

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2013

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ANIMAL ABUSE

Animal Sales: Conditions and Treatment

Animals are being sold at swap meets, sometimes in inhumane conditions where there is no oversight of the seller. Moreover, swap meets historically have been prime outlets for the sale of smuggled birds, presenting conservation, welfare, and disease risk concerns. The bargain-sales atmosphere of swap meets encourages impulse buying and leads to increased costs to local government for sheltering discarded animals. Existing protections that apply to the sale of animals at pet shops, however, do not apply to the sale of animals at swap meets.

AB 339 (Dickinson), Chapter 231, prohibits a swap meet vendor, beginning January 1, 2016, and except as specified, from offering animals for sale unless the local jurisdiction has adopted standards for the care and treatment of those animals when they are present at, or being transported to or from, the swap meet. Specifically, this new law:

- Requires that any local ordinance adopted to allow the sale of animals at swap meets to require, at a minimum, that the swap meet vendor do all of the following:
 - Maintain the facilities used for the keeping of animals in a sanitary condition;
 - Provide proper heating and ventilation for the facilities used for the keeping of animals;
 - Provide adequate nutrition for, and humane care and treatment of, all animals that are under his or her care and control;
 - Take reasonable care to release for sale, trade, or adoption only those animals that are free of disease or injuries;
 - Provide adequate space appropriate to the size, weight, and species of animals;
 - Have a documented program of routine care, preventative care, emergency care, disease control and prevention, and veterinary treatment and euthanasia that is established and maintained by the vendor in consultation with a licensed veterinarian employed by the vendor or a California-licensed veterinarian, to ensure adherence to the program with respect to each animal, including a documented onsite visit to the swap meet premises by a California-licensed veterinarian at least once a year;
 - Provide buyers of an animal with general written recommendations for the generally accepted care of the type of animal sold, including recommendations as to the housing, equipment, cleaning, environment, and feeding of the animal;

- Present for inspection and display a current business license issued by the local jurisdiction where the animals are principally housed; and,
- Maintain records for identification purposes of the person from whom the animals offered for sale were acquired, including that person's name, address, e-mail address, and telephone number and the date the animals were acquired.
- Makes a swap meet vendor guilty of an infraction punishable by a fine of not more than \$100 for the first violation, and not more than \$500 for a second or subsequent violation, if he or she offers animals for sale at a swap meet without an authorizing local ordinance.

BACKGROUND CHECKS

Background Checks: Paratransit Agencies

The Americans with Disability Act (ADA) requires comparable transportation service for individuals with disabilities who are unable to use fixed route transportation systems. A “paratransit agency” is an entity formed by the regional transportation planning authority as a nonprofit public benefit corporation charged with administering a countywide coordinated paratransit plan adopted under the ADA.

Current law limits the dissemination of summary criminal history information that can be requested of applicants for employment. However, current law creates exceptions to these rules where health and safety are of primary concern or the person will be working with particularly vulnerable individuals in connection with the employment. Paratransit agencies employ contract service providers to provide paratransit services to individuals with disabilities; therefore, the agencies should be authorized to conduct background checks on these employees.

AB 971 (Garcia), Chapter 458, authorizes a paratransit agency to receive criminal history information with respect to contracted service providers.

BAIL

Risk Assessment Reports

Prior to trial, a defendant in custody may be released on bail or on his or her own recognizance. In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. A court, with the concurrence of the board of supervisors, is authorized to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance.

Release on bail and release on a defendant's own recognizance are both forms of pretrial release. The same risk factors are considered in both types of pre-trial release, such as the risk of the defendant failing to appear in court and the risk of reoffending while on pretrial release. However, it is unclear whether these risk assessment reports prepared by courts' investigative staff may only be used for own recognizance release, or whether the report may also be used for the purpose of release on bail.

AB 805 (Jones-Sawyer), Chapter 17, clarifies that in setting bail, a judge or magistrate may consider the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance.

CHILD ABUSE

Child Abuse: Multidisciplinary Personnel Teams

AB 2229 (Brownley), Chapter 464, Statutes of 2010, authorized counties to create two-person child abuse multidisciplinary personnel teams (MDTs), rather than three-person MDTs, engaged in the investigation of suspected child abuse or neglect, and permitted the disclosure of the information gathered by a child abuse MDT to be disclosed among team members electronically and telephonically upon the proper verification of the recipient's status as a team member.

Child abuse MDTs are intended to identify, treat, and prevent child abuse, and are comprised of qualified persons who may include psychiatrists, psychologists, medical personnel, law enforcement personnel, social workers and teachers. The benefit and purpose of forming a child abuse MDT is that information that would otherwise be confidential may be shared within the confines of the team.

By conforming the law regarding child abuse MDTs with the law regarding elder abuse MDTs, which only required two members, AB 2229 enhanced the treatment and prevention of child abuse by streamlining the ability of qualified personnel to aid victims by promptly having relevant information, and saved time and resources by eliminating the need for a redundant third person consulted merely to satisfy the statute.

AB 2229 contained a sunset clause of January 1, 2014.

AB 406 (Torres), Chapter 7, deletes the January 1, 2014 sunset date on provisions of law that authorizes counties to establish child abuse MDTs within that county to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse and neglect, as specified.

Child Abuse and Neglect Reporting: Homeless Youth

Youth most often contribute family conflict and breakdown—commonly abuse or neglect, alcohol or drug addiction of a family member, pregnancy, and rejection over sexual orientation—as the major reason for their homelessness or episodes of running away. Additionally, a sizeable portion of homeless children reported being physically or sexually abused at home in the prior year or feared abuse upon returning home. Many of the unaccompanied minors on the street are foster youth who have left the child welfare system and feel the system has failed them. Some homeless youth are reluctant to seek out available services out of fear of being returned to the same circumstances from which they fled.

AB 652 (Ammiano), Chapter 486, provides that the fact that a child is homeless or is classified as an unaccompanied minor, as defined, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

CONTROLLED SUBSTANCES

Controlled Substances: Transportation

Currently, an ambiguity in state law allows prosecutors to charge drug users – who are not in any way involved in drug trafficking – with two crimes for simply being in possession of drugs. While current law makes it a felony for any person to import, distribute or transport drugs, the term "transportation" used in the Health and Safety Code has been widely interpreted to apply to any type of movement – even walking down the street – and any amount of drugs, even if the evidence shows the drugs are for personal use and there is no evidence that the person is involved in drug trafficking. As a result, prosecutors are using this wide interpretation to prosecute individuals who are in possession of drugs for only personal use, and who are not in any way involved in a drug trafficking enterprise.

AB 721 (Bradford), Chapter 504, amends existing law to make the transportation of specified controlled substances a felony only if the individual is transporting the controlled substance for the purpose of sale.

Controlled Substances: Reporting

Prescription drug abuse is the nation's fastest growing drug problem and has been classified as a public health epidemic by the Centers for Disease Control and Prevention. One hundred people die from drug overdoses every day in the United States and prescription painkillers are responsible for 75 percent of these deaths, claiming more lives than heroin and cocaine combined, and fueling a doubling of drug-related deaths in the United States over the last decade. In California, on average, there are six deaths every day from prescription drug overdose and 1.2 million emergency room visits related to the misuse or abuse of pharmaceuticals.

Under current law, California practitioners and pharmacies are required to report to the Department of Justice (DOJ) every Schedule II, III, and IV prescription filled. In 2009, DOJ launched its automated Prescription Drug Monitoring Program (PDMP) within the Controlled Substances Utilization Review and Evaluation System (CURES). The program allows licensed health care practitioners eligible to prescribe Schedule II, III, and IV controlled substances access to patient controlled substance prescription information in real time, 24 hours per day, at the point of care. Practitioners and pharmacists use PDMP to make informed decisions about patient care and detect patients who may be abusing controlled substances by obtaining multiple prescriptions from various practitioners.

While the automated PDMP within CURES is a valuable investigative, preventative, and educational tool for law enforcement, regulatory boards, and health care providers, recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support PDMP. The program is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate prescription drug diversion. Without a dedicated funding source, CURES' PDMP is not sustainable.

SB 809 (DeSaulnier), Chapter 400, establishes a funding mechanism to update and maintain CURES and PDMP, requires all prescribing health care practitioners to apply to access CURES information, and establishes processes and procedures for regulating prescribing licensees through CURES and securing private information. Specifically, this new law:

- Assesses an annual \$6 fee on specified licensees to pay the reasonable costs associated with operating and maintaining CURES for the purpose of regulating those licensees.
- Requires, beginning April 1, 2014, the assessed fee to be billed and collected by the regulating agency of each licensee at the time of the licensee's license renewal, and states that if the reasonable regulatory cost of operating and maintaining CURES is less than \$6 per licensee, the Department of Consumer Affairs (DCA) may, by regulation, reduce the fee to the reasonable regulatory cost.
- Requires the fees collected to be deposited in the CURES Fund and, upon appropriation by the Legislature, available to DCA to reimburse the DOJ for costs to operate and maintain CURES for the purposes of regulating the specified licensees.
- Requires DCA to contract with DOJ on behalf of the Medical Board of California (MBC), the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Board of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board, the State Board of Optometry, and the California Board of Podiatric Medicine to operate and maintain CURES for the purposes of regulating licensees.
- Requires DOJ, in conjunction with DCA and the appropriate boards and committees, to do all of the following:
 - Identify and implement a streamlined application and approval process to provide access to the CURES' PDMP database for pharmacists and licensed health care practitioners eligible to prescribe, order, administer, furnish, or dispense Schedule II, III, or IV controlled substances, and requires every reasonable effort be made to implement a streamlined application and approval process that a licensed health care practitioner or pharmacist can complete at the time that he or she is applying for licensure or renewing his or her license;
 - Identify necessary procedures to enable licensed health care practitioners and pharmacists with access to CURES' PDMP to delegate their authority to order reports from CURES' PDMP; and,

- Develop a procedure to enable health care practitioners who do not have a federal Drug Enforcement Administration number to opt out of applying for access to CURES' PDMP.
- Requires MBC to periodically develop and disseminate information and educational material regarding assessing a patient's risk of abusing or diverting controlled substances and information relating to CURES to each licensed physician and surgeon and to each general acute care hospital in this state; and further requires MBC to consult with the State Department of Public Health, appropriate boards and committees, and DOJ in developing the materials to be distributed.
- Requires a California pharmacy to report dispensing a Schedule IV controlled substance issued by a prescriber in another state for delivery to a patient in another state to CURES.
- Authorizes pharmacies to dispense Schedule III, IV, and V controlled substances prescriptions from out-of-state prescribers as specified.
- Requires DOJ to maintain CURES to assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances.
- Deletes provisions stating that the reporting of Schedule III and IV controlled substances shall be contingent upon the availability of adequate funds from DOJ.
- Requires DOJ to report annually to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.
- Permits DOJ to seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES.
- Requires CURES to comply with all applicable federal and state privacy and security laws and regulations.
- Requires DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, disclosure, management, implementation, operation, storage, and security of the information within CURES.
- Requires a pharmacy, clinic, or other dispenser to report specified information, including a prescribers national provider identifier number, to DOJ as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed.
- Permits DOJ to invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser

invitees must be licensees, as specified, in active practice in California, and a regular user of CURES.

- Requires DOJ, prior to upgrading CURES, to consult with prescribers licensed by one of the relevant boards or committees, the boards or committees themselves, and any other stakeholders for the purpose of identifying desirable capabilities and upgrades to CURES' PDMP.
- Permits DOJ to establish a process to educate authorized subscribers of the CURES PDMP on how to access and use CURES' PDMP.
- Requires a health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II-IV controlled substances or a pharmacist to submit, before January 1, 2016, or upon receipt of a federal DEA registration, whichever occurs later, an application to DOJ to access information online regarding the controlled substance history of a patient, as specified.
- Requires DOJ, upon approval of an application to access patient information, release to the practitioner or pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in CURES' PDMP.
- States that a health care practitioner authorized to prescribe Schedules II-IV controlled substances shall be deemed to have completed the requirements to access individual patient information if he or she has applied to access CURES' PDMP at the time he or she applied for licensure or renewal.
- Requires a pharmacist to submit an application, as specified, to obtain approval to access CURES' PDMP.
- Permits DOJ to seek voluntarily contributed private funds from insurers, health care service plans, and qualified manufacturers for the purpose of supporting CURES. Insurers, health care service plans, qualified manufacturers, and other donors may contribute by submitting their payment to the Controller for deposit into the CURES Fund. Contributions to the CURES Fund shall be nondeductible for state tax purposes.

CORRECTIONS

Medical Parole: Notice to Counties

Medical parole applies to those inmates declared by the head physician in the institute where they are housed to be permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living and results in the prisoner requiring 24-hour care. The Board of Parole Hearings (BPH) must also make a determination that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

The California Department of Corrections and Rehabilitation (CDCR) has exclusive jurisdiction and full discretion to determine a parolee's placement. Whenever possible, an inmate who is released on parole shall be returned to the county that was the last residence of the inmate prior to his or her incarceration. If CDCR determines that the inmate cannot be returned to the county of his or her last residence, CDCR may return the inmate to another county if that would be in the best interests of the public.

Generally, when an inmate is paroled, CDCR must provide certain information to local law enforcement agencies regarding a paroled inmate released in their jurisdictions. When an inmate serving a sentence for a violent felony conviction is being paroled, CDCR must notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person is scheduled to be released on parole. The notification must be made by mail at least 60 days prior to the scheduled release or as soon as practicable. Law enforcement and the district attorney are notified of release; however, the counties where the parolee will be released on medical parole are not specifically notified.

AB 68 (Maienschein), Chapter 764, requires CDCR to give notice of any medical parole hearing and any medical parole release to the county of commitment, and the county of proposed release if different than the county of commitment, at least 30 days, or as soon as feasible, prior to a medical parole hearing or a medical parole release.

Voting: Probationers

As of 2010, California ranked 45th in the nation in voter registration. In the 2012 presidential election, less than 50 percent of eligible voters in California cast a ballot. Presently, nearly six million eligible voters in California remain unregistered to vote. Among the millions of unregistered voters in California are people who mistakenly believe they are ineligible to vote due to a criminal charge or conviction. Despite the fact that civic participation can be a critical component of reentry and has been linked to reduced recidivism, persons involved in the criminal justice system are unaware of their voting rights and sometimes are unable to find accurate voter information.

The result is that many eligible voters are unregistered to vote and effectively deprived of the opportunity to exercise their fundamental right to vote on issues critical to them and their families, such as school board races, school funding initiatives, statewide ballot initiatives, and many other important races that directly impact their communities. Given the racial disparities in the criminal justice system, the lack of accurate voter registration information has a particularly disparate impact on communities of color in California.

AB 149 (Weber), Chapter 580, requires each county probation department to either establish and maintain on the department's Web site a hyperlink to the Secretary of State's voting rights guide for incarcerated persons or post a notice with the Web site address that contains the Secretary of State's voting rights guide for incarcerated persons in each probation office where probationers are seen.

Prisoners: Literacy and Education

In 1986, California enacted legislation setting standards for inmates who were enrolled in academic classes while incarcerated within the state prison system. The standard set was 60 percent of inmates would, upon parole, be able to read at a ninth-grade level by 1996. Twenty-seven years later, according to the Department of Corrections and Rehabilitation (CDCR), 23 to 30 percent of inmates read below the third-grade level, 68 percent above the seventh-grade level and 52 percent above the ninth-grade level.

In contrast, according to the California Department of Education, the 1996 high school graduation rate among California high school students was 66.3 percent. The graduation rate has continued on a slow upward trend over the past 16 years. By 2012, the high school graduation rate has climbed to 76.3 percent. The current educational standard for the California prison system is antiquated and out of sync with CDCR's own plan on inmate academic programming.

AB 494 (V. Manuel Pérez), Chapter 784, codifies plans known as the "Blueprint of CDCR" to improve academic programming offered to inmates in the prison system. Specifically, this new law:

- Required CDCR to offer academic programming throughout an inmate's incarceration and that the academic programming offered focuses on increasing inmates' reading ability to at least a ninth-grade level.
- Required CDCR to focus on helping inmates who read at a ninth-grade level or higher in obtaining a general education development certificate or high school diploma.
- Required CDCR to offer college programs through voluntary education programs.
- Required CDCR to give priority in offering academic programming to those inmates with a criminogenic need for education and inmates who have a need based on their education level or other factors as determined by CDCR.

County Jail Inmates: Program Credits

Under existing law, the California Department of Corrections and Rehabilitation (CDCR), in addition to "good-time" and participation credits, may also award a prisoner program credit reduction from his or her term of confinement of not less than one week to credit reduction of not more than six weeks for each performance milestone that is achieved.

Sheriffs should have these same tools at their disposal to help incentivize inmates to participate in educational and substance abuse programs, ensuring that when these inmates are released back into California communities they have new skills and better prospects for employment which, in turn, will hopefully reduce recidivism and make communities safer for all.

AB 624 (Mitchell), Chapter 266, authorizes a sheriff or county director of corrections to award a prisoner program credit reduction from an inmate's term of confinement for the successful completion of performance objectives for approved rehabilitative programming. Specifically, this new law:

- Provides that in addition to credit awarded for good behavior, a sheriff may also award a prisoner program credit reduction from his or her term of confinement. A sheriff who elects to participate in this program shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone.
- States that regulations promulgated by the sheriff shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-custody rehabilitation program. Commencing upon the approval of these guidelines, the sheriff shall thereafter calculate and award credit reductions as authorized. A prisoner may not have his or her term reduced by more than six weeks for credits awarded during any 12-month period of continuous confinement.
- States that program credits is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security, available resources, and guidelines set forth by the sheriff.
- Provides that "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, substance abuse programs, and core programs such as anger management and social life skills.
- Provides that additional credits awarded may be forfeited, as specified. Inmates shall not be eligible for program credits that result in an inmate being overdue for release.

- Specifies that only inmates sentenced to the county jail pursuant to realignment are eligible for prisoner program credit reductions.

Inmates: Health Care Enrollment

Medicaid is a joint federal-state insurance program that provides health coverage, including mental and behavioral health benefits, for certain low-income families and individuals. Medicaid is financed jointly by the Federal Government and states, and administered by states and/or counties within broad federal guidelines. In California, the Medicaid program is administered by the Department of Health Care Services (DHCS) and is known as "Medi-Cal."

The Patient Protection and Affordable Care Act (ACA) was signed into law by President Obama in 2010. ACA gives states the option to significantly expand their Medicaid programs, with the Federal Government paying for a large majority of the additional costs. Beginning January 1, 2014, ACA gives state Medicaid programs the option to cover most individuals under age 65 - including childless adults - with incomes at or below 133 percent of the federal poverty level.

A significant portion of county inmates and detainees are men who fit into these extended categories. National studies show many inmates have medical, mental health and substance abuse needs. Upon release, these individuals do not have health insurance or financial resources to pay for medical care. Although incarcerated individuals are not eligible for Medi-Cal, pre-enrolling these individuals will allow counties to get a head start on providing wrap-around services to the most high-risk inmates to ensure adequate supervision and successful and sustainable reentry back into communities.

AB 720 (Skinner), Chapter 646, authorizes the board of supervisors in each county, in consultation with the county sheriff, to designate an entity or entities to assist county jail inmates to apply for a health insurance affordability program, as defined. Specifically, this new law:

- Prohibits county jail inmates currently enrolled in the Medi-Cal from being terminated from the program due to their detention, unless required by federal law or they become otherwise ineligible.
- Provide that an entity designated by the board of supervisors shall not determine Medi-Cal eligibility or redetermine Medi-Cal eligibility unless the entity is the county human services agency.
- Deletes the age restriction relating to Medi-Cal benefits provided to inmates of the public institution.

Work Furlough

Work furlough is an alternative form of punishment which allows participants to pursue legitimate day-time activities while submitting to nightly incarceration. Work furlough programs allow an inmate to maintain employment while serving a custody commitment. Although

commonly referred to as "work furlough," this alternative sentencing program also encompasses job training and school furlough.

Existing law explicitly cites a variety of sentences that are eligible for work furlough and includes sentences for misdemeanants, or felons when jail is imposed as condition of probation. Existing law does not currently include felons sentenced to county jail as a result of Criminal Justice Realignment. Allowing a felon sentenced to county jail under realignment to participate in a work furlough program if he or she is deemed suitable will assist in his or her transition back into the community, thus helping to reduce recidivism. Additionally, the removal of these offenders from the county jail will also help alleviate over-crowding and free jail space for other offenders.

AB 752 (Jones-Sawyer), Chapter 52, expands eligibility for jail work furlough programs to include felons sentenced to county jail under realignment.

County Parole

Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails.

As a result of realignment, there are more inmates who may wish to apply for county parole. The purpose of the county parole system is to assist jail inmates to reintegrate into society as constructive individuals as soon as they are able. Since inmates are not confined for the full term of their sentences, the program also alleviates the cost of keeping the inmates in jail.

Currently, very few counties are currently utilizing county parole. Due to the increased jail population resulting from realignment, local governments are in need of more tools and flexibility to manage their jails and offender populations. Unfortunately, some counties are not utilizing so-called "split sentences" and are merely sentencing offenders to "straight time" with no period of supervision and no evidence-based programming. A longer county parole term will provide an option to relieve overcrowding while still providing the opportunity for supervision.

AB 884 (Bonilla), Chapter 456, increases the term of years that a county parole board may place an inmate on county parole from two to three years.

Post-Release Community Supervision: Flash Incarceration

The 2011 Realignment Act shifted the supervision of some released prison inmates from California Department of Corrections and Rehabilitation (CDCR) parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. All other inmates released from prison are subject to up to three years of

Post-Release Community Supervision (PRCS) under supervision by the county probation department.

With the creation of PRCS, probation was authorized to employ flash incarceration as an intermediate sanction for responding to both parole and PRCS violations. County probation officers are authorized to return offenders who violate the terms of their community supervision or parole to county jail for up to 10 days. The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings.

Under existing law, a person on PRCS or parole may serve a period of flash incarceration in county jail only. However, some counties with a large number of cities have a county jail and several city jails. Typically, city jails are used as short-term detention facilities to hold arrested persons until they are either transferred to the county jail or released from custody, either after interview and release or after posting bail. Some city jails are used by some inmates to serve short sentences.

AB 986 (Bradford), Chapter 788, authorizes a person on PRCS or on parole to serve a period of flash incarceration in a city jail.

Prisons: Career Technical Education

According to the Legislative Analyst's Office, as of 2008, California Department of Corrections and Rehabilitation's (CDCR) education programs reach only a small segment of the inmate population who could benefit from them. CDCR, however, has states that the decline of state prison inmate populations due to criminal justice realignment has provided the opportunity to increase access and improve its rehabilitative programs, which will significantly lower California's recidivism rate.

Current law requires the Superintendent of Correctional Education to set goals and priorities for literacy and testing programs but does not set the same requirement for the goals and priorities within CDCR for career technical education (CTE) programs, also referred to as "vocational education."

AB 1019 (Ammiano), Chapter 789, requires the Superintendent of Correctional Education to take into account specific factors when establishing CTE programs within CDCR. Specifically, this new law requires CDCR, based upon and given its goals and priorities, to take into account all of the following factors in establishing a CTE program:

- Whether the program aligns with the workforce needs of high demand sectors of California and regional economies;
- Whether there is an active job market for the skills being developed where the inmate likely will be released;

- Whether the program increases the number of inmates who obtain marketable and industry or apprenticeship board-recognized certifications, credentials, or degrees;
- Whether there are formal or informal networks in the field that support finding employment upon release from prison; and,
- Whether the program will lead to employment in occupations with a livable wage.

Board of State and Community Corrections: Data Collection

The Board of State and Community Corrections (BSCC) was established in 2012, and replaced the Correction Standards Authority, a division of the California Department of Corrections and Rehabilitation (CDCR). BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. The BSCC is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices.

Several terms are not defined in the statute that authorizes the BSCC to collect data, yet the BSCC is required to establish appropriate benchmarks and outcomes. Having concrete definitions of relevant data points will facilitate greater rates of information gathering and allow greater ease in drawing conclusions based on such data. By tracking the success of evidence-based practices, counties can learn from each other what works and what does not.

AB 1050 (Dickinson), Chapter 270, requires BSCC, in consultation with specified representatives to develop definitions of specified key terms in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based programs. These key terms, include, but are not limited to, “recidivism,” “average daily population,” “treatment program completion rates,” and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices and evidence-based programs.

Prisoners: Temporary Removal

Under existing law, a Superior Court is authorized to order a state prison inmate to be brought before the court and tried for a felony or to testify as a material witness in a criminal action or other related purposes. In order to aid the investigation of “cold cases” and other open investigations where a witness or suspect was in the custody of CDCR, local law enforcement agencies would obtain a court order to have an inmate temporarily transferred from a state prison to a county jail.

However, local law enforcement ability to obtain these orders was eliminated by the holding in *Swarthout v Superior Court* (2012). The Court of Appeal held that Superior Courts have no jurisdictional authority to order the transfer of a state prison inmate to a local jail as part of a criminal investigation, prior to the filing of a felony case. The Court of Appeal did not find any

constitutional violations involved in these orders, instead the Court simply cited a lack of statutory authority for these orders.

