1998, a General Accounting Office (GAO) report noted that there were "significant care problems" in nearly one-third of all California nursing homes; the California Department of Social Services and the GAO estimated that "225,000 incidents of adult abuse occur annually in the state, but only 44,000 or less than one-fifth are reported." In 2000, Adult Protective Services estimated a monthly average of 872 confirmed elder abuse cases.

SB 18 (Oropeza), Chapter 25, increases the maximum fine from $6,000 to $10,000 for all second or subsequent convictions of placing an elderly or dependent adult into a harmful position in a manner likely to produce great bodily injury or death. Moreover, this new law increases the maximum fine from $2,000 to $5,000 for all second or subsequent convictions of placing an elderly or dependent adult into a harmful position in a manner not likely to produce great bodily injury or death.

Grand Theft: Cargo

AB 1814 (Oropeza), Chapter 515, Statutes of 2004, established "cargo" as a separate category of grand theft for purposes of accurately tracking the offense at California's ports and to obtain funding from the Department of Homeland Security. Since the passage of AB 1814, the Los Angeles County Sheriff's Office has received approximately $6 million for their special investigative detail, the Cargo Criminal Apprehension Team (known as "Cargo Cats"). Between 2006 and 2008, the Cargo Cats recovered more than $56 million in stolen cargo.

SB 24 (Oropeza), Chapter 607, eliminates the sunset date on cargo theft, and clarifies that the elements of cargo theft are the same as other specified forms of grand theft as defined in the Penal Code.

Animal Cruelty: Cow Tail Docking

Scientific studies have shown that the mutilation of tails causes serious welfare problems for animals, including distress, pain, and increased fly attacks. This practice is inhumane and unnecessary. Tail docking is performed on some California dairy cattle, which results in removing more than one-half of a dairy cow's tail without anesthesia. California law currently prohibits tail docking on horses and should prohibit tail docking on cattle.

SB 135 (Florez), Chapter 344, prohibits tail "docking" of cattle, as specified. Specifically, this new law:

- Provides the prohibition on tail "docking" of cattle shall not apply when the solid part of a cow's tail must be removed in an emergency for the purpose of saving the animal's life or relieving the animal's pain provided that the emergency treatment is performed consistent with the Veterinary Medicine Practice Act, as specified.

- Defines "cattle" as any animal of a bovine species.

Mortgage Fraud

Existing law defines various forms of theft and fraud, including, but not limited to, the obtaining of property, labor, or services by means of false or misleading statements. Under existing law, fraud is committed where a person causes or procures others to report falsely of his or her wealth or mercantile character and thereby obtains credit and fraudulently receives possession of money or property or obtains the labor or service of another. A person who makes any false financial statement or other written statements, as specified, is guilty of an alternate misdemeanor/felony, punishable by a fine not exceeding $5,000 or by imprisonment in the state prison or by both such fine and imprisonment, or by a fine not exceeding $2,500 or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SB 239 (Pavley), Chapter 174, creates a new public offense of "mortgage fraud" punishable by imprisonment in the state prison or in a county jail for not more than one year. Specifically, this new law:

- Sets forth legislative findings and declarations, including, but not limited to, the following:
  - California is one of the leading states in the incidence of mortgage fraud.
  - The harms associated with mortgage fraud include:
    - Foreclosures that disproportionately affect low-income borrowers,
    - The deterioration of neighborhoods stricken by foreclosures;
    - Plummeting property values; and,
    - The proliferation of fraudulent loan modification scams.
  - While perpetrators of mortgage fraud are currently subject to prosecution under general felony theft statutes, the only California statute specifically dedicated to mortgage fraud treats the crime as a misdemeanor.
  - Time is of the essence in the investigative stage of real estate fraud cases, which are dependent on the timely acquisition of documents held by parties to the transactions such as mortgage brokers, title and escrow companies, and lenders.
  - The current statutory scheme hampers the ability of law enforcement to efficiently gather those documents and determine whether crimes have occurred.
- Encourages and facilitates a shift of prosecution of mortgage fraud cases to prosecution under one specifically dedicated felony mortgage statute that carries the same penalties as the currently utilized general felony theft statutes.

- Facilitates the tracking of mortgage fraud cases in order to assist law enforcement in accessing federal funds for the purpose of combating mortgage fraud to the extent that such funds are available.

- Provides an efficient method to obtain necessary documents from real estate record holders in fraud-related cases.

Counterfeit Goods: Charitable Donations

In 2007, United States Customs Officials seized $197 million in counterfeit goods, up 27 percent from 2006. The county Economic Development Corporation estimates about $2 billion worth of counterfeit goods are sold annually in Los Angeles alone.

In California, there are over 150,000 individuals and families who are homeless, a number which will likely grow in the next two years due to job loss and the impact of home foreclosures.

Repurposing counterfeit shoes and clothes after their confiscation and with the trademark owner's consent could help California's homeless population. Donating these items to nonprofit agencies would fill the paucity of public funding created by budget cuts to homeless and women's shelters. Landfills are already at capacity; donating goods is a sound solution to an environmental problem.

Under existing law, upon conviction and confiscation of counterfeit items, items such as shoes and clothing must be destroyed. In some instances, items have been donated by the Los Angeles City Attorney's Office to organizations serving the homeless with the permission of the trademark owners. Organizations taking possession of counterfeit items remove tags and imprint the items with an indelible stamp to ensure the items do not re-enter the market place. However, there is a reluctance to continue this practice as statute calls for the destruction of goods regardless of trademark owner's consent.

SB 324 (Calderon), Chapter 581, authorizes lawfully registered owners of intellectual property to consent to the donation of seized counterfeit goods to charity. Specifically, this new law:

- States that upon request of any law enforcement agency and consent from the lawful registrants, a court may consider a motion to have seized counterfeit goods donated to nonprofit organizations.

- Specifies that the purpose of distributing the goods to charity is to benefit persons living in poverty and that no charge shall be rendered upon the persons served by the charitable organization.

- Excludes recordings and audiovisual works.

Loitering: Gang Enhancements

Under existing law, every person who loiters about any school or public place at or near which children attend or normally congregate and who remains at any school or public place at or near which children attend or normally congregate, or who reenters or comes upon a school or place within 72 hours, after being asked to leave by the chief administrative official of that school or, in the absence of the chief administrative official, the person acting as the chief administrative official, or by a member of the security patrol of the school district who has been given authorization, in writing, by the chief administrative official of that school to act as his or her agent in performing this duty, or a city police officer, or sheriff or deputy sheriff, or Department of the California Highway Patrol peace officer is a vagrant, and is punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding six months, or by both the fine and the imprisonment.

SB 492 (Maldonado), Chapter 592, creates enhanced penalties for registered gang members, as specified, to return within 72 hours after being asked to leave a school property or other public place at or near where children normally congregate. Specifically, this new law:

- Punishes any person required to register as a gang member, as specified, and who loiters on or near school property after being asked to leave as follows:
  - Upon first conviction, by a fine not exceeding 1,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment.
  - Upon a second conviction, by a fine not exceeding $2,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment. The court shall consider a period of imprisonment of at least 10 days.
  - If the defendant has been previously convicted two or more times, by a fine not exceeding $2,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment. The court shall consider a period of imprisonment of at least 90 days.
- Provides that if the court grants probation to a defendant who is convicted of, or a minor as to whom a petition is sustained for, a violation of loitering on or near school grounds after being asked to leave and the defendant or minor is a person required to register as a gang member with the chief of police or sheriff, the court shall impose a condition prohibiting the defendant from entering the grounds of a school without the express permission of the chief administrative officer of the school.
- Provides that the court may excuse a defendant or minor from this condition in the unusual case in which the interests of justice warrant this excuse. The court shall state the reasons on the record for excusing a defendant or minor from this condition.

Boating and Waterways

Since its inception in 1957, the Department of Boating and Waterways (DBW) has provided over $800 million in funding to public and private entities for planning, constructing, rehabilitating and expanding small craft harbors throughout California. Breakwater construction, dredging, berthing, utilities, landscaping and irrigation, restrooms, fuel docks, boat sewage pump-out stations, public access walkways, and other facilities at small craft harbors are funded by this program.

DBW also provides loan funds to private businesses for development, expansion, and improvement of recreational marinas open to the public. Such funds can be used for design; collateral appraisals; and construction of berthing, restrooms, vessel pump-out stations, utilities, erosion control, vehicle/trailer parking, launching facilities, dry boat storage facilities, and breakwaters; and other boating related facilities.

These loan programs are governed by statutes in the Harbors and Navigation Code and should be updated to improve DBW's ability to conduct business with its borrowers, resulting in increased revenues to the Harbors and Watercraft Revolving Fund through loan principal and interest payments.

DBW also provides boating safety education and regulations pertaining to boat operation, navigation and equipment, which includes increasing public awareness of the benefits of life jacket use by children and adults. California law, which requires life jackets to be worn by children under 11 years of age, is currently less stringent than federal law, which requires life jackets to be worn by children under 13 years of age.

> **SB 717 (Runner), Chapter 610,** makes numerous changes to the Harbors and Navigation Code relating to DBW loans from the Harbors and Watercraft Revolving Fund, clarifies the penalties for misdemeanor and felony convictions of boating violations, modifies the age requirement for use of personal flotation devices, and makes other related changes.

DNA

Criminal Justice Programs: DNA

Existing law requires the Department of Justice (DOJ) to create a database for all cases involving the report of an unidentified deceased person or a high-risk missing person. This database compares the DNA of missing persons or their relatives with the DNA of unidentified deceased persons. The sole purpose of the confidential data samples is to identify missing persons. This database is funded by a $2 increase on each death certificate issued by a local government agency or by the State of California. Until January 1, 2010, the issuing agency may retain up to five percent of the funds from the fee increase for administrative costs.

AB 275 (Solorio), Chapter 228, eliminates the January 1, 2010 sunset date for the $2 fee increase on death certificates issued by a local government agency or by the State of California. Specifically, this new law:

- Eliminates the advisory committee formed to prioritize case analysis.
- Clarifies the procedure for identifying the backlog of unidentified remains or donated familial samples.
- States that identification of any backlog may be outsourced to other laboratories at the discretion of the DOJ.
- Provides that the DOJ shall give priority to cases involving children and homicide victims.

DOMESTIC VIOLENCE

Domestic Violence: Protective Orders

Existing law provides that in a situation where a mutual protective order has been issued in the case of domestic violence, as specified, liability for arrest applies only to the person reasonably believed to have been the primary aggressor. In that situation, prior to making an arrest, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect a victim of domestic violence from continuing abuse, the threat of creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person involved acted in self-defense.

> **AB 258 (Ma), Chapter 92,** alters provisions relating to mutual protective orders by replacing the term "primary aggressor" with "dominant aggressor."

Search Warrants: Firearms

Law enforcement is required to take temporary custody of any firearms or other deadly weapon at the scene of a domestic violence incident or whenever an individual is apprehended due to a mental condition that makes him or her a danger to himself, herself, or others. However, it is not constitutionally permissible to confiscate a firearm or other deadly weapon when it is *in* the residence of the mentally disordered detained *outside* his or her residence and there is no exigent circumstance or other basis for warrantless entry. Although current law requires confiscation of firearms and other deadly weapons, this situation is not included as a ground for the issuance of a search warrant as currently written.

> **AB 532 (Lieu), Chapter 450,** authorizes the issuance of a search warrant when the property or things to be seized included a firearm or other deadly weapon at the scene of, or at the premises occupied, or under the control of: (1) a person arrested in connection with a domestic violence incident involving a threat to human life or physical assault, or (2) a person who has been detained or apprehended for examination of his or her mental condition.

Domestic Violence: Release

Current law requires a person charged with a domestic violence misdemeanor to appear before a judge or commissioner in order to have the facts relevant to the arrest reviewed and determine whether the person is a threat to the alleged victim or to the public. However, there are discrepancies in state law that potentially allow for the release of a person charged without ever appearing before a judge or commissioner.

AB 688 (Eng), Chapter 465, clarifies that a peace officer may not release a person on his or her own recognizance, as specified, when arrested for a misdemeanor violation of a domestic violence protective order.

Search Warrants: Firearms

Current law prohibits a person who is the subject of a Domestic Violence Protective Order (DVPO) from owning, possessing, purchasing or receiving any firearm while the protective order is in effect, and requires the subject to immediately surrender any firearm in his or her possession or control to a law enforcement officer. Despite these laws, law enforcement has found that many persons subject to DVPOs do not report this legally mandated information. Therefore, in order to protect the safety of a domestic violence (DV) victim, law enforcement consequently obtains a search warrant to seize all firearms and weapons from a DV offender's possession. However, a California court recently ruled that because current law does not explicitly cite a DVPO as grounds for the issuance of a search warrant, law enforcement does not have a constitutionally permissible method to seize firearms from the DV offender's possessions if the DV offender is served outside of his or her residence. A United States court also ruled that law enforcement cannot constitutionally seize firearms from a DV offender if the offender or his or her residential partner will not consent to a voluntary search of his or her residence to seize any firearms of which the offender owns or has control.

AB 789 (De Leon), Chapter 473, authorizes the issuance of a search warrant when the property or things to be seized include a firearm owned by, in the possession of, or in the custody or control of a person subject to the prohibitions regarding firearms pursuant to protective orders issued to prevent the molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property; contacting, either directly or indirectly, by mail or otherwise; coming within a specified distance of, or disturbing the peace of, the other party; and, in the discretion of the court, on a showing of good cause, of other named family or household members.