SB 162 (Lieu), Chapter 56, establishes a process for district attorneys and peace officers to seek a court order for the temporary removal of a prisoner from prison for a legitimate law enforcement purpose. Specifically, this new law:

- Provides a process for district attorneys and peace officers to seek a court order for the temporary removal of a prisoner from prison for a “legitimate law enforcement purpose.” Specifically, this new law provides that “the superior court of the county in which a requesting district attorney or peace officer has jurisdiction may order the temporary removal of a prisoner from a state prison facility, and his/her transportation to a county or city jail, if a legitimate law enforcement purpose exists to move the prisoner.”
- Provides that an order for the temporary removal of a prisoner may be issued, at the discretion of the court, upon a finding of good cause in an affidavit by the requesting district attorney or peace officer stating that the law enforcement purpose is legitimate and necessary.
- Provides that the order to a county or city jail will not exceed 30 days.
- Authorizes extensions of these orders upon application, for no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted, and not exceeding additional 30-day period beyond the initial period specified in the order for temporary removal.
- Requires that an order for the temporary removal of a prisoner will include all of the following:
 - A recitation of the purposes for which the prisoner is to be brought to the county or city jail.
 - The affidavit of the requesting district attorney or peace officer stating that the law enforcement purpose is legitimate and necessary. The affidavit will be supported by facts establishing good cause.
 - The signature of the judge or magistrate making the order.
 - The seal of the court, if any.
- Provides that, upon the request of a district attorney or peace officer for a court order for the temporary removal of a prisoner from a state prison facility, the court may, for

- good cause, seal an order made, unless a court determines that the failure to disclose the contents of the order would deny a fair trial to a charged defendant in a criminal proceeding.
- Provides that an order for the temporary removal of a prisoner be executed presumptively by the sheriff of the county in which the order is issued. It will be the duty of the sheriff to bring the prisoner to the proper county or city jail, to safely retain the prisoner, and to return the prisoner to the state prison facility when he/she is no longer required for the stated law enforcement purpose. The expense of executing the order will be a proper charge against, and will be paid by, the county in which the order is made. The presumption that the transfer will be effectuated by the sheriff of the county in which the transfer order is made may be overcome upon application of the investigating officer or prosecuting attorney stating the name of each peace officer who will conduct the transportation of the prisoner.
- Provides that if a prisoner is removed from a state prison facility pursuant to its provisions, the prisoner will remain at all times in the constructive custody of the warden of the state prison facility from which the prisoner was removed. During the temporary removal, the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the superior court of the county from which the original order for the temporary removal was issued.
- Requires that a copy of the written order directing the prisoner to appear before the superior court will be forwarded by the district attorney to the warden of the prison having custody of the prisoner.
- States that the state is not liable for any claim of damage, or for the injury or death of any person, including a prisoner, that occurs during the period in which the prisoner is in the exclusive control of a local law enforcement agency.

Search Warrants: Driving under the Influence

On April 17, 2013, the Supreme Court of the United States, in a 5-4 opinion (*Missouri v. McNeely*), decided that in drunk-driving investigations it is unlawful to conduct a blood test without consent. The decision effectively requires an officer to obtain a warrant before he or she can take a suspect's blood if that suspect does not give consent. It is necessary to conform California's Penal Code to adhere to this ruling by specifying that an officer may request, and a court may grant, a search warrant to perform a blood draw.

SB 717 (DeSaulnier), Chapter 317, authorizes the issuance of a search warrant to allow a blood draw or sample of other bodily fluids to be taken from a person in a reasonable, medically approved manner as evidence that the person has violated specified provisions relating to driving under the influence, and the person has refused a peace officer's request to submit to, or failed to complete a blood test.

COURT HEARINGS

Protective Orders

Existing law allows the court to issue a protective order in any criminal proceeding pursuant to where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings.

When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. Additionally, in some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. For example, the court has the authority to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The same is true of stalking cases and cases involving a domestic-violence related offense. Similarly, in cases involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit . . . harassing, intimidating, or threatening the victim or the victim's family members or spouse." Adult victims of sex offenses should have the same ability to obtain a meaningful protective order.

AB 307 (Campos), Chapter 291, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed. Specifically, this new law applies when the defendant is convicted of any of the following crimes:

- Rape,
- Spousal rape,
- Statutory rape, and,
- Any crime that requires the defendant to register as a sex offender.

Probation Transfers: Non-Violent Drug Offenses

SB 431(Benoit), Chapter 588, Statutes of 2009, modified the transfer procedure for probationers as governed by Penal Code Section 1203.9 to create uniformity and a process whereby both the transferring and receiving court were involved in the transfer decision and process.

At the time, the Legislature did not modify the transfer procedure for Proposition 36 probation cases under Penal Code section 1203.9(c) due to the focus on removing "courtesy supervision." In other words, it was decided to not make changes to Proposition 36 transfers in an effort to mitigate any confusion or unintended impacts of a new process.

Thus, in Proposition 36 cases (unlike all other cases), the receiving court - as opposed to the transferring court - is still responsible for determining the probationer's county of residence. As a result, there are two distinct transfer procedures.

Now that the courts and probation have been operating under the new Penal Code section 1203.9 transfer process for a number of years; because there is no ostensible reason to treat Proposition 36 transfers differently, it is practical to align the Proposition 36 procedure to reduce confusion and unnecessary burdens on staff.

AB 492 (Quirk), Chapter 13, conforms the procedures for the transfer of probation to the county of residence for persons convicted of non-violent drug possession under Proposition 36 with the existing procedures for the transfer of probation or mandatory supervision, of any person, to the jurisdiction of the Superior Court in the county of residence.

Preliminary Hearings: Testimony of Law Enforcement Officers

Penal Code Section 872(b) enumerates experience-and-training requirements for an investigating officer to be able offer hearsay evidence at the preliminary hearing. The statute requires such an officer to have at least five years of law enforcement experience or to have completed have completed a course certified by the Commission on Peace Officers Standards and Training which covers the investigating and reporting of criminal cases, and testifying at preliminary hearings. (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1073.)

While existing law establishes the training or experience required for testifying officers, it does not provide a definition of what "law enforcement officers" qualify to testify. Appellate court decisions that have considered the issue have held that the relevant statute is not limited to traditional peace officers authorized to carry weapons and to make arrests. Rather, the intent is to hear from an officer who has knowledge of the relevant law and facts such that he or she can provide meaningful testimony at a preliminary hearing. As such, an arson investigator and a Franchise Tax Board investigator have both qualified under the statute. (*Martin v. Superior Court* (1991) 230 Cal.App.3d 1192 [arson investigator]; and *Sims v. Superior Court* (1993) 18 Cal.App.4th 463 [tax board investigator].)

In order to avoid continuous re-litigation of the issue, the term "law enforcement officer" should be explicitly defined in statute. AB 568 provides a statutory guideline for the admission of hearsay statements via law enforcement officers, other than traditional peace officers, that should reduce litigation on the question of whether a law enforcement officer qualifies under Penal Code Section 872(b).

AB 568 (Muratsuchi), Chapter 125, clarifies the definition of a "law enforcement officer" for purposes of introducing hearsay statements at a preliminary hearing. Specifically, this new law provides that for the purposes of a hearsay preliminary hearing, a law enforcement officer is any officer or agent employed by a federal, state, or local government agency to whom all the following apply:

- Has either five years of law enforcement experience or who has completed a training course certified by POST that includes training in the investigation and reporting of cases and testifying at preliminary hearing, and
- Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecutions of cases involving violation of laws.

Witnesses: Support Persons

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

SB 130 (Corbett), Chapter 44, expands provisions allowing support persons while testifying for victims of specified sex offenses when they testify in court to include more crimes and to include attempts of the listed crimes. Specifically, this new law:

- Adds kidnapping to commit a robbery or a sex crime, sexual acts with a child under 10, criminal threat, and stalking to the crimes for which a prosecuting witness may have a support person.
- Expands current law allowing support persons to apply to cases where the person is charged with an attempt to commit any of the listed crimes.
- Expands existing provisions for minor victims under the age of 11 or persons with a disability which permit these witnesses specified comfort and support and protect them from coercion or undue influence. Specifically this new law adds kidnapping to commit a robbery or a sex crime; assault with intent to commit mayhem, rape, sodomy or oral copulation; human trafficking; sexual acts with a child under 10; criminal threat; and stalking to the crimes for which the specified accommodations may apply. This new law also provides that the court may use accommodations to apply to cases where the person is charged with an attempt to commit any of the listed crimes.

Felony Sentencing

In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial because the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. [*Cunningham v. California* (2007) 549 U.S. 270.] The Supreme Court suggested that this problem could be

corrected by either providing for a jury trial on the sentencing issue or by giving the judge discretion to impose the higher term without additional findings of fact.

SB 40 (Romero), Chapter 40, Statutes of 2007, corrected the constitutional problem by giving judges the discretion to impose a minimum, medium or maximum term, without additional finding of fact. SB 40's approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. SB 150 (Wright), Chapter 171, Statutes of 2009, extended this constitutional fix to sentence enhancements.

The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. [SB 1701 (Romero), Chapter 416, Statutes of 2008.] SB 150 also included a sunset provision that corresponded to the date upon which the provisions of SB 40 would expire. Since then, the Legislature has extended the sunset provisions several times. The current sunset date is January 1, 2014.

SB 463 (Pavley), Chapter 508, extends the sunset date from January 1, 2014 to January 1, 2017 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40 (Romero), Chapter 40, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009; and *Cunningham vs. California* (2007) 549 U.S. 270.

Diversions Programs: Sealed Records

Existing law provides that upon successful completion of a drug diversion program, the court may order the sealing of court and arrest records of diverted charges where the interests of justice would be served. However, existing law lacks a similar mechanism for individuals who successfully complete other prosecutor-administered diversion programs.

Steady employment is known to be an essential element in keeping former offenders or those at risk out of prison. Many times, these individuals cannot find viable employment due to their previous criminal records.

SB 513 (Hancock), Chapter 798, allows individuals who successfully complete a prosecutor-administered diversion program to petition the court have their arrest records sealed. Specifically, this new law:

- Authorizes the court to order those records sealed if the court finds that doing so will be in furtherance of justice.
- Requires a copy of the petition to be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing.
- States that the prosecuting attorney and the law enforcement agency, through the prosecuting attorney, may present evidence to the court at the hearing.

- States if the order is made to seal the records, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.
- Allows the person, except as specified, to indicate in response to any question concerning the person's prior criminal record that the person was not arrested.

Veteran Services: Restorative Relief

AB 2371 (Butler), Chapter 403, Statutes of 2012, provides restorative relief to a veteran defendant who acquires a criminal record due to a mental disorder stemming from military service. The law does not have a provision expressly prohibiting the possession of a firearm by a veteran defendant granted restorative relief. However, as evidenced by the amendments to AB 2371 as it went through the legislative process, it was the intent of the Legislature that this right not be restored. Although unintended, the law currently leaves open the possibility that restorative relief granted to a veteran may restore the veteran's legal right to own, possess, or have a firearm, where the veteran's conviction would otherwise prevent him or her from owning, possessing, or having a firearm.

SB 769 (Block), Chapter 46, clarifies that dismissal of a case under provisions for veteran defendants who had military-service related mental health issues does not restore the veteran's right to possess a firearm.

CRIME PREVENTION

Prisoners: Literacy and Education

In 1986, California enacted legislation setting standards for inmates who were enrolled in academic classes while incarcerated within the state prison system. The standard set was 60 percent of inmates would, upon parole, be able to read at a ninth-grade level by 1996. Twenty-seven years later, according to the Department of Corrections and Rehabilitation (CDCR), 23 to 30 percent of inmates read below the third-grade level, 68 percent above the seventh-grade level and 52 percent above the ninth-grade level.

In contrast, according to the California Department of Education, the 1996 high school graduation rate among California high school students was 66.3 percent. The graduation rate has continued on a slow upward trend over the past 16 years. By 2012, the high school graduation rate has climbed to 76.3 percent. The current educational standard for the California prison system is antiquated and out of sync with CDCR's own plan on inmate academic programming.

AB 494 (V. Manuel Pérez), Chapter 784, codifies plans known as the "Blueprint of CDCR" to improve academic programming offered to inmates in the prison system. Specifically, this new law:

- Required CDCR to offer academic programming throughout an inmate's incarceration and that the academic programming offered focuses on increasing inmates' reading ability to at least a ninth-grade level.
- Required CDCR to focus on helping inmates who read at a ninth-grade level or higher in obtaining a general education development certificate or high school diploma.
- Required CDCR to offer college programs through voluntary education programs.
- Required CDCR to give priority in offering academic programming to those inmates with a criminogenic need for education and inmates who have a need based on their education level or other factors as determined by CDCR.

Firearms: Prohibited Persons

Many people are prohibited by either federal or state law, or both, from owning firearms for a variety of reasons. Current California law makes it a crime for any person to sell, supply, deliver, or give possession or control of a firearm to any person who the person knows, or has cause to believe, is prohibited from possessing a firearm. Parallel federal law makes it a crime for any person to "sell or otherwise dispose" of any firearm or ammunition to any person knowing, or having reasonable cause to believe, that such person is prohibited from possessing a firearm.

Residing with a person the other resident knows, or has reason to know, is prohibited from owning a firearm for any reason, and giving that person access to any firearms that resident possesses, whether that person actually uses the firearm to cause harm or not, has been found to be a crime under federal law. The penalty for violation under federal law is up to 10 years in prison and a fine of up to \$250,000. Whether permitting access to firearms to a cohabitant prohibited from possessing a firearm is currently a violation of California law is not clear.

AB 500 (Ammiano), Chapter 737, prohibits a person who is residing with another person who is prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless it is secured or carried on the person. Specifically, this new law:

- Prohibits a person who is residing with another person prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless:
 - The firearm is maintained within a locked container.
 - The firearm is disabled by a firearm safety device.
 - The firearm is maintained within a locked gun safe.
 - The firearm is maintained within a locked trunk.
 - The firearm is locked with a locking device as specified, which has rendered the firearm inoperable.
 - The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.

A violation of this new law is a misdemeanor and the prohibition of this new law is cumulative, and does not restrict the application of any other law.

- Requires the Department of Justice (DOJ) immediately notify a firearms dealer to delay the transfer of a firearm to the purchaser if, during the 10-day waiting period, DOJ's records, or the records available to DOJ in the National Instant Criminal Background Check System, make specified indications.
- Provides that, beginning January 1, 2015, if after the conclusion of the specified waiting period, the individual named in the application as the purchaser of the firearm takes possession of the firearm set forth in the application to purchase, the dealer shall notify DOJ of that fact in a manner and within a time period specified by DOJ, and with sufficient information to identify the purchaser and the firearm that the purchaser took possession of.

Firearms: Temporary Prohibition

Under current law, individuals convicted of a felony; individuals with a history of violence, such as domestic violence offenders and subjects of restraining orders; individuals with severe mental illness; wanted persons; and others are prohibited from possessing firearms. While some specified cases include a life-long prohibition provision, for the most part individuals are on the prohibited persons list temporarily for a length of time subjected to a court order.

While a person's length of time on the prohibited persons list may be temporary, current law allows only for the permanent surrendering of firearms by giving the firearm to a law enforcement agency for that agency's disposition or by selling the weapon to a licensed firearms dealer if certain conditions are met.

AB 539 (Pan), Chapter 739, allows a person who is temporarily prohibited from owning or possessing a firearm to transfer firearms in his or her possession or ownership to a licensed firearms dealer for storage during the period of prohibition.

Revenue Recovery and Collaborative Enforcement Team Act: Pilot Program

At a time when California has been reducing and in some cases eliminating funding for vital public services, it is estimated California loses up to \$8 billion per year in tax revenue due to the effects of California's prolific underground economy, currently valued at between \$60 and \$140 billion. While the impact of the underground economy on California is extensive, California lacks a coordinated effort among its various agencies to tackle the underground economy.

AB 576 (V. Manuel Pérez), Chapter 614, establishes a pilot program to create the "Revenue Recovery and Collaborative Enforcement Team" consisting of specified agencies to collaborate in combating criminal tax evasion associated with the underground economy. Specifically, this new law:

- Creates the Team, consisting of the Franchise Tax Board (FTB), Department of Justice (DOJ), Board of Equalization (BOE), and the Employment Development Department (EDD).
- Permits the California Health and Human Services Agency, Department of Consumer Affairs, Department of Industrial Relations, Department of Insurance, and Department of Motor Vehicles to participate as advisory agencies.
- Allows advisory agencies to notify the Team of criminal violations that, through enforcement, would lead to increased revenues for California.
- Requires the Team to meet at least quarterly.
- Requires the Team to:

- Develop a plan for a central intake process and organizational structure to document, review, and evaluate data and complaints.
- Evaluate the benefits of a processing center to receive and analyze data, share complaints, and research leads from the input of each impacted agency.
- Provide participating and nonparticipating agencies with investigative leads where collaboration opportunities exist for felony-level criminal investigations, including, but not limited to, referring leads to agencies with appropriate enforcement jurisdiction.
- Submit to the Legislature on or before December 1, 2017, a report of the pilot program that includes, but is not limited to, the following information:
 - The number of leads or complaints received by the Team.
 - The number of cases investigated or prosecuted through civil action or criminal prosecution as a result of team collaboration.
 - Recommendations for modifying, eliminating, or continuing the operation of any or all of the provisions of this part.
- Sunsets the provisions on January 1, 2019, unless a later enacted statute enacted before January 1, 2019, deletes or extends that date.
- Requires the Team to operate the pilot program using existing funding of the DOJ, the FTB, the BOE, and the EDD and shall not request additional funding for the pilot program until after making its report to the Legislature, as specified.
- Makes findings and declarations on the problems of tax evasion and the underground economy and its impacts on California's economy.

Mentally Ill and Developmentally Disabled Persons: Abuse Reporting

Law enforcement organizations are not required to be contacted when a vulnerable adult living within a developmental center or state mental hospital is seriously injured from known or suspected physical abuse. The California Welfare and Institutions Code provides for certain reports to be directed to the state hospital or developmental center internal investigatory body or local law enforcement. Law enforcement training opportunities are unavailable to organizations to better learn and understand the unique techniques necessary to respond effectively to abuse within institutional settings where jurisdiction may be shared and co-workers of employees of the investigatory body are the subject of the investigation. Existing training for law enforcement requires modernization to be responsive and useful in the rapidly changing developmental and state hospital environments.

AB 602 (Yamada), Chapter 673, requires the Commission on Peace Officer Standards and Training (POST) to, by July 1, 2015, develop a course on investigations of abuse of residents of state mental hospitals and developmental centers and requires mandated reporters to report specified forms of serious abuse of persons in state mental hospitals and developmental centers to both local law enforcement and state investigators immediately, but no later than two hours. Specifically, this new law:

- Requires POST to establish, by July 1, 2015, and keep updated, a training course relating to law enforcement interaction with mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center, as specified.
- Provides that the training course is required for law enforcement personnel in law enforcement agencies with jurisdiction over state mental health hospitals and state developmental centers, as part of the agency's officer training program.
- Requires that mandated reporters of elder or dependent adult abuse report incidents of specified alleged abuse or neglect in state mental hospitals or state developmental centers to both local law enforcement and designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse. The specific incidents requiring reporting are:
 - Death;
 - Sexual assault;
 - Assault with a deadly weapon;
 - Assault with force likely to produce great bodily injury;
 - An injury to the genitals when the cause of the injury is undetermined;
 - A broken bone when the cause of the injury is undetermined; and,
 - Other reports of suspected or alleged abuse or neglect.

Criminal Convictions: Dismissal

A felony conviction on a person's record will often create significant barriers to that person's reentry into the community. As background checks by landlords and employers have become nearly universal - a recent survey by the Society of Human Resources found that over 90 percent of employers conduct background checks - a person with a decades-old conviction for drug possession may be prevented from finding gainful employment or securing stable housing. This bleak reality leads some individuals with felony convictions to recidivate to criminal activity

instead of successfully reintegrating back into the community as a productive and contributing member of society.

AB 651 (Bradford), Chapter 787, allows a court to dismiss a conviction of a person sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. Specifically, this new law:

- Allows the court, in its discretion and in the interests of justice, to dismiss a conviction only after the lapse of one year following the person's completion of the sentence, provided that the person is not under post-release community supervision pursuant to realignment or is not serving a sentence for, on probation for, or charged with the commission of any offense.
- Provides that in any subsequent prosecution of the person for any offense, a conviction dismissed pursuant to this law shall have the same effect as if it had not been dismissed.
- Does not relieve the person of the obligation to disclose the dismissed conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.
- Does not permit a person prohibited from owning, possessing, or having in his or her custody or control any firearm as a result of the dismissed conviction to own, possess, or have a firearm.
- Does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.
- Prevents the court from dismissing the conviction unless the prosecuting attorney has been given 15-days' notice of the petition for the dismissal.

Background Checks: Paratransit Agencies

The Americans with Disability Act (ADA) requires comparable transportation service for individuals with disabilities who are unable to use fixed route transportation systems. A “paratransit agency” is an entity formed by the regional transportation planning authority as a nonprofit public benefit corporation charged with administering a countywide coordinated paratransit plan adopted under the ADA.

Current law limits the dissemination of summary criminal history information that can be requested of applicants for employment. However, current law creates exceptions to these rules where health and safety are of primary concern or the person will be working with particularly vulnerable individuals in connection with the employment. Paratransit agencies employ contract service providers to provide paratransit services to individuals with disabilities; therefore, the agencies should be authorized to conduct background checks on these employees.

AB 971 (Garcia), Chapter 458, authorizes a paratransit agency to receive criminal history information with respect to contracted service providers.

Prisons: Career Technical Education

According to the Legislative Analyst's Office, as of 2008, California Department of Corrections and Rehabilitation's (CDCR) education programs reach only a small segment of the inmate population who could benefit from them. CDCR, however, has states that the decline of state prison inmate populations due to criminal justice realignment has provided the opportunity to increase access and improve its rehabilitative programs, which will significantly lower California's recidivism rate.

Current law requires the Superintendent of Correctional Education to set goals and priorities for literacy and testing programs but does not set the same requirement for the goals and priorities within CDCR for career technical education (CTE) programs, also referred to as "vocational education."

AB 1019 (Ammiano), Chapter 789, requires the Superintendent of Correctional Education to take into account specific factors when establishing CTE programs within CDCR. Specifically, this new law requires CDCR, based upon and given its goals and priorities, to take into account all of the following factors in establishing a CTE program:

- Whether the program aligns with the workforce needs of high demand sectors of California and regional economies;
- Whether there is an active job market for the skills being developed where the inmate likely will be released;
- Whether the program increases the number of inmates who obtain marketable and industry or apprenticeship board-recognized certifications, credentials, or degrees;
- Whether there are formal or informal networks in the field that support finding employment upon release from prison; and,
- Whether the program will lead to employment in occupations with a livable wage.

Firearms Possession: Mentally Disordered Persons

California has several laws that prohibit certain persons from purchasing or possessing firearms. Some of those prohibitions are based on a person's mental health. A person who has been taken into custody and admitted to a facility because that person is a danger to himself, herself, or to others is prohibited from possessing or purchasing any firearm for a period of five years after the person is released from the facility. A person who communicates to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims is

prohibited from owning or purchasing a firearm for six months, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat.

In 2012, a total of 191,416 people in California were prohibited from owning a firearm because of a prior mental health determination. While the vast majority of individuals with mental health issues are not violent, research has shown that the risk of violence towards others is higher among those with serious mental illnesses, in part because this population also has high rates of other risk factors such as substance abuse, trauma, and unemployment.

AB 1131 (Skinner), Chapter 753, increases from six months to five years the period of time a person is prohibited from possessing or owning a firearm based on his or her communication with a licensed psychotherapist, on or after January 1, 2014, of a threat of physical violence against a reasonably identifiable victim or victims. Specifically, this new law:

- States that, if a hearing is requested, the People have the burden of showing by a preponderance of the evidence that the person is not likely to use firearms in a safe and lawful manner; if the court finds that the People have not met their burden, the court shall order that the person shall not be subject to the five-year prohibition and submit a copy of the order to the Department of Justice (DOJ).
- Provides where the district attorney declines or fails to go forward in a hearing to restore ownership and possession of firearms, the court shall order that the person shall not be subject to the five-year prohibition and a copy of the order shall be submitted to the DOJ.
- Specifies procedures to be followed for the return, sale, transfer, or destruction of confiscated firearms by persons found not to be subject to the five-year prohibition for having communicated a threat to a therapist as well as those subject to a five-year prohibition as a result of being taken into custody for a mental health examination.
- Requires the court to, as soon as possible, but no later than two court days after issuing the certificate, notify DOJ whenever the court has issued a certificate stating that a person, adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, may now possess a firearm or any other deadly weapon without endangering others.
- Requires any notice or report required to be submitted to DOJ to be submitted in an electronic format, in a manner prescribed by DOJ.

Informant Privilege: Crime Stoppers

California and federal law lay out a number of scenarios where communications between individuals are privileged and thereby inadmissible in civil and criminal proceedings. Society has deemed that it is in the interest of the greater good that these communications should remain

confidential to foster healthy relationships, mental health, and honesty. Examples of privilege include communications between married couples, patients and doctors, psychotherapists and patients, clerics and penitents, and attorneys with their clients.

Under California law, a public entity has a privilege to refuse to disclose the identity of an informer if disclosure is against the public interest because there is a need to preserve the confidentiality of the informer's identity that outweighs the need for disclosure to the parties to the action. The disclosure of an informer is not required when a search is made pursuant to a warrant and the standard is merely probable cause.

AB 1250 (Perea), Chapter 19, clarifies the informant privilege applies to communications between people who call crime stopper organizations for the purpose of transmittal of that information to law enforcement.

Firearms Possession: Reports by Licensed Psychotherapists

Current law requires that licensed psychotherapists immediately notify local law enforcement when a person or a person's family member communicates to the therapist a serious threat of physical violence against a reasonably identifiable victim or victims. This threat triggers a six-month ban on firearms possession and purchasing for the person who made the threat. Upon receipt of the notification, local law enforcement must then communicate that information to the Department of Justice (DOJ) immediately.

However, the term "immediately" is undefined. The lack of definition leads to lags in reporting that create gaps where people who are temporarily forbidden from purchasing or possessing handguns may do so.

SB 127 (Gaines), Chapter 753, requires that reports by a licensed psychotherapist to a local law enforcement agency regarding the identity of a person who has communicated to that therapist a serious threat of physical violence against a reasonably identifiable victim or victims be made within 24 hours, and requires that local law enforcement agencies, when they receive such reports, notify DOJ electronically and within 24 hours of receiving that report.

Law Enforcement: Anti-Reproductive Rights Crimes

The California Freedom of Access to Clinic and Church Entrances Act adds criminal and civil provisions to state law regarding the commission of certain activities that interfere with a person's access to reproductive health services and facilities or with a person's participation in religious services. The Reproductive Rights Law Enforcement Act specifies law enforcement training requirements on the topic of anti-reproductive rights crimes and requires the implementation of a plan and reporting scheme by the Attorney General.

A survey by the California Senate Office of Research showed that more than one-half (50.9 percent) of participating clinics and medical offices experienced anti-reproductive rights crimes between 1995 and 2000. Forty-eight percent of survey participants who reported the crimes to

law enforcement were dissatisfied with the response. The report indicates, “Complaints about responses included officers who were unfamiliar with the law, officers who tried to mediate rather than make arrests, and law enforcement agencies accused of refusing to enforce laws other than for major cases.”

According to the Department of Justice, the following numbers of anti-reproductive rights crimes were reported in California since specific reporting has been required: 2003 - ten reports, 2004 - eight reports, 2005 - nine reports, 2006 - four reports, 2007 - six reports, 2008 - five reports, 2009 - ten reports, 2010 - four reports, and 2011 - nine reports.

SB 340 (Jackson), Chapter 285, eliminates the January 1, 2014 sunset date on the Reproductive Rights Law Enforcement Act.

Firearms: Criminal Storage

A recent decision by the federal Eighth Circuit Court of Appeals upheld the conviction of a man who had allowed such a “prohibited person” to stay in his RV and disclosed to his guest the location of his firearms in the RV. (*United States v. Stegmeier*, 701 F.3d 574 (8th Cir. 2012)). The Court found that this constituted a violation of the federal law prohibiting disposing of any firearm or ammunition to a prohibited person.

Thus, residing with a person a cohabitant knows, or has reason to know, is prohibited from owning a firearm for any reason, and giving that person access to any firearms the cohabitant possesses whether that person actually uses the firearm to cause harm or not has been found to be a crime under federal law. (*U.S. v. Stegmeier, supra*, 18 U.S.C. 922(d).) The penalty for violation under federal law is up to 10 years in prison and a fine of up to \$250,000. (18 U.S.C. Sec. 924(a)(2), 18 U.S.C. Sec. 3571.) Whether permitting access to firearms to a cohabitant who is prohibited from possessing a firearm is currently a violation of California law is not clear. Existing California law provides that “no person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is prohibited from possessing a firearm.” (Penal Code Section 27500.) While there does not appear to be any published opinion to this effect, a California court could, as the Eighth Circuit Court of Appeals recently did, find that any person living with another person prohibited from possessing a firearm has the duty to deny access to the firearm by the prohibited person.

SB 363 (Wright), Chapter 758, expands the crime of “criminal storage” to include keeping a loaded firearm within premises where a prohibited person is likely to gain access and actually accesses and causes injury as specified. Specifically, this new law:

- Amends the existing crime of “criminal storage of a firearm” to provide that a person who keeps any loaded firearms within any premises and knows, or reasonably should know, that a person prohibited from possessing a firearm pursuant to state or federal law is likely to gain access to the firearm, and that prohibited person does in fact gain access to the firearm and thereby kills or injures another person is guilty of criminal storage of a firearm. If the prohibited person causes death or great bodily injury, this

is punishable as a felony by imprisonment in a county jail for 16 months, or two or three years, by a fine not exceeding \$10,000, or both; or as a misdemeanor by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine. If the prohibited person causes injury, other than great bodily injury, or carries the firearm and draws or exhibits the firearm, as specified, this is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or both.

- Provides that, beginning January 1, 2015, the fee charged by the Department of Justice for the handgun safety testing program, as specified, shall be paid on January 1 of every year, as specified.
- Amends the existing crime of “criminal storage of a firearm” to provide that a person who keeps any loaded firearms within any premises and knows, or reasonably should know, that a person who is prohibited from possessing a firearm is likely to gain access to the firearm, and that prohibited person does in fact gain access to the firearm and carries it off-premises, or carries it to a school shall be punished by a fine of up to \$5,000 and/or imprisonment in the county jail not to exceed one year.
- Amends the existing crime of “criminal storage of a firearm” to provide that if a person keeps any loaded firearm within any premises that are under the person’s custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child is punishable of “criminal storage of a firearm in the third degree”.
- Exempts the sale of handguns to or the purchase of handguns by, federal law enforcement agencies from specified unsafe handgun provisions.

Second-Hand Goods: Lost, Stolen, or Embezzled

The Legislature has enacted various laws to curtail the dissemination of stolen property and facilitate the recovery of stolen property, including laws regulating pawnbroker and second-hand dealer businesses, which may be utilized by individuals attempting to sell or pawn stolen or embezzled property. With the recent rise in the price of gold, individuals unlicensed to deal in the resale of second-hand goods are availing themselves of this opportunity to purchase gold and jewelry items for resale.

SB 762 (Hill), Chapter 318, clarifies the interests of licensed pawnbrokers and second-hand dealers relating to the seizure and disposition of property during a criminal investigation or criminal case. Specifically, this new law:

- Clarifies that if a peace officer has probable cause to believe that specified property in the possession of a licensed pawnbroker or second-hand dealer is lost, stolen, or embezzled, the peace officer may place a hold on the property not to exceed 90 days.
- Provides that a 90-day hold is created upon receipt by a licensed pawnbroker or second-hand dealer of a written notice from a peace officer that contains the following:
 - An accurate description of the property being placed on the 90-day hold;
 - An acknowledgment that the property is being placed on hold as specified, and denoting whether physical possession will remain with the licensed pawnbroker or second-hand dealer or will be taken by the law enforcement agency instituting the 90-day hold;
 - The law enforcement agency's police report or department record number, if issued, for which the property is needed as evidence; and,
 - The date the notice was delivered to the licensed pawnbroker or second-hand dealer that initiates the specified notification period.
- Provides that the hold will not exceed a period of 90 calendar days, but may be renewed, as specified.
- Provides that the hold may be renewed as often as required for a criminal investigation or criminal proceeding by any peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.
- Permits a peace officer to either take physical possession of the property as evidence, consistent with a peace officer's right to a plain view seizure for a criminal investigation or criminal proceeding, or to leave the property in the possession of the licensed pawnbroker or second-hand dealer as a custodian on behalf of the law enforcement agency.
- Requires the licensed pawnbroker or second-hand dealer to maintain physical possession of the property placed on hold and prohibits the property's release or disposal, except pursuant to the written authorization signed by a peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.
- Specifies that the hold terminates when the property is no longer needed as evidence in a criminal investigation or criminal proceeding at which time the property shall be disposed of, as specified.

- Specifies that the hold shall not be applicable to secure lost, stolen, or embezzled property found in the possession of an unlicensed pawnbroker or second-hand dealer who has not duly and correctly reported the acquisition, as specified; and allows, in such circumstance, a peace officer having probable cause to believe the property found in the possession of an unlicensed pawnbroker or second-hand dealer is lost, stolen, or embezzled may seize the item or items consistent with the legal authority granted to the peace officer.
- Specifies that if property placed on hold is physically surrendered or delivered to a law enforcement agency during the period of the hold, the hold and the pawnbroker's lien against the property shall continue.
- Clarifies that whenever a law enforcement agency has knowledge that property in possession of a licensed pawnbroker or second-hand dealer has been reported lost, stolen, or embezzled, the law enforcement agency must, within two business days after placing a hold on the property, notify the person in writing who reported the property as lost, stolen or embezzled.
- Specifies that when property in possession of a licensed pawnbroker or second-hand dealer which is subject to a hold is no longer required for the purpose of an investigation or criminal proceeding, the law enforcement agency that placed the hold shall return the property to the licensed pawnbroker or second-hand dealer from which it was taken if the law enforcement agency took physical possession of the property.
- Specifies that a licensed pawnbroker or second-hand dealer shall not refuse a request to place property in his or her possession on hold, as specified, when a peace officer has probable cause to believe the property is lost, stolen, or embezzled. If a licensed pawnbroker or second-hand dealer refuses a request to place property on hold, as specified, the property may be seized with or without a warrant and the peace officer shall issue a receipt, as specified, left with the licensed pawnbroker or second-hand dealer and specifies that that property should be disposed of accordingly.
- Specifies that if a search warrant is issued for the search of a business of a licensed pawnbroker or second-hand dealer to secure lost, stolen or embezzled property that has been placed on hold, the hold shall continue for the duration that the property remains subject to the court's jurisdiction and specifies that when the property seized for a criminal investigation or criminal proceeding has concluded the property shall be disposed of, as specified.
- Specifies that if a civil or criminal court is called upon to adjudicate the competing claims of a licensed pawnbroker or second-hand dealer and another party claiming ownership or an interest in the property that is or was subject to a hold, as specified, the court shall award the possession of the property only after due consideration is given, as specified.

- Specifies that a licensed pawnbroker or second-hand dealer is not subject to civil liability for compliance, as specified.
- Specifies that if any person makes a claim of ownership, that person shall file a written statement, signed under penalty of perjury, stating the factual basis upon which he or she claims ownership or an interest in the property with the person having custody of the property and shall notify the pawnbroker of the claim by providing a true and correct copy of the claim to the pawnbroker.
- Specifies that in adjudicating the competing claims of a pawnbroker and a person claiming ownership or an interest in the property seized from a pawnbroker, the adjudicating court shall give due consideration to the specified effect on the claim.
- Specifies that at least 30 calendar days before any hearing adjudicating any competing claims of a pawnbroker and a person claiming ownership or an interest in the property, the person having custody of the property shall deliver to the pawnbroker a true and correct copy of the police report, redacted as may be required by law and consistent with due process of law, substantiating the basis of the seizure.
- Provides that the return of property by a law enforcement agency required to be made to a person claiming to be entitled to possession of a lost or stolen vehicle is not required if the report of the theft or loss of the vehicle into the automated property system preceded the report of the acquisition of the property by a licensed pawnbroker.

CRIMINAL JUSTICE PROGRAMS

Child Abuse: Multidisciplinary Personnel Teams

AB 2229 (Brownley), Chapter 464, Statutes of 2010, authorized counties to create two-person child abuse multidisciplinary personnel teams (MDTs), rather than three-person MDTs, engaged in the investigation of suspected child abuse or neglect, and permitted the disclosure of the information gathered by a child abuse MDT to be disclosed among team members electronically and telephonically upon the proper verification of the recipient's status as a team member.

Child abuse MDTs are intended to identify, treat, and prevent child abuse, and are comprised of qualified persons who may include psychiatrists, psychologists, medical personnel, law enforcement personnel, social workers and teachers. The benefit and purpose of forming a child abuse MDT is that information that would otherwise be confidential may be shared within the confines of the team.

By conforming the law regarding child abuse MDTs with the law regarding elder abuse MDTs, which only required two members, AB 2229 enhanced the treatment and prevention of child abuse by streamlining the ability of qualified personnel to aid victims by promptly having relevant information, and saved time and resources by eliminating the need for a redundant third person consulted merely to satisfy the statute.

AB 2229 contained a sunset clause of January 1, 2014.

AB 406 (Torres), Chapter 7, deletes the January 1, 2014 sunset date on provisions of law that authorizes counties to establish child abuse MDTs within that county to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse and neglect, as specified.

Youth Sports: Criminal Background Checks

The Department of Justice (DOJ) maintains state summary criminal history information and furnishes the information to statutorily authorized entities. Existing law authorizes a human resource agency or an employer to request from DOJ records of all convictions or any arrest pending adjudication involving the offenses specified of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. Pursuant to such a request, DOJ is required to furnish the information to the requesting employer and send a copy of the information to the applicant.

Current law is unclear as to whether a community youth athletic program may request criminal history information for volunteer or hired coach candidates.

AB 465 (Bonilla and Maienschein), Chapter 146, specifies that a community youth athletic program, as defined, may request state- and federal-level background checks for a volunteer coach or hired coach candidate.

Emergency Services: Amber Alert

According to the U.S. Department of Justice (DOJ), 800,000 children are reported missing every year in the U.S. An estimated 200,000 are abducted by a family member. No parent ever wants to have to report a missing child; however, when such action is needed, quick and coordinated response by law enforcement can help to safely return the child.

According to the DOJ, 75 percent of children abducted and later found murdered were killed within three hours of being abducted. As such, quick response is critical in the safe return of children.

The Amber Alert system has been a powerful tool is helping law enforcement to safely and quickly recover abducted children.

However, there is a discrepancy in current law that needs to be addressed. There is disagreement if, all other factors considered, an Amber Alert can be issued if the abductor is a parent or guardian. The relationship between the child and the abductor should not be an inhibiting factor if there is reason to believe that the child's life is at risk.

AB 535 (Quirk), Chapter 328, requires a law enforcement agency to request activation of the Emergency Alert System when the law enforcement receives a report that an abduction has occurred or that a child has been taken by anyone, including a custodial parent or guardian, and specific other requirements are met.

County Jail Inmates: Program Credits

Under existing law, the California Department of Corrections and Rehabilitation (CDCR), in addition to "good-time" and participation credits, may also award a prisoner program credit reduction from his or her term of confinement of not less than one week to credit reduction of not more than six weeks for each performance milestone that is achieved.

Sheriffs should have these same tools at their disposal to help incentivize inmates to participate in educational and substance abuse programs, ensuring that when these inmates are released back into California communities they have new skills and better prospects for employment which, in turn, will hopefully reduce recidivism and make communities safer for all.

AB 624 (Mitchell), Chapter 266, authorizes a sheriff or county director of corrections to award a prisoner program credit reduction from an inmate's term of confinement for the successful completion of performance objectives for approved rehabilitative programming. Specifically, this new law:

- Provides that in addition to credit awarded for good behavior, a sheriff may also award a prisoner program credit reduction from his or her term of confinement. A sheriff who elects to participate in this program shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone.
- States that regulations promulgated by the sheriff shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-custody rehabilitation program. Commencing upon the approval of these guidelines, the sheriff shall thereafter calculate and award credit reductions as authorized. A prisoner may not have his or her term reduced by more than six weeks for credits awarded during any 12-month period of continuous confinement.
- States that program credits is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security, available resources, and guidelines set forth by the sheriff.
- Provides that "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, substance abuse programs, and core programs such as anger management and social life skills.
- Provides that additional credits awarded may be forfeited, as specified. Inmates shall not be eligible for program credits that result in an inmate being overdue for release.
- Specifies that only inmates sentenced to the county jail pursuant to realignment are eligible for prisoner program credit reductions.

Child Abuse and Neglect Reporting: Homeless Youth

Youth most often contribute family conflict and breakdown—commonly abuse or neglect, alcohol or drug addiction of a family member, pregnancy, and rejection over sexual orientation—as the major reason for their homelessness or episodes of running away. Additionally, a sizeable portion of homeless children reported being physically or sexually abused at home in the prior year or feared abuse upon returning home. Many of the unaccompanied minors on the street are foster youth who have left the child welfare system and feel the system has failed them. Some homeless youth are reluctant to seek out available services out of fear of being returned to the same circumstances from which they fled.

AB 652 (Ammiano), Chapter 486, provides that the fact that a child is homeless or is classified as an unaccompanied minor, as defined, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

Work Furlough

Work furlough is an alternative form of punishment which allows participants to pursue legitimate day-time activities while submitting to nightly incarceration. Work furlough programs allow an inmate to maintain employment while serving a custody commitment. Although commonly referred to as "work furlough," this alternative sentencing program also encompasses job training and school furlough.

Existing law explicitly cites a variety of sentences that are eligible for work furlough and includes sentences for misdemeanants, or felons when jail is imposed as condition of probation. Existing law does not currently include felons sentenced to county jail as a result of Criminal Justice Realignment. Allowing a felon sentenced to county jail under realignment to participate in a work furlough program if he or she is deemed suitable will assist in his or her transition back into the community, thus helping to reduce recidivism. Additionally, the removal of these offenders from the county jail will also help alleviate over-crowding and free jail space for other offenders.

AB 752 (Jones-Sawyer), Chapter 52, expands eligibility for jail work furlough programs to include felons sentenced to county jail under realignment.

County Parole

Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails.

As a result of realignment, there are more inmates who may wish to apply for county parole. The purpose of the county parole system is to assist jail inmates to reintegrate into society as constructive individuals as soon as they are able. Since inmates are not confined for the full term of their sentences, the program also alleviates the cost of keeping the inmates in jail.

Currently, very few counties are currently utilizing county parole. Due to the increased jail population resulting from realignment, local governments are in need of more tools and flexibility to manage their jails and offender populations. Unfortunately, some counties are not utilizing so-called "split sentences" and are merely sentencing offenders to "straight time" with no period of supervision and no evidence-based programming. A longer county parole term will provide an option to relieve overcrowding while still providing the opportunity for supervision.

AB 884 (Bonilla), Chapter 456, increases the term of years that a county parole board may place an inmate on county parole from two to three years.

Informant Privilege: Crime Stoppers

California and federal law lay out a number of scenarios where communications between individuals are privileged and thereby inadmissible in civil and criminal proceedings. Society has deemed that it is in the interest of the greater good that these communications should remain

confidential to foster healthy relationships, mental health, and honesty. Examples of privilege include communications between married couples, patients and doctors, psychotherapists and patients, clerics and penitents, and attorneys with their clients.

Under California law, a public entity has a privilege to refuse to disclose the identity of an informer if disclosure is against the public interest because there is a need to preserve the confidentiality of the informer's identity that outweighs the need for disclosure to the parties to the action. The disclosure of an informer is not required when a search is made pursuant to a warrant and the standard is merely probable cause.

AB 1250 (Perea), Chapter 19, clarifies the informant privilege applies to communications between people who call crime stopper organizations for the purpose of transmittal of that information to law enforcement.

Victim Compensation: Human Trafficking

Human trafficking is a crime that has devastating effects not only on society but on the victim. Existing law, however, does not provide these victims with the ability to ask the Victim Compensation and Government Claims Board for financial compensation for the crimes they have endured, even if the victim has suffered severe emotional trauma and injury. Access to financial compensation, while not a cure-all, will help former trafficked individuals through the healing process and reintegrate into society.

SB 60 (Wright), Chapter 147, expands eligibility to human trafficking victims who have suffered emotional injury for compensation from the restitution fund administered by the California Victim Compensation and Government Claims Board.

Sexual Assault Victims: Medical Evidentiary Exams

Sexual assault remains a problem for Californians. In 2009 alone, 1.3 million women were raped in the United States. Furthermore, nationally, nearly one in five women and one in seventy-one men will be raped in their lifetime. In California alone, approximately two million women have been raped in their lifetime. In 2012, the California Emergency Management Agency (now the Governor's Office of Emergency Services) received approximately \$12 million from the federal government for Violence Against Women Act (VAWA) programs and measures.

Under existing law, the appropriation of VAWA grant funds for forensic medical examinations of sexual assault victims will sunset on January 1, 2014. After that time, it is unclear what funding source will be used to reimburse local law enforcement for these medical examinations. Without an extension of this authorization, if no additional funding source can be found to reimburse local law enforcement, California may fall out of compliance with VAWA and risk losing the accompanying funds.

SB 107 (Corbett), Chapter 148, repeals the sunset date authorizing the use of VAWA grant funds to cover the costs of the evidentiary portion of medical examinations of sexual assault victims.

Diversion Programs: Sealed Records

Existing law provides that upon successful completion of a drug diversion program, the court may order the sealing of court and arrest records of diverted charges where the interests of justice would be served. However, existing law lacks a similar mechanism for individuals who successfully complete other prosecutor-administered diversion programs.

Steady employment is known to be an essential element in keeping former offenders or those at risk out of prison. Many times, these individuals cannot find viable employment due to their previous criminal records.

SB 513 (Hancock), Chapter 798, allows individuals who successfully complete a prosecutor-administered diversion program to petition the court have their arrest records sealed. Specifically, this new law:

- Authorizes the court to order those records sealed if the court finds that doing so will be in furtherance of justice.
- Requires a copy of the petition to be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing.
- States that the prosecuting attorney and the law enforcement agency, through the prosecuting attorney, may present evidence to the court at the hearing.
- States if the order is made to seal the records, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.
- Allows the person, except as specified, to indicate in response to any question concerning the person's prior criminal record that the person was not arrested.

Compensation for Exonerated Inmates

California law offers a remedy for wrongfully convicted men and women by providing compensation in the amount of \$100 for each day he or she spent illegally imprisoned. The California Victim Compensation and Government Claims Board (VCGCB) reviews the claims and makes a recommendation to the Legislature on whether a claimant should be compensated.

While the program is well intended, funds have been grossly underutilized due to a number of barriers that deny access to the very population the funds were designed to assist. Individuals who have established their actual innocence to the criminal justice system and whose conviction would not have been reversed unless they proved their innocence to the judge have been denied claims by VCGCB. Claimants are often required to spend tens of thousands of dollars to re-litigate their claims in front of VCGCB because the factual findings of the court that reversed the

conviction are not binding on VCGCB. Additionally, the claim review process timeline is unlimited: there are no limits to the length of time a claim may be considered and therefore a claimant may wait years before his or her claim is decided.

SB 618 (Leno), Chapter 800, streamlines the process for compensating persons exonerated after being wrongfully convicted and imprisoned. Specifically, this new law:

- Provides if a person has secured a declaration of factual innocence from the court after having his or her conviction set aside, the finding shall be sufficient grounds for payment of compensation for a claim against the state to the VCGCB.
- States that the express factual findings made by the court, including credibility determinations, in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the Attorney General (AG), the factfinder, and VCGCB.
- Provides that if the claimant is a person who had his or her conviction reversed in a habeas corpus proceeding or secured a declaration of factual innocence, VCGCB shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant and recommend to the Legislature payment of that sum.
- Specifies if the claimant is not a person who had his or her conviction reversed in a habeas corpus proceeding or secured a declaration of factual innocence, the AG shall respond to the claim within 60 days of the order, or request an extension of time, upon a showing of good cause.
- Requires VCGCB to fix a time and place for the hearing of the claim, mail notice to the claimant at least 15 days prior to the time fixed for the hearing, and make a recommendation based on the claimant's verified claim and any evidence presented by him or her.
- Authorizes a person incarcerated in county jail for a felony conviction to file a claim to VCGCB for the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment or incarceration.
- Clarifies that the two-year statute of limitations for filing a claim to VCGCB starts to toll after judgment of acquittal, or after pardon granted, or after release from custody.
- States that VCGCB shall deny payment of any claim if VCGCB finds by a preponderance of the evidence that a claimant pled guilty with specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

- Deletes the requirement under current law that the claimant must introduce evidence to prove the fact that he or she did not, by any act or omission, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged.

CRIMINAL OFFENSES

Domestic Violence: Relationships

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, is guilty of a felony domestic violence punishable by up to four years in state prison. California's misdemeanor domestic violence includes the same list of relationships, but also includes a fiancé or fiancée, and persons with whom the defendant has, or previously had, a dating or engagement relationship.

This inconsistency with respect to which relationship qualifies for domestic violence creates a serious problem. Because of this flaw, a defendant who commits a felony battery on his or her fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship is not subject to the same punishments and treatment requirements that other domestic abusers are subject to upon conviction.

AB 16 (John A. Pérez), Chapter 763, expands the categories of relationships that constitute felony domestic violence resulting in a traumatic condition to include fiancés and fiancées, and persons with whom an offender has, or previously had, an engagement or dating relationship, as defined.

Statute of Limitations: Vehicular Manslaughter

Current law sets the statute of limitations for prosecuting a hit-and-run crime at three years after the commission of the offense. The current statute of limitations may provide an incentive for some perpetrators to flee the scene of an accident rather than take responsibility for their actions. These individuals essentially can evade prosecution, even when the incident led to a death or serious bodily injury, by remaining unidentified until law enforcement's period to prosecute has lapsed.

AB 184 (Gatto), Chapter 765, allows the prosecuting attorney to criminally charge a person of fleeing the scene of an accident that causes death or permanent, serious injury within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, or within the existing statute of limitations, whichever is later, but in no case later than six years after the commission of the offense.

Firearms: Criminal Storage

Studies have found that Child Access Prevention (CAP) laws reduce firearm-related deaths by increasing firearm owner responsibility. Unfortunately, California's CAP laws do not emphasize prevention. In the case of loaded firearms, a person may be found guilty of a misdemeanor or a felony if he or she keeps a loaded firearm within any premises under his or her custody or control and a child under 18 years of age obtains and uses the firearm, resulting in injury or death, or

carries the firearm to a public place. In the case of handguns only, California imposes liability when the child carries a loaded or unloaded handgun off-premises.

Statistics indicate that more than 40 percent of gun owning households with children store their guns unlocked. With such staggering figures, California needs to put greater emphasis on the safe storage of weapons to avoid unauthorized access.

AB 231 (Ting and Gomez), Chapter 730, creates the crime of criminal storage in the third degree, which imposes liability if a person negligently stores or leaves a loaded firearm in a place where he or she knows, or reasonably should know, that a child is likely to access the firearm without the permission of the child's parent or legal guardian. Specifically, this new law:

- Provides that a person may be found guilty of criminal storage of a firearm of the third degree if the following conditions are satisfied:
 - The person keeps any loaded firearm within any premises that are under the person's custody or control, and,
 - The person negligently stores the firearm or leaves it in a place where the person knows or reasonably should know that a child is likely to gain access to the firearm, without the permission of the child's parent or legal guardian, unless reasonable action has been taken to secure the firearm against access by a child.
- Provides that criminal storage of a firearm in the third degree is punishable as a misdemeanor.
- Requires that a licensee conspicuously post within the licensed premises the following warnings in block letters not less than one inch in height: "If you negligently store or leave a loaded firearm within any premises under your custody or control, where a person under 18 years of age is likely to access it, you may be guilty of a misdemeanor, including a fine of up to one thousand dollars (\$1,000), unless you store the firearm in a locked container, or lock the firearm with a locking device."

Extortion: Immigration Status

Research and individual experiences show that labor violations and widespread practices of retaliation have become key features of the low-wage labor market in California. In many of these occupations and industries, vulnerable immigrants cannot exercise their labor rights or speak out against unfair or illegal working conditions without the fear of retaliation and immigration-related threats.

Existing law defines "extortion" as the obtaining of property from another, with consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or

under color of official right. Existing law further provides that fear sufficient to constitute extortion may be induced by certain threats, including a threat to accuse the threatened individual, or his or her relative or family, of a crime.

AB 524 (Mullin), Chapter 572, states that a threat to report the immigration status or suspected immigration status of the threatened individual, or his or her relative or a member of his or her family, may also induce fear sufficient to constitute extortion.

Controlled Substances: Transportation

Currently, an ambiguity in state law allows prosecutors to charge drug users – who are not in any way involved in drug trafficking – with two crimes for simply being in possession of drugs. While current law makes it a felony for any person to import, distribute or transport drugs, the term "transportation" used in the Health and Safety Code has been widely interpreted to apply to any type of movement – even walking down the street – and any amount of drugs, even if the evidence shows the drugs are for personal use and there is no evidence that the person is involved in drug trafficking. As a result, prosecutors are using this wide interpretation to prosecute individuals who are in possession of drugs for only personal use, and who are not in any way involved in a drug trafficking enterprise.

AB 721 (Bradford), Chapter 504, amends existing law to make the transportation of specified controlled substances a felony only if the individual is transporting the controlled substance for the purpose of sale.

Sales and Use Taxes: Sales Suppression Devices

California's tax system is based on the principal of voluntary compliance. Most taxpayers report tax liability to appropriate agencies and generally comply with California tax law. However, there are those persons who will try to evade paying their taxes. Such evasion takes the form of failing to report sales, keeping two sets of books, or even filing false tax returns. Newer and more sophisticated products like automated sales suppression devices, zappers, and phantom software have made this process much easier and faster to accomplish. In general, these devices electronically and systematically conceal and remove sale transactions from recordkeeping systems. The Board of Equalization has estimated that California loses \$214 million in annual sales tax revenue due to these kinds of devices, and the use of such devices also makes it much more difficult for auditors to detect fraud.