Equality in Prevention and Services for Domestic Abuse Fund

Existing law establishes a grant program for the development and support of domestic violence programs and services for the lesbian, gay, bisexual and transgender (LGBT) communities. Under existing law, the Office of Emergency Services (Cal-EMA) may use funds from the Equality in Prevention and Services for Domestic Abuse (EPSDA) to award up to four grants annually to fund qualifying domestic violence programs for the LGBT community, including, but not limited to, 24-hour crisis hotlines; counseling, court and social service advocacy; legal assistance with temporary restraining orders and custody disputes; emergency housing; and, educational workshops and publications.

AB 1003 (John A. Perez), Chapter 498, eliminates the annual limitation of four grants from the EPSDA. Specifically, this new law:

- Requires qualified organizations to provide matching funds of at least 10 percent in order to be eligible to receive grant funding.

- Requires the Cal-EMA to consult with the Department of Public Health (DPH) to consider consolidation of their respective domestic violence programs.

- Requires Cal-EMA and DPH to report their conclusions to the Legislature no later than June 30, 2011.

Domestic Violence: Conditional Examinations

Existing law explicitly lists the instances in which conditional examinations may be ordered in criminal cases. Those instances include when a material witness for the defendant, or for the People, is about to leave California; is so sick or infirm as to afford reasonable grounds to believe he or she will be unable to attend the trial; or is a person 65 years of age or older. When the defendant is charged with a serious felony, a conditional examination may be ordered when there is evidence that the life of a witness is in jeopardy

SB 197 (Pavley), Chapter 567, authorizes the use of conditional examinations by the People or the defendant in specific cases of domestic violence, as specified. Specifically, this new law:

- States when a defendant has been charged in a misdemeanor or felony case of domestic violence, the People or the defendant may have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy, as specified.

- States if a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been dissuaded by the defendant or any person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial the people or the defendant may, have a witness examined conditionally, as specified.

- Defines "domestic violence" as any public offense arising from acts of domestic violence listed in provisions of law related to arrest.

DRIVING UNDER THE INFLUENCE

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

AB 91 (Feuer), Chapter 217, establishes a three-county pilot program within the Department of Motor Vehicles (DMV) that requires a person convicted pf DUI to install an IID, as specified, on all vehicles he or she owns or operates. This program commences on July 1, 2010 and sunsets on January 1, 2016. Specifically, this new law:

- Requires the DMV to establish a pilot program in Tulare, Los Angeles, and Sacramento, to reduce the number of first-time violations and repeat offenses of DUI and DUI with injury.
- Requires the DMV, upon receipt of the court's abstract conviction for DUI or DUI with injury, to inform the convicted person of his or her duty to install an IID, as specified, including the term for which the person is required to have a certified IID installed and the requirement that he or she participate in a county alcohol and drug problem assessment program, as specified.
- Requires that DMV records reflect the mandatory use of the IID for the term specified and the time when the IID must be installed, as specified. The DMV must advise the person that the installation of an IID does not allow the person to drive without a valid driver's license.
- States that before a driver's license may be issued, reissued or returned to a person after a suspension or revocation of that person's driving privilege where an IID is required, a person notified by the DMV of the IID requirement must complete all of the following:
    - Arrange for each vehicle owned and operated by the person to be fitted with an IID by a certified IID provided, as specified;
    - Notify and provide proof if installation of the IID to the DMV by submitting a "verification of installation" for, as specified; and,
    - Pay the fee determined by the DMV to be sufficient to include the cost of administration.

- Provides that the DMV shall place a restriction on the convicted person's driver's license record that states the driver is restricted to only driving a vehicle equipped with a certified IID.

- States the DMV shall monitor installation and maintenance of the IID, as specified.

- Provides a person required to install an IID as a condition of being issued a restricted driver's license, being reissued a driver's license, or having the privilege to operate a motor vehicle reinstated subsequent to a suspension for driving on a suspended license, as specified, shall be as follows:

  - Upon conviction of a first offense DUI or DUI with injury, a person shall install an IID in all vehicles owned and operated by that person for a mandatory term of five months for a DUI and 12 months for a DUI with injury to begin when he or she has shown proof of installation;

  - Upon conviction for a second offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 12 months for a DUI and 24 months for a DUI with injury;

  - Upon conviction for a third offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 24 months for a DUI and 36 months for a DUI with injury; and,

  - Upon conviction of a fourth or subsequent offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 36 months for a DUI and 48 months for a DUI with injury.

- States existing provisions related to mandatory IIDs are still operative.

- Provides that the mandatory term for which the IID is to be installed shall be reset by the DMV if a person fails to comply with any of the requirements regarding IID installation and maintenance.

- Requires every manufacturer and manufacturer's agent certified by the DMV, as specified, providing IIDs must adopt the following fee schedule that provides for the payment of the costs of the IID by an offender subject to this requirement in amounts commensurate with that person's income relative to the federal poverty level, as specified:

  - A person with an income at 100 percent of the federal poverty level and below is responsible for 10 percent of the fee for the assessment;

  - A person with an income at 101 percent to 200 percent of the federal poverty level is responsible for 10 percent of the fee for the assessment;

- A person with an income at 201 percent to 300 percent of federal poverty level is responsible for 50 percent of the fee for the assessment;

- All other offenders are responsible for 100 percent of the fee for the assessment; and,

- The IID provider is responsible for absorbing the cost of the IID that is not paid by the person.

- States the cost of the IID may only be raised annually equal to the Consumer Price Index and the offender's income may be verified by presentation of that person's federal income tax return or three months of monthly income statements.

- States the requirements of an IID, as specified, are in addition to any other requirement of law.

- Creates an exception from the requirements to install an IID if the person notified by the DMV certifies within 30 days all of the following:

  - The person does not own a vehicle;

  - The person does not have access to a vehicle at his or her residence;

  - The person no longer has access to the vehicle driven by the person when he or she was arrested for DUI that subsequently resulted in a conviction, as specified;

  - The person acknowledges that he or she is only allowed to drive a vehicle fitted with an operating IID and that he or she is required to have a valid driver's license before he or she can drive; and,

  - The person is subject to the requirements of this provision when he or she purchases or has access to a vehicle.

- Mandates the DMV to report to the Legislature on or before January 1, 2014 regarding the effectiveness of the pilot program, as specified, in reducing the number of first-time violations and repeat offenses of DUI and DUI with injury in Tulare, Los Angeles, and Sacramento Counties.

- Defines a "vehicle" as not including a motorcycle until the State certifies an IID that can be installed on a motorcycle. A person subject to an IID restriction shall not operate a motorcycle for the duration of the IID restriction period.

- Mandates the DMV will not implement the IID requirements by this new law if, by January 31, 2010, the DMV fails to obtain non-state funds for the programming costs of the pilot program, as specified.

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

> **SB 598 (Huff), Chapter 193,** provides that the Department of Motor Vehicles advise a person convicted of a second or third DUI offense with a blood alcohol content of 0.08 percent or more that he or she may receive a restricted license, as specified, if he or she shows verification of installation of a certified IID and pays a fee sufficient to include the costs of administration, as specified.

ELDER ABUSE

Elder Abuse: Fines

Under existing law, the maximum fine for placing an elderly or dependent adult into a harmful position in a manner likely to produce great bodily injury or death is $6,000 for a first or subsequent offense. Additionally, under existing law, the maximum fine for placing an elderly or dependent adult into a harmful position in a manner not likely to produce great bodily injury or death is $2,000 for a first or subsequent offense.

In 1998, a General Accounting Office (GAO) report noted that there were "significant care problems" in nearly one-third of all California nursing homes; the California Department of Social Services and the GAO estimated that "225,000 incidents of adult abuse occur annually in the state, but only 44,000 or less than one-fifth are reported." In 2000, Adult Protective Services estimated a monthly average of 872 confirmed elder abuse cases.

> **SB 18 (Oropeza), Chapter 25,** increases the maximum fine from $6,000 to $10,000 for all second or subsequent convictions of placing an elderly or dependent adult into a harmful position in a manner likely to produce great bodily injury or death. Moreover, this new law increases the maximum fine from $2,000 to $5,000 for all second or subsequent convictions of placing an elderly or dependent adult into a harmful position in a manner not likely to produce great bodily injury or death.

GANG PROGRAMS

Loitering: Gang Enhancements

Under existing law, every person who loiters about any school or public place at or near which children attend or normally congregate and who remains at any school or public place at or near which children attend or normally congregate, or who reenters or comes upon a school or place within 72 hours, after being asked to leave by the chief administrative official of that school or, in the absence of the chief administrative official, the person acting as the chief administrative official, or by a member of the security patrol of the school district who has been given authorization, in writing, by the chief administrative official of that school to act as his or her agent in performing this duty, or a city police officer, or sheriff or deputy sheriff, or Department of the California Highway Patrol peace officer is a vagrant, and is punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding six months, or by both the fine and the imprisonment.

SB 492 (Maldonado), Chapter 592, creates enhanced penalties for registered gang members, as specified, to return within 72 hours after being asked to leave a school property or other public place at or near where children normally congregate. Specifically, this new law:

- Punishes any person required to register as a gang member, as specified, and who loiters on or near school property after being asked to leave as follows:
  - Upon first conviction, by a fine not exceeding 1,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment.
  - Upon a second conviction, by a fine not exceeding $2,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment. The court shall consider a period of imprisonment of at least 10 days.
  - If the defendant has been previously convicted two or more times, by a fine not exceeding $2,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment. The court shall consider a period of imprisonment of at least 90 days.
- Provides that if the court grants probation to a defendant who is convicted of, or a minor as to whom a petition is sustained for, a violation of loitering on or near school grounds after being asked to leave and the defendant or minor is a person required to register as a gang member with the chief of police or sheriff, the court shall impose a condition prohibiting the defendant from entering the grounds of a school without the express permission of the chief administrative officer of the school.

- Provides that the court may excuse a defendant or minor from this condition in the unusual case in which the interests of justice warrant this excuse. The court shall state the reasons on the record for excusing a defendant or minor from this condition.

HATE CRIMES

Hate Crimes: Nooses

Existing law does not provide a deterrent to hanging a noose, a well known symbol that represents a terrorist threat to life. According to the Attorney General's (AG) *Hate Crime Report, 2007*, there were 1,426 hate crimes in California, which included 1,931 offenses; 1,764 victims; and 1,627 known suspects. Hate crime events increased 9.2 percent from 1,306 in 2006 to 1,426 in 2007. Hate crime offenses increased 13.5 percent from 1,702 in 2006 to 1,931 in 2007. The number of victims of reported hate crimes increased 9.5 percent from 1,611 in 2006 to 1,764 in 2007. The number of known suspects of reported hate crimes increased 0.9 percent from 1,612 in 2006 to 1,627 in 2007. Anti-black hate crime events increased 15.3 percent from 432 in 2006 to 498 in 2007. Race/ethnicity/national origin hate crime offenses have consistently been the largest bias motivation category of hate crimes reported since and account for at least 60 percent of all hate crime offenses. Within this category, anti-black hate crimes continue to be the largest bias motivation accounting for at least 26 percent of all hate crime offenses annually since 1998.

> **AB 412 (Carter), Chapter 106,** provides that any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park or place of employment for the purpose of terrorizing any person who attends or works at the school, park or place of employment or who is otherwise associated with the school, park or place of employment, shall be punished by imprisonment in the county jail not to exceed one year, by a fine not to exceed five $5,000, or by both the fine and imprisonment for the first conviction and by imprisonment in the county jail not to exceed one year, by a fine not to exceed $15,000, or by both the fine and imprisonment for any subsequent conviction.

Hate Crimes: Perceived Gender, Sexual Orientation and Gender Identity

While California hate crimes law expressly includes violence based on sexual orientation and gender (which includes gender identity), many states do not offer similar protection. In addition, federal law currently prevents the United States Department of Justice from assisting state and local authorities in the investigation and prosecution of hate crimes where the perpetrator has selected the victim because of the person's actual or perceived sexual orientation or gender identity. H.R. No. 1913, 111th Cong., 1st Sess. (2009), the "Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act" (LLEHCPA), authorizes the Justice Department to investigate and prosecute bias-motivated violence in instances where the perpetrator has victimized a person based on his or her actual or perceived gender, sexual orientation, gender identity or disability (in addition to race, color, religion, and national origin, which is current law). H.R. No. 1913 was passed the House on April 29, 2009 and is pending a vote in the Senate.

According to the Attorney General's (AG) *Hate Crime Report, 2007*, there were 1,426 hate crimes in California, which included 1,931 offenses; 1,764 victims; and 1,627 known suspects. Hate crimes increased 9.2 percent from 1,306 in 2006 to 1,426 in 2007. Hate crimes increased 13.5 percent from 1,702 in 2006 to 1,931 in 2007. The number of victims of reported hate crimes increased 9.5 percent from 1,611 in 2006 to 1,764 in 2007. The number of known suspects of reported hate crimes increased 0.9 percent from 1,612 in 2006 to 1,627 in 2007. Sexual orientation hate crimes have consistently been the second largest bias motivation category of hate crimes since 1998, accounting for at least 18 percent of all hate crime offenses. Within this category, anti-male homosexual (gay) hate crimes continue to be the largest bias motivation category, accounting for at least eight percent of all hate crime offenses every year since 1998.

HR 16 (Nava), as adopted:

- Provides that the Assembly finds and declares all of the following:

  - The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.

  - Such violence disrupts the tranquility and safety of communities and is deeply divisive.

  - State and local authorities are now, and will continue to be, responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater federal assistance.