AB 781 (Bocanegra), Chapter 532, provides that a person who purchases, installs, or uses in California any automated sales suppression device or zapper or phantom-ware with the intent to defeat or evade the determination of an amount due is guilty of a misdemeanor. Specifically, this new law:

- Specifies that any person who, for commercial gain, sells, purchases, installs, transfers, or possesses any automated sales suppression device or zapper or phantom-

ware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due pursuant to this part is guilty of either a misdemeanor or felony.

- States that any person who uses an automated sales suppression device or zapper or phantom-ware shall be liable for all taxes, interest, and penalties due as a result of the use of that device.
- Provides for a maximum fine of up to \$5,000 or \$10,000 depending on the number of devices the person sold, installed, transferred or possessed.
- Defines terms related to sales and use taxes including "automated sales suppression device," "zapper," "electronic cash register," "phantom-ware" and "transaction data."
- Exempts a person who is a corporation that possesses any automated sales suppression device, zapper, or phantom-ware for the sole purpose of developing hardware or software to combat the evasion of taxes by use of automated sales suppression devices or zappers or phantom-ware.

Grand Theft: Livestock

Animal theft can impact a ranching operation tremendously and mean the difference between a financial loss or gain any given year. There has been a 60-percent increase in the value of beef cattle over the last few years; as a result, California has also seen an increase in theft. In 2012, the Bureau of Livestock Identification reported that 1,110 head of cattle were stolen a value of nearly \$1 million.

Under existing law, there is no fine specified for grand theft of livestock. Additionally, livestock is categorized in the same Penal Code subsection with automobiles for purposes of grand theft. As a result, it is difficult to track livestock offenses of separate and apart from automobiles.

AB 924 (Bigelow), Chapter 618, specifies a fine of up to \$5,000 for grand theft involving livestock and earmarks those funds to the Bureau of Livestock Identification for the purpose of investigating theft of livestock. Additionally, this new law separates livestock from automobiles in the grand theft section.

Vandalism: Community Service

Under existing law, every person convicted of vandalism may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment. In many instances, 240 days is not enough time in which to complete court-ordered community service.

AB 1325 (John A. Pérez), Chapter 791, extends from 240 days to one year the period of time a person convicted of vandalism or affixing graffiti to complete his or her court imposed community service.

Sex Offenders: Removal or Disabling of Electronic Monitoring Devices

The California Department of Corrections and Rehabilitation (CDCR) is authorized to utilize continuous electronic monitoring, including a global positioning system (GPS), to electronically monitor the whereabouts of persons on parole as specified. Under existing law, every inmate who has been convicted for any felony violation of a registerable sex offense or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole shall be monitored by GPS for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

Based on CDCR data, from 2010 through 2012, inclusive, 6,092 sex offenders absconded from parole (about 20 percent of the sex offenders on parole) and 5,791 were captured. According to CDCR, almost all disabled their GPS devices. A person on parole who removes or disables a GPS or other electronic monitoring device may have his or her parole revoked and serve up to 180 days in county jail.

SB 57 (Lieu), Chapter 776, prohibits a person who is required to register as a sex offender and who is subject to parole supervision from removing, as specified, an electronic, GPS, or other monitoring device affixed as a condition of parole. Specifically, this new law:

- Requires, upon a violation of the provision, the parole authority to revoke the person's parole and impose a mandatory 180-day period of incarceration.
- Exempts the removal or disabling of an electronic, GPS, or other monitoring device by a physician, emergency medical services technician, or by any other emergency response or medical personnel when doing so is necessary during the course of medical treatment of the person subject to the electronic, GPS, or other monitoring device.
- Exempts the removal or disabling of the electronic, GPS, or other monitoring device is authorized or required by a court, or by the law enforcement, probation, parole authority, or other entity responsible for placing the electronic, GPS, or other monitoring device upon the person, or that has, at the time, the authority and responsibility to monitor the electronic, GPS, or other monitoring device.

Sex Offenders: Child Pornography

Child pornography production necessarily involves the abuse of children, such as capturing images of infants and toddlers being raped. The United States Department of Justice (US DOJ) estimates that pornographers have recorded the abuse of more than one million children in the U.S. alone, with 200 new images posted daily. The US DOJ also reports an increasing trend

towards younger victims, including infants, and greater brutality. When images are instantly sent around the world through the Internet, children are re-victimized long after the physical abuse. A recent New York Times story, “The Price of Stolen Childhood” profiled young people driven into virtual seclusion because sexual images of them are posted on the Internet.

SB 145 (Pavley), Chapter 777, creates new categories of offenses related to aggravated forms of child pornography with increased state prison terms for those offenses. Specifically, this new law:

- Provides that where a defendant is convicted of possession of child pornography and one of the following circumstances is established, the defendant shall be guilty of an alternate felony-misdemeanor, punishable by a prison term of 16 months, two, or five years and a fine of up to \$2,500, imprisonment in the county jail for up to one year or both:
 - The material contains more than 600 images of child pornography and 10 or more images depict prepubescent minors or minors under 12 years of age.
 - The material portrays sexual sadism or sexual masochism involving minors.
- Defines “sexual sadism” as the intentional infliction of pain for purposes of sexual gratification or stimulation and “sexual masochism” as the experiencing of pain for purposes of sexual gratification or stimulation.
- Redefines the crime of using harmful matter to seduce a child in the following manner: the crime is an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine of up to \$1,000, or both, or by imprisonment in state prison for two, three or five years and a fine under the following circumstances:
 - The defendant furnished, displayed or otherwise presented to the minor harmful matter - obscene material from the perspective of a minor - that also depicted minors engaged in sexual conduct, as defined by the child pornography laws.
 - The defendant used any means of communication, including electronic communication, in-person contact, or any delivery or mail service. The defendant intended to induce or persuade the minor to engage in sexual acts involving sexual intercourse, sodomy, oral copulation, sexual penetration or the touching by either party of an intimate body part of the other.
- Provides that for purposes of determining the number of images the following shall apply:
 - Each photograph, picture, computer, or computer-generated image, or any similar visual depiction shall be considered to be one image.

- Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images.
- Defines an “intimate body part” as the sexual organ, anus, groin or buttocks of any person, or the breast of a female.

Disorderly Conduct: Revenge Porn

"Cyber revenge" or "revenge porn" refers to the posting of illicit pictures of another person without his or her consent, often as retaliation following a breakup between partners. Current law is silent as to the illegality of this disturbing practice.

While the creation, possession, or distribution of sexually charged images of a minor can be charged according to child pornography prohibitions, the same actions committed against victims over 18 years old do not constitute a crime under current statute.

Victims of this act are often so humiliated that they pose a threat to harming themselves, as evidenced by numerous examples of cyber revenge victims who have taken their own lives. Cyber revenge and its consequences should not be tolerated.

SB 255 (Cannella), Chapter 466, creates a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private, commonly referred to as "revenge porn." Specifically, this new law:

- Provides that any person who photographs or records by any means the image of another identifiable person's intimate body parts under circumstances where the parties agree or understand that the image shall remain private, and subsequently distributes that image with the intent to cause serious emotional distress, and where the person depicted does suffer serious emotional distress, is guilty of a misdemeanor.
- Defines "intimate body parts" as "any portion of the genitals, and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing."
- Specifies that nothing in this new law will preclude punishment under other any section of law providing for greater punishment.
- Contains an urgency clause, which takes effect immediately.

Filing a False Emergency Report: Restitution

"Swatting" is essentially a prank call which earned its nickname because law enforcement agencies sometimes send SWAT teams to respond to the false emergencies. False 911 calls have become increasingly common in recent months as they involve entertainers, celebrities, and other public officials.

"Swatting" not only stretches local emergency response capacity but also endangers victims by placing them in potential confrontation with police. "Swatting" is also a costly waste of precious law enforcement resources. Law enforcement takes every emergency reported and uses its resources to maximize public safety. But at the time a false report is given, law enforcement is unaware that it is a hoax until arriving at the scene of the alleged crime.

Arguably, the police or fire department responding to a prank swatting call is not the direct victim of the crime. Rather, the individual who is the subject of the hoax may be seen as the direct victim. As such, the responding agency would not be eligible to recoup its costs under victim restitution statutes. Nevertheless, other statutes often provide governmental agencies separate remedies to obtain reimbursement for expenditures attributable to a defendant's conduct. Like the agencies, law enforcement needs the ability to recoup expenses within the criminal case, which reportedly can run as high as \$10,000 per incident.

SB 333 (Lieu), Chapter 284, makes a person convicted of filing a false emergency report liable to a public agency for the costs of the emergency response by that agency.

Petty Theft: Enhancements for Prior Convictions

Current law is ambiguous as to whether a prior conviction for theft-related offenses against an elder or dependent adult is a theft for purposes of enhanced penalties for subsequent petty theft. Current law, in referencing theft convictions, simply states "petty theft" and "grand theft" without reference to Penal Code provisions. The statute does not distinguish among victims of theft crimes. Therefore, elder theft appears to qualify as a conviction for enhancing the sentence of a petty theft conviction.

However, the fact that a defendant was convicted under the statute defining theft-related crimes against elder or dependent adults does not necessarily establish that the prior conviction involved theft because the elder financial abuse statute also includes embezzlement, forgery, fraud, and identity theft. Moreover, the exclusion of theft from an elder or dependent adult from the current predicate-offense list indicates that the Legislature did not intend to include the crime as a qualifying conviction for purposes of petty theft with a prior conviction.

It is necessary to eliminate these potential ambiguities by including all forms of elder financial abuse as qualifying prior convictions, thereby ensuring that elder theft is treated with the same seriousness as any other form of theft.

SB 543 (Block), Chapter 782, specifies that a conviction for theft, embezzlement, forgery, fraud, or identity theft against an elder or dependent adult is a prior qualifying conviction for purposes of the crime of petty theft with a prior theft conviction.

Harassment: Children

AB 3592 (Umberg), Statutes of 1994, protects children susceptible to retaliatory attacks because of their parents' employment. AB 3592 made the intentional harassment of a child because of

their parents' employment a misdemeanor and was meant to specifically address the increased harassment faced by the children of health care facility employees where abortion procedures were performed.

The beneficiaries of the law, however, were not solely healthcare workers. Clearly, there are many other categories of workers whose children are subject to retaliatory attacks because of the nature of their work. For example, the children of public figures are susceptible to fanatical attention and harassment because of their parents' occupation.

SB 606 (De León), Chapter 348, clarifies that misdemeanor harassment of a child because of the employment of the child's parent or guardian may include attempting to record the child's image or voice if done in a harassing manner, increases criminal penalties, and subjects a person who commits misdemeanor harassment to civil liability. Specifically, this new law:

- Expands the definition of harass, from knowing and willful conduct directed at a specific child or ward that seriously alarms, torments, or terrorizes the child or ward and that serves no legitimate purpose, to include conduct occurring during the course of actual or attempted recording of the child's image or voice without express consent of the child's parent or legal guardian, by following the child's activities or by lying in wait. The conduct must be such that would cause a reasonable child to suffer substantial emotional distress, and actually cause the victim to suffer substantial emotional distress.
- Increases the penalty for harassing a child because of the employment of the child's parent or guardian from up to six months in county jail to up to one year in county jail.
- Increases the maximum fines for harassment of a child as follows:
 - Up to \$10,000 for a first offense.
 - Up to \$20,000 for a second offense.
 - Up to \$30,000 for a third or subsequent offense.
- Permits the parent or guardian to bring a civil action against a person who violates this child harassment statute. This new law limits remedies to actual damages, punitive damages, reasonable attorney's fees and costs, and disgorgement of compensation received by the individual who recorded the child's image or voice from the sale, license or dissemination of such recording.

CRIMINAL PROCEDURE

Statute of Limitations: Vehicular Manslaughter

Current law sets the statute of limitations for prosecuting a hit-and-run crime at three years after the commission of the offense. The current statute of limitations may provide an incentive for some perpetrators to flee the scene of an accident rather than take responsibility for their actions. These individuals essentially can evade prosecution, even when the incident led to a death or serious bodily injury, by remaining unidentified until law enforcement's period to prosecute has lapsed.

AB 184 (Gatto), Chapter 765, allows the prosecuting attorney to criminally charge a person of fleeing the scene of an accident that causes death or permanent, serious injury within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, or within the existing statute of limitations, whichever is later, but in no case later than six years after the commission of the offense.

Criminal Convictions: Dismissal

A felony conviction on a person's record will often create significant barriers to that person's reentry into the community. As background checks by landlords and employers have become nearly universal - a recent survey by the Society of Human Resources found that over 90 percent of employers conduct background checks - a person with a decades-old conviction for drug possession may be prevented from finding gainful employment or securing stable housing. This bleak reality leads some individuals with felony convictions to recidivate to criminal activity instead of successfully reintegrating back into the community as a productive and contributing member of society.

AB 651 (Bradford), Chapter 787, allows a court to dismiss a conviction of a person sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. Specifically, this new law:

- Allows the court, in its discretion and in the interests of justice, to dismiss a conviction only after the lapse of one year following the person's completion of the sentence, provided that the person is not under post-release community supervision pursuant to realignment or is not serving a sentence for, on probation for, or charged with the commission of any offense.
- Provides that in any subsequent prosecution of the person for any offense, a conviction dismissed pursuant to this law shall have the same effect as if it had not been dismissed.

- Does not relieve the person of the obligation to disclose the dismissed conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.
- Does not permit a person prohibited from owning, possessing, or having in his or her custody or control any firearm as a result of the dismissed conviction to own, possess, or have a firearm.
- Does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.
- Prevents the court from dismissing the conviction unless the prosecuting attorney has been given 15-days' notice of the petition for the dismissal.

Human Trafficking: Admissibility of Evidence

Human trafficking involves recruiting, transporting or selling people 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 are 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 victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).]

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence that victims engaged in sexual conduct from being used against victims in court proceedings. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors. However, the language of Proposition 35 as it reads now could reach beyond its intended use and potentially jeopardize other serious prosecutions, such as robbery or murder of the human trafficker, where that evidence may be key in establishing motive.

AB 694 (Bloom), Chapter 126, prohibits the admissibility of evidence that a victim had engaged in a commercial sex act as a result of being a victim of human trafficking in order to prove the victim's criminal liability for the commercial sex act.

Arrest Warrants: Electronic Signatures

In 2010, AB 2505 (Strickland), Chapter 98, amended Penal Code Section 1526 to allow judges' signatures on search warrants to be in digital or electronic form.

Currently, law enforcement may submit arrest warrants to a magistrate via e-mail. However, existing law requires a magistrate's physical signature in order to authorize the warrant.

AB 1004 (Gray), Chapter 460, makes technological updates to procedures related to the judicial issuance of an arrest warrant. Specifically, this new law:

- Allows an oath in support of a declaration of probable cause for arrest to be made using a telephone and computer server.
- Provides that the declarant's signature may be in the form of an electronic signature.
- Allows the magistrate to subsequently print the warrant, supporting affidavit, and attachments if received by electronic mail or computer server.
- Allows the magistrate to sign an arrest warrant using a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.
- Authorizes a signed arrest warrant to be transmitted by a computer server to the declarant.

Youth Offender Parole Hearings

Juveniles age 14 and older can be subject to prosecution in adult criminal court depending upon their alleged offense and their criminal offense history. Once under the jurisdiction of adult criminal court, sentencing laws generally do not distinguish youth from adults. However, recent court decisions have acknowledged the diminished culpability of juveniles as compared to adults.

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole. [*Graham v. Florida* (2010) 130 S.Ct. 2011.] The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its earlier findings from *Roper v. Simmons* (2005) 543 U.S. 551, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." [*Graham, supra*, 130 S.Ct. at 2016.]

In 2012, the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. [*People v. Caballero* (2012) 55 Cal. 4th 262, 268.] The Court stated that "the state may not deprive [juveniles] at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." (*Ibid.*) The Court pointed out that these inmates may file petitions for writs of habeas corpus in the trial court, but also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile.

SB 260 (Hancock), Chapter 312, requires the Board of Parole Hearings (BPH) to conduct a youth offender parole hearing to consider release of offenders who committed specified crimes prior to being 18 years of age and who were sentenced to state prison. Specifically, this new law:

- Makes a person eligible for release on parole at a youth offender parole hearing:
 - During the 15th year of incarceration if the person meeting these criteria received a determinate sentence;
 - During the 20th year if the person received a sentence that was less than 25 years to life; and,
 - During the 25th year of incarceration if the person received a sentence that was 25 years to life.
- Requires BPH, in reviewing a prisoner's suitability for parole, to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.
- Sets a deadline of July 1, 2015, for BPH to complete all youth offender parole hearings for individuals who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this new law.
- Mandates BPH to review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to the provisions of this new law, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.
- Exempts persons sentenced under the "Three Strikes" law, the "One-Strike" sex law, or sentenced to life in prison without the possibility of parole.

- Excludes a person who is otherwise eligible, but who, subsequent to attaining 18 years of age, commits an additional crime for which the person is sentenced to life in prison or commits murder, as specified.
- Requires BPH to meet with each inmate during the sixth year prior to the inmate's minimum eligible parole release date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to both parole eligibility and to the granting or withholding of post-conviction credit.
- Requires BPH, within 30 days following the consultation, to issue its positive and negative findings and recommendations to the inmate in writing.
- States, if parole is not granted, BPH shall set the time for the subsequent youth offender parole hearing in accordance with existing provisions of law, and in exercising its discretion BPH shall consider the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

Official Record of Conviction: Electronically Digitized Copy

Under existing law, an official certified record of conviction is admissible to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record. Evidence of a prior conviction may be needed in order to prove an element of the current offense or during sentencing as a sentence enhancement. In order to prove a prior conviction, the prosecutor must rely on official records which may include documents such as the trial transcript, the preliminary hearing transcript, the defendant's guilty plea, and any appellate record.

However, these court-certified copies are taking longer to receive, despite the statutorily mandated timelines for bringing charged defendants to hearing. Authorizing the use of electronically digitized documents as evidence where documents or records can be admitted would be more efficient and result in cost savings because the courts could certify an electronic file one time rather than producing and certifying multiple hard copies.

SB 378 (Block), Chapter 150, authorizes the use of an electronically digitized copy of a certified record as evidence in situations where documents or records are admissible. This new law also defines an “electronically digitized copy” as a copy that is made by scanning, photographing, or otherwise exactly reproducing a document, is stored or maintained in a digitized format, and bears an electronic signature or watermark unique to the entity responsible for certifying the document.

Felony Sentencing

In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial because the judge was required to make factual

findings in order to justify imposing the maximum term of a sentencing triad. [*Cunningham v. California* (2007) 549 U.S. 270.] The Supreme Court suggested that this problem could be corrected by either providing for a jury trial on the sentencing issue or by giving the judge discretion to impose the higher term without additional findings of fact.

SB 40 (Romero), Chapter 40, Statutes of 2007, corrected the constitutional problem by giving judges the discretion to impose a minimum, medium or maximum term, without additional finding of fact. SB 40's approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. SB 150 (Wright), Chapter 171, Statutes of 2009, extended this constitutional fix to sentence enhancements.

The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. [SB 1701 (Romero), Chapter 416, Statutes of 2008.] SB 150 also included a sunset provision that corresponded to the date upon which the provisions of SB 40 would expire. Since then, the Legislature has extended the sunset provisions several times. The current sunset date is January 1, 2014.

SB 463 (Pavley), Chapter 508, extends the sunset date from January 1, 2014 to January 1, 2017 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40 (Romero), Chapter 40, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009; and *Cunningham vs. California* (2007) 549 U.S. 270.

Search Warrants: Driving under the Influence

On April 17, 2013, the Supreme Court of the United States, in a 5-4 opinion (*Missouri v. McNeely*), decided that in drunk-driving investigations it is unlawful to conduct a blood test without consent. The decision effectively requires an officer to obtain a warrant before he or she can take a suspect's blood if that suspect does not give consent. It is necessary to conform California's Penal Code to adhere to this ruling by specifying that an officer may request, and a court may grant, a search warrant to perform a blood draw.

SB 717 (DeSaulnier), Chapter 317, authorizes the issuance of a search warrant to allow a blood draw or sample of other bodily fluids to be taken from a person in a reasonable, medically approved manner as evidence that the person has violated specified provisions relating to driving under the influence, and the person has refused a peace officer's request to submit to, or failed to complete a blood test.

DOMESTIC VIOLENCE

Domestic Violence: Relationships

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, is guilty of a felony domestic violence punishable by up to four years in state prison. California's misdemeanor domestic violence includes the same list of relationships, but also includes a fiancé or fiancée, and persons with whom the defendant has, or previously had, a dating or engagement relationship.

This inconsistency with respect to which relationship qualifies for domestic violence creates a serious problem. Because of this flaw, a defendant who commits a felony battery on his or her fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship is not subject to the same punishments and treatment requirements that other domestic abusers are subject to upon conviction.

AB 16 (John A. Pérez), Chapter 763, expands the categories of relationships that constitute felony domestic violence resulting in a traumatic condition to include fiancés and fiancées, and persons with whom an offender has, or previously had, an engagement or dating relationship, as defined.

Domestic Violence: Probationer Fees

In September 2012, the California State Auditor released a report on domestic violence payments by probationers. The report found that state courts differ in their interpretations of whether the payments are actually fines or fees. To ensure consistent assessment, collection, and allocation of the payments, the report made several recommendations including clarification of whether the Legislature intended the domestic violence payment to be a fine or a fee.

AB 139 (Holden), Chapter 144, specifies that the payment imposed on a defendant who is granted probation for a domestic violence crime is to be treated as a fee, and not a fine.

DRIVING UNDER THE INFLUENCE

Search Warrants: Driving under the Influence

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EVIDENCE

Preliminary Hearings: Testimony of Law Enforcement Officers

Penal Code Section 872(b) enumerates experience-and-training requirements for an investigating officer to be able offer hearsay evidence at the preliminary hearing. The statute requires such an officer to have at least five years of law enforcement experience or to have completed have completed a course certified by the Commission on Peace Officers Standards and Training which covers the investigating and reporting of criminal cases, and testifying at preliminary hearings. (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1073.)

While existing law establishes the training or experience required for testifying officers, it does not provide a definition of what "law enforcement officers" qualify to testify. Appellate court decisions that have considered the issue have held that the relevant statute is not limited to traditional peace officers authorized to carry weapons and to make arrests. Rather, the intent is to hear from an officer who has knowledge of the relevant law and facts such that he or she can provide meaningful testimony at a preliminary hearing. As such, an arson investigator and a Franchise Tax Board investigator have both qualified under the statute. (*Martin v. Superior Court* (1991) 230 Cal.App.3d 1192 [arson investigator]; and *Sims v. Superior Court* (1993) 18 Cal.App.4th 463 [tax board investigator].)

In order to avoid continuous re-litigation of the issue, the term "law enforcement officer" should be explicitly defined in statute. AB 568 provides a statutory guideline for the admission of hearsay statements via law enforcement officers, other than traditional peace officers, that should reduce litigation on the question of whether a law enforcement officer qualifies under Penal Code Section 872(b).

AB 568 (Muratsuchi), Chapter 125, clarifies the definition of a "law enforcement officer" for purposes of introducing hearsay statements at a preliminary hearing. Specifically, this new law provides that for the purposes of a hearsay preliminary hearing, a law enforcement officer is any officer or agent employed by a federal, state, or local government agency to whom all the following apply:

- Has either five years of law enforcement experience or who has completed a training course certified by POST that includes training in the investigation and reporting of cases and testifying at preliminary hearing, and
- Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecutions of cases involving violation of laws.

Human Trafficking: Admissibility of Evidence

Human trafficking involves recruiting, transporting or selling people 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 are 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 victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).]

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence that victims engaged in sexual conduct from being used against victims in court proceedings. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors. However, the language of Proposition 35 as it reads now could reach beyond its intended use and potentially jeopardize other serious prosecutions, such as robbery or murder of the human trafficker, where that evidence may be key in establishing motive.

AB 694 (Bloom), Chapter 126, prohibits the admissibility of evidence that a victim had engaged in a commercial sex act as a result of being a victim of human trafficking in order to prove the victim's criminal liability for the commercial sex act.

Informant Privilege: Crime Stoppers

California and federal law lay out a number of scenarios where communications between individuals are privileged and thereby inadmissible in civil and criminal proceedings. Society has deemed that it is in the interest of the greater good that these communications should remain confidential to foster healthy relationships, mental health, and honesty. Examples of privilege include communications between married couples, patients and doctors, psychotherapists and patients, clerics and penitents, and attorneys with their clients.

Under California law, a public entity has a privilege to refuse to disclose the identity of an informer if disclosure is against the public interest because there is a need to preserve the confidentiality of the informer's identity that outweighs the need for disclosure to the parties to the action. The disclosure of an informer is not required when a search is made pursuant to a warrant and the standard is merely probable cause.

AB 1250 (Perea), Chapter 19, clarifies the informant privilege applies to communications between people who call crime stopper organizations for the purpose of transmittal of that information to law enforcement.

Official Record of Conviction: Electronically Digitized Copy

Under existing law, an official certified record of conviction is admissible to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record. Evidence of a prior conviction may be needed in order to prove an element of the current offense or during sentencing as a sentence enhancement. In order to prove a prior conviction, the prosecutor must rely on official records which may include documents such as the trial transcript, the preliminary hearing transcript, the defendant's guilty plea, and any appellate record.

However, these court-certified copies are taking longer to receive, despite the statutorily mandated timelines for bringing charged defendants to hearing. Authorizing the use of electronically digitized documents as evidence where documents or records can be admitted would be more efficient and result in cost savings because the courts could certify an electronic file one time rather than producing and certifying multiple hard copies.

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Interrogation of Juveniles: Electronic Recordation

A disproportionate number of false confessions are provided by juveniles. Research demonstrates that when in police custody, many juveniles do not fully understand or appreciate their rights, options or alternatives. There is a heightened risk that juvenile suspects will falsely confess when pressured by police during the interrogation process.

Videotaping of interrogations would help guard against false confessions by allowing judges to better assess the juvenile's comprehension of the *Miranda* warnings, and providing the factfinder with a more complete picture of the nature, setting and circumstances of the interrogation that resulted in the confession.

SB 569 (Lieu), Chapter 799, requires the electronic recordation of custodial interrogations of minors suspected of committing murder, and sets forth exceptions and remedies to that requirement. Specifically, this new law:

- Creates a rebuttable presumption that the electronically recorded statement was, in fact, given and was accurately recorded by the prosecution's witnesses, provided that the electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible.

- States if the prosecution relies on one of the specified exceptions to justify a failure to make an electronic recording of a custodial interrogation, the prosecution shall show by clear and convincing evidence that the exception applies.
- Specifies that a person's statements that were not electronically recorded may be admitted into evidence in a criminal proceeding or in a juvenile court proceeding if certain conditions have been met.
- Requires the interrogating entity to maintain the original or an exact copy of an electronic recording made of a custodial interrogation until a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or as otherwise specified.
- Creates specified remedies as relief for noncompliance, including suppression of the statement, admission into evidence the failure to comply with the recordation requirement, or providing the jury with an instruction that advises the jury to view with caution the statements made in that custodial interrogation.

Inmates: Temporary Removal

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

SB 771 (Galgiani), Chapter 181, authorizes the Secretary of CDCR to temporarily remove an inmate from prison or any other institution for the purpose of permitting the inmate to assist with the gathering of evidence related to crimes. Specifically, this new law:

- Authorizes the Secretary of the CDCR to temporarily remove an inmate from prison or any other institution for the purpose of permitting the inmate to participate in or to assist with the gathering of evidence related to crimes.
- States that if an inmate is temporarily removed from the state prison to assist with the gathering of evidence related to crimes, the Secretary may not require the inmate to reimburse the state, in whole or in part, for expenses incurred by the state in connection with the temporary removal.
- Contains a January 1, 2015 sunset date.

FINES AND FEES

Child Pornography: Fines

Existing law provides that any person possessing or importing into California any obscene matter for sale or distribution is guilty of a misdemeanor for a first conviction. A second or subsequent conviction is a felony, with increased fines. Additionally, existing California law provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material, is guilty of an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year or in the state prison for 16 months, 2 or 3 years, and a fine not to exceed \$10,000. Existing law specifies that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to \$100,000.

AB 20 (Waldron), Chapter 143, creates an additional fine of up to \$2,000 to be imposed upon conviction of every offender who commits specified child pornography offenses when the offense is committed via government-owned property. Specifically, this new law:

- Creates an additional fine of up to \$2,000 for the use of government-owned property during the commission of specified child pornography offenses.
- Exempts the additional \$2,000 fine from penalties and assessments imposed on standard criminal fines.
- Requires revenue from any fines collected pursuant to this new law shall be deposited into a county fund established for that purpose and allocated as follows, and a county may transfer all or part of any of those allocations to another county for the allocated use:
 - One-third for sexual assault investigator training;
 - One-third for public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking; and,
 - One-third for multidisciplinary teams.

Domestic Violence: Probationer Fees

In September 2012, the California State Auditor released a report on domestic violence payments by probationers. The report found that state courts differ in their interpretations of whether the payments are actually fines or fees. To ensure consistent assessment, collection, and allocation

of the payments, the report made several recommendations including clarification of whether the Legislature intended the domestic violence payment to be a fine or a fee.

AB 139 (Holden), Chapter 144, specifies that the payment imposed on a defendant who is granted probation for a domestic violence crime is to be treated as a fee, and not a fine.

Grand Theft: Livestock

Animal theft can impact a ranching operation tremendously and mean the difference between a financial loss or gain any given year. There has been a 60-percent increase in the value of beef cattle over the last few years; as a result, California has also seen an increase in theft. In 2012, the Bureau of Livestock Identification reported that 1,110 head of cattle were stolen a value of nearly \$1 million.

Under existing law, there is no fine specified for grand theft of livestock. Additionally, livestock is categorized in the same Penal Code subsection with automobiles for purposes of grand theft. As a result, it is difficult to track livestock offenses of separate and apart from automobiles.

AB 924 (Bigelow), Chapter 618, specifies a fine of up to \$5,000 for grand theft involving livestock and earmarks those funds to the Bureau of Livestock Identification for the purpose of investigating theft of livestock. Additionally, this new law separates livestock from automobiles in the grand theft section.

FIREARMS

Assault Weapons: Permits

Generally, it a felony, punishable by imprisonment, for any Californian to manufacture, distribute, transport, or import into Californian, keep or offer for sale, or give or lend any assault weapon or .50 BMG rifle. Current law, however, allows an individual, partnership, corporation, limited liability company, association, and other specified business entities to apply for, and be issued, a permit from the Department of Justice to possess these firearms. The current procedure allows a business entity or organization to share possession of assault weapons and .50 BMG rifles amongst their members without each member being subjected to a background check.

AB 170 (Bradford), Chapter 729, provides that commencing January 1, 2014 no partnership, corporation, limited liability company, association, or any other group or entity, regardless of how the entity was created, may be issued a permit to possess an assault weapon, .50 BMG rifle, or machine gun.

Firearms: Criminal Storage

Studies have found that Child Access Prevention (CAP) laws reduce firearm-related deaths by increasing firearm owner responsibility. Unfortunately, California's CAP laws do not emphasize prevention. In the case of loaded firearms, a person may be found guilty of a misdemeanor or a felony if he or she keeps a loaded firearm within any premises under his or her custody or control and a child under 18 years of age obtains and uses the firearm, resulting in injury or death, or carries the firearm to a public place. In the case of handguns only, California imposes liability when the child carries a loaded or unloaded handgun off-premises.

Statistics indicate that more than 40 percent of gun owning households with children store their guns unlocked. With such staggering figures, California needs to put greater emphasis on the safe storage of weapons to avoid unauthorized access.

AB 231 (Ting and Gomez), Chapter 730, creates the crime of criminal storage in the third degree, which imposes liability if a person negligently stores or leaves a loaded firearm in a place where he or she knows, or reasonably should know, that a child is likely to access the firearm without the permission of the child's parent or legal guardian. Specifically, this new law:

- Provides that a person may be found guilty of criminal storage of a firearm of the third degree if the following conditions are satisfied:
 - The person keeps any loaded firearm within any premises that are under the person's custody or control, and,
 - The person negligently stores the firearm or leaves it in a place where the person knows or reasonably should know that a child is likely to gain access to the

firearm, without the permission of the child's parent or legal guardian, unless reasonable action has been taken to secure the firearm against access by a child.

- Provides that criminal storage of a firearm in the third degree is punishable as a misdemeanor.
- Requires that a licensee conspicuously post within the licensed premises the following warnings in block letters not less than one inch in height: "If you negligently store or leave a loaded firearm within any premises under your custody or control, where a person under 18 years of age is likely to access it, you may be guilty of a misdemeanor, including a fine of up to one thousand dollars (\$1,000), unless you store the firearm in a locked container, or lock the firearm with a locking device."

Firearms: Prohibited Persons

Many people are prohibited by either federal or state law, or both, from owning firearms for a variety of reasons. Current California law makes it a crime for any person to sell, supply, deliver, or give possession or control of a firearm to any person who the person knows, or has cause to believe, is prohibited from possessing a firearm. Parallel federal law makes it a crime for any person to "sell or otherwise dispose" of any firearm or ammunition to any person knowing, or having reasonable cause to believe, that such person is prohibited from possessing a firearm.

Residing with a person the other resident knows, or has reason to know, is prohibited from owning a firearm for any reason, and giving that person access to any firearms that resident possesses, whether that person actually uses the firearm to cause harm or not, has been found to be a crime under federal law. The penalty for violation under federal law is up to 10 years in prison and a fine of up to \$250,000. Whether permitting access to firearms to a cohabitant prohibited from possessing a firearm is currently a violation of California law is not clear.

AB 500 (Ammiano), Chapter 737, prohibits a person who is residing with another person who is prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless it is secured or carried on the person. Specifically, this new law:

- Prohibits a person who is residing with another person prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless:
 - The firearm is maintained within a locked container.
 - The firearm is disabled by a firearm safety device.
 - The firearm is maintained within a locked gun safe.
 - The firearm is maintained within a locked trunk.

- The firearm is locked with a locking device as specified, which has rendered the firearm inoperable.
- The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.

A violation of this new law is a misdemeanor and the prohibition of this new law is cumulative, and does not restrict the application of any other law.

- Requires the Department of Justice (DOJ) immediately notify a firearms dealer to delay the transfer of a firearm to the purchaser if, during the 10-day waiting period, DOJ's records, or the records available to DOJ in the National Instant Criminal Background Check System, make specified indications.
- Provides that, beginning January 1, 2015, if after the conclusion of the specified waiting period, the individual named in the application as the purchaser of the firearm takes possession of the firearm set forth in the application to purchase, the dealer shall notify DOJ of that fact in a manner and within a time period specified by DOJ, and with sufficient information to identify the purchaser and the firearm that the purchaser took possession of.

Firearms: Purchase Records

Current law requires any person who acquires, disposes of, or moves into California with a handgun to go through a firearm registration process, which includes passing a background check processed by the Department of Justice (DOJ). Except under certain circumstance, DOJ is not notified that a person who applied to acquire a firearm and was cleared to take possession, actually took possession of that weapon. In most transactions, the process works so that the firearms dealer pre-registers the gun in the recipient's name. Only if the firearm is not picked up is DOJ to be notified. Furthermore, it is not uncommon to have handguns pre-registered to multiple persons or other registration issues that prevent guns from otherwise being properly registered.

AB 538 (Pan), Chapter 738, updates filing and notice requirements relating to the purchase and delivery of firearms. Specifically, this new law:

- Requires a licensed firearms dealer to provide a copy of the register or record of a firearms transaction to the purchaser that has the dealer's signature indicating delivery of the firearm.
- Provides that if an authorized law enforcement representative sells, delivers, or transfers a firearm to a licensed firearms dealer, the law enforcement agency is required to enter a record of that delivery into the Automated Firearms Systems (AFS) via the California Law Enforcement Telecommunications System (CLETS) within 10 days.

- Exempts a firearm sale, delivery, or transfer made by an authorized law enforcement representative to a firearms wholesaler, manufacturer, or importer, as specified, from being completed by a licensed firearms dealer, when neither of the parties is a licensed firearms dealer, if, along with other specified requirements, the law enforcement agency enters a record of the delivery into the AFS via the CLETS within 10 days.

Firearms: Temporary Prohibition

Under current law, individuals convicted of a felony; individuals with a history of violence, such as domestic violence offenders and subjects of restraining orders; individuals with severe mental illness; wanted persons; and others are prohibited from possessing firearms. While some specified cases include a life-long prohibition provision, for the most part individuals are on the prohibited persons list temporarily for a length of time subjected to a court order.

While a person's length of time on the prohibited persons list may be temporary, current law allows only for the permanent surrendering of firearms by giving the firearm to a law enforcement agency for that agency's disposition or by selling the weapon to a licensed firearms dealer if certain conditions are met.

AB 539 (Pan), Chapter 739, allows a person who is temporarily prohibited from owning or possessing a firearm to transfer firearms in his or her possession or ownership to a licensed firearms dealer for storage during the period of prohibition.

State-Issued Handgun: Deceased Peace Officer

Under existing law, a peace officer who retires after serving the State of California for a period of more than 120 months, or who retires because of a job-incurred disability not related to a mental or emotional disorder, may be authorized by his or her department to purchase the retiring officer's state-issued handgun. There is no analogous procedure in place, however, for a spouse or domestic partner of a state-employed peace officer to purchase the officer's state-issued handgun if the officer dies in the line of duty.

AB 685 (Achadjian), Chapter 16, provides that the spouse or domestic partner of a state-employed peace officer who dies in the line of duty may be authorized by the peace officer's department head to purchase the deceased officer's state-issued handgun.

Retired Reserve Peace Officers: Firearms

Whether off duty or in retirement, peace officers may come into contact with former arrestees, placing themselves and family members or friends in potential harm. As a result, most peace officers receive a Concealed Carry Weapons (CCW) Endorsement which allows them to carry a concealed weapon for their protection.

Even though they face many of the same dangers associated with a career in law enforcement, Level I retired reserve peace officers are not afforded the same post-employment protections necessary to ensure their personal safety.

AB 703 (Hall), Chapter 267, provides that a retired Level I reserve peace officer is entitled to an endorsement for a CCW permit if he or she carried a firearm during the course and scope of his or her employment and he or she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years.

Firearms Possession: Mentally Disordered Persons

California has several laws that prohibit certain persons from purchasing or possessing firearms. Some of those prohibitions are based on a person's mental health. A person who has been taken into custody and admitted to a facility because that person is a danger to himself, herself, or to others is prohibited from possessing or purchasing any firearm for a period of five years after the person is released from the facility. A person who communicates to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims is prohibited from owning or purchasing a firearm for six months, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat.

In 2012, a total of 191,416 people in California were prohibited from owning a firearm because of a prior mental health determination. While the vast majority of individuals with mental health issues are not violent, research has shown that the risk of violence towards others is higher among those with serious mental illnesses, in part because this population also has high rates of other risk factors such as substance abuse, trauma, and unemployment.

AB 1131 (Skinner), Chapter 753, increases from six months to five years the period of time a person is prohibited from possessing or owning a firearm based on his or her communication with a licensed psychotherapist, on or after January 1, 2014, of a threat of physical violence against a reasonably identifiable victim or victims. Specifically, this new law:

- States that, if a hearing is requested, the People have the burden of showing by a preponderance of the evidence that the person is not likely to use firearms in a safe and lawful manner; if the court finds that the People have not met their burden, the court shall order that the person shall not be subject to the five-year prohibition and submit a copy of the order to the Department of Justice (DOJ).
- Provides where the district attorney declines or fails to go forward in a hearing to restore ownership and possession of firearms, the court shall order that the person shall not be subject to the five-year prohibition and a copy of the order shall be submitted to the DOJ.
- Specifies procedures to be followed for the return, sale, transfer, or destruction of confiscated firearms by persons found not to be subject to the five-year prohibition

for having communicated a threat to a therapist as well as those subject to a five-year prohibition as a result of being taken into custody for a mental health examination.

- Requires the court to, as soon as possible, but no later than two court days after issuing the certificate, notify DOJ whenever the court has issued a certificate stating that a person, adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, may now possess a firearm or any other deadly weapon without endangering others.
- Requires any notice or report required to be submitted to DOJ to be submitted in an electronic format, in a manner prescribed by DOJ.

Law Enforcement: Identification Certificates and Concealed Weapon Endorsements

In 2004, Congress passed legislation establishing the right of peace officers to carry firearms in any state with appropriate identification. Existing California law allows peace officers to maintain their law enforcement identification certificate and concealed weapon endorsement after an honorable retirement. The identification certificate and endorsement are provided by the agency from which the officer retired. A retired peace officer is required to petition the issuing agency for renewal of the privilege of carrying a loaded firearm every five years.

Over the last several years, municipalities have been faced with continually shrinking budgets. In an effort to cut costs, local governments throughout California have dissolved their own city police departments and contracted with neighboring cities' departments or sheriffs' offices to provide law enforcement services for their constituents.

If, when seeking a renewal of the privilege to carry a loaded firearm, the issuing agency from which a peace officer honorably retired is no longer a functioning public safety entity, the officer no longer has the option to renew his or her identification certificate or concealed weapon endorsement, as California does not have a system in place to manage these renewals once the original agency has been disbanded or absorbed by another. As a result, retired officers from dismantled police departments, through no fault of their own, are placed at a distinct disadvantage to their peers.

SB 303 (Knight), Chapter 149, provides that if the agency from which a peace officer has retired honorably is no longer providing law enforcement services, the agency that subsequently provides law enforcement services for that jurisdiction is required to issue the identification certificate to that retired officer.

Firearms: Criminal Storage

A recent decision by the federal Eighth Circuit Court of Appeals upheld the conviction of a man who had allowed such a "prohibited person" to stay in his RV and disclosed to his guest the location of his firearms in the RV. (*United States v. Stegmeier*, 701 F.3d 574 (8th Cir. 2012)).

The Court found that this constituted a violation of the federal law prohibiting disposing of any firearm or ammunition to a prohibited person.

Thus, residing with a person a cohabitant knows, or has reason to know, is prohibited from owning a firearm for any reason, and giving that person access to any firearms the cohabitant possesses whether that person actually uses the firearm to cause harm or not has been found to be a crime under federal law. (*U.S. v. Stegmeier, supra*, 18 U.S.C. 922(d).) The penalty for violation under federal law is up to 10 years in prison and a fine of up to \$250,000. (18 U.S.C. Sec. 924(a)(2), 18 U.S.C. Sec. 3571.) Whether permitting access to firearms to a cohabitant who is prohibited from possessing a firearm is currently a violation of California law is not clear. Existing California law provides that “no person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is prohibited from possessing a firearm.” (Penal Code Section 27500.) While there does not appear to be any published opinion to this effect, a California court could, as the Eighth Circuit Court of Appeals recently did, find that any person living with another person prohibited from possessing a firearm has the duty to deny access to the firearm by the prohibited person.

SB 363 (Wright), Chapter 758, expands the crime of “criminal storage” to include keeping a loaded firearm within premises where a prohibited person is likely to gain access and actually accesses and causes injury as specified. Specifically, this new law:

- Amends the existing crime of “criminal storage of a firearm” to provide that a person who keeps any loaded firearms within any premises and knows, or reasonably should know, that a person prohibited from possessing a firearm pursuant to state or federal law is likely to gain access to the firearm, and that prohibited person does in fact gain access to the firearm and thereby kills or injures another person is guilty of criminal storage of a firearm. If the prohibited person causes death or great bodily injury, this is punishable as a felony by imprisonment in a county jail for 16 months, or two or three years, by a fine not exceeding \$10,000, or both; or as a misdemeanor by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine. If the prohibited person causes injury, other than great bodily injury, or carries the firearm and draws or exhibits the firearm, as specified, this is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or both.
- Provides that, beginning January 1, 2015, the fee charged by the Department of Justice for the handgun safety testing program, as specified, shall be paid on January 1 of every year, as specified.
- Amends the existing crime of “criminal storage of a firearm” to provide that a person who keeps any loaded firearms within any premises and knows, or reasonably should know, that a person who is prohibited from possessing a firearm is likely to gain access to the firearm, and that prohibited person does in fact gain access to the

firearm and carries it off-premises, or carries it to a school shall be punished by a fine of up to \$5,000 and/or imprisonment in the county jail not to exceed one year.

- Amends the existing crime of “criminal storage of a firearm” to provide that if a person keeps any loaded firearm within any premises that are under the person’s custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child is punishable of “criminal storage of a firearm in the third degree”.
- Exempts the sale of handguns to or the purchase of handguns by, federal law enforcement agencies from specified unsafe handgun provisions.

Firearms: Safety Certificate

Current law requires a potential handgun owner to obtain a handgun safety certificate, which requires passing a test designed to ensure that the a buyer understands the law and knows how to handle a handgun safely. To purchase a long gun, however, a buyer is not required to have a safety certificate or otherwise show that he or she has a basic understanding of the laws associated with firearm handling or storage.

SB 683 (Block), Chapter 761, extends the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun. Specifically, this new law:

- Starting January 1, 2015, extends the safety certificate requirement for handguns to all firearms and makes conforming changes.
- Requires long-gun recipients, except as specified, to perform a safe handling demonstration before receiving that firearm from a licensed firearm dealer; and requires the Department of Justice to adopt regulations by January 1, 2015, establishing a long-gun safe-handling demonstration that includes, at a minimum, loading and unloading the long gun.
- Exempts individuals with valid current-season hunting licenses, or valid hunting licenses from the hunting season immediately preceding the calendar year, from the firearm safety certificate requirement when acquiring a firearm other than handguns. This exemption is in addition to the current list of exemptions to the handgun safety certificate requirements.
- Exempts individuals with unexpired handgun safety certificates from the firearm safety certificate requirement when acquiring only handguns.

Firearms: California State Military Museum and Resource Center

Existing law provides that an officer having custody of any firearm that may be useful to the California National Guard, the Coast Guard Auxiliary, or to any military or naval agency of the federal or state government, including, but not limited to, the California National Guard military museum and resource center, may, upon the authority of the legislative body of the city, city and county, or county by which the officer is employed and the approval of the Adjutant General, deliver the firearm to the commanding officer of a unit of the California National Guard, the Coast Guard Auxiliary, or any other military agency of the state or federal government, in lieu of destruction as required by any of provisions in existing law.

SB 759 (Nielsen), Chapter 698, authorizes any state agency, county, municipality, or special purpose district to offer any excess historical military weapons or equipment to the California State Military Museum and Resource Center (CSMMRC) or any branch museum, as specified, and corrects an erroneous reference to the CSMMRC in various provisions of law.

Firearms: Assault Weapons

Assault weapons are a class of semiautomatic firearms designed with military features that allow those weapons to spray large amounts of ammunition quickly and accurately. These weapons are frequently used in mass shootings, including the 1993 California Street attack in San Francisco and the 2012 shootings in Aurora, Colorado and Newtown, Connecticut.

Seven states, including California, have enacted laws strictly regulating the making, possessing, and transferring of assault weapons. Without a comprehensive federal law, states that take steps to protect their communities from assault weapons remain vulnerable to criminals who use those weapons. The National Firearms Act provides a framework for Congress and the President to pass new legislation regulating generically defined assault weapons and high-capacity magazines.

In addition, while California requires background checks for all firearms sales and transfers, it is estimated that 40 percent of firearm transfers are completed without a federal background check. The National Instant Criminal Background Check System (NICS), which compiles mental health records from states, could be more fully utilized by states and federal agencies that currently are not participating and provide a universal background check for all firearms transfers.

SJR 1 (Wolk), Resolution Chapter 83, urges the President and the Congress of the United States to develop a comprehensive federal approach to reducing and preventing gun violence, promptly place assault weapons and high-capacity magazines under the scope of the National Firearms Act, and require universal background checks through the NICS for the transfer of all firearms. Specifically, this resolution:

- Makes numerous declarations regarding incidents involving the use of assault weapons, that numerous factors contribute to the occurrence of mass shootings and the use of semiautomatic assault weapons at such events, that U.S. Supreme Court

case law does not prohibit laws forbidding firearms in places such as schools or regulation of unusually dangerous weapons or restrictions on certain individuals carrying guns, that a number of individual states including California have enacted strict assault weapon-control laws, and the need for comprehensive federal regulation of assault weapons and large-capacity magazines.

- States that it is resolved by the Assembly and the Senate of the State of California, jointly, that the Legislature of the State of California urges the President and the Congress of the United States to promptly place generically defined assault weapons and high-capacity magazines under the scope of the National Firearms Act; that a universal background check through the NICS should be required for the transfer of all firearms; and that the President should take steps to ensure that all states and applicable federal agencies are reporting all necessary records to the NICS.
- States that it is resolved that the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

GANG PROGRAMS

Gangs Database: Youth

In the 1980s, local law enforcement agencies in California began implementing regional gang tracking systems. In less than a decade, these regional databases were integrated into a new unified statewide database, the CalGang system, making the information easier to use and less expensive to access. Today, the CalGang system is accessed by over 6,000 law enforcement officers in 58 counties. The database tracks 200 data fields including the name, address, physical information, Social Security number, and racial makeup and records all encounters police have with the individual. Concerns, however, have been raised regarding the secrecy of the CalGang database and the accuracy of records entered into the system.

Under current law, if a minor is convicted when tried as an adult, or has had a petition sustained against him or her in a juvenile court, his or her parent or guardian must be notified of a requirement to register with a local sheriff's office upon release from custody or moving to a new city or county. Parents are not notified, however, when a minor is designated in the CalGang database as a suspected gang member, associate, or affiliate. Although a conviction or declaration of wardship is not required for a minor to be placed in the CalGang database, serious consequences to the minor can flow from that action.

SB 458 (Wright), Chapter 797, requires local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation. Specifically, this new law:

- Requires a local law enforcement agency, to the extent it chooses to use a shared gang database, prior to the agency designating a minor as a gang member, associate, or affiliate in a shared gang database or submitting a document to the Attorney General's office for the purpose of designating a minor in a shared gang database, to provide written notice to the minor and his or her parent or guardian of the designation and its basis, except when providing notification would compromise an active criminal investigation or compromise the health and safety of the minor.
- Authorizes a person designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, subsequent to the notice described above, to submit written documentation to the local law enforcement agency contesting the designation; and requires the local law enforcement agency to review the documentation and remove the person from the database if the agency determines that the person is not a suspected gang member, associate, or affiliate and to provide the person and his or her parent or guardian with written verification of the agency's decision within 60 days of the submission of the document contesting the designation.
- Provides that the person designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, is able to request information as to whether

the person has been designated as a suspected gang member, associate, or affiliate; and requires the local law enforcement agency to provide that information unless doing so would compromise an active criminal investigation or compromise the health or safety of the minor.

- Prohibits the local law enforcement agency from disclosing the location of the person designated as a suspected gang member, associate, or affiliate to his or her parent or guardian if the agency determines there is credible evidence that the information would endanger the health or safety of the minor.
- Requires a shared gang database to retain records related to the gang activity of the individuals in the database consistent with specified federal criminal intelligence system operating policies.
- Provides that nothing in this law requires a local law enforcement agency to disclose any protected information, as specified.

JUVENILES

Juvenile Records: Sealing

Youth who have completed their court-adjudicated debt to society should have an opportunity to start over with a clean slate. Unfortunately, because of a lack of formal process to inform youth of this right, many former juvenile offenders are unaware that their records are unsealed until they are refused a job, credit, or housing. This impedes the state's explicitly stated goal of rehabilitating youthful offenders and reintroducing them to society.

AB 1006 (Yamada), Chapter 269, requires courts and probation departments to ensure that information about the sealing of juvenile records are provided to a minor against whom a juvenile proceeding has been initiated or who has been brought before a probation officer.

Select Committee on the Status of Boys and Men of Color

In general, the concept of self-defense holds that conduct that would otherwise be illegal is legal and justified if committed to prevent harm and the conduct is reasonable under the circumstances. The rules of self-defense have been predominantly defined through case law. Seminally, California case law has stated that one is justified in the use of necessary means of protecting himself or his property against unlawful force and violence, when he has reasonable cause to believe such force is about to be exercised. Further, to justify a homicide, the defendant must not only have believed himself to be in peril, but as a reasonable person, he must have had sufficient grounds for such belief, and it does not matter whether such peril was real or apparent. In general, the force used by a person claiming self-defense must be reasonable. The test as to whether the force is reasonable is both objective and subjective. The person must actually feel that the force was necessary to defend himself. Additionally, a reasonable person in the same circumstances must also feel that the force used was necessary to constitute self-defense.