  - Existing federal law is inadequate to address this problem.

  - A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

  - Federal jurisdiction over certain violent crimes motivated by bias enables federal, state, and local authorities to work together as partners in the investigation and prosecution of such crimes.

  - The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant federal assistance to states, local jurisdictions, and Indian tribes.

- Thanks the United States House of Representatives for its support of the Local Law Enforcement Hate Crimes Prevention Act and calls on the United States Senate to swiftly pass the Senate companion measure, the Matthew Shepard Hate Crimes Prevention Act.

- Urges the President of the United States to sign into law the "Matthew Shepard Hate Crimes Prevention Act", to accomplish all of the following:

    - Authorize the United States AG to provide technical, forensic, prosecutorial, or other assistance in the criminal investigation or prosecution of violent, bias-motivated crime.

    - Update and expand existing federal hate crimes law to ensure that hate crimes based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim are fully investigated and prosecuted.

    - Direct the United States AG to give priority for such assistance, with respect to crimes committed by offenders who have committed crimes in more than one state.

    - Authorize the United States AG to award grants to assist state, local, and Indian law enforcement agencies, for rural jurisdictions, that have difficulty paying for the extraordinary investigation or prosecution expenses involved in these cases.

    - Direct the United States Office of Justice Programs to work closely with funded jurisdictions to ensure that the concerns and needs of all affected parties are addressed.

    - Allow grants to state, local, or tribal programs designed to combat hate crimes committed by juveniles.

    - Require the United States AG to acquire data on crimes that manifest evidence of prejudice based on gender and gender identity.

JUDGES, JURORS AND WITNESSES

Criminal Proceedings: Mental Health Examinations

A recent California Supreme Court Case (*Verdin v. Superior Court*) held that the prosecution is no longer entitled to a court order requiring a defendant to submit to a mental health examination by a prosecution expert after the defendant has claimed a mental defense.

The California Supreme Court in *Verdin* reasoned that a mandatory psychiatric examination is a form of pretrial discovery that is not mentioned or authorized in Penal Code Section 1054.5 *et. seq.* The court held that California case law specifically allowing such orders for mental health examinations have been superseded by California Penal Code Section 1054 *et. seq.* as enacted by Proposition 115 (November 1990 General Election). The court concluded its opinion in *Verdin* by stating in Footnote 9, "The Legislature remains free, of course, to establish such a rule within constitutional limits." Although the Court is limited by Proposition 115, the Legislature is free to amend the law.

> **AB 1516 (Lieu), Chapter 297,** authorizes the court to order, upon timely request of the prosecution, a defendant or juvenile to submit to an examination by a prosecution-retained mental health expert whenever the defendant or respondent, as specified, places his or her mental state in issue at any phase of the criminal action or juvenile proceeding through proposed testimony of any mental health expert.

Domestic Violence: Conditional Examinations

Existing law explicitly lists the instances in which conditional examinations may be ordered in criminal cases. Those instances include when a material witness for the defendant, or for the People, is about to leave California; is so sick or infirm as to afford reasonable grounds to believe he or she will be unable to attend the trial; or is a person 65 years of age or older. When the defendant is charged with a serious felony, a conditional examination may be ordered when there is evidence that the life of a witness is in jeopardy

> **SB 197 (Pavley), Chapter 567,** authorizes the use of conditional examinations by the People or the defendant in specific cases of domestic violence, as specified. Specifically, this new law:

- States when a defendant has been charged in a misdemeanor or felony case of domestic violence, the People or the defendant may have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy, as specified.
- States if a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been dissuaded by the defendant or any

person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial the people or the defendant may, have a witness examined conditionally, as specified.

- Defines "domestic violence" as any public offense arising from acts of domestic violence listed in provisions of law related to arrest.

Witness Relocation and Assistance Program

The Witness Relocation and Assistance Program (WRAP) is administered by the Attorney General. Under WRAP, in any California criminal proceeding when the action is brought by local or state prosecutors where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services. Existing law provides that the Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, human trafficking, and creating a high degree of risk to the witness. Special regard shall be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped and victims of hate incidents.

SB 748 (Leno), Chapter 613, provides further protection to persons participating in the Witness Relocation and Assistance Program by prohibiting their addresses and telephone numbers from being posted on the Internet. This new law additionally provides for injunctive and declaratory relief, including court costs and attorneys' fees, as well as the ability to bring a civil action for damages, and various criminal penalties. This new law also:

- Makes it a misdemeanor for any person or private entity to post on the Internet the home address, telephone number, or personal identifying information that discloses the location of any witness or witness family member participating in WRAP with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member.

- Provides that upon admission to WRAP, local or state prosecutors shall give each participant a written "opt-out" form for submission to relevant Internet search engine companies or entities. This form shall notify the entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public Internet search databases.

- States that a business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant shall remove the participant's personal information from public display on the Internet within two business days of delivery of the opt-out form, and shall continue to ensure that this information is not re-posted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form.

- Provides that no business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant.

- States that a violation of the above requirements is subject to a civil penalty in the amount of $5,000.

- Provides that an action for the civil penalty may be brought by any public prosecutor, and the penalty imposed shall be enforceable as a civil judgment.

- Provides that any witness whose home address or telephone number is made public as a result of a violation of the above requirements may bring an action for injunctive or declaratory relief. This new law states that if a violation is found by a court or a jury, injunctive or declaratory relief may be granted in addition to court costs and reasonable attorneys' fees.

- Provides that, notwithstanding any other provision of law, a witness whose home address or telephone number is solicited, sold, or traded in violation of the above requirements may bring an action in any court of competent jurisdiction.

- States that if a jury or court finds that a violation has occurred, it shall award damages to that witness in an amount up to a maximum of three times the actual damages, but in no case less than $4,000.

JUVENILES

Weapons on School Grounds

Existing law provides that bringing or possessing specified weapons upon the grounds of, or within, any private or public school providing instruction in Kindergarten or any or all of Grades 1 to 12, inclusive, is a public offense punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison. Weapons included in this prohibition include dirks, daggers, ice picks, folding knives with a blade that locks into place, razors with unguarded blades, tasers, stun guns, instruments that expel a metallic projectile such as a BB or pellet, through the force of air pressure or spring action, and a spot marker gun.

AB 870 (Huber), Chapter 258, makes it a misdemeanor to bring or possess a razor blade or box cutter on specified school grounds. Specifically, this new law:

- Closes a loophole in current law regarding the possession of weapons on school campuses by specifically adding razor blades and box cutters to the list of prohibited weapons.
- Infers a difference in the danger level of razor blades and box cutters on one level and stun guns, tasers, BB and pellet guns on another level.
- Imposes a lesser punishment as a misdemeanor on possession of a razor blade or box cutter on school grounds than the alternate misdemeanor/felony imposed for the possession of the more serious weapons.

Sale of Nitrous Oxide

Under existing law, possession of nitrous oxide with the intent to ingest the substance for the purpose of intoxication or to intentionally be under the influence of nitrous oxide, except pursuant to legitimate medical or dental use, is a misdemeanor.

AB 1015 (Torlakson), Chapter 266, makes it a misdemeanor for a person to sell or furnish to a person under the age of 18 years a canister or device containing nitrous oxide or a chemical compound mixed with nitrous oxide. Specifically, this new law:

- Establishes the punishment for violation as imprisonment in a county jail not to exceed six months.
- Adds a provision that the court shall consider ordering a person convicted of this offense to perform community service as a condition of probation.
- Requires the suspension of the business license for a period of up to one year for repeated violations for knowingly selling nitrous oxide to a minor.

- Provides that it is a defense to this crime that the defendant reasonably believed that the minor was at least 18 years of age.

- Adds to the defense of reasonable belief that the minor was at least 18 years of age the requirement that the defendant also honestly so believed.

- Imposes a requirement that the defendant shall bear the burden of establishing, by a preponderance of the evidence, the defense of honest and reasonable belief that the minor involved in the offense was at least 18 years of age.

- States that for the purpose of preventing a violation of this new law, any person may refuse to sell or furnish a device or receptacle containing nitrous oxide or a chemical compound mixed with nitrous oxide to a person who is unable to produce adequate proof of age of majority.

Juveniles: Parole and Interstate Compact

The Department of Juvenile Justice (DJJ) incarcerates the state's most troubled young offenders. Under its existing indeterminate sentencing law, the DJJ retains hundreds of youth in custody each year until the youth either "age out" or reach maximum confinement time. As a result, many youth are released back to their communities with minimal, or without any, supervision or transitional services. Failure to provide support during the transition period diminishes youths' chances of success and increases the likelihood that they will commit new crimes. A significant number of youth released from the DJJ are without homes. An estimated 70 percent of DJJ wards have mental health treatment needs and 80 percent have histories of substance abuse. Most DJJ youth have gang affiliations and only 11 percent have passed the California High School Exit Exam. Moreover, formerly incarcerated youth, particularly those with certain convictions, are restricted from educational financial aid; public housing; food stamps; and certain types of employment, such as childcare and education.

Youth who age out from DJJ institutions are not entitled to receive any services or supervision upon release. Youth who age out from DJJ facilities are not eligible for parole and cannot receive the reentry services attached to parole because the juvenile justice system does not have jurisdiction over the youth. According to the DJJ, there were 254 such youth released from DJJ facilities in 2007. Additionally, parole officers provide little, if any, assistance to youth who have reached maximum confinement time. Since, by law, those youth may not be returned to custody, parole officers have little incentive for youth to comply and, likewise, youth are less likely to follow parole plans.

Additionally, California is not a member of the new Interstate Compact for juveniles, replacing a compact that has been in place in California since 1955. Thirty-nine states have adopted this new compact to date. The purpose of the compact centers on ensuring adequate supervision and services for juvenile offenders; ensuring that the public safety interests of citizens and victims are adequately protected; and providing systems, procedures and equitably allocated costs and benefits for addressing these interests between compacting states.

The existing juvenile compact is over 50 years old. Unlike the existing compact, where the actual terms of the compact are codified, the new compact would enact and thereby commit California to a multi-state process for promulgating and enforcing rules and regulations governing the interstate movement of juveniles under the jurisdiction of the juvenile court.

AB 1053 (Solorio), Chapter 268, requires DJJ wards who have either reached maximum age or maximum time in custody to be placed on supervised parole 90 to 120 days prior to the expiration of jurisdiction to assist in reentry into the community. Specifically, this new law:

- Specifies this new law does not apply when a petition or order for further detention has been requested.
- Specifies that wards who have been released under these provisions shall be subject to revocation of parole for alleged violations committed during the release period.
- Enacts a new "Interstate Compact for Juveniles," as specified.
- Requires that the Executive Director of the Corrections Standards Authority (CSA) to convene an executive steering committee to review and make recommendations regarding the compact, as specified.
- Requires the CSA to present the committee's final report to the Legislature by January 1, 2011.

PEACE OFFICERS

Public Safety Officers: Golden Shield Award

Each year, between 140 and 160 officers are killed in the line of duty. In 2009, to date six officers have been killed on the job – more than any other state.   In 2008, 13 officers were killed on patrol in California, second only to Texas, where 14 died.

Despite the danger inherent in their job, California public safety officers do not yet have a state-wide honorific to recognize those officers who have died in the line of duty.

> **AB 671 (Krekorian), Chapter 462,** requires the Governor to annually present a Golden Shield Award, of appropriate design, to the next of kin or immediate family of every public safety officer, as defined, who, while serving in any capacity under competent authority, has been killed in the line of duty in that year.

Public Safety Officers: Procedural Bill of Rights

On April 17, 2008, the California Supreme Court decided the case of *Mays v. City of Los Angeles* (2008) 43 Cal 4th 313. In *Mays*, the court was asked to determine if the one-year statute of limitations imposed for notice in the Public Safety Officers Procedural Bill of Rights (POBOR) was satisfied by notification to the subject officer that discipline would be imposed. The Supreme Court overturned an appellate court decision which had held that the police department was required to inform the subject officer of the specific proposed punishment it sought to impose within the one-year statute. The Supreme Court held that the police department need only inform the subject officer that it has completed the investigation and seeks to impose some form of disciplinary action for specified conduct within the one-year statute of limitations.

The Supreme Court interpreted Government Code Section 3304(d), which provides a statute of limitations period specifying that "no punitive action" may be imposed upon any public safety officer for alleged misconduct unless the public agency investigating the allegations "completes its investigation and notifies the public safety officer of its proposed disciplinary action" within one year of discovering the alleged misconduct.

In *Mays*, the notice informed the officer of the proposed board of rights adjudication not only informed the officer that disciplinary action might be taken as the result of the investigation into the alleged misconduct but also identified the procedural mechanism by which the officer's punishment, if any, would be determined. The Supreme Court ruled that this notice was sufficient under Penal Code Section 3304.

> **AB 955 (De Leon), Chapter 494,** abrogates *Mays* and specifies that discipline need not be imposed upon peace officers within the one-year time limit placed upon the investigation and imposition of penalty by the POBOR. Specifically, this new law:

- States that agencies need not actually impose prescribed discipline within the one-year time limit placed upon investigations and the resolution of disciplinary actions of peace officers by POBOR.

- States that the officer shall be notified by a Letter of Intent articulating the proposed discipline or Notice of Adverse Action within the one-year time limit imposed by POBOR.

Weapons: Concealed Firearms

Existing law provides for the revocation for good cause of an identification certificate or an endorsement on the certificate authorizing a retired peace officer to carry a concealed and loaded firearm, as determined in a hearing, as specified. The current procedure for revocation proceedings is ambiguous.