California has recognized the basic legal concept that the person who provokes the conflict which later results in a death cannot then later claim self-defense to justify the homicide. Whenever an assault is brought upon a person by his own procurement, or under an appearance of hostility which he himself creates, with a view of having his adversary act upon it, and he so acts and is killed, the plea of self-defense is unavailing. However, case law has carved out exceptions that courts have found self-defense under these circumstances reasonable. For instance, if the initial interaction was minor and on the level of misdemeanor assault or trespass and it is met with deadly force, self-defense may be claimed. Courts have maintained, however, that an initial assailant who initiates a confrontation knowing that he is armed may not claim self-defense. A defendant cannot maintain that in taking his assailant's life he acted in self-defense if defendant in any way challenged the fight and went to the fight armed; a man has not the right to provoke a quarrel and take advantage of it, and then justify the homicide; self-

defense may be resorted to in order to repel force, but not to inflict vengeance. An assailant who brings on attack may not claim exemption from consequences of killing his adversary on ground of self-defense.

California does recognize through case law the right of a person to stand one's ground to defend themselves against an assault or more violent attack. However, as in most jurisdictions which recognize English Common Law, this right is limited by the same reasonableness standard set forth in the general self-defense rule. The defendant has no duty peaceably to avoid an unprovoked and unwarranted threatened assault on his person before repelling it by force. Where the attack is sudden and the danger imminent, one may stand his ground and slay his aggressor, even if it be proved that he might more easily have gained safety by flight. A person assailed in his own house or in his own premises has the right to stand his ground and may kill the assailant if reasonably necessary. However, a person who claims self-defense and the right to stand one's ground when he is the initial aggressor may have additional hurdles in asserting self-defense. Where a defendant seeks or induces the quarrel which leads to the necessity for killing his adversary, the right to stand his ground is not immediately available to him, but he must first decline to carry on the affray and must honestly endeavor to escape from it; only when he has done so will the law justify him in thereafter standing his ground and killing his antagonist.

HR 23 (Bradford), resolves that the Assembly encourage the Select Committee on the Status of Boys and Men of Color to continue to advance its legislative agenda to improve the lives of young people of color, including its work to reduce the use of policies and practices that push boys out of school and to instead promote common sense discipline that keeps pupils in school and on track. Specifically, this resolution:

- Makes the following findings in support of the resolution:
 - The criminalization of African American, Latino, and Asian and Pacific Islander youth continues to pervade our social, educational, political, and cultural systems.
 - Boys and men of color throughout California continue to face unnecessary hurdles in education, in opportunities to work, in public safety, and in other areas based on preconceived notions and fear.
 - The verdict in the case against George Zimmerman for the killing of Trayvon Martin was deeply troubling to many young people and to Californians in general. Many have interpreted the ruling to signify that there are two separate but unequal justice systems for whites and nonwhites, and that fearing a black and brown youth can justify the taking of a life, and that simply walking down the street or wearing certain clothes is viewed as criminal.
 - California's boys and men of color face unique barriers on their road to adulthood. They are more likely to grow up in neighborhoods marked by poverty, violence, underfunded schools, and low-wage jobs.

- In California, 35 percent of African American youth and 26 percent of Latino youth do not graduate from high school.
- Young African American men experience homicide rates at least 16 times greater than that of young white men.
- Racial profiling continues to exist throughout California, and our young people deserve better.
- It is essential that all Californians examine their prejudices and biases so that we can work toward a world in which all people are judged by the content of their character and their actions, and not by the color of their skin.
- All lives are valuable, and none are disposable.
- All people, regardless of the color of their skin, should be able to enjoy the basic liberty that many of us take for granted, including the freedom to walk down the street.
- Laws like Florida's Stand Your Ground law risk escalating minor confrontations with tragic results. We need to find ways to defuse conflicts, and not escalate them.
- The best way to honor the memory of Trayvon Martin is to channel our pain and frustration into our work to create an inclusive California in which our communities need not fear our sons and brothers walking down the street.
- Trayvon Martin's death is not in vain. The tragedy is a catalyst to create a California that embraces and invests in the health and well-being of all young people. They are a source of strength, creativity, and economic dynamism, and not a group that should be feared or condemned. California's diversity is its greatest strength and a competitive advantage.
- The Legislature is taking action through legislation, budget decisions, and through the Legislative oversight function to ensure that the needs of California's boys and men of color are a priority in state investments and programs.
- The Assembly has established the Select Committee on the Status of Boys and Men of Color to help put our young people on a road to a healthy and successful adulthood because successful young people are not born, they are nurtured.
- Makes the following resolutions:
 - That the Assembly encourages the Select Committee on the Status of Boys and Men of Color to continue to advance its legislative agenda to improve the lives of young people of color, including its work to reduce the use of policies and

practices that push boys out of school and to instead promote common sense discipline that keeps pupils in school and on track.

- That the Assembly encourages the Select Committee on the Status of Boys and Men of Color to deepen its commitment to prepare young men of color for success in the workplace and in the marketplace and to increase the numbers of young men of color who are prepared for jobs and professional careers in the health, education, and green infrastructure sectors.
- That the Assembly further encourages the Select Committee on the Status of Boys and Men of Color to support growing state and national efforts to shine a spotlight on the needs and aspirations of young men of color across the United States, including the newly formed Congressional Caucus on Black Men and Boys.
- That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

Youth Offender Parole Hearings

Juveniles age 14 and older can be subject to prosecution in adult criminal court depending upon their alleged offense and their criminal offense history. Once under the jurisdiction of adult criminal court, sentencing laws generally do not distinguish youth from adults. However, recent court decisions have acknowledged the diminished culpability of juveniles as compared to adults.

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole. [*Graham v. Florida* (2010) 130 S.Ct. 2011.] The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its earlier findings from *Roper v. Simmons* (2005) 543 U.S. 551, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." [*Graham, supra*, 130 S.Ct. at 2016.]

In 2012, the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. [*People v. Caballero* (2012) 55 Cal. 4th 262, 268.] The Court stated that "the state may not deprive [juveniles] at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." (*Ibid.*) The Court pointed out that these inmates may file petitions for writs of habeas corpus in the trial court, but also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile.

SB 260 (Hancock), Chapter 312, requires the Board of Parole Hearings (BPH) to conduct a youth offender parole hearing to consider release of offenders who committed

specified crimes prior to being 18 years of age and who were sentenced to state prison. Specifically, this new law:

- Makes a person eligible for release on parole at a youth offender parole hearing:
 - During the 15th year of incarceration if the person meeting these criteria received a determinate sentence;
 - During the 20th year if the person received a sentence that was less than 25 years to life; and,
 - During the 25th year of incarceration if the person received a sentence that was 25 years to life.
- Requires BPH, in reviewing a prisoner's suitability for parole, to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.
- Sets a deadline of July 1, 2015, for BPH to complete all youth offender parole hearings for individuals who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this new law.
- Mandates BPH to review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to the provisions of this new law, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.
- Exempts persons sentenced under the "Three Strikes" law, the "One-Strike" sex law, or sentenced to life in prison without the possibility of parole.
- Excludes a person who is otherwise eligible, but who, subsequent to attaining 18 years of age, commits an additional crime for which the person is sentenced to life in prison or commits murder, as specified.
- Requires BPH to meet with each inmate during the sixth year prior to the inmate's minimum eligible parole release date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to both parole eligibility and to the granting or withholding of post-conviction credit.
- Requires BPH, within 30 days following the consultation, to issue its positive and negative findings and recommendations to the inmate in writing.
- States, if parole is not granted, BPH shall set the time for the subsequent youth offender parole hearing in accordance with existing provisions of law, and in exercising its discretion BPH shall consider the diminished culpability of juveniles as

compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

Gangs Database: Youth

In the 1980s, local law enforcement agencies in California began implementing regional gang tracking systems. In less than a decade, these regional databases were integrated into a new unified statewide database, the CalGang system, making the information easier to use and less expensive to access. Today, the CalGang system is accessed by over 6,000 law enforcement officers in 58 counties. The database tracks 200 data fields including the name, address, physical information, Social Security number, and racial makeup and records all encounters police have with the individual. Concerns, however, have been raised regarding the secrecy of the CalGang database and the accuracy of records entered into the system.

Under current law, if a minor is convicted when tried as an adult, or has had a petition sustained against him or her in a juvenile court, his or her parent or guardian must be notified of a requirement to register with a local sheriff's office upon release from custody or moving to a new city or county. Parents are not notified, however, when a minor is designated in the CalGang database as a suspected gang member, associate, or affiliate. Although a conviction or declaration of wardship is not required for a minor to be placed in the CalGang database, serious consequences to the minor can flow from that action.

SB 458 (Wright), Chapter 797, requires local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation. Specifically, this new law:

- Requires a local law enforcement agency, to the extent it chooses to use a shared gang database, prior to the agency designating a minor as a gang member, associate, or affiliate in a shared gang database or submitting a document to the Attorney General's office for the purpose of designating a minor in a shared gang database, to provide written notice to the minor and his or her parent or guardian of the designation and its basis, except when providing notification would compromise an active criminal investigation or compromise the health and safety of the minor.
- Authorizes a person designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, subsequent to the notice described above, to submit written documentation to the local law enforcement agency contesting the designation; and requires the local law enforcement agency to review the documentation and remove the person from the database if the agency determines that the person is not a suspected gang member, associate, or affiliate and to provide the person and his or her parent or guardian with written verification of the agency's decision within 60 days of the submission of the document contesting the designation.
- Provides that the person designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, is able to request information as to whether

the person has been designated as a suspected gang member, associate, or affiliate; and requires the local law enforcement agency to provide that information unless doing so would compromise an active criminal investigation or compromise the health or safety of the minor.

- Prohibits the local law enforcement agency from disclosing the location of the person designated as a suspected gang member, associate, or affiliate to his or her parent or guardian if the agency determines there is credible evidence that the information would endanger the health or safety of the minor.
- Requires a shared gang database to retain records related to the gang activity of the individuals in the database consistent with specified federal criminal intelligence system operating policies.
- Provides that nothing in this law requires a local law enforcement agency to disclose any protected information, as specified.

Interrogation of Juveniles: Electronic Recordation

A disproportionate number of false confessions are provided by juveniles. Research demonstrates that when in police custody, many juveniles do not fully understand or appreciate their rights, options or alternatives. There is a heightened risk that juvenile suspects will falsely confess when pressured by police during the interrogation process.

Videotaping of interrogations would help guard against false confessions by allowing judges to better assess the juvenile's comprehension of the *Miranda* warnings, and providing the factfinder with a more complete picture of the nature, setting and circumstances of the interrogation that resulted in the confession.

SB 569 (Lieu), Chapter 799, requires the electronic recordation of custodial interrogations of minors suspected of committing murder, and sets forth exceptions and remedies to that requirement. Specifically, this new law:

- Creates a rebuttable presumption that the electronically recorded statement was, in fact, given and was accurately recorded by the prosecution's witnesses, provided that the electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible.
- States if the prosecution relies on one of the specified exceptions to justify a failure to make an electronic recording of a custodial interrogation, the prosecution shall show by clear and convincing evidence that the exception applies.
- Specifies that a person's statements that were not electronically recorded may be admitted into evidence in a criminal proceeding or in a juvenile court proceeding if certain conditions have been met.

- Requires the interrogating entity to maintain the original or an exact copy of an electronic recording made of a custodial interrogation until a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or as otherwise specified.
- Creates specified remedies as relief for noncompliance, including suppression of the statement, admission into evidence the failure to comply with the recordation requirement, or providing the jury with an instruction that advises the jury to view with caution the statements made in that custodial interrogation.

PEACE OFFICERS

Peace Officers: Los Angeles World Airport

Los Angeles World Airports (LAWA) includes the Los Angeles International Airport (LAX), the Ontario International Airport, and the Van Nuys Airport. LAWA also includes the Manchester/Belford area and its residents. Currently, LAWA peace officers are to perform their duties under Penal Code 830.33. Since the terrorists attacks of September 11, stricter security measures have been employed in airports around the nation to ensure the security of travelers, airports and cities alike. However, LAX is in a very unique situation since it handles approximately 65 million people annually, is the third largest airport in the world in terms of passenger volume, and deemed one California's top terrorist targets.

Although LAWA peace officers receive the same level of police academy training as the Los Angeles Police Department, in addition to aviation security training, they are not given the statutory authority to undertake specific actions in certain scenarios. LAWA peace officers are the first responders to the scene of any dispute, accident, or incident arising in its jurisdiction. If a domestic dispute arises in the Manchester area, a LAWA peace officer does not have the legal authority to seize firearms or other deadly weapons at the scene of the argument. Additionally, existing law does not allow LAWA police to perform the operations considered vital to the continual protection and function of the airports.

AB 128 (Bradford), Chapter 783, makes airport law enforcement officers regularly employed by the LAWA peace officers whose authority extends to any place in California without restrictions on the powers of arrest or authority to carry specified firearms, when the Los Angeles Police Commission and the Los Angeles Board of Airport Commissioners take specified actions. Specifically, this new law:

- Makes peace officers employed by LAWA peace officers whose authority extends to any place California, if and when the Los Angeles Police Commission and the Los Angeles Board of Airport Commissioners enter into an agreement to enable the Inspector General of the Los Angeles Police Commission to conduct audits and investigations of the Los Angeles Airport Police Division.
- Requires that the above action to be taken on or before April 1, 2014.

State-Issued Handgun: Deceased Peace Officer

Under existing law, a peace officer who retires after serving the State of California for a period of more than 120 months, or who retires because of a job-incurred disability not related to a mental or emotional disorder, may be authorized by his or her department to purchase the retiring officer's state-issued handgun. There is no analogous procedure in place, however, for a spouse or domestic partner of a state-employed peace officer to purchase the officer's state-issued handgun if the officer dies in the line of duty.

AB 685 (Achadjian), Chapter 16, provides that the spouse or domestic partner of a state-employed peace officer who dies in the line of duty may be authorized by the peace officer's department head to purchase the deceased officer's state-issued handgun.

Retired Reserve Peace Officers: Firearms

Whether off duty or in retirement, peace officers may come into contact with former arrestees, placing themselves and family members or friends in potential harm. As a result, most peace officers receive a Concealed Carry Weapons (CCW) Endorsement which allows them to carry a concealed weapon for their protection.

Even though they face many of the same dangers associated with a career in law enforcement, Level I retired reserve peace officers are not afforded the same post-employment protections necessary to ensure their personal safety.

AB 703 (Hall), Chapter 267, provides that a retired Level I reserve peace officer is entitled to an endorsement for a CCW permit if he or she carried a firearm during the course and scope of his or her employment and he or she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years.

Peace Officers: Maritime Peace Officer Standards Training Act

California's dramatic and lengthy coastline, rivers, dams, ports, harbors and the bay delta require a large and constant waterborne presence of peace officers for the protection of California's waterways, especially in emergency situations such as natural and manmade disasters. As agencies such as the Coast Guard, sheriff's departments, and police departments have enhanced their maritime presence, concerns have arisen over the adequacy and consistency of training.

Unlike other requirements in the Police Officers Standards for Training (POST) system, there are no statewide standards for tactical training for state and local maritime officers. The POST commission has already approved three courses for maritime peace officers that are taught at the regional maritime law enforcement training center at the port of Los Angeles. These courses can be exported to any training facility.

California must set in motion the necessary statutes, regulations and curriculum to provide the level of training and standards for safe effective waterborne law enforcement across California.

AB 979 (Weber), Chapter 619, requires peace officers who serve as crew members on a waterborne law enforcement vessel to complete a course in basic maritime operations for law enforcement officers. Specifically, this new law:

- Requires peace officers to complete a course in basic maritime operations for law enforcement officers if they meet all of the following criteria:

- The officer is employed by a city, county, city and county, or district that has adopted a resolution implementing this bill;
 - The officer falls within a classification identified by the local governing body;
 - The officer is assigned in a jurisdiction that includes navigable waters; and,
 - The officer serves as a crew member on a waterborne law enforcement vessel.
- Specifies that the course shall include boat handling, chart reading, navigation rules, and comprehensive training regarding maritime boarding, arrest procedures, vessel identification, searches, and counterterrorism practices and procedures, and requires that the curriculum be consistent with federal standards and tactical training.
 - Provides that this new law shall only become operative in a city, county, city and county, or district when all of the following conditions apply:
 - The federal Department of Homeland Security provides funding to the locality;
 - The local governing body adopts a resolution agreeing to implement this bill; and,
 - The local governing body identifies the specific classification of peace officers in their jurisdiction that will be subject to the training requirements.

Law Enforcement: Identification Certificates and Concealed Weapon Endorsements

In 2004, Congress passed legislation establishing the right of peace officers to carry firearms in any state with appropriate identification. Existing California law allows peace officers to maintain their law enforcement identification certificate and concealed weapon endorsement after an honorable retirement. The identification certificate and endorsement are provided by the agency from which the officer retired. A retired peace officer is required to petition the issuing agency for renewal of the privilege of carrying a loaded firearm every five years.

Over the last several years, municipalities have been faced with continually shrinking budgets. In an effort to cut costs, local governments throughout California have dissolved their own city police departments and contracted with neighboring cities' departments or sheriffs' offices to provide law enforcement services for their constituents.

If, when seeking a renewal of the privilege to carry a loaded firearm, the issuing agency from which a peace officer honorably retired is no longer a functioning public safety entity, the officer no longer has the option to renew his or her identification certificate or concealed weapon endorsement, as California does not have a system in place to manage these renewals once the original agency has been disbanded or absorbed by another. As a result, retired officers from dismantled police departments, through no fault of their own, are placed at a distinct disadvantage to their peers.

SB 303 (Knight), Chapter 149, provides that if the agency from which a peace officer has retired honorably is no longer providing law enforcement services, the agency that subsequently provides law enforcement services for that jurisdiction is required to issue the identification certificate to that retired officer.

Peace Officers: Public Safety Officers Procedural Bill of Rights

It has been widely reported that law enforcement agencies are taking punitive actions against their public safety officers based solely on the officers' inclusion on "Brady lists", without regard to the facts in an investigation. Numerous officers have been subject to punitive action or denied promotions based on their placement on the Brady List for alleged misconduct even if the misconduct did not actually occur. There is a need for uniform criteria for placement on the Brady List county by county and public safety officers should be evaluated based on the underlying reasons they are being investigated.

SB 313 (De León), Chapter 779, prohibits any public agency from taking any punitive action against a public safety officer or denying a promotion on grounds other than officer merit because he or she is placed on a Brady list, as specified. Specifically, this new law:

- Provides that a punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer because that officer's name has been placed on a Brady list or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).
- States that this new law does not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) if the actions taken by the public agency otherwise conform to this new law and to the rules and procedures adopted by the local agency.
- Prohibits the introduction of evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) in any administrative appeal of a punitive action.
- Provides that evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which the officer's name was placed on a Brady list is proven and the officer is subject to some form of punitive action. Evidence that a public safety officer's name was placed on a Brady list shall only be used for the sole purpose of determining the type or level of punitive action to be imposed.

- Defines a "Brady list" as any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in to *Brady v. Maryland*, 373 U.S. 83 (1963).

PROBATION/MANDATORY SUPERVISION

Probation Transfers: Non-Violent Drug Offenses

SB 431(Benoit), Chapter 588, Statutes of 2009, modified the transfer procedure for probationers as governed by Penal Code Section 1203.9 to create uniformity and a process whereby both the transferring and receiving court were involved in the transfer decision and process.

At the time, the Legislature did not modify the transfer procedure for Proposition 36 probation cases under Penal Code section 1203.9(c) due to the focus on removing "courtesy supervision." In other words, it was decided to not make changes to Proposition 36 transfers in an effort to mitigate any confusion or unintended impacts of a new process.

Thus, in Proposition 36 cases (unlike all other cases), the receiving court - as opposed to the transferring court - is still responsible for determining the probationer's county of residence. As a result, there are two distinct transfer procedures.

Now that the courts and probation have been operating under the new Penal Code section 1203.9 transfer process for a number of years; because there is no ostensible reason to treat Proposition 36 transfers differently, it is practical to align the Proposition 36 procedure to reduce confusion and unnecessary burdens on staff.

AB 492 (Quirk), Chapter 13, conforms the procedures for the transfer of probation to the county of residence for persons convicted of non-violent drug possession under Proposition 36 with the existing procedures for the transfer of probation or mandatory supervision, of any person, to the jurisdiction of the Superior Court in the county of residence.

Post-Release Community Supervision: Flash Incarceration

The 2011 Realignment Act shifted the supervision of some released prison inmates from California Department of Corrections and Rehabilitation (CDCR) parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. All other inmates released from prison are subject to up to three years of Post-Release Community Supervision (PRCS) under supervision by the county probation department.

With the creation of PRCS, probation was authorized to employ flash incarceration as an intermediate sanction for responding to both parole and PRCS violations. County probation officers are authorized to return offenders who violate the terms of their community supervision or parole to county jail for up to 10 days. The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at

detering subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings.

Under existing law, a person on PRCS or parole may serve a period of flash incarceration in county jail only. However, some counties with a large number of cities have a county jail and several city jails. Typically, city jails are used as short-term detention facilities to hold arrested persons until they are either transferred to the county jail or released from custody, either after interview and release or after posting bail. Some city jails are used by some inmates to serve short sentences.

AB 986 (Bradford), Chapter 788, authorizes a person on PRCS or on parole to serve a period of flash incarceration in a city jail.

RESTITUTION

Filing a False Emergency Report: Restitution

"Swatting" is essentially a prank call which earned its nickname because law enforcement agencies sometimes send SWAT teams to respond to the false emergencies. False 911 calls have become increasingly common in recent months as they involve entertainers, celebrities, and other public officials.

"Swatting" not only stretches local emergency response capacity but also endangers victims by placing them in potential confrontation with police. "Swatting" is also a costly waste of precious law enforcement resources. Law enforcement takes every emergency reported and uses its resources to maximize public safety. But at the time a false report is given, law enforcement is unaware that it is a hoax until arriving at the scene of the alleged crime.

Arguably, the police or fire department responding to a prank swatting call is not the direct victim of the crime. Rather, the individual who is the subject of the hoax may be seen as the direct victim. As such, the responding agency would not be eligible to recoup its costs under victim restitution statutes. Nevertheless, other statutes often provide governmental agencies separate remedies to obtain reimbursement for expenditures attributable to a defendant's conduct. Like the agencies, law enforcement needs the ability to recoup expenses within the criminal case, which reportedly can run as high as \$10,000 per incident.

SB 333 (Lieu), Chapter 284, makes a person convicted of filing a false emergency report liable to a public agency for the costs of the emergency response by that agency.

SEX OFFENSES

Child Pornography: Fines

Existing law provides that any person possessing or importing into California any obscene matter for sale or distribution is guilty of a misdemeanor for a first conviction. A second or subsequent conviction is a felony, with increased fines. Additionally, existing California law provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material, is guilty of an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year or in the state prison for 16 months, 2 or 3 years, and a fine not to exceed \$10,000. Existing law specifies that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to \$100,000.

AB 20 (Waldron), Chapter 143, creates an additional fine of up to \$2,000 to be imposed upon conviction of every offender who commits specified child pornography offenses when the offense is committed via government-owned property. Specifically, this new law:

- Creates an additional fine of up to \$2,000 for the use of government-owned property during the commission of specified child pornography offenses.
- Exempts the additional \$2,000 fine from penalties and assessments imposed on standard criminal fines.
- Requires revenue from any fines collected pursuant to this new law shall be deposited into a county fund established for that purpose and allocated as follows, and a county may transfer all or part of any of those allocations to another county for the allocated use:
 - One-third for sexual assault investigator training;
 - One-third for public agencies and nonprofit corporations that provide shelter, counseling, or other direct services for victims of human trafficking; and,
 - One-third for multidisciplinary teams.

Sex Offenses

There is an archaic loophole in current law in that a sex crime committed by fraud concerning the identity of the perpetrator can only be committed where the perpetrator holds himself or herself out to be the spouse of the victim.

A Santa Barbara case clearly demonstrates the deficiency in existing law. The case involved a male suspect who entered a residence during the night and had intercourse with the female occupant. The victim believed that the suspect was her live-in boyfriend. The victim did not immediately realize that the person with whom she was engaged in an act of intercourse was not her boyfriend. When the victim realized that the man was not her boyfriend, she resisted and the perpetrator fled. Although the perpetrator was arrested, the Santa Barbara District Attorney could not prosecute him for rape by fraud due to the fact that the victim and her boyfriend lived together but were not married. Had the couple been married, the crime could have been prosecuted as a rape. The District Attorney's only option was to prosecute the perpetrator for misdemeanor sexual battery and trespass.

Recently, in *People v. Morales* (2013) 212 Cal.App.4th 583, the court "urge[d] the Legislature to reexamine section 261, subdivisions (a)(4) and (a)(5), and correct the incongruity that exists when a man may commit rape by having intercourse with a woman when impersonating a husband, but not when impersonating a boyfriend." The updated language contained in AB 65 and SB 59 will better reflect the modern society Californians live in and protect all forms of relationship that exist.

AB 65 (Achadjian), Chapter 259, expands the definitions of rape and sodomy committed by fraud, which are currently restricted to the impersonation of a spouse, to include cases where the perpetrator induces the victim to believe that he or she is a person known to the victim other than the perpetrator.

SB 59 (Evans), Chapter 282, expands the definitions of oral copulation and sexual penetration committed by fraud to include cases where the perpetrator induces the victim to believe that he or she is a person known to the victim other than the perpetrator.

Protective Orders

Existing law allows the court to issue a protective order in any criminal proceeding pursuant to where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings.

When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. Additionally, in some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. For example, the court has the authority to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The same is true of stalking cases and cases involving a domestic-violence related offense. Similarly, in cases involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit . . . harassing, intimidating, or threatening the victim or

the victim's family members or spouse." Adult victims of sex offenses should have the same ability to obtain a meaningful protective order.

AB 307 (Campos), Chapter 291, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed. Specifically, this new law applies when the defendant is convicted of any of the following crimes:

- Rape,
- Spousal rape,
- Statutory rape, and,
- Any crime that requires the defendant to register as a sex offender.

Sex Offenders: Foster Home Prohibitions

According to a recent report by the State Auditor, *Child Welfare Services (CWS): California Can and Must Provide Better Protection and Support for Abused and Neglected Children* (October 2011), the Department of Social Services (DSS) could make better use of the Department of Justice's (DOJ) sex-offender registry to ensure that sex offenders are not living or working among children in the child welfare services system. The auditor compared the addresses of sex offenders in the DOJ registry with the addresses of DSS- and county-licensed facilities, as well as the addresses of child welfare services placements and found over 1,000 address matches, nearly 600 of which were high risk and in need of immediate investigation. The auditor provided the address matches to DSS and, after completing over 800 investigations, DSS found registered sex offenders inappropriately living or present in several foster homes and other licensed facilities.

AB 1108 (Perea), Chapter 772, enacts a new misdemeanor, prohibiting any person required to register as a sex offender based on the commission of an offense against a minor from residing (except as a client), working, or volunteering in specified foster homes or facilities. Specifically, this new law:

- Makes it a misdemeanor for any person required to register as sex offenders based upon the commission of an offense against a minor are prohibited from residing, except as a client, to work or volunteer in any of the following:
 - A child day care facility or children's residential facility that is licensed by the DSS, a home certified by a foster family agency, or a home approved by a county child welfare services agency.
 - A certified home of a foster family agency.

- A home or facility that receives a placement of a child who has been, or may be, declared a dependent child of the juvenile court or who has been, or may be, declared a ward of the juvenile court, as specified.
- Clarifies that this new law does not limit the authority of DSS to deny a criminal record exemption request and to take an action to exclude an individual from residing, working, or volunteering in a licensed facility, as specified.

Sex Offenders: Removal or Disabling of Electronic Monitoring Devices

The California Department of Corrections and Rehabilitation (CDCR) is authorized to utilize continuous electronic monitoring, including a global positioning system (GPS), to electronically monitor the whereabouts of persons on parole as specified. Under existing law, every inmate who has been convicted for any felony violation of a registerable sex offense or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole shall be monitored by GPS for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

Based on CDCR data, from 2010 through 2012, inclusive, 6,092 sex offenders absconded from parole (about 20 percent of the sex offenders on parole) and 5,791 were captured. According to CDCR, almost all disabled their GPS devices. A person on parole who removes or disables a GPS or other electronic monitoring device may have his or her parole revoked and serve up to 180 days in county jail.

SB 57 (Lieu), Chapter 776, prohibits a person who is required to register as a sex offender and who is subject to parole supervision from removing, as specified, an electronic, GPS, or other monitoring device affixed as a condition of parole. Specifically, this new law:

- Requires, upon a violation of the provision, the parole authority to revoke the person's parole and impose a mandatory 180-day period of incarceration.
- Exempts the removal or disabling of an electronic, GPS, or other monitoring device by a physician, emergency medical services technician, or by any other emergency response or medical personnel when doing so is necessary during the course of medical treatment of the person subject to the electronic, GPS, or other monitoring device.
- Exempts the removal or disabling of the electronic, GPS, or other monitoring device is authorized or required by a court, or by the law enforcement, probation, parole authority, or other entity responsible for placing the electronic, GPS, or other monitoring device upon the person, or that has, at the time, the authority and responsibility to monitor the electronic, GPS, or other monitoring device.

Sex Offenses

There is an archaic loophole in current law in that a sex crime committed by fraud concerning the identity of the perpetrator can only be committed where the perpetrator holds himself or herself out to be the spouse of the victim.

A Santa Barbara case clearly demonstrates the deficiency in existing law. The case involved a male suspect who entered a residence during the night and had intercourse with the female occupant. The victim believed that the suspect was her live-in boyfriend. The victim did not immediately realize that the person with whom she was engaged in an act of intercourse was not her boyfriend. When the victim realized that the man was not her boyfriend, she resisted and the perpetrator fled. Although the perpetrator was arrested, the Santa Barbara District Attorney could not prosecute him for rape by fraud due to the fact that the victim and her boyfriend lived together but were not married. Had the couple been married, the crime could have been prosecuted as a rape. The District Attorney's only option was to prosecute the perpetrator for misdemeanor sexual battery and trespass.

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Sexual Assault Victims: Medical Evidentiary Exams

Sexual assault remains a problem for Californians. In 2009 alone, 1.3 million women were raped in the United States. Furthermore, nationally, nearly one in five women and one in seventy-one men will be raped in their lifetime. In California alone, approximately two million women have been raped in their lifetime. In 2012, the California Emergency Management Agency (now the Governor's Office of Emergency Services) received approximately \$12 million from the federal government for Violence Against Women Act (VAWA) programs and measures.

Under existing law, the appropriation of VAWA grant funds for forensic medical examinations of sexual assault victims will sunset on January 1, 2014. After that time, it is unclear what funding source will be used to reimburse local law enforcement for these medical examinations. Without an extension of this authorization, if no additional funding source can be found to

reimburse local law enforcement, California may fall out of compliance with VAWA and risk losing the accompanying funds.

SB 107 (Corbett), Chapter 148, repeals the sunset date authorizing the use of VAWA grant funds to cover the costs of the evidentiary portion of medical examinations of sexual assault victims.

Sex Offenders: Child Pornography

Child pornography production necessarily involves the abuse of children, such as capturing images of infants and toddlers being raped. The United States Department of Justice (US DOJ) estimates that pornographers have recorded the abuse of more than one million children in the U.S. alone, with 200 new images posted daily. The US DOJ also reports an increasing trend towards younger victims, including infants, and greater brutality. When images are instantly sent around the world through the Internet, children are re-victimized long after the physical abuse. A recent New York Times story, “The Price of Stolen Childhood” profiled young people driven into virtual seclusion because sexual images of them are posted on the Internet.

SB 145 (Pavley), Chapter 777, creates new categories of offenses related to aggravated forms of child pornography with increased state prison terms for those offenses. Specifically, this new law:

- Provides that where a defendant is convicted of possession of child pornography and one of the following circumstances is established, the defendant shall be guilty of an alternate felony-misdemeanor, punishable by a prison term of 16 months, two, or five years and a fine of up to \$2,500, imprisonment in the county jail for up to one year or both:
 - The material contains more than 600 images of child pornography and 10 or more images depict prepubescent minors or minors under 12 years of age.
 - The material portrays sexual sadism or sexual masochism involving minors.
- Defines “sexual sadism” as the intentional infliction of pain for purposes of sexual gratification or stimulation and “sexual masochism” as the experiencing of pain for purposes of sexual gratification or stimulation.
- Redefines the crime of using harmful matter to seduce a child in the following manner: the crime is an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine of up to \$1,000, or both, or by imprisonment in state prison for two, three or five years and a fine under the following circumstances:
 - The defendant furnished, displayed or otherwise presented to the minor harmful matter - obscene material from the perspective of a minor - that also depicted minors engaged in sexual conduct, as defined by the child pornography laws.

- The defendant used any means of communication, including electronic communication, in-person contact, or any delivery or mail service. The defendant intended to induce or persuade the minor to engage in sexual acts involving sexual intercourse, sodomy, oral copulation, sexual penetration or the touching by either party of an intimate body part of the other.
- Provides that for purposes of determining the number of images the following shall apply:
 - Each photograph, picture, computer, or computer-generated image, or any similar visual depiction shall be considered to be one image.
 - Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images.
- Defines an “intimate body part” as the sexual organ, anus, groin or buttocks of any person, or the breast of a female.

Sex Offenders: Restrictions to School Grounds

Under current law, it is a misdemeanor for a sex offender registrant to come onto a campus for lawful business without the written permission of the school’s principal (“chief administrative officer” (CAO) in the Penal Code).

A recent incident at a school in Senate District Fifteen was the impetus for this new law. A convicted sex offender was able to volunteer at a local school festival after he was granted permission to be there by the school. The individual was discovered, and the authorities were called, but were unable to remove him from the event due to his written permission. The event was disrupted, and left parents questioning the safety of their children because they did not know of the decision beforehand.

Parental notification of a sex offender on campus gives parents the opportunity to take precautionary measures if they have questions regarding their child's safety.

SB 326 (Beall), Chapter 279, requires a school's CAO to provide notice to pupils' parents or guardians when allowing a registered sex offender to enter a school campus for purposes of volunteering. Specifically, this new law:

- Authorizes the CAO of a school to grant a registered sex offender who is not a family member of a pupil attending the school permission to come into a school building or upon the school grounds for purposes of volunteering at the school.
- Requires the CAO to, at least 14 days prior to the first date for which permission has been granted, notify the parent or guardian of each child attending the school that a sex-offender registrant has been granted permission to be on school grounds, the date

- or dates and times for which permission has been granted, and of the right to obtain information regarding the registrant from a designated law-enforcement entity.
- Specifies that the notification be disseminated by one of the methods required for the annual parent notification.
- Provides immunity from civil liability to any CAO or school employee who in good faith disseminates the notification and information regarding the grant of permission for a registered sex offender to volunteer on school grounds.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Civil Commitments

Existing law contains procedures whereby a person civilly committed to the Department of State Hospitals (DSH) as a sexually violent predator (SVP) can seek release from commitment. These statutes attempt to describe the procedures whereby an SVP can seek either conditional release to a less restrictive alternative or an unconditional discharge. Unfortunately, the statutes are confusing, poorly drafted, and incomplete.

Welfare and Institutions Code Section 6605 provides that an SVP may seek conditional release when DSH deems the person safe to be released to a less restrictive setting, or obtain unconditional discharge when the person no longer qualifies as an SVP. In *People v. Smith* (2013) 212 Cal.App.4th 1398, 1405, the court observed that Section 6605 is ambiguous because it grants a person with a recommendation for conditional release the ability to file a petition for release, but provides no procedures for doing so. Section 6605 only describes procedures for trial of the issue of whether the patient should be unconditionally discharged.

Additionally, Welfare and Institutions Code Section 6608, which relates to release from SVP commitment when DSH does not agree that the person is no longer a risk to the public or believes the person still meets the criteria of an SVP, is less than clear as it relates to an SVP seeking unconditional discharge. The intent of the SVP Act, and subsequent case law interpreting the same, is that an SVP may only seek unconditional discharge when DSH concurs with such premise (pursuant to Section 6605), or after at least one year of conditional release. [See *People v. McKee* (2012) 207 Cal.App.4th 1325, 1334.]

Clarifying the procedures in current law will benefit all parties involved in SVP commitments.

SB 295 (Emmerson), Chapter 182, revises the procedures to be used by the courts for SVP petitions, whether with or without DSH concurrence, for conditional release and unconditional discharge. Specifically, this new law:

- Provides that where a SVP patient files a petition for conditional release without the concurrence or recommendation of the director of the treatment facility, the court may not act on the petition until the court obtains the written recommendation of that director.
- Requires the community program director designated by the DSH to submit a report to the court making a recommendation as to the appropriateness of placement of the petitioner in a state-operated, forensic, conditional-release program before the court holds a hearing.
- Requires that the state be represented by specified counsel at the hearing.

- Mandates that the committed person be evaluated by state-chosen experts.
- Entitles the petitioner to the appointment of experts, if he or she requests them, for the hearing on the petition for conditional release.
- Shifts the burden of proof to the state to prove by a preponderance of the evidence that conditional release is inappropriate when the DSH annual report on the mental status of the SVP finds that the conditional discharge would be in the patient's best interests and that conditions to protect the public could be imposed.
- Eliminates the ability of a SVP to petition for unconditional discharge without the concurrence of DSH unless the person has been on at least one year of conditional release.
- Precludes the committed person from filing a subsequent petition for conditional release for one year after the denial of a petition.

VICTIMS

Mentally Ill and Developmentally Disabled Persons: Abuse Reporting

Law enforcement organizations are not required to be contacted when a vulnerable adult living within a developmental center or state mental hospital is seriously injured from known or suspected physical abuse. The California Welfare and Institutions Code provides for certain reports to be directed to the state hospital or developmental center internal investigatory body or local law enforcement. Law enforcement training opportunities are unavailable to organizations to better learn and understand the unique techniques necessary to respond effectively to abuse within institutional settings where jurisdiction may be shared and co-workers of employees of the investigatory body are the subject of the investigation. Existing training for law enforcement requires modernization to be responsive and useful in the rapidly changing developmental and state hospital environments.

AB 602 (Yamada), Chapter 673, requires the Commission on Peace Officer Standards and Training (POST) to, by July 1, 2015, develop a course on investigations of abuse of residents of state mental hospitals and developmental centers and requires mandated reporters to report specified forms of serious abuse of persons in state mental hospitals and developmental centers to both local law enforcement and state investigators immediately, but no later than two hours. Specifically, this new law:

- Requires POST to establish, by July 1, 2015, and keep updated, a training course relating to law enforcement interaction with mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center, as specified.
- Provides that the training course is required for law enforcement personnel in law enforcement agencies with jurisdiction over state mental health hospitals and state developmental centers, as part of the agency's officer training program.
- Requires that mandated reporters of elder or dependent adult abuse report incidents of specified alleged abuse or neglect in state mental hospitals or state developmental centers to both local law enforcement and designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse. The specific incidents requiring reporting are:
 - Death;
 - Sexual assault;
 - Assault with a deadly weapon;

- Assault with force likely to produce great bodily injury;
- An injury to the genitals when the cause of the injury is undetermined;
- A broken bone when the cause of the injury is undetermined; and,
- Other reports of suspected or alleged abuse or neglect.

Victim Compensation: Human Trafficking

Human trafficking is a crime that has devastating effects not only on society but on the victim. Existing law, however, does not provide these victims with the ability to ask the Victim Compensation and Government Claims Board for financial compensation for the crimes they have endured, even if the victim has suffered severe emotional trauma and injury. Access to financial compensation, while not a cure-all, will help former trafficked individuals through the healing process and reintegrate into society.

SB 60 (Wright), Chapter 147, expands eligibility to human trafficking victims who have suffered emotional injury for compensation from the restitution fund administered by the California Victim Compensation and Government Claims Board.

Witnesses: Support Persons

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

SB 130 (Corbett), Chapter 44, expands provisions allowing support persons while testifying for victims of specified sex offenses when they testify in court to include more crimes and to include attempts of the listed crimes. Specifically, this new law:

- Adds kidnapping to commit a robbery or a sex crime, sexual acts with a child under 10, criminal threat, and stalking to the crimes for which a prosecuting witness may have a support person.
- Expands current law allowing support persons to apply to cases where the person is charged with an attempt to commit any of the listed crimes.
- Expands existing provisions for minor victims under the age of 11 or persons with a disability which permit these witnesses specified comfort and support and protect them from coercion or undue influence. Specifically this new law adds kidnapping to

commit a robbery or a sex crime; assault with intent to commit mayhem, rape, sodomy or oral copulation; human trafficking; sexual acts with a child under 10; criminal threat; and stalking to the crimes for which the specified accommodations may apply. This new law also provides that the court may use accommodations to apply to cases where the person is charged with an attempt to commit any of the listed crimes.

Law Enforcement: Anti-Reproductive Rights Crimes

The California Freedom of Access to Clinic and Church Entrances Act adds criminal and civil provisions to state law regarding the commission of certain activities that interfere with a person's access to reproductive health services and facilities or with a person's participation in religious services. The Reproductive Rights Law Enforcement Act specifies law enforcement training requirements on the topic of anti-reproductive rights crimes and requires the implementation of a plan and reporting scheme by the Attorney General.

A survey by the California Senate Office of Research showed that more than one-half (50.9 percent) of participating clinics and medical offices experienced anti-reproductive rights crimes between 1995 and 2000. Forty-eight percent of survey participants who reported the crimes to law enforcement were dissatisfied with the response. The report indicates, "Complaints about responses included officers who were unfamiliar with the law, officers who tried to mediate rather than make arrests, and law enforcement agencies accused of refusing to enforce laws other than for major cases."

According to the Department of Justice, the following numbers of anti-reproductive rights crimes were reported in California since specific reporting has been required: 2003 - ten reports, 2004 - eight reports, 2005 - nine reports, 2006 - four reports, 2007 - six reports, 2008 - five reports, 2009 - ten reports, 2010 - four reports, and 2011 - nine reports.

SB 340 (Jackson), Chapter 285, eliminates the January 1, 2014 sunset date on the Reproductive Rights Law Enforcement Act.

Harassment: Children

AB 3592 (Umberg), Statutes of 1994, protects children susceptible to retaliatory attacks because of their parents' employment. AB 3592 made the intentional harassment of a child because of their parents' employment a misdemeanor and was meant to specifically address the increased harassment faced by the children of health care facility employees where abortion procedures were performed.

The beneficiaries of the law, however, were not solely healthcare workers. Clearly, there are many other categories of workers whose children are subject to retaliatory attacks because of the nature of their work. For example, the children of public figures are susceptible to fanatical attention and harassment because of their parents' occupation.

SB 606 (De León), Chapter 348, clarifies that misdemeanor harassment of a child because of the employment of the child's parent or guardian may include attempting to record the child's image or voice if done in a harassing manner, increases criminal penalties, and subjects a person who commits misdemeanor harassment to civil liability. Specifically, this new law:

- Expands the definition of harass, from knowing and willful conduct directed at a specific child or ward that seriously alarms, torments, or terrorizes the child or ward and that serves no legitimate purpose, to include conduct occurring during the course of actual or attempted recording of the child's image or voice without express consent of the child's parent or legal guardian, by following the child's activities or by lying in wait. The conduct must be such that would cause a reasonable child to suffer substantial emotional distress, and actually cause the victim to suffer substantial emotional distress.
- Increases the penalty for harassing a child because of the employment of the child's parent or guardian from up to six months in county jail to up to one year in county jail.
- Increases the maximum fines for harassment of a child as follows:
 - Up to \$10,000 for a first offense.
 - Up to \$20,000 for a second offense.
 - Up to \$30,000 for a third or subsequent offense.
- Permits the parent or guardian to bring a civil action against a person who violates this child harassment statute. This new law limits remedies to actual damages, punitive damages, reasonable attorney's fees and costs, and disgorgement of compensation received by the individual who recorded the child's image or voice from the sale, license or dissemination of such recording.

Compensation for Exonerated Inmates

California law offers a remedy for wrongfully convicted men and women by providing compensation in the amount of \$100 for each day he or she spent illegally imprisoned. The California Victim Compensation and Government Claims Board (VCGCB) reviews the claims and makes a recommendation to the Legislature on whether a claimant should be compensated.

While the program is well intended, funds have been grossly underutilized due to a number of barriers that deny access to the very population the funds were designed to assist. Individuals who have established their actual innocence to the criminal justice system and whose conviction would not have been reversed unless they proved their innocence to the judge have been denied claims by VCGCB. Claimants are often required to spend tens of thousands of dollars to re-litigate their claims in front of VCGCB because the factual findings of the court that reversed the

conviction are not binding on VCGCB. Additionally, the claim review process timeline is unlimited: there are no limits to the length of time a claim may be considered and therefore a claimant may wait years before his or her claim is decided.

SB 618 (Leno), Chapter 800, streamlines the process for compensating persons exonerated after being wrongfully convicted and imprisoned. Specifically, this new law:

- Provides if a person has secured a declaration of factual innocence from the court after having his or her conviction set aside, the finding shall be sufficient grounds for payment of compensation for a claim against the state to the VCGCB.
- States that the express factual findings made by the court, including credibility determinations, in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the Attorney General (AG), the factfinder, and VCGCB.
- Provides that if the claimant is a person who had his or her conviction reversed in a habeas corpus proceeding or secured a declaration of factual innocence, VCGCB shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant and recommend to the Legislature payment of that sum.
- Specifies if the claimant is not a person who had his or her conviction reversed in a habeas corpus proceeding or secured a declaration of factual innocence, the AG shall respond to the claim within 60 days of the order, or request an extension of time, upon a showing of good cause.
- Requires VCGCB to fix a time and place for the hearing of the claim, mail notice to the claimant at least 15 days prior to the time fixed for the hearing, and make a recommendation based on the claimant's verified claim and any evidence presented by him or her.
- Authorizes a person incarcerated in county jail for a felony conviction to file a claim to VCGCB for the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment or incarceration.
- Clarifies that the two-year statute of limitations for filing a claim to VCGCB starts to toll after judgment of acquittal, or after pardon granted, or after release from custody.
- States that VCGCB shall deny payment of any claim if VCGCB finds by a preponderance of the evidence that a claimant pled guilty with specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

- Deletes the requirement under current law that the claimant must introduce evidence to prove the fact that he or she did not, by any act or omission, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged.

MISCELLANEOUS

Immigration Detainers

The Secure Communities Program (S-Comm) was developed by Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) in March 2008. Under the program, local law enforcement agencies submit arrestees' fingerprints to ICE and Federal Bureau of Investigation databases, the United States Visitor and Immigrant Status Indicator Technology Program, and the Automated Biometric Identification System. The program allowed these federal agencies to access the arrestee's documented criminal and immigration history. According to ICE statements and materials, S-Comm is intended to target dangerous criminals and those who pose threats to public safety.

After S-Comm was implemented, data revealed that most of the individuals detained were non-criminals or had committed infractions or other minor crimes - not those who had committed serious offenses. The most recent national statistics provided by ICE reveal that about 24 percent of all undocumented immigrants detained and removed as a result of S-Comm fall into this prioritized category. The remaining 76 percent are undocumented immigrants convicted of minor offenses or never convicted of a criminal offense.

Counties reported that S-Comm created harm to community policing because of the fear that any contact with police—even by a crime victim or witness calling 911—could lead to deportation. Additionally, counties were forced to internalize financial costs of detaining people in local jails before they are transferred to ICE custody.

Federal law allows DHS to request a county to hold an individual based on an immigration detainer for up to 48 hours after the individual becomes eligible for release from custody. Although some counties have interpreted these requests for an immigration hold to be mandatory orders, these requests are actually voluntary and enforceable at the discretion of the agency holding the individual arrestee.

AB 4 (Ammiano), Chapter 570, prohibits a law enforcement official from detaining an individual on the basis of an ICE hold after that individual becomes eligible for release, unless the individual has been convicted of or charged with specified crimes.

Voting: Probationers

As of 2010, California ranked 45th in the nation in voter registration. In the 2012 presidential election, less than 50 percent of eligible voters in California cast a ballot. Presently, nearly six million eligible voters in California remain unregistered to vote. Among the millions of unregistered voters in California are people who mistakenly believe they are ineligible to vote due to a criminal charge or conviction. Despite the fact that civic participation can be a critical component of reentry and has been linked to reduced recidivism, persons involved in the criminal justice system are unaware of their voting rights and sometimes are unable to find accurate voter information.

The result is that many eligible voters are unregistered to vote and effectively deprived of the opportunity to exercise their fundamental right to vote on issues critical to them and their families, such as school board races, school funding initiatives, statewide ballot initiatives, and many other important races that directly impact their communities. Given the racial disparities in the criminal justice system, the lack of accurate voter registration information has a particularly disparate impact on communities of color in California.

AB 149 (Weber), Chapter 580, requires each county probation department to either establish and maintain on the department's Web site a hyperlink to the Secretary of State's voting rights guide for incarcerated persons or post a notice with the Web site address that contains the Secretary of State's voting rights guide for incarcerated persons in each probation office where probationers are seen.

Civil Liberties: Suspension of Habeas Corpus for American Citizens

After the attacks on September 11, 2001, Congress passed the Authorization for Use of Military Force (AUMF) allowing the executive branch to leverage all available military assets to bring to justice combatants deemed responsible or materially supportive of forces associated with the terrorist attacks of 9/11. The AUMF gives the President the power to attack "nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on Sept. 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." The AUMF has been relied on by the federal government for activities such as military detentions and the use of drones.

The Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA) codifies the authority given to the President in the AUMF. The NDAA is mainly a budgetary law; but two provisions of the 2012 NDAA deal with the circumstances under which the government has authority to detain persons deemed to be supportive of terrorism. For example, Section 1022 requires indefinite military detention without charge or trial of specified persons captured in the course of hostilities.

In the FY 2013 NDAA, the United States House of Representatives included provisions setting forth findings regarding habeas corpus and affirming the right of habeas corpus and the Constitutional right of due process for American citizens. (Sections 1032 and 1033.) However, despite these provisions, as well as assurances from the current President that U.S. citizens will not be subject to indefinite detention, concerns about the NDAA detainee provisions continue.

AB 351 (Donnelly), Chapter 450, prohibits state agencies, political subdivision, employees, and members of the California National Guard officials from knowingly aiding an agency of the Armed Forces of the United States in enforcing specified federal laws if the agency, political subdivision, employee, or National Guard member would violate the United States or California Constitutions or any state law by providing that aid. Specifically, this new law:

- Provides that notwithstanding any law to the contrary, no agency of the State of California, no political subdivision of this state, no employee of an agency, or a political subdivision of this state acting in his/her official capacity, and no member of the California National Guard on official state duty shall knowingly aid an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to:
 - Sections 1021 and 1022 of the NDAA for FY 2012;
 - The AUMF enacted in 2001; or,
 - Any other federal law.
- States that it does not apply to participation by state or local law enforcement of the California National Guard in a joint task force, partnership, or other similar cooperative agreement with federal law enforcement if that joint task force, partnership, or similar cooperative agreement is not for the purpose of investigating, prosecuting, or detaining any person, as specified.
- States that it is California policy to refuse to provide material support for or to participate in any way with the implementation within this state of any federal law that purports to authorize indefinite detention of a person within California.
- Provides that notwithstanding any other law, no local law enforcement agency or local or municipal government, or the employee of that agency or government acting in his/her official capacity, shall knowingly use state funds or funds allocated by the state to local entities on or after January 1, 2013, in whole or in part, to engage in any activity that aids an agency of the Armed Forces of the United States in the detention of any person within California for the purposes of implementing Sections 1021 and 1022 of the NDAA or the federal law known as the Authorization for Use of Military Force, enacted in 2001, if that activity violates the United States Constitution, the California Constitution, or any law of this state.

Extortion: Immigration Status

Research and individual experiences show that labor violations and widespread practices of retaliation have become key features of the low-wage labor market in California. In many of these occupations and industries, vulnerable immigrants cannot exercise their labor rights or speak out against unfair or illegal working conditions without the fear of retaliation and immigration-related threats.

Existing law defines "extortion" as the obtaining of property from another, with consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. Existing law further provides that fear sufficient to constitute

extortion may be induced by certain threats, including a threat to accuse the threatened individual, or his or her relative or family, of a crime.

AB 524 (Mullin), Chapter 572, states that a threat to report the immigration status or suspected immigration status of the threatened individual, or his or her relative or a member of his or her family, may also induce fear sufficient to constitute extortion.

Emergency Services: Amber Alert

According to the U.S. Department of Justice (DOJ), 800,000 children are reported missing every year in the U.S. An estimated 200,000 are abducted by a family member. No parent ever wants to have to report a missing child; however, when such action is needed, quick and coordinated response by law enforcement can help to safely return the child.