AB 1129 (Hagman), Chapter 138, imbues a clear procedure for the temporary revocation of an identification certificate or an endorsement on the certificate authorizing a retired peace officer to carry a concealed and loaded firearm for conduct that compromises public safety. Specifically, this new law:

- Provides that an identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement on the certificate may be immediately and temporarily revoked by the issuing agency when the conduct of a retired peace officer compromises public safety. Notice of this temporary revocation shall be effective upon personal service or upon receipt of the notice sent by first-class mail, postage prepaid, return receipt requested, to the retiree's last known place of residence. The retiree shall have 15 days to respond to the notification and request a hearing to determine if the temporary revocation should become permanent. A retired peace officer who fails to respond to the notice of hearing within the 15-day period shall forfeit his or her right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency. If a hearing is requested, good cause for permanent revocation shall be determined at the hearing. The retiree may waive his or her right to a hearing and immediately return the identification to the issuing agency.

- States that an identification certificate authorizing an officer to carry a concealed and loaded firearm or an endorsement may be permanently revoked or denied by the issuing agency upon a showing of good cause.

- Allows any retired peace officer whose identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement is to be revoked to have 15 days to respond to the notice of the hearing. Notice of the hearing shall be served either personally on the retiree or sent by first-class mail, postage prepaid, return receipt requested to the retiree's last known place of residence. From the date the retiree signs for the notice or upon the date the notice is served personally on the

retiree, the retiree shall have 15 days to respond to the notification. A retired peace officer who fails to respond to the notice of the hearing shall forfeit his or her right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency. If a hearing is requested, good cause for permanent revocation shall be determined at the hearing. The hearing shall be held no later than 120 days after the request by the retired officer for a hearing is received. The retiree may waive his or her right to a hearing and immediately return the identification certificate to the issuing agency.

Peace Officer Training: Firearms

Existing law provides that no person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period. Existing law provides for certain specified exceptions to this law, including law enforcement agencies; any agency authorized to perform law enforcement duties; any state or local correctional facility; any private security company licensed to conduct business in California; any person properly identified as a full-time paid peace officer who is authorized to, and does, carry a firearm during the course and scope of his or her employment as a peace officer; and others such as motion picture or video production companies; licensed collectors and others.

AB 1286 (Huber), Chapter 144, adds to these exemptions community colleges certified by the Commission on Peace Officer Standards and Training (POST) to present the law enforcement academy basic course or other Commission-certified law enforcement training. This new law:

- Corrects an oversight that excludes these college-affiliated academies from the one-handgun-per-month limit.
- Recognizes that this oversight restricts the ability of college-affiliated academies, which serve regional areas that contain smaller law enforcement jurisdictions that cannot support their own academy, to purchase a quantity of firearms in anticipation of a full class.
- Provides that the new exemption will apply only to POST-certified academies operating in community colleges.
- Is consistent with the original intent of the legislation which created the one-handgun-per-month purchase limitation.

Public Safety Officer Medal of Valor Act

Under existing law, the Governor may annually present in the name of the State of California a Medal of Valor to one or more public safety officers cited by the Attorney General (AG) upon

the recommendation of the Medal of Valor Review Board for extraordinary valor above and beyond the call of duty. The Medal of Valor is the highest state award for valor given to public safety officers.

SB 52 (Correa), Chapter 553, repeals and the Medal of Valor Act and renames it the "Public Safety Officer Medal of Valor Act". Specifically, this new law:

- Allows the Public Safety Officer Medal of Valor Review Board to recommend more than five candidates for the Public Safety Officer Medal of Valor per year and to meet more than once per year.

- Allows the Governor to award the Public Safety Officer Medal of Valor to more than one public safety officer per year.

- Adds the California Coalition of Law Enforcement Associations and the California Professional Firefighters to the Public Safety Medal of Valor Review Board.

- Clarifies that any cost incurred by a member of the Board acting as a member shall not be paid by the state, but allows payment for per diem and mileage to be paid by funds donated to the Board.

- Provides that the Board shall not hold hearings or have hearings if donated funds are not available.

Honorably Retired Peace Officers

Existing law contains a number of provisions prohibiting any person other than an authorized peace officer from wearing or using the authorized insignia or emblem of a peace officer with the intent to fraudulently impersonate a peace officer and prohibiting the sale or transfer of any badge or insignia which falsely purports to be for the use of a peace officer.

SB 169 (Benoit), Chapter 345, authorizes the head of an agency that employs specified peace officers to issue identification in the form of a badge, insignia, emblem, device, label, certificate, card, or writing that clearly states that the recipient has honorably retired following service as a peace officer with that agency. Specifically, this new law:

- States that if the badge issued to an honorably retired peace officer is not affixed to a plaque or other memento commemorating the retiree's service for the agency, the words "honorably retired" must be clearly visible above, underneath, or on the badge itself.

- Provides that the term "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination.

- Provides law enforcement agencies with a valuable tool for honoring, upon retirement, members of their agency who deserve such recognition.

- Eliminates provisions that have prevented the head of a law enforcement agency from issuing an honorary badge, insignia, emblem or other device to honor the service of members of their agencies who have honorably retired.

RESTITUTION

Vandalism: Restitution

Graffiti is a costly and pervasive problem affecting all residents, property owners, businesses, and public agencies. The California Research Bureau estimates that the statewide cost of graffiti abatement is potentially upwards of $350 million annually. The majority of these costs are borne entirely by local governments. One of the main reasons local governments continue to pay to clean up graffiti is cost recovery procedures are cumbersome and ineffective.

> **AB 576 (Torres), Chapter 454,** expands the definition of a "victim" for the purposes of restitution to include any governmental entity responsible for repairing, replacing or restoring public and privately owned property defaced with graffiti or other inscribed material, as specified, and has sustained economic loss as a result.

Victim Restitution

The Victims Compensation and Government Claims Board (VCGCB) is the state agency responsible for administering the Victims Restitution Fund. The Restitution Fund is for victims of violent crimes who suffer out-of-pocket losses and who may be eligible to apply for financial reimbursement. The Fund reimburses eligible victims for lost wages or support, medical or psychological counseling expenses, and other related costs.

As of July 2008, the California Department of Corrections and Rehabilitation (CDCR) has approximately 250,000 inmates and parolees with obligations for restitution over $100. There are approximately 33,000 current inmates and parolees who owe direct orders. The sum of the balance due for these offenders is approximately $1.1 billion.

There are approximately 100,000 unknown victims with direct orders of restitution that CDCR is unable to locate.

Prior to 2007, any undisbursed collected restitution funds were almost nonexistent. VCGCB was able to distribute about 97 percent of all direct order collections immediately upon collection; when an offender was ordered to pay a victim under a direct order of restitution, the law further required the victim to file a claim with the state before CDCR was empowered to collect on the victim's behalf. However, many victims were unclear on how file a claim or did not know that they were required to file a claim in order to receive restitution funds. Victims also assumed that once the order was written by the court awarding restitution the money would be automatically mailed to them.

The requirement to file a claim became very unpopular with both judges and victims. As a result, CDCR sponsored AB 1505 (La Suer), Chapter 555, Statutes of 2006, which authorized CDCR to collect on all direct orders without the victim claim filing requirement effective January 1, 2007; this caused direct order collections to increase immediately from $40,000 monthly to $400,000.

However, as collections rose, the percentage which could be distributed (where victim information was known) dropped from 97 percent to 22 percent. CDCR is accumulating $3.5 million annually that cannot be disbursed due to the lack of victim contact information.

SB 432 (Runner), Chapter 49, authorizes a county probation department, when restitution has been ordered, to provide the CDCR a copy of the restitution order and victim contact information. Specifically, this new law provides that whenever a person is committed to an institution under CDCR's jurisdiction and the court has ordered the person top pay restitution to a victim the following shall apply:

- If the victim consents, the probation officer of the county from which the person is committed may send to the CDCR the victim's contact information and a copy of the restitution order for the purpose of distributing the restitution collected on behalf of the victim.

- The contact information shall remain confidential and shall not be made part of the court file or combined with any public document.

SEX OFFENDERS

State-Authorized Risk Assessment Tool for Sex Offenders

Existing law authorizes the use of a State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to the legislative finding that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. Current law also establishes a "SARATSO Review Committee," comprised of a Department of Mental Health (DMH) representative, in consultation with a California Department of Corrections and Rehabilitation (CDCR) representative and a representative of the Attorney General's Office.

SB 325 (Alquist), Chapter 582, provides additional protocol for an agency administering the SARATSO and believing that a score does not represent the person's true risk level to submit the case to experts, as specified, for possible override. Specifically, this new law:

- Provides that if the agency responsible for scoring the SARATSO believes an individual's score does not represent the person’s true risk level based on factors in the offender’s record, the agency may submit the case to the experts retained by the SARATSO Review Committee to monitor the SARATSO scoring.

- Requires the experts, as specified, be guided by empirical research in determining whether to raise or lower the risk level. Agencies scoring the SARATSO shall develop a protocol for the submission of risk-level override requests to the experts retained in accordance with provisions of law, as specified.

- Clarifies that the CDCR assess every eligible person on parole if that person was not assessed prior to release from state prison.

- Mandates that the CDCR and DMH record in a database the risk assessment scores of persons assessed, as specified, and any risk assessment score submitted to CDCR by a probation officer, as required in existing law.

- Provides that beginning January 1, 2010, the CDCR and DMH shall send the risk assessment scores to the Department of Justice's (DOJ) Sex Offender Tracking Program not later than 30 days after the date of the assessment. The risk assessment score of an offender shall be made part of his or her file maintained by DOJ's Offender Tracking Program as soon as possible without financial impact, but no later than January 1, 2012.

- Provides that eligible persons not assessed by CDCR while incarcerated may be assessed as follows:

- A person may be assessed upon request of the law enforcement agency in the jurisdiction in which the person is required to register as a sex offender. The law enforcement agency may enter into a memorandum of understanding (MOU) with a probation department to perform the assessment. In the alternative, the law enforcement agency may arrange to have personnel trained to perform the risk assessment in accordance with existing law.

- Eligible persons not assessed may request that a risk assessment be performed. A request form shall be available at registering law enforcement agencies. The person requesting the assessment shall pay a fee for the assessment that shall be sufficient to cover the cost of the assessment. The risk assessment so requested shall be performed either by the probation department, if a MOU is established between the law enforcement agency and the probation department, or by personnel who have been trained to perform risk assessment in accordance with existing law.

- States that for purposes relating to administering the SARATSO, an "eligible person" is defined as a registered sex offender eligible for assessment pursuant to the official Coding Rules designated for use with the risk assessment instrument by the author of any SARATSO selected by the Review Committee, as specified.

- Eliminates from the definition of "eligible person" an offender who has not been assessed within the previous five years.

- Provides that persons authorized to perform risk assessments pursuant to existing law shall be immune from liability for good-faith conduct, as specified.

- Requires persons acting under authority from the SARATSO Review Committee as an expert, as specified, to have access to all relevant records concerning the offender.

- Provides that if the probation officer has recommended that the minor be transferred to the CDCR's Division of Juvenile Justice pursuant to an adjudication for an offense requiring him or her to register as a sex offender, the selected SARATSO shall be used to assess the minor and the court shall receive that risk assessment score into evidence.

- Retains a DMH representative on the SARATSO Review Committee but states the Review Committee shall be staffed by CDCR and any agreed changes to the SARATSO are to be posted by CDCR rather than DMH.

Sex Offenders: Registration

California requires those convicted of specified sex offenses to register with local law enforcement for life. The purpose of sex offender registration is to assure that these offenders are available for police surveillance at all times as the Legislature has deemed those offenders are likely to commit similar offenses in the future. Registered sex offenders are required to

update their information annually, within five working days of their birthday. Some sex offenders must update more often: transients must update registration every 30 days and sexually violent predators must update registration every 90 days. Currently, if a registrant provides false information on his or her registration form, the registrant is subject to a misdemeanor.

SB 668 (Hollingsworth), Chapter 60, specifies that the maximum one-year misdemeanor punishment for failure to provide complete and accurate information required on the Department of Justice's sex offender registration and re-registration forms shall not be construed to limit or prevent prosecution under any other applicable provision of law.

SEX OFFENSES

Human Trafficking

Human trafficking involves the recruitment, transportation or sale of persons for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80 percent are women and girls and up to 50 percent are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees.

AB 17 (Swanson), Chapter 211, modifies several provisions related to the sexual exploitation of minors. Specifically, this new law:

- Adds abduction or procurement by fraudulent inducement for prostitution to the list of crimes for which a forfeiture of assets can be sought for criminal profiteering.
- Increases the maximum fine for pimping, pandering, or procurement from $5,000 to $20,000.
- States that in any case involving human trafficking of minors for purposes of prostitution or lewd conduct, or procurement in which the victim is a minor, the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs. Fifty percent of the funds deposited in the Victim-Witness Assistance Fund shall be granted to community-based organizations serving minor victims of human trafficking.

Sex Offenders: Registration Requirements

Under existing law, the Sex Offender Registration Act requires that any person found to have committed certain sexual offenses must register with certain regional entities as a sex offender while residing in California. State law generally requires the Department of Corrections and Rehabilitation (CDCR) to return paroled a sex offender to his or her county of last legal residence unless circumstances call for a different placement. Such an individual is required to register (provide an address) with the local law enforcement agency that has jurisdiction over his or her place of residence within five working days of moving there and upon each anniversary of his or her birth. The law enforcement agency forwards the registration information to the Department of Justice (DOJ), which maintains a database of sex offenders. While not

responsible for determining where a paroled sex offender resides, CDCR may help facilitate placement. Further, state law requires DOJ to maintain a registry to track certain information (including the addresses of sex offenders), but does not require DOJ to monitor compliance; rather, state law holds the sex offender responsible for ensuring compliance with registration requirements. Restrictions apply as to how many paroled sex offenders can live at the same address.

DOJ's database contains addresses of registered sex offenders, but DOJ does not identify whether the addresses are private residences, a licensed residential facility, or a hotel as there is no requirement to report this information.

SB 583 (Hollingsworth), Chapter 55, requires the DOJ to record the type of residence at which a sex offender resides and provide the information to state agencies for law enforcement purposes related to investigative responsibilities regarding sex offenders. Specifically, this new law:

- States that DOJ shall record the address at which a registered sex offender resides with a unique identifier for the address.
- Provides that the identifier shall consist of a description of the nature of the dwelling, with the choices of a single-family residence, an apartment/condominium, a motel/hotel, or a licensed facility.
- Specifies that each address and its association with any specific registered sex offender shall be stored by DOJ in the same database as the registration data recorded pursuant to Penal Code Section 290.015.
- States that the DOJ shall make that information available to the Department of Social Services or any other state agency when the agency needs the information for law enforcement purposes relating to investigative responsibilities relative to sex offenders.
- Provides that this section shall become operative on January 1, 2012.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Jury Instructions

The Sexually Violent Predator Act went into effect on January 1, 1996 and established a new category of civil commitment for persons classified as "sexually violent predators" (SVPs). In establishing the SVP Act, the Legislature declared that there is a small group of extremely dangerous offenders with diagnosed mental disorders that can be readily identified while incarcerated. The Legislature further declared that these individuals are not safe to reside at-large and represent a danger to the health and safety of others if they are released. It was the intent of the Legislature that individuals classified as SVPs be confined and treated until they no longer present a threat to society. The SVP law has been amended several times since it was enacted. Current law defines a SVP as a person who has been convicted of a sexually violent offense against one or more victims and provides for an indeterminate commitment. Currently, there are about 768 SVPs in state mental facilities. Completion of a treatment program is not currently a condition of release under state law. In fact, a vast majority of adjudicated SVPs refuse treatment while in a state hospital; according to the Department of Mental Health, 70 percent of SVPs are currently refusing treatment.

SB 669 (Hollingsworth), Chapter 61, provides that, in a trial to determine whether or not a person is still a SVP, the court shall instruct the jury that failure to participate in or complete the prescribed sex offender treatment may be considered evidence that a person's condition has not changed. Specifically, this new law:

- States that where the SVP's failure to participate in, or complete, treatment is relied upon as proof that the person's condition has not changed and there is evidence to support that reliance, the jury shall be instructed.

- Provides that the jury shall be instructed as follows, "[t]he committed person's failure to participate in or complete the State Department of Mental Health Sex Offender Commitment Program are facts that, if proved, may be considered as evidence that the committed person's condition has not changed. The weight to be given that evidence is a matter for the jury to determine."

VEHICLES

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

AB 91 (Feuer), Chapter 217, establishes a three-county pilot program within the Department of Motor Vehicles (DMV) that requires a person convicted pf DUI to install an IID, as specified, on all vehicles he or she owns or operates. This program commences on July 1, 2010 and sunsets on January 1, 2016. Specifically, this new law:

- Requires the DMV to establish a pilot program in Tulare, Los Angeles, and Sacramento, to reduce the number of first-time violations and repeat offenses of DUI and DUI with injury.

- Requires the DMV, upon receipt of the court's abstract conviction for DUI or DUI with injury, to inform the convicted person of his or her duty to install an IID, as specified, including the term for which the person is required to have a certified IID installed and the requirement that he or she participate in a county alcohol and drug problem assessment program, as specified.

- Requires that DMV records reflect the mandatory use of the IID for the term specified and the time when the IID must be installed, as specified. The DMV must advise the person that the installation of an IID does not allow the person to drive without a valid driver's license.

- States that before a driver's license may be issued, reissued or returned to a person after a suspension or revocation of that person's driving privilege where an IID is required, a person notified by the DMV of the IID requirement must complete all of the following:

    - Arrange for each vehicle owned and operated by the person to be fitted with an IID by a certified IID provided, as specified;

    - Notify and provide proof if installation of the IID to the DMV by submitting a "verification of installation" for, as specified; and,

    - Pay the fee determined by the DMV to be sufficient to include the cost of administration.

- Provides that the DMV shall place a restriction on the convicted person's driver's license record that states the driver is restricted to only driving a vehicle equipped with a certified IID.

- States the DMV shall monitor installation and maintenance of the IID, as specified.

- Provides a person required to install an IID as a condition of being issued a restricted driver's license, being reissued a driver's license, or having the privilege to operate a motor vehicle reinstated subsequent to a suspension for driving on a suspended license, as specified, shall be as follows:

  - Upon conviction of a first offense DUI or DUI with injury, a person shall install an IID in all vehicles owned and operated by that person for a mandatory term of five months for a DUI and 12 months for a DUI with injury to begin when he or she has shown proof of installation;

  - Upon conviction for a second offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 12 months for a DUI and 24 months for a DUI with injury;

  - Upon conviction for a third offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 24 months for a DUI and 36 months for a DUI with injury; and,

  - Upon conviction of a fourth or subsequent offense DUI or DUI with injury, a person shall install an IID for a mandatory term of 36 months for a DUI and 48 months for a DUI with injury.

- States existing provisions related to mandatory IIDs are still operative.

- Provides that the mandatory term for which the IID is to be installed shall be reset by the DMV if a person fails to comply with any of the requirements regarding IID installation and maintenance.

- Requires every manufacturer and manufacturer's agent certified by the DMV, as specified, providing IIDs must adopt the following fee schedule that provides for the payment of the costs of the IID by an offender subject to this requirement in amounts commensurate with that person's income relative to the federal poverty level, as specified:

  - A person with an income at 100 percent of the federal poverty level and below is responsible for 10 percent of the fee for the assessment;

  - A person with an income at 101 percent to 200 percent of the federal poverty level is responsible for 10 percent of the fee for the assessment;

  - A person with an income at 201 percent to 300 percent of federal poverty level is responsible for 50 percent of the fee for the assessment;

  - All other offenders are responsible for 100 percent of the fee for the assessment; and,

  - The IID provider is responsible for absorbing the cost of the IID that is not paid by the person.

- States the cost of the IID may only be raised annually equal to the Consumer Price Index and the offender's income may be verified by presentation of that person's federal income tax return or three months of monthly income statements.

- States the requirements of an IID, as specified, are in addition to any other requirement of law.

- Creates an exception from the requirements to install an IID if the person notified by the DMV certifies within 30 days all of the following:

  - The person does not own a vehicle;

  - The person does not have access to a vehicle at his or her residence;

  - The person no longer has access to the vehicle driven by the person when he or she was arrested for DUI that subsequently resulted in a conviction, as specified;

  - The person acknowledges that he or she is only allowed to drive a vehicle fitted with an operating IID and that he or she is required to have a valid driver's license before he or she can drive; and,

  - The person is subject to the requirements of this provision when he or she purchases or has access to a vehicle.

- Mandates the DMV to report to the Legislature on or before January 1, 2014 regarding the effectiveness of the pilot program, as specified, in reducing the number of first-time violations and repeat offenses of DUI and DUI with injury in Tulare, Los Angeles, and Sacramento Counties.

- Defines a "vehicle" as not including a motorcycle until the State certifies an IID that can be installed on a motorcycle. A person subject to an IID restriction shall not operate a motorcycle for the duration of the IID restriction period.

- Mandates the DMV will not implement the IID requirements by this new law if, by January 31, 2010, the DMV fails to obtain non-state funds for the programming costs of the pilot program, as specified.

Driving under the Influence: Ignition Interlock Devices

Under existing law, a court may require a person convicted of a first-time driving under the influence (DUI) offense or DUI causing bodily injury to install a certified ignition interlock device (IID) on any vehicle that the person owns or operates and prohibits that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

> **SB 598 (Huff), Chapter 193,** provides that the Department of Motor Vehicles advise a person convicted of a second or third DUI offense with a blood alcohol content of 0.08 percent or more that he or she may receive a restricted license, as specified, if he or she shows verification of installation of a certified IID and pays a fee sufficient to include the costs of administration, as specified.

VICTIMS

Human Trafficking

Human trafficking involves the recruitment, transportation or sale of persons for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80 percent are women and girls and up to 50 percent are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees.

AB 17 (Swanson), Chapter 211, modifies several provisions related to the sexual exploitation of minors. Specifically, this new law:

- Adds abduction or procurement by fraudulent inducement for prostitution to the list of crimes for which a forfeiture of assets can be sought for criminal profiteering.
- Increases the maximum fine for pimping, pandering, or procurement from $5,000 to $20,000.
- States that in any case involving human trafficking of minors for purposes of prostitution or lewd conduct, or procurement in which the victim is a minor, the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs. Fifty percent of the funds deposited in the Victim-Witness Assistance Fund shall be granted to community-based organizations serving minor victims of human trafficking.

Domestic Violence: Protective Orders

Existing law provides that in a situation where a mutual protective order has been issued in the case of domestic violence, as specified, liability for arrest applies only to the person reasonably believed to have been the primary aggressor. In that situation, prior to making an arrest, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect a victim of domestic violence from continuing abuse, the

threat of creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person involved acted in self-defense.

AB 258 (Ma), Chapter 92, alters provisions relating to mutual protective orders by replacing the term "primary aggressor" with "dominant aggressor."

Claims for Damages for Erroneous Conviction

At a hearing before the Victim Compensation and Government Claims Board (VCGCB), a claimant must prove that the crime with which he or she was charged with was either not committed at all or if committed was not committed by him or her, as well as the fact that he or she did not, by any act or omission, either intentionally or negligently, contribute to his or her arrest and conviction. The claimant must also prove that pecuniary injury was sustained through erroneous conviction and imprisonment. Claimants have six months to file a claim with the VCGCB.

AB 316 (Solorio), Chapter 432, amends the time for filing a claim with the VCGCB from six months to two years. Specifically, this new law:

- Provides that a judicial finding of factual innocence shall be admissible as evidence at the VCGCB hearing.

- Reflects the policy of the State of California to redress the injury inflicted upon the innocent as quickly as possible.

Vandalism: Restitution

Graffiti is a costly and pervasive problem affecting all residents, property owners, businesses, and public agencies. The California Research Bureau estimates that the statewide cost of graffiti abatement is potentially upwards of $350 million annually. The majority of these costs are borne entirely by local governments. One of the main reasons local governments continue to pay to clean up graffiti is cost recovery procedures are cumbersome and ineffective.

AB 576 (Torres), Chapter 454, expands the definition of a "victim" for the purposes of restitution to include any governmental entity responsible for repairing, replacing or restoring public and privately owned property defaced with graffiti or other inscribed material, as specified, and has sustained economic loss as a result.

Domestic Violence: Release

Current law requires a person charged with a domestic violence misdemeanor to appear before a judge or commissioner in order to have the facts relevant to the arrest reviewed and determine whether the person is a threat to the alleged victim or to the public. However, there are discrepancies in state law that potentially allow for the release of a person charged without ever appearing before a judge or commissioner.

AB 688 (Eng), Chapter 465, clarifies that a peace officer may not release a person on his or her own recognizance, as specified, when arrested for a misdemeanor violation of a domestic violence protective order.

Mortgage Fraud

Existing law defines various forms of theft and fraud, including, but not limited to, the obtaining of property, labor, or services by means of false or misleading statements. Under existing law, fraud is committed where a person causes or procures others to report falsely of his or her wealth or mercantile character and thereby obtains credit and fraudulently receives possession of money or property or obtains the labor or service of another. A person who makes any false financial statement or other written statements, as specified, is guilty of an alternate misdemeanor/felony, punishable by a fine not exceeding $5,000 or by imprisonment in the state prison or by both such fine and imprisonment, or by a fine not exceeding $2,500 or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SB 239 (Pavley), Chapter 174, creates a new public offense of "mortgage fraud" punishable by imprisonment in the state prison or in a county jail for not more than one year. Specifically, this new law:

- Sets forth legislative findings and declarations, including, but not limited to, the following:
  - California is one of the leading states in the incidence of mortgage fraud.
  - The harms associated with mortgage fraud include:
    - Foreclosures that disproportionately affect low-income borrowers,
    - The deterioration of neighborhoods stricken by foreclosures;
    - Plummeting property values; and,
    - The proliferation of fraudulent loan modification scams.
  - While perpetrators of mortgage fraud are currently subject to prosecution under general felony theft statutes, the only California statute specifically dedicated to mortgage fraud treats the crime as a misdemeanor.
  - Time is of the essence in the investigative stage of real estate fraud cases, which are dependent on the timely acquisition of documents held by parties to the transactions such as mortgage brokers, title and escrow companies, and lenders.
  - The current statutory scheme hampers the ability of law enforcement to efficiently gather those documents and determine whether crimes have occurred.

- Encourages and facilitates a shift of prosecution of mortgage fraud cases to prosecution under one specifically dedicated felony mortgage statute that carries the same penalties as the currently utilized general felony theft statutes.

- Facilitates the tracking of mortgage fraud cases in order to assist law enforcement in accessing federal funds for the purpose of combating mortgage fraud to the extent that such funds are available.

- Provides an efficient method to obtain necessary documents from real estate record holders in fraud-related cases.