According to the DOJ, 75 percent of children abducted and later found murdered were killed within three hours of being abducted. As such, quick response is critical in the safe return of children.

The Amber Alert system has been a powerful tool is helping law enforcement to safely and quickly recover abducted children.

However, there is a discrepancy in current law that needs to be addressed. There is disagreement if, all other factors considered, an Amber Alert can be issued if the abductor is a parent or guardian. The relationship between the child and the abductor should not be an inhibiting factor if there is reason to believe that the child's life is at risk.

AB 535 (Quirk), Chapter 328, requires a law enforcement agency to request activation of the Emergency Alert System when the law enforcement receives a report that an abduction has occurred or that a child has been taken by anyone, including a custodial parent or guardian, and specific other requirements are met.

Revenue Recovery and Collaborative Enforcement Team Act: Pilot Program

At a time when California has been reducing and in some cases eliminating funding for vital public services, it is estimated California loses up to \$8 billion per year in tax revenue due to the effects of California's prolific underground economy, currently valued at between \$60 and \$140 billion. While the impact of the underground economy on California is extensive, California lacks a coordinated effort among its various agencies to tackle the underground economy.

AB 576 (V. Manuel Pérez), Chapter 614, establishes a pilot program to create the "Revenue Recovery and Collaborative Enforcement Team" consisting of specified agencies to collaborate in combating criminal tax evasion associated with the underground economy. Specifically, this new law:

- Creates the Team, consisting of the Franchise Tax Board (FTB), Department of Justice (DOJ), Board of Equalization (BOE), and the Employment Development

Department (EDD).

- Permits the California Health and Human Services Agency, Department of Consumer Affairs, Department of Industrial Relations, Department of Insurance, and Department of Motor Vehicles to participate as advisory agencies.
- Allows advisory agencies to notify the Team of criminal violations that, through enforcement, would lead to increased revenues for California.
- Requires the Team to meet at least quarterly.
- Requires the Team to:
 - Develop a plan for a central intake process and organizational structure to document, review, and evaluate data and complaints.
 - Evaluate the benefits of a processing center to receive and analyze data, share complaints, and research leads from the input of each impacted agency.
 - Provide participating and nonparticipating agencies with investigative leads where collaboration opportunities exist for felony-level criminal investigations, including, but not limited to, referring leads to agencies with appropriate enforcement jurisdiction.
 - Submit to the Legislature on or before December 1, 2017, a report of the pilot program that includes, but is not limited to, the following information:
 - The number of leads or complaints received by the Team.
 - The number of cases investigated or prosecuted through civil action or criminal prosecution as a result of team collaboration.
 - Recommendations for modifying, eliminating, or continuing the operation of any or all of the provisions of this part.
- Sunsets the provisions on January 1, 2019, unless a later enacted statute enacted before January 1, 2019, deletes or extends that date.
- Requires the Team to operate the pilot program using existing funding of the DOJ, the FTB, the BOE, and the EDD and shall not request additional funding for the pilot program until after making its report to the Legislature, as specified.
- Makes findings and declarations on the problems of tax evasion and the underground economy and its impacts on California's economy.

Inmates: Health Care Enrollment

Medicaid is a joint federal-state insurance program that provides health coverage, including mental and behavioral health benefits, for certain low-income families and individuals. Medicaid is financed jointly by the Federal Government and states, and administered by states and/or counties within broad federal guidelines. In California, the Medicaid program is administered by the Department of Health Care Services (DHCS) and is known as "Medi-Cal."

The Patient Protection and Affordable Care Act (ACA) was signed into law by President Obama in 2010. ACA gives states the option to significantly expand their Medicaid programs, with the Federal Government paying for a large majority of the additional costs. Beginning January 1, 2014, ACA gives state Medicaid programs the option to cover most individuals under age 65 - including childless adults - with incomes at or below 133 percent of the federal poverty level.

A significant portion of county inmates and detainees are men who fit into these extended categories. National studies show many inmates have medical, mental health and substance abuse needs. Upon release, these individuals do not have health insurance or financial resources to pay for medical care. Although incarcerated individuals are not eligible for Medi-Cal, pre-enrolling these individuals will allow counties to get a head start on providing wrap-around services to the most high-risk inmates to ensure adequate supervision and successful and sustainable reentry back into communities.

AB 720 (Skinner), Chapter 646, authorizes the board of supervisors in each county, in consultation with the county sheriff, to designate an entity or entities to assist county jail inmates to apply for a health insurance affordability program, as defined. Specifically, this new law:

- Prohibits county jail inmates currently enrolled in the Medi-Cal from being terminated from the program due to their detention, unless required by federal law or they become otherwise ineligible.
- Provide that an entity designated by the board of supervisors shall not determine Medi-Cal eligibility or redetermine Medi-Cal eligibility unless the entity is the county human services agency.
- Deletes the age restriction relating to Medi-Cal benefits provided to inmates of the public institution.

Sales and Use Taxes: Sales Suppression Devices

California's tax system is based on the principal of voluntary compliance. Most taxpayers report tax liability to appropriate agencies and generally comply with California tax law. However, there are those persons who will try to evade paying their taxes. Such evasion takes the form of failing to report sales, keeping two sets of books, or even filing false tax returns. Newer and more sophisticated products like automated sales suppression devices, zappers, and phantom software have made this process much easier and faster to accomplish. In general, these devices

electronically and systematically conceal and remove sale transactions from recordkeeping systems. The Board of Equalization has estimated that California loses \$214 million in annual sales tax revenue due to these kinds of devices, and the use of such devices also makes it much more difficult for auditors to detect fraud.

AB 781 (Bocanegra), Chapter 532, provides that a person who purchases, installs, or uses in California any automated sales suppression device or zapper or phantom-ware with the intent to defeat or evade the determination of an amount due is guilty of a misdemeanor. Specifically, this new law:

- Specifies that any person who, for commercial gain, sells, purchases, installs, transfers, or possesses any automated sales suppression device or zapper or phantom-ware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due pursuant to this part is guilty of either a misdemeanor or felony.
- States that any person who uses an automated sales suppression device or zapper or phantom-ware shall be liable for all taxes, interest, and penalties due as a result of the use of that device.
- Provides for a maximum fine of up to \$5,000 or \$10,000 depending on the number of devices the person sold, installed, transferred or possessed.
- Defines terms related to sales and use taxes including "automated sales suppression device," "zapper," "electronic cash register," "phantom-ware" and "transaction data."
- Exempts a person who is a corporation that possesses any automated sales suppression device, zapper, or phantom-ware for the sole purpose of developing hardware or software to combat the evasion of taxes by use of automated sales suppression devices or zappers or phantom-ware.

Peace Officers: Maritime Peace Officer Standards Training Act

California's dramatic and lengthy coastline, rivers, dams, ports, harbors and the bay delta require a large and constant waterborne presence of peace officers for the protection of California's waterways, especially in emergency situations such as natural and manmade disasters. As agencies such as the Coast Guard, sheriff's departments, and police departments have enhanced their maritime presence, concerns have arisen over the adequacy and consistency of training.

Unlike other requirements in the Police Officers Standards for Training (POST) system, there are no statewide standards for tactical training for state and local maritime officers. The POST commission has already approved three courses for maritime peace officers that are taught at the regional maritime law enforcement training center at the port of Los Angeles. These courses can be exported to any training facility.

California must set in motion the necessary statutes, regulations and curriculum to provide the level of training and standards for safe effective waterborne law enforcement across California.

AB 979 (Weber), Chapter 619, requires peace officers who serve as crew members on a waterborne law enforcement vessel to complete a course in basic maritime operations for law enforcement officers. Specifically, this new law:

- Requires peace officers to complete a course in basic maritime operations for law enforcement officers if they meet all of the following criteria:
 - The officer is employed by a city, county, city and county, or district that has adopted a resolution implementing this bill;
 - The officer falls within a classification identified by the local governing body;
 - The officer is assigned in a jurisdiction that includes navigable waters; and,
 - The officer serves as a crew member on a waterborne law enforcement vessel.
- Specifies that the course shall include boat handling, chart reading, navigation rules, and comprehensive training regarding maritime boarding, arrest procedures, vessel identification, searches, and counterterrorism practices and procedures, and requires that the curriculum be consistent with federal standards and tactical training.
- Provides that this new law shall only become operative in a city, county, city and county, or district when all of the following conditions apply:
 - The federal Department of Homeland Security provides funding to the locality;
 - The local governing body adopts a resolution agreeing to implement this bill; and,
 - The local governing body identifies the specific classification of peace officers in their jurisdiction that will be subject to the training requirements.

Sex Offenders: Foster Home Prohibitions

According to a recent report by the State Auditor, *Child Welfare Services (CWS): California Can and Must Provide Better Protection and Support for Abused and Neglected Children* (October 2011), the Department of Social Services (DSS) could make better use of the Department of Justice's (DOJ) sex-offender registry to ensure that sex offenders are not living or working among children in the child welfare services system. The auditor compared the addresses of sex offenders in the DOJ registry with the addresses of DSS- and county-licensed facilities, as well as the addresses of child welfare services placements and found over 1,000 address matches, nearly 600 of which were high risk and in need of immediate investigation. The auditor provided the address matches to DSS and, after completing over 800 investigations,

DSS found registered sex offenders inappropriately living or present in several foster homes and other licensed facilities.

AB 1108 (Perea), Chapter 772, enacts a new misdemeanor, prohibiting any person required to register as a sex offender based on the commission of an offense against a minor from residing (except as a client), working, or volunteering in specified foster homes or facilities. Specifically, this new law:

- Makes it a misdemeanor for any person required to register as sex offenders based upon the commission of an offense against a minor are prohibited from residing, except as a client, to work or volunteer in any of the following:
 - A child day care facility or children’s residential facility that is licensed by the DSS, a home certified by a foster family agency, or a home approved by a county child welfare services agency.
 - A certified home of a foster family agency.
 - A home or facility that receives a placement of a child who has been, or may be, declared a dependent child of the juvenile court or who has been, or may be, declared a ward of the juvenile court, as specified.
- Clarifies that this new law does not limit the authority of DSS to deny a criminal record exemption request and to take an action to exclude an individual from residing, working, or volunteering in a licensed facility, as specified.

Select Committee on the Status of Boys and Men of Color

In general, the concept of self-defense holds that conduct that would otherwise be illegal is legal and justified if committed to prevent harm and the conduct is reasonable under the circumstances. The rules of self-defense have been predominantly defined through case law. Seminally, California case law has stated that one is justified in the use of necessary means of protecting himself or his property against unlawful force and violence, when he has reasonable cause to believe such force is about to be exercised. Further, to justify a homicide, the defendant must not only have believed himself to be in peril, but as a reasonable person, he must have had sufficient grounds for such belief, and it does not matter whether such peril was real or apparent. In general, the force used by a person claiming self-defense must be reasonable. The test as to whether the force is reasonable is both objective and subjective. The person must actually feel that the force was necessary to defend himself. Additionally, a reasonable person in the same circumstances must also feel that the force used was necessary to constitute self-defense.

California has recognized the basic legal concept that the person who provokes the conflict which later results in a death cannot then later claim self-defense to justify the homicide. Whenever an assault is brought upon a person by his own procurement, or under an appearance of hostility which he himself creates, with a view of having his adversary act upon it, and he so acts and is killed, the plea of self-defense is unavailing. However, case law has carved out

exceptions that courts have found self-defense under these circumstances reasonable. For instance, if the initial interaction was minor and on the level of misdemeanor assault or trespass and it is met with deadly force, self-defense may be claimed. Courts have maintained, however, that an initial assailant who initiates a confrontation knowing that he is armed may not claim self-defense. A defendant cannot maintain that in taking his assailant's life he acted in self-defense if defendant in any way challenged the fight and went to the fight armed; a man has not the right to provoke a quarrel and take advantage of it, and then justify the homicide; self-defense may be resorted to in order to repel force, but not to inflict vengeance. An assailant who brings on attack may not claim exemption from consequences of killing his adversary on ground of self-defense.

California does recognize through case law the right of a person to stand one's ground to defend themselves against an assault or more violent attack. However, as in most jurisdictions which recognize English Common Law, this right is limited by the same reasonableness standard set forth in the general self-defense rule. The defendant has no duty peaceably to avoid an unprovoked and unwarranted threatened assault on his person before repelling it by force. Where the attack is sudden and the danger imminent, one may stand his ground and slay his aggressor, even if it be proved that he might more easily have gained safety by flight. A person assailed in his own house or in his own premises has the right to stand his ground and may kill the assailant if reasonably necessary. However, a person who claims self-defense and the right to stand one's ground when he is the initial aggressor may have additional hurdles in asserting self-defense. Where a defendant seeks or induces the quarrel which leads to the necessity for killing his adversary, the right to stand his ground is not immediately available to him, but he must first decline to carry on the affray and must honestly endeavor to escape from it; only when he has done so will the law justify him in thereafter standing his ground and killing his antagonist.

HR 23 (Bradford), resolves that the Assembly encourage the Select Committee on the Status of Boys and Men of Color to continue to advance its legislative agenda to improve the lives of young people of color, including its work to reduce the use of policies and practices that push boys out of school and to instead promote common sense discipline that keeps pupils in school and on track. Specifically, this resolution:

- Makes the following findings in support of the resolution:
 - The criminalization of African American, Latino, and Asian and Pacific Islander youth continues to pervade our social, educational, political, and cultural systems.
 - Boys and men of color throughout California continue to face unnecessary hurdles in education, in opportunities to work, in public safety, and in other areas based on preconceived notions and fear.
 - The verdict in the case against George Zimmerman for the killing of Trayvon Martin was deeply troubling to many young people and to Californians in general. Many have interpreted the ruling to signify that there are two separate but unequal justice systems for whites and nonwhites, and that fearing a black and brown

youth can justify the taking of a life, and that simply walking down the street or wearing certain clothes is viewed as criminal.

- California's boys and men of color face unique barriers on their road to adulthood. They are more likely to grow up in neighborhoods marked by poverty, violence, underfunded schools, and low-wage jobs.
- In California, 35 percent of African American youth and 26 percent of Latino youth do not graduate from high school.
- Young African American men experience homicide rates at least 16 times greater than that of young white men.
- Racial profiling continues to exist throughout California, and our young people deserve better.
- It is essential that all Californians examine their prejudices and biases so that we can work toward a world in which all people are judged by the content of their character and their actions, and not by the color of their skin.
- All lives are valuable, and none are disposable.
- All people, regardless of the color of their skin, should be able to enjoy the basic liberty that many of us take for granted, including the freedom to walk down the street.
- Laws like Florida's Stand Your Ground law risk escalating minor confrontations with tragic results. We need to find ways to defuse conflicts, and not escalate them.
- The best way to honor the memory of Trayvon Martin is to channel our pain and frustration into our work to create an inclusive California in which our communities need not fear our sons and brothers walking down the street.
- Trayvon Martin's death is not in vain. The tragedy is a catalyst to create a California that embraces and invests in the health and well-being of all young people. They are a source of strength, creativity, and economic dynamism, and not a group that should be feared or condemned. California's diversity is its greatest strength and a competitive advantage.
- The Legislature is taking action through legislation, budget decisions, and through the Legislative oversight function to ensure that the needs of California's boys and men of color are a priority in state investments and programs.

- The Assembly has established the Select Committee on the Status of Boys and Men of Color to help put our young people on a road to a healthy and successful adulthood because successful young people are not born, they are nurtured.
- Makes the following resolutions:
 - That the Assembly encourages the Select Committee on the Status of Boys and Men of Color to continue to advance its legislative agenda to improve the lives of young people of color, including its work to reduce the use of policies and practices that push boys out of school and to instead promote common sense discipline that keeps pupils in school and on track.
 - That the Assembly encourages the Select Committee on the Status of Boys and Men of Color to deepen its commitment to prepare young men of color for success in the workplace and in the marketplace and to increase the numbers of young men of color who are prepared for jobs and professional careers in the health, education, and green infrastructure sectors.
 - That the Assembly further encourages the Select Committee on the Status of Boys and Men of Color to support growing state and national efforts to shine a spotlight on the needs and aspirations of young men of color across the United States, including the newly formed Congressional Caucus on Black Men and Boys.
 - That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

Prisoners: Temporary Removal

Under existing law, a Superior Court is authorized to order a state prison inmate to be brought before the court and tried for a felony or to testify as a material witness in a criminal action or other related purposes. In order to aid the investigation of “cold cases” and other open investigations where a witness or suspect was in the custody of CDCR, local law enforcement agencies would obtain a court order to have an inmate temporarily transferred from a state prison to a county jail.

However, local law enforcement ability to obtain these orders was eliminated by the holding in *Swarthout v Superior Court* (2012). The Court of Appeal held that Superior Courts have no jurisdictional authority to order the transfer of a state prison inmate to a local jail as part of a criminal investigation, prior to the filing of a felony case. The Court of Appeal did not find any constitutional violations involved in these orders, instead the Court simply cited a lack of statutory authority for these orders.

SB 162 (Lieu), Chapter 56, establishes a process for district attorneys and peace officers to seek a court order for the temporary removal of a prisoner from prison for a legitimate law enforcement purpose. Specifically, this new law:

- Provides a process for district attorneys and peace officers to seek a court order for the temporary removal of a prisoner from prison for a “legitimate law enforcement purpose.” Specifically, this new law provides that “the superior court of the county in which a requesting district attorney or peace officer has jurisdiction may order the temporary removal of a prisoner from a state prison facility, and his/her transportation to a county or city jail, if a legitimate law enforcement purpose exists to move the prisoner.”
- Provides that an order for the temporary removal of a prisoner may be issued, at the discretion of the court, upon a finding of good cause in an affidavit by the requesting district attorney or peace officer stating that the law enforcement purpose is legitimate and necessary.
- Provides that the order to a county or city jail will not exceed 30 days.
- Authorizes extensions of these orders upon application, for no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted, and not exceeding additional 30-day period beyond the initial period specified in the order for temporary removal.
- Requires that an order for the temporary removal of a prisoner will include all of the following:
 - A recitation of the purposes for which the prisoner is to be brought to the county or city jail.
 - The affidavit of the requesting district attorney or peace officer stating that the law enforcement purpose is legitimate and necessary. The affidavit will be supported by facts establishing good cause.
 - The signature of the judge or magistrate making the order.
 - The seal of the court, if any.
- Provides that, upon the request of a district attorney or peace officer for a court order for the temporary removal of a prisoner from a state prison facility, the court may, for good cause, seal an order made, unless a court determines that the failure to disclose the contents of the order would deny a fair trial to a charged defendant in a criminal proceeding.
- Provides that an order for the temporary removal of a prisoner be executed presumptively by the sheriff of the county in which the order is issued. It will be the

duty of the sheriff to bring the prisoner to the proper county or city jail, to safely retain the prisoner, and to return the prisoner to the state prison facility when he/she is no longer required for the stated law enforcement purpose. The expense of executing the order will be a proper charge against, and will be paid by, the county in which the order is made. The presumption that the transfer will be effectuated by the sheriff of the county in which the transfer order is made may be overcome upon application of the investigating officer or prosecuting attorney stating the name of each peace officer who will conduct the transportation of the prisoner.

- Provides that if a prisoner is removed from a state prison facility pursuant to its provisions, the prisoner will remain at all times in the constructive custody of the warden of the state prison facility from which the prisoner was removed. During the temporary removal, the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the superior court of the county from which the original order for the temporary removal was issued.
- Requires that a copy of the written order directing the prisoner to appear before the superior court will be forwarded by the district attorney to the warden of the prison having custody of the prisoner.
- States that the state is not liable for any claim of damage, or for the injury or death of any person, including a prisoner, that occurs during the period in which the prisoner is in the exclusive control of a local law enforcement agency.

Sex Offenders: Restrictions to School Grounds

Under current law, it is a misdemeanor for a sex offender registrant to come onto a campus for lawful business without the written permission of the school's principal ("chief administrative officer" (CAO) in the Penal Code).

A recent incident at a school in Senate District Fifteen was the impetus for this new law. A convicted sex offender was able to volunteer at a local school festival after he was granted permission to be there by the school. The individual was discovered, and the authorities were called, but were unable to remove him from the event due to his written permission. The event was disrupted, and left parents questioning the safety of their children because they did not know of the decision beforehand.

Parental notification of a sex offender on campus gives parents the opportunity to take precautionary measures if they have questions regarding their child's safety.

SB 326 (Beall), Chapter 279, requires a school's CAO to provide notice to pupils' parents or guardians when allowing a registered sex offender to enter a school campus for purposes of volunteering. Specifically, this new law:

- Authorizes the CAO of a school to grant a registered sex offender who is not a family member of a pupil attending the school permission to come into a school building or upon the school grounds for purposes of volunteering at the school.
- Requires the CAO to, at least 14 days prior to the first date for which permission has been granted, notify the parent or guardian of each child attending the school that a sex-offender registrant has been granted permission to be on school grounds, the date or dates and times for which permission has been granted, and of the right to obtain information regarding the registrant from a designated law-enforcement entity.
- Specifies that the notification be disseminated by one of the methods required for the annual parent notification.
- Provides immunity from civil liability to any CAO or school employee who in good faith disseminates the notification and information regarding the grant of permission for a registered sex offender to volunteer on school grounds.

Public Safety Omnibus Bill

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

SB 514 (Senate Committee on Public Safety), Chapter 59, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, this new law:

- Clarifies that a term of imprisonment cannot satisfy a restitution fine;
- Defines a "joint powers agency" as any agency, entity, or authority formed pursuant Government Code sections relating to joint powers agreements;
- Clarifies that a joint powers agency may apply to the Commission on Peace Officers Standards and Training to receive state aid from the Peace Officers' Training Fund; and,
- Makes technical corrections to various other code sections in the Penal Code and Welfare and Institutions Code.

Industrial Hemp

Industrial hemp is a variety of the plant *Cannabis sativa L.* and has been grown as a fiber and seed crop for centuries. Industrial hemp is currently grown in 30 countries including Canada, China, Great Britain, and several other countries throughout Europe. Hemp products are available in the United States marketplace as components of goods such as textiles, paper, and body care products.

However, it is illegal to grow hemp in the United States due to its similar characteristics to marijuana (also a variety of *Cannabis sativa L.*) and presence of tetrahydrocannabinol (THC), a Schedule I controlled substance. Because state and federal law define "marijuana" as all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, all hemp materials are grown outside the United States and imported for domestic use.

SB 566 (Leno), Chapter 398, allows the regulated cultivation and processing of industrial hemp upon federal approval. Specifically, this new law:

- Establishes the California Industrial Hemp Farming Act;
- Revises the definition of “marijuana” to clarify that it does not include industrial hemp, as defined by this new law, except where the plant is cultivated or processed for purposes not expressly allowed;
- Creates within the Department of Food and Agriculture (DFA) an Industrial Hemp Advisory Board (Board) and specifies who shall sit on the Board;
- Provides specified guidelines and procedures for the cultivation and processing of industrial hemp;
- Specifies the application procedures for a seed breeder and a grower of industrial hemp to register with the commissioner of the county;
- Provides requirements for keeping and maintaining specified records;
- Requires DFA to establish a registration fee and appropriate renewal fee to be paid by growers of industrial hemp for commercial purposes and seed breeders, not including an established agricultural research institution, to cover the costs of implementing, administering, and enforcing these provisions;
- Prohibits ornamental and clandestine cultivation, as well as the pruning, culling, and tending of individual plants, of industrial hemp;
- Requires, except as specified, a registrant that grows industrial hemp under this Act to obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown before the harvest of each crop as specified;
- Mandates the Attorney General (AG) to report to the Assembly and Senate Agriculture Committees and the Assembly and Senate Public Safety Committees the reported incidents, if any, of the following:

- A field of industrial hemp being used to disguise marijuana cultivation; or,
- Claims in a court hearing by persons other than those specifically exempted that marijuana is industrial hemp.
- Mandates the Board to report the following to the Assembly and Senate Agriculture Committees and the Assembly and Senate Public Safety Committees:
 - The economic impacts of industrial hemp cultivation, processing, and product manufacturing in California; and,
 - The economic impacts of industrial hemp cultivation, processing, and product manufacturing in other states that may have permitted industrial hemp cultivation.
- States that the provisions of the Act shall not become operative unless authorized under federal law.
- Requires, if these provisions become operative, the AG to issue an opinion, within four months of authorization under federal law or as soon as possible, on the extent of authorization under federal law and California law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with these provisions.
- States, if in the AG's opinion it is determined that the provisions of this Act are not sufficient to comply with federal law, the DFA, in consultation with the Board, shall establish procedures that meet the requirements of federal law.

Firearms: Safety Certificate

Current law requires a potential handgun owner to obtain a handgun safety certificate, which requires passing a test designed to ensure that the a buyer understands the law and knows how to handle a handgun safely. To purchase a long gun, however, a buyer is not required to have a safety certificate or otherwise show that he or she has a basic understanding of the laws associated with firearm handling or storage.

SB 683 (Block), Chapter 761, extends the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun. Specifically, this new law:

- Starting January 1, 2015, extends the safety certificate requirement for handguns to all firearms and makes conforming changes.
- Requires long-gun recipients, except as specified, to perform a safe handling demonstration before receiving that firearm from a licensed firearm dealer; and requires the Department of Justice to adopt regulations by January 1, 2015,

establishing a long-gun safe-handling demonstration that includes, at a minimum, loading and unloading the long gun.

- Exempts individuals with valid current-season hunting licenses, or valid hunting licenses from the hunting season immediately preceding the calendar year, from the firearm safety certificate requirement when acquiring a firearm other than handguns. This exemption is in addition to the current list of exemptions to the handgun safety certificate requirements.
- Exempts individuals with unexpired handgun safety certificates from the firearm safety certificate requirement when acquiring only handguns.

Firearms: California State Military Museum and Resource Center

Existing law provides that an officer having custody of any firearm that may be useful to the California National Guard, the Coast Guard Auxiliary, or to any military or naval agency of the federal or state government, including, but not limited to, the California National Guard military museum and resource center, may, upon the authority of the legislative body of the city, city and county, or county by which the officer is employed and the approval of the Adjutant General, deliver the firearm to the commanding officer of a unit of the California National Guard, the Coast Guard Auxiliary, or any other military agency of the state or federal government, in lieu of destruction as required by any of provisions in existing law.

SB 759 (Nielsen), Chapter 698, authorizes any state agency, county, municipality, or special purpose district to offer any excess historical military weapons or equipment to the California State Military Museum and Resource Center (CSMMRC) or any branch museum, as specified, and corrects