Counterfeit Goods: Charitable Donations

In 2007, United States Customs Officials seized $197 million in counterfeit goods, up 27 percent from 2006. The county Economic Development Corporation estimates about $2 billion worth of counterfeit goods are sold annually in Los Angeles alone.

In California, there are over 150,000 individuals and families who are homeless, a number which will likely grow in the next two years due to job loss and the impact of home foreclosures.

Repurposing counterfeit shoes and clothes after their confiscation and with the trademark owner's consent could help California's homeless population. Donating these items to nonprofit agencies would fill the paucity of public funding created by budget cuts to homeless and women's shelters. Landfills are already at capacity; donating goods is a sound solution to an environmental problem.

Under existing law, upon conviction and confiscation of counterfeit items, items such as shoes and clothing must be destroyed. In some instances, items have been donated by the Los Angeles City Attorney's Office to organizations serving the homeless with the permission of the trademark owners. Organizations taking possession of counterfeit items remove tags and imprint the items with an indelible stamp to ensure the items do not re-enter the market place. However, there is a reluctance to continue this practice as statute calls for the destruction of goods regardless of trademark owner's consent.

SB 324 (Calderon), Chapter 581, authorizes lawfully registered owners of intellectual property to consent to the donation of seized counterfeit goods to charity. Specifically, this new law:

- States that upon request of any law enforcement agency and consent from the lawful registrants, a court may consider a motion to have seized counterfeit goods donated to nonprofit organizations.

- Specifies that the purpose of distributing the goods to charity is to benefit persons living in poverty and that no charge shall be rendered upon the persons served by the charitable organization.

- Excludes recordings and audiovisual works.

Victim Restitution

The Victims Compensation and Government Claims Board (VCGCB) is the state agency responsible for administering the Victims Restitution Fund. The Restitution Fund is for victims of violent crimes who suffer out-of-pocket losses and who may be eligible to apply for financial reimbursement. The Fund reimburses eligible victims for lost wages or support, medical or psychological counseling expenses, and other related costs.

As of July 2008, the California Department of Corrections and Rehabilitation (CDCR) has approximately 250,000 inmates and parolees with obligations for restitution over $100. There are approximately 33,000 current inmates and parolees who owe direct orders. The sum of the balance due for these offenders is approximately $1.1 billion.

There are approximately 100,000 unknown victims with direct orders of restitution that CDCR is unable to locate.

Prior to 2007, any undisbursed collected restitution funds were almost nonexistent. VCGCB was able to distribute about 97 percent of all direct order collections immediately upon collection; when an offender was ordered to pay a victim under a direct order of restitution, the law further required the victim to file a claim with the state before CDCR was empowered to collect on the victim's behalf. However, many victims were unclear on how file a claim or did not know that they were required to file a claim in order to receive restitution funds. Victims also assumed that once the order was written by the court awarding restitution the money would be automatically mailed to them.

The requirement to file a claim became very unpopular with both judges and victims. As a result, CDCR sponsored AB 1505 (La Suer), Chapter 555, Statutes of 2006, which authorized CDCR to collect on all direct orders without the victim claim filing requirement effective January 1, 2007; this caused direct order collections to increase immediately from $40,000 monthly to $400,000.

However, as collections rose, the percentage which could be distributed (where victim information was known) dropped from 97 percent to 22 percent. CDCR is accumulating $3.5 million annually that cannot be disbursed due to the lack of victim contact information.

SB 432 (Runner), Chapter 49, authorizes a county probation department, when restitution has been ordered, to provide the CDCR a copy of the restitution order and victim contact information. Specifically, this new law provides that whenever a person is committed to an institution under CDCR's jurisdiction and the court has ordered the person top pay restitution to a victim the following shall apply:

- If the victim consents, the probation officer of the county from which the person is committed may send to the CDCR the victim's contact information and a copy of the restitution order for the purpose of distributing the restitution collected on behalf of the victim.

- The contact information shall remain confidential and shall not be made part of the court file or combined with any public document.

Witness Relocation and Assistance Program

The Witness Relocation and Assistance Program (WRAP) is administered by the Attorney General. Under WRAP, in any California criminal proceeding when the action is brought by local or state prosecutors where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services. Existing law provides that the Attorney General shall give priority to matters involving organized crime, gang activities, drug trafficking, human trafficking, and creating a high degree of risk to the witness. Special regard shall be given to the elderly, the young, battered, victims of domestic violence, the infirm, the handicapped and victims of hate incidents.

SB 748 (Leno), Chapter 613, provides further protection to persons participating in the Witness Relocation and Assistance Program by prohibiting their addresses and telephone numbers from being posted on the Internet. This new law additionally provides for injunctive and declaratory relief, including court costs and attorneys' fees, as well as the ability to bring a civil action for damages, and various criminal penalties. This new law also:

- Makes it a misdemeanor for any person or private entity to post on the Internet the home address, telephone number, or personal identifying information that discloses the location of any witness or witness family member participating in WRAP with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member.

- Provides that upon admission to WRAP, local or state prosecutors shall give each participant a written "opt-out" form for submission to relevant Internet search engine companies or entities. This form shall notify the entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public Internet search databases.

- States that a business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant shall remove the participant's personal information from public display on the Internet within two business days of delivery of the opt-out form, and shall continue to ensure that this information is not re-posted

on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form.

- Provides that no business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant.

- States that a violation of the above requirements is subject to a civil penalty in the amount of $5,000.

- Provides that an action for the civil penalty may be brought by any public prosecutor, and the penalty imposed shall be enforceable as a civil judgment.

- Provides that any witness whose home address or telephone number is made public as a result of a violation of the above requirements may bring an action for injunctive or declaratory relief. This new law states that if a violation is found by a court or a jury, injunctive or declaratory relief may be granted in addition to court costs and reasonable attorneys' fees.

- Provides that, notwithstanding any other provision of law, a witness whose home address or telephone number is solicited, sold, or traded in violation of the above requirements may bring an action in any court of competent jurisdiction.

- States that if a jury or court finds that a violation has occurred, it shall award damages to that witness in an amount up to a maximum of three times the actual damages, but in no case less than $4,000.

WEAPONS

Search Warrants: Firearms

Law enforcement is required to take temporary custody of any firearms or other deadly weapon at the scene of a domestic violence incident or whenever an individual is apprehended due to a mental condition that makes him or her a danger to himself, herself, or others. However, it is not constitutionally permissible to confiscate a firearm or other deadly weapon when it is *in* the residence of the mentally disordered detained *outside* his or her residence and there is no exigent circumstance or other basis for warrantless entry. Although current law requires confiscation of firearms and other deadly weapons, this situation is not included as a ground for the issuance of a search warrant as currently written.

> **AB 532 (Lieu), Chapter 450,** authorizes the issuance of a search warrant when the property or things to be seized included a firearm or other deadly weapon at the scene of, or at the premises occupied, or under the control of: (1) a person arrested in connection with a domestic violence incident involving a threat to human life or physical assault, or (2) a person who has been detained or apprehended for examination of his or her mental condition.

Weapons: Composite Knuckles

The current language contained in Penal Code Section 12020 (c) (7) referring exclusively to "metal knuckles" is insufficient to protect law enforcement and other public safety officers from similar weapons constructed from composite materials. Metal knuckles are even more dangerous than their metal or brass counterparts as they are undetectable in metal detectors, creating the potential for these weapons to be smuggled onto airplanes, into courthouses and other public buildings, and into prisons. The loophole allowing these dangerous weapons should be closed.

> **AB 714 (Feuer), Chapter 121,** makes the possession, manufacture, importation, or sale of composite knuckles, as defined, a misdemeanor punishable by up to six months in a county jail, a fine of up to $1,000, or by both. Specifically, this new law:
>
> - Provides that any person that possesses, manufactures, imports into California, or offers for sale any composite knuckles is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed $1,000, or by both imprisonment and a fine.
>
> - Defines "composite knuckles" as any device or instrument made wholly or partially of composite materials, other than a medically prescribed prosthetic, that is not a metal knuckle, as defined, and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow.

Search Warrants: Firearms

Current law prohibits a person who is the subject of a Domestic Violence Protective Order (DVPO) from owning, possessing, purchasing or receiving any firearm while the protective order is in effect, and requires the subject to immediately surrender any firearm in his or her possession or control to a law enforcement officer. Despite these laws, law enforcement has found that many persons subject to DVPOs do not report this legally mandated information. Therefore, in order to protect the safety of a domestic violence (DV) victim, law enforcement consequently obtains a search warrant to seize all firearms and weapons from a DV offender's possession. However, a California court recently ruled that because current law does not explicitly cite a DVPO as grounds for the issuance of a search warrant, law enforcement does not have a constitutionally permissible method to seize firearms from the DV offender's possessions if the DV offender is served outside of his or her residence. A United States court also ruled that law enforcement cannot constitutionally seize firearms from a DV offender if the offender or his or her residential partner will not consent to a voluntary search of his or her residence to seize any firearms of which the offender owns or has control.

> **AB 789 (De Leon), Chapter 473,** authorizes the issuance of a search warrant when the property or things to be seized include a firearm owned by, in the possession of, or in the custody or control of a person subject to the prohibitions regarding firearms pursuant to protective orders issued to prevent the molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property; contacting, either directly or indirectly, by mail or otherwise; coming within a specified distance of, or disturbing the peace of, the other party; and, in the discretion of the court, on a showing of good cause, of other named family or household members.

Weapons on School Grounds

Existing law provides that bringing or possessing specified weapons upon the grounds of, or within, any private or public school providing instruction in Kindergarten or any or all of Grades 1 to 12, inclusive, is a public offense punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison. Weapons included in this prohibition include dirks, daggers, ice picks, folding knives with a blade that locks into place, razors with unguarded blades, tasers, stun guns, instruments that expel a metallic projectile such as a BB or pellet, through the force of air pressure or spring action, and a spot marker gun.

> **AB 870 (Huber), Chapter 258,** makes it a misdemeanor to bring or possess a razor blade or box cutter on specified school grounds. Specifically, this new law:
>
> - Closes a loophole in current law regarding the possession of weapons on school campuses by specifically adding razor blades and box cutters to the list of prohibited weapons.
>
> - Infers a difference in the danger level of razor blades and box cutters on one level and stun guns, tasers, BB and pellet guns on another level.

- Imposes a lesser punishment as a misdemeanor on possession of a razor blade or box cutter on school grounds than the alternate misdemeanor/felony imposed for the possession of the more serious weapons.

Ammunition Sales

Under existing law, no person prohibited from owning or possessing a firearm under specified provisions of law shall have under his or her custody or control any ammunition or reloaded ammunition; a violation of this provision is an alternate felony/misdemeanor. Further, it is unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than 21 years of age.

AB 962 (De Leon), Chapter 628, requires, commencing February 1, 2011, that a handgun ammunition vender obtain a thumb print and other specified information from an ammunition purchaser and requires that the above information be subject to inspection by law enforcement. Specifically, this new law:

- Provides that, commencing February 1, 2011, a vendor of handgun ammunition shall not sell or transfer ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser without the assistance of the vendor or employee thereof.

- Provides that, commencing February 1, 2011, a vendor of handgun ammunition shall not sell or transfer handgun ammunition without at the time of purchase legibly recording the following information on a form prescribed by the DOJ:

    - The date of the transaction;
    - The transferee's driver's license or other identification number and the state in which it was issued;
    - The brand, type, and amount of ammunition transferred;
    - The purchaser or transferee's signature;
    - The name of the salesperson who processed the sale or transaction;
    - The right thumbprint of the purchaser or transferee on the prescribed form;
    - The purchaser's or transferee's full residential address and telephone number; and,
    - The purchaser's or transferee's date of birth.

- Provides that, commencing February 1, 2011, the records of the sale or transfer of handgun ammunition shall be maintained on the premises of the vendor for at least five years from the date of the recorded transfer.

- Provides that, commencing February 1, 2011, the handgun ammunition vendor's records of sale shall be subject to inspection by specified peace officers engaged in an investigation where the records may be relevant, is seeking information about prohibited persons, or is engaged in ensuring compliance with laws relating to firearms or ammunition.

- Provides that, commencing February 1, 2011, a handgun ammunition vendor shall not knowingly make a false entry in, fail to make a required entry in, fail to obtain the required thumbprint, or otherwise fail to maintain the records of handgun ammunition transfers or sales.

- Provides that, commencing February 1, 2011, no vendor shall refuse to permit specified peace officers to examine any record related to the transfer or sale of handgun ammunition, or refuse to permit the use of these record by those persons.

- Exempts from providing specified information at the time of purchase or transfer of ownership of handgun ammunition by licensed handgun ammunition vendors to any of the following who are properly identified in a manner prescribed by the DOJ:

    - A licensed firearms dealers;

    - A licensed handgun ammunition vendor;

    - A federally licensed firearms dealer;

    - A target facility which holds a business or regulatory license;

    - Gunsmiths;

    - Wholesalers;

    - Manufacturers or importers of firearms, as specified;

    - Sales or transfers of ownership of handgun ammunition made to authorized law enforcement representatives if written authorization from the employing the agency is presented to the person from whom the purchase is being made; and,

    - Sales or transfers of ownership of handgun ammunition by licensed handgun ammunition vendors to sworn peace officers, as specified.

- Provides that specified violations relating to the maintenance of records of handgun ammunition transfers or sales shall be punished as a misdemeanor.

- Makes it a misdemeanor for any person who is subject to an injunction for being a member of a criminal street gang to own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

- Provides that a sale of any ammunition by a person, corporation or firm to a person prohibited from owning or possessing ammunition, or to a person he or she reasonably should know is a prohibited person, is punishable by up to one year in the county jail, by a fine not to exceed $1,000, or both.

- Provides that, commencing February 1, 2011, the sale or transfer of handgun ammunition may only occur in a face-to-face transaction with the seller or transferor being provided with bona fide evidence of identity from the purchaser, and a violation of this provision is a misdemeanor.

- Defines "bona fide evidence of identity" as a document issued by a federal, state, county, or municipal government, or agency thereof, including, but not limited to, a motor vehicle operator's license; California state identification card; identification card issued to a member of the armed forces; or other form of identification that bears the name, date of birth, description, and picture of the person.

- Defines "handgun ammunition" as ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined, notwithstanding that the ammunition may also be used in some rifles, but excluding ammunition intended to be used in antique firearms. Handgun ammunition does not include blanks used in prop weapons.

- Provides that the face-to-face requirement shall not apply to the delivery of ammunition to law enforcement agencies, sworn peace officers, importers and manufacturers of firearms, licensed ammunition vendors, licensed firearms dealers or collectors, and consultant evaluators as specified.

Weapons: Concealed Firearms

Existing law provides for the revocation for good cause of an identification certificate or an endorsement on the certificate authorizing a retired peace officer to carry a concealed and loaded firearm, as determined in a hearing, as specified. The current procedure for revocation proceedings is ambiguous.

AB 1129 (Hagman), Chapter 138, imbues a clear procedure for the temporary revocation of an identification certificate or an endorsement on the certificate authorizing a retired peace officer to carry a concealed and loaded firearm for conduct that compromises public safety. Specifically, this new law:

- Provides that an identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement on the certificate may be immediately and temporarily revoked by the issuing agency when the conduct of a retired peace officer compromises public safety. Notice of this temporary revocation shall be effective upon personal service or upon receipt of the notice sent by first-class mail, postage prepaid, return receipt requested, to the retiree's last known place of residence. The retiree shall have 15 days to respond to the notification and request a hearing to determine if the temporary revocation should become permanent. A retired peace officer who fails to respond to the notice of hearing within the 15-day period shall forfeit his or her right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency. If a hearing is requested, good cause for permanent revocation shall be determined at the hearing. The retiree may waive his or her right to a hearing and immediately return the identification to the issuing agency.

- States that an identification certificate authorizing an officer to carry a concealed and loaded firearm or an endorsement may be permanently revoked or denied by the issuing agency upon a showing of good cause.

- Allows any retired peace officer whose identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement is to be revoked to have 15 days to respond to the notice of the hearing. Notice of the hearing shall be served either personally on the retiree or sent by first-class mail, postage prepaid, return receipt requested to the retiree's last known place of residence. From the date the retiree signs for the notice or upon the date the notice is served personally on the retiree, the retiree shall have 15 days to respond to the notification. A retired peace officer who fails to respond to the notice of the hearing shall forfeit his or her right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency. If a hearing is requested, good cause for permanent revocation shall be determined at the hearing. The hearing shall be held no later than 120 days after the request by the retired officer for a hearing is received. The retiree may waive his or her right to a hearing and immediately return the identification certificate to the issuing agency.

Peace Officer Training: Firearms

Existing law provides that no person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period. Existing law provides for certain specified exceptions to this law, including law enforcement agencies; any agency authorized to perform law enforcement duties; any state or local correctional facility; any private security company licensed to conduct business in California; any person properly identified as a full-time paid peace officer who is authorized to, and does, carry a firearm during the course and scope of his or her employment as a peace officer; and others such as motion picture or video production companies; licensed collectors and others.

AB 1286 (Huber), Chapter 144, adds to these exemptions community colleges certified by the Commission on Peace Officer Standards and Training (POST) to present the law enforcement academy basic course or other Commission-certified law enforcement training. This new law:

- Corrects an oversight that excludes these college-affiliated academies from the one-handgun-per-month limit.
- Recognizes that this oversight restricts the ability of college-affiliated academies, which serve regional areas that contain smaller law enforcement jurisdictions that cannot support their own academy, to purchase a quantity of firearms in anticipation of a full class.
- Provides that the new exemption will apply only to POST-certified academies operating in community colleges.
- Is consistent with the original intent of the legislation which created the one-handgun-per-month purchase limitation.

Firearms: Concealed Weapons Permits

California Penal Code Section 12050 allows a sheriff or chief of police to issue a concealed weapons permit ("CCW permit") to an applicant he or she deems acceptable according to law. If approved, the applicant can carry a concealed, loaded gun. Penal Code Section 12050 also allows a sheriff or police chief in a county with a population of less than 200,000 to allow an applicant to carry a loaded, exposed weapon, but only in that county.

Some of those persons authorized to carry a loaded, exposed weapon have been traveling to other counties with a population over 200,000, violating their CCW authorization. Currently, Penal Code Section 12031 (making it illegal to carry a loaded firearm in public) provides for an exception to an individual who has a CCW permit. However, that exception does not appropriately address the two different CCW authorizations.

AB 1363 (Davis), Chapter 288, clarifies existing provisions of law stating that CCW permits only apply in the county of issuance. Specifically, this new law:

- Revises the exception to permit the carrying of handguns by persons as authorized pursuant to provisions relating to licenses to carry concealed firearms.
- Deletes language pertaining to reports to be filed by the Attorney General.
- Makes other technical, non-substantive changes such as substituting the term "handgun" for "pistols, revolvers, or other firearms capable of being concealed upon the person."

- Specifies that when a sheriff of a county, or the chief or other head of a municipal police department, authorizes a person to carry a concealed firearm subject to specified criteria being met and where the population of the county is less than 200,000 persons according to the most recent federal decennial census, the permit is only applicable and enforceable in the county for where it has been issued.

Weapons: School Grounds

Nationwide, more than 357,000 student expulsions and suspensions for firearm and other serious incidents took place in 2007-08 alone. Yet, under existing law, many such crimes - deemed serious enough to trigger expulsion proceedings - are not reported to local law enforcement. Under current law [Education Code Section 48902 (a) to (c)], school principals are required to notify the appropriate law enforcement authorities of the county or city in which the school is located of certain offenses. In large jurisdictions where district security/police respond to calls for service on campus, principals often mistake school police as "the appropriate law enforcement authority" within the meaning of Education Code 48902. As a result, some incidents are not reported to local law enforcement agencies.

AB 1390 (Blumenfield), Chapter 292, requires the principal of a school or the principal's designee to report the following acts committed by a pupil or non-pupil on a school site to the city police or county sheriff with jurisdiction over the school and the school security department or the school police department:

- Possessing, selling, or otherwise furnishing a firearm, except where the pupil had obtained prior written permission to possess the firearm from school officials; or,

- Possessing an explosive.

Secondhand Dealers: Firearms

Currently, secondhand dealers and pawnbrokers are exempt from reporting firearms acquisitions directly to the Department of Justice (DOJ). Instead, pawnbrokers and secondhand dealers fill out a form from the DOJ which details the receipt or purchase of property and is sent to local law enforcement agencies. In theory, local agencies log in the information they receive. In reality, the DOJ has found that due to limited resources, many local law enforcement agencies are unable to enter the firearms information into the DOJ's Automated Firearms System. As a result, inaccurate owner information sometimes appears in the system.

SB 449 (Padilla), Chapter 335, requires secondhand dealers to directly report firearms transactions to the DOJ instead of to local law enforcement. Specifically, this new law:

- Requires secondhand dealers, in a format proscribed by the DOJ and on the day of the transaction, to electronically report to the DOJ each firearm purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning.

- Requires the secondhand dealer to retain a copy of the report forwarded to the DOJ and make the copy available for inspection by the DOJ, any peace officer, or any local law enforcement employee authorized to inspect firearms transaction records.

- Authorizes DOJ to retain second dealer reports for the purpose of determining whether the firearm had been reported lost or stolen, and requires DOJ to notify the appropriate law enforcement agency or agencies if it is determined that a firearm is in fact lost or stolen.

- Provides that all information in the secondhand dealer report, for each firearm acquired, shall be electronically provided by the DOJ to the secure mailbox of the local law enforcement agency in the jurisdiction where the secondhand dealer is located within one working day of receipt by the DOJ.

- Delays implementation until July 1, 2010

MISCELLANEOUS

Public Officials: Personal Information

California Government Code Section 6254.21 provides for Internet privacy of public safety officials' home addresses and telephone numbers. Specifically, no public agency shall post the private information of a public safety official on the Internet without the written consent of that individual and also prescribes that a public safety official may opt-out of having his or her private information posted on any non-governmental Internet Web site for a period of four years.

However, often the opted-out information is reposted online prior to its intended expiration. Data vendors will purchase public information from a variety of sources, including the county recorder's office and school alumni lists. When data vendors purchase public information, the public safety official's home address and telephone number is posted once again on the Internet. While existing statute allows for injunctive or declaratory relief to prevent re-posting, re-posting occurs so frequently that the court system could be overly burdened with the amount of cases.

AB 32 (Lieu), Chapter 403, requires the removal of personal information of specified officials from the Internet, and permits employers or professional organizations to assert the rights of the official in removing the personal information from the Internet. Specifically, this new law:

- Requires a person, business, or association, upon receiving the written demand of an elected or appointed official, to immediately remove the official's home address or telephone number from public display on the Internet and to continue to ensure that information is not reposted on the Internet or any subsidiary site.

- Permits an elected or appointed official to designate the official's employer or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand or seeking enforcement of these posting requirements.

- Specifies a 48-hour window to remove the information from the Internet.

- Exempts telephone corporations, if necessary, in an emergency to collect a debt owed or as otherwise authorized by law.

- Requires agents of the elected or appointed official to include a statement describing the threat or fear of the official.

- Limits the award of damages for violating an injunction or declaratory relief to $1,000.

Sports Betting Pools: Penalties

In 2006, Margaret Hamblin, 73, and Cari Gardner, 39, both of Wildomar in Riverside County, were charged with operating a $50 football pool at the Wildomar Elks Lodge. Vital law enforcement resources were expended to investigate charge and prosecute these two women of participating in an activity as common as speeding. In a 1999 Society for Human Resource Management survey, 58 percent of the human resources professionals who participated in the survey said their company's employees have participated in Super Bowl pools; 55 percent said employees have participated in regular-season football pools; one-in-ten said employees have participated in fantasy football leagues; and 30 percent said employees bet in college basketball tournament office pools. According to the 2008 Spherion Workplace Snapshot, 44 percent of American workers have participated in office betting pools.

> **AB 58 (Jeffries), Chapter 72,** changes the penalty for participation in a "sports betting pool", as specified, from a misdemeanor to an infraction, punishable by a fine not to exceed $250, for a person not acting for gain, hire, or reward, other than that at stake under conditions available to every participant, to participate in a bet, wager, or betting pool with another person or group of persons who are not acting for gain, hire, or reward other than that at stake under conditions available to every participant, on the result of any contest or event, including a sporting event, as specified, or where the bet or wager of not more than $2,500.

Hazardous Material Release Response Plans

Under existing law, owners or operators of hazardous material facilities must develop hazardous material release response plans (business plans) and report any release or threatened release of a hazardous material to the appropriate agency and to the Office of Emergency Services. Existing law establishes a one-year statute of limitations for violations of the requirement for the development of business plans.

> **AB 305 (Nava), Chapter 429,** extends the statute of limitations for business plan violations and authorizes the imposition of a jail sentence for the violation of oil spill prevention reporting requirements. Specifically, this new law:

- Increases from one to five years the statute of limitations on civil penalty actions related to business plans.
- Makes a failure to report an oil spill or to knowingly make a false or misleading report on an oil spill occurring in waters of the state punishable, upon conviction, by imprisonment in a county jail.
- Assists environmental prosecutors by conforming the statute of limitations for civil actions for violations of business plan requirements to the statute of limitations for civil actions for other hazardous materials and wastes.

Claims for Damages for Erroneous Conviction

At a hearing before the Victim Compensation and Government Claims Board (VCGCB), a claimant must prove that the crime with which he or she was charged with was either not committed at all or if committed was not committed by him or her, as well as the fact that he or she did not, by any act or omission, either intentionally or negligently, contribute to his or her arrest and conviction. The claimant must also prove that pecuniary injury was sustained through erroneous conviction and imprisonment. Claimants have six months to file a claim with the VCGCB.

AB 316 (Solorio), Chapter 432, amends the time for filing a claim with the VCGCB from six months to two years. Specifically, this new law:

- Provides that a judicial finding of factual innocence shall be admissible as evidence at the VCGCB hearing.

- Reflects the policy of the State of California to redress the injury inflicted upon the innocent as quickly as possible.

Public Safety Officers: Golden Shield Award

Each year, between 140 and 160 officers are killed in the line of duty. In 2009, to date six officers have been killed on the job – more than any other state. In 2008, 13 officers were killed on patrol in California, second only to Texas, where 14 died.

Despite the danger inherent in their job, California public safety officers do not yet have a state-wide honorific to recognize those officers who have died in the line of duty.

AB 671 (Krekorian), Chapter 462, requires the Governor to annually present a Golden Shield Award, of appropriate design, to the next of kin or immediate family of every public safety officer, as defined, who, while serving in any capacity under competent authority, has been killed in the line of duty in that year.

Equality in Prevention and Services for Domestic Abuse Fund

Existing law establishes a grant program for the development and support of domestic violence programs and services for the lesbian, gay, bisexual and transgender (LGBT) communities. Under existing law, the Office of Emergency Services (Cal-EMA) may use funds from the Equality in Prevention and Services for Domestic Abuse (EPSDA) to award up to four grants annually to fund qualifying domestic violence programs for the LGBT community, including, but not limited to, 24-hour crisis hotlines; counseling, court and social service advocacy; legal assistance with temporary restraining orders and custody disputes; emergency housing; and, educational workshops and publications.

AB 1003 (John A. Perez), Chapter 498, eliminates the annual limitation of four grants from the EPSDA. Specifically, this new law:

- Requires qualified organizations to provide matching funds of at least 10 percent in order to be eligible to receive grant funding.

- Requires the Cal-EMA to consult with the Department of Public Health (DPH) to consider consolidation of their respective domestic violence programs.

- Requires Cal-EMA and DPH to report their conclusions to the Legislature no later than June 30, 2011.

Board of Parole Hearings: En Banc Review

SB 737 (Romero), Chapter 10, Statutes of 2005, reorganized what is now the "Department of Corrections and Rehabilitation" and, in doing so, inaccurately labeled the en banc review of a tie vote in a parole hearing as a “hearing” rather than as a “review.” Because the en banc review is merely and properly a review of the hearing that already occurred and which resulted in a tie vote, referring to this review as a “hearing” is problematic as the term "hearing" implies that specific due process rights must occur, which including the inmate's presence. However, at the time of an en banc review, this “hearing” has already occurred, with all appropriate rights afforded to the inmate. Therefore, it is necessary to clarify that that en banc review of a tie vote is not a full “hearing” as defined by the Penal Code; otherwise, a court decision that would force extraordinarily costly and duplicative proceedings could occur.

AB 1166 (Nielson), Chapter 276, authorizes the Board of Parole Hearings (BPH), when sitting en banc to review a tie vote in deciding parole, to review only the record of the parole hearing rather than holding another hearing. Upon en banc review, the BPH shall vote to either grant or deny parole and render a statement of decision. Specifically, this new law:

- Require an en banc review be conducted in compliance with the following:

  - The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

  - The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

  - The BPH shall separately state reasons for its decision to grant or deny parole.

- States a commissioner involved in the tie vote shall be recused from consideration of the matter in the en banc review.

Arrest Procedures: Fingerprinting

Under current law, when a person is arrested for an infraction or misdemeanor, law enforcement officers are required to verify a person's identification (ID) through a driver's license or other satisfactory evidence for citation purposes. Additionally, when an arrestee is cited and released for certain offenses, he or she required to appear a later date for booking and fingerprinting. So long as the arresting officer determines that the arrestee will not continue to endanger the public, an arrestee, with proper identification, is cited, released, and agrees to appear in court at a later date for booking and fingerprinting, instead of being transported to a facility to be booked. When an arrestee does not have proper ID, the arrestee provides fingerprints on the citation, agrees to appear in court, and is then released. The arrestee must arrange to provide preliminary fingerprints before court arraignment.

> **AB 1209 (Ma), Chapter 278,** authorizes an officer to book an arrested person at the scene or at the arresting agency prior to being cited and released, as specified.

Central Coast Rural Crime Prevention Program

SB 44 (Denham), Chapter 18, Statutes of 2003, encouraged the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo to develop and implement a Central Coast Rural Crime Prevention Program for the purpose of preventing rural crime.

> **SB 121 (Denham), Chapter 31,** extends the sunset date on the Central Coast Rural Crime Prevention Program until July 1, 2013.

Honorably Retired Peace Officers

Existing law contains a number of provisions prohibiting any person other than an authorized peace officer from wearing or using the authorized insignia or emblem of a peace officer with the intent to fraudulently impersonate a peace officer and prohibiting the sale or transfer of any badge or insignia which falsely purports to be for the use of a peace officer.

> **SB 169 (Benoit), Chapter 345,** authorizes the head of an agency that employs specified peace officers to issue identification in the form of a badge, insignia, emblem, device, label, certificate, card, or writing that clearly states that the recipient has honorably retired following service as a peace officer with that agency. Specifically, this new law:

- States that if the badge issued to an honorably retired peace officer is not affixed to a plaque or other memento commemorating the retiree's service for the agency, the words "honorably retired" must be clearly visible above, underneath, or on the badge itself.
- Provides that the term "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination.

- Provides law enforcement agencies with a valuable tool for honoring, upon retirement, members of their agency who deserve such recognition.

- Eliminates provisions that have prevented the head of a law enforcement agency from issuing an honorary badge, insignia, emblem or other device to honor the service of members of their agencies who have honorably retired.

Public Safety: Omnibus Bill

The annual omnibus bill makes technical, non-substantive changes and corrections to various provisions of the code.

SB 174 (Strickland), Chapter 35, makes a variety of corrections and minor amendments to various criminal justice related statutes. Specifically, this new law:

- Clarifies that the Department of Justice (DOJ) shall provide subsequent arrest and conviction information supporting an applicant's ineligibility to hold an explosives permit.

- Explains that every person who is required to register as a sex offender who is living as a transient in California but was convicted in another jurisdiction, shall register within five working days of coming into California with the chief of police of the city in which he or she is present or the sheriff of the county if he or she is present in an unincorporated area or city that has no police department.

- Removes the requirement that DOJ must provide annual reports to the Legislature on the service through which members of the public may obtain information on sex offenders via the Megan's Law Internet Web site.

- Clarifies that in situations where a person diverts $1,000 or less in construction funds, the person shall be guilty of a misdemeanor.

- Extends the sunset date from January 1, 2010 to January 1, 2015 to allow, upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail to be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder.

- Corrects erroneous titles and adds titles to conform to the addition of the Bureau of Independent Review as follows: Chief Deputy Inspector General (IG); Chief Assistant IG; Deputy IG; In-Charge, Senior Deputy IG; Deputy IG; Senior Assistant IG; and Special Assistant IG.

- Provides that the IG shall be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the California Department of Corrections and Rehabilitation (CDCR) as requested by either the CDCR Secretary or a member of the Legislature.

- Specifies each audit of a warden by the IG shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. Each four-year audit shall include an assessment of the maintenance of the facility managed by the warden.

- Deletes a redundant requirement that persons certified as a fingerprint roller shall have a notarized application.

- Removes the locality specification of Sacramento when referring to DOJ with regard to the transmission of firearm purchaser information.

- Updates the definition of "stun gun" as any item, except a less lethal weapon, used or intended to be used as either an offensive or defensive weapon capable of temporarily immobilizing a person by the infliction of an electrical charge.

- Removes the requirement that annual reports by the DOJ containing criminal statistics of the preceding calendar year must to be printed and presented to the Governor in paper form, thus allowing for electronic distribution.

- Specifies that a deposit of bail does not constitute entry of a plea or a court appearance when a person who has received a written notice to appear for an infraction is required to make a deposit and declare the intention to plead not guilty to the clerk named in the notice to appear. A plea of not guilty under this section must be made in court at the arraignment.

- Allows out-of-state law enforcement agencies to obtain a complete copy of a juvenile police record, without notice or consent from the person who is the subject of the juvenile police record to the following persons or entities.

- Specifies that employees or agents of CDCR, the Board of Parole Hearings, or the Department of Mental Health may disclose to employees or agents of each named department, the prosecutor, the respondent's counsel, licensed private investigators hired or appointed for the respondent, or other persons or agencies where authorized or required by law, the name, address, telephone number, or other identifying information of a person who was involved in a civil commitment hearing as the victim of a sex offense except where authorized or required by law.

Forfeiture: Dog Fighting

Existing law permits forfeiture for any tangible or intangible property interest acquired through a pattern of criminal profiteering activity. Criminal profiteering activity includes any act committed or attempted or any threat made for financial gain or advantage which may be charged as a crime under specified enumerated felony sections. Existing law establishes procedures for forfeiture upon a conviction of a pattern of criminal profiteering. "A pattern of criminal profiteering" is defined as engaging in at least two incidents of criminal profiteering.

Existing law also permits the seizure of any animals used in fighting, as well as all paraphernalia, implements or other property or things used or employed, or about to be employed, in violation of any bird or animal fighting statute. Upon conviction, the items seized shall be deemed forfeited.

> **SB 318 (Calderon), Chapter 302,** provides that any property interest, whether tangible or intangible, acquired through the commission of any of specified dog fighting crimes shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by dog fighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting dogs, and persons who steal or illegally obtain dogs or other animals for fighting, including bait and sparring animals.

Probation: County of Supervision

Under existing law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. The probation department supervises the probationer residing in the probation department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

However, currently there are an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium-size counties, up to 40 percent of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

> **SB 431 (Benoit), Chapter 588,** requires the county of a probationer's residence to accept transfer of jurisdiction over the case from the county in which the probationer is convicted, with specified exceptions. Specifically, this new law:
>
> - Requires that when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the superior court in the county in which

that person permanently resides unless the transferring court determines that the transfer would be inappropriate.

  - Specifies that the court must state its reasons on the record.
  - Provides that upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer following procedures set forth in rules of court developed by the Judicial Council.

- States that the same provisions shall be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36, the Substance Abuse and Crime Prevention Act of 2000.

  - Provides that the Judicial Council shall promulgate rules of court for procedures by which the proposed receiving county shall receive notice and the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council shall adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including but not limited to the following:

    - Permanency of residence of the offender;
    - Local programs available for the offender; and,
    - Restitution orders and victim issues.

Local Fees

Existing law authorizes counties to charge a variety of fees. In most cases, a board of supervisors can adjust fees to recover the cost of providing a good or service. However, some county fees are established by the state and the Legislature must act each time to change them. Many county fees established by the state have not been reviewed by the Legislature for 20-plus years and no longer cover the cost of providing the service. When a fee-based service does not recover sufficient funds to cover the cost of providing the service, the difference comes out of the county's general fund. The cost of these services is supposed to be borne by only those using the services, but ends up being subsidized by all taxpayers – including those who never use a particular service.

SB 676 (Wolk), Chapter 606, increases or eliminates the maximum fee for various services provided by the county, city or court. Specifically, this new law:

- Deletes the $15 limitation on the fee that may be charged by a county recorder acting as a filing officer under the Uniform Federal Lien Registration Act when he or she

issues a certificate showing whether there is on file any notice of a federal lien or certificate or notice affecting any federal lien filed pursuant to the act or as specified.

- Asks the Department of Fish and Game to impose and collect a fee to defray the costs of managing and protecting fish and wildlife trust resources and authorizes the county clerk to charge a documentary handling fee of $75 per a filing, in addition to the fees charged by the department.

- Authorizes the county recorder of each county to charge a fee not to exceed $10 for the first page and $3 for each additional page for recording and indexing every instrument, paper, or notice required or permitted to be recorded, as specified.

- Increases the registration fee to $50 when a defendant is represented by appointed counsel, but the fee shall not be required of any defendant that is financially unable to pay it.

- Provides that if the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution, but not to exceed 15 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

- Permits the board of supervisors in any county, by resolution, to establish a fee for the processing of payments made in installments to the probation department, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed $75.

- States that a person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court, and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors, and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the council.

- A person who petitions for an order sealing a record under this section may be required to reimburse the court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed $150, and to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed $150, and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate

to be determined by the city council not to exceed $150. The ability to make this reimbursement shall be determined by the court and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in a case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

- Demands that a defendant pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors.

- Removes the limit on the fee a local agency may charge to take fingerprints and process the required documents of a person who is an applicant for licensing, employment, or certification.

- Authorizes a county to levy charges for reasonable costs of support of a minor against the father, mother, spouse or other person, while the minor is placed, or detained in, or committed to, any institution or other place, or pursuant to an order of the juvenile court. Costs of support to actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses shall not exceed a maximum cost of $30 per day.

- Removes the maximum amount the county board of supervisors or court may charge for filing a petition to seal or expunge a criminal record of a minor.

- Provides that in the event a petition is filed for an order sealing a record, the father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county and court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed $150.

Boating and Waterways

Since its inception in 1957, the Department of Boating and Waterways (DBW) has provided over $800 million in funding to public and private entities for planning, constructing, rehabilitating and expanding small craft harbors throughout California. Breakwater construction, dredging, berthing, utilities, landscaping and irrigation, restrooms, fuel docks, boat sewage pump-out stations, public access walkways, and other facilities at small craft harbors are funded by this program.

DBW also provides loan funds to private businesses for development, expansion, and improvement of recreational marinas open to the public. Such funds can be used for design; collateral appraisals; and construction of berthing, restrooms, vessel pump-out stations, utilities, erosion control, vehicle/trailer parking, launching facilities, dry boat storage facilities, and breakwaters; and other boating related facilities.

These loan programs are governed by statutes in the Harbors and Navigation Code and should be updated to improve DBW's ability to conduct business with its borrowers, resulting in increased revenues to the Harbors and Watercraft Revolving Fund through loan principal and interest payments.

DBW also provides boating safety education and regulations pertaining to boat operation, navigation and equipment, which includes increasing public awareness of the benefits of life jacket use by children and adults. California law, which requires life jackets to be worn by children under 11 years of age, is currently less stringent than federal law, which requires life jackets to be worn by children under 13 years of age.

> **SB 717 (Runner), Chapter 610,** makes numerous changes to the Harbors and Navigation Code relating to DBW loans from the Harbors and Watercraft Revolving Fund, clarifies the penalties for misdemeanor and felony convictions of boating violations, modifies the age requirement for use of personal flotation devices, and makes other related changes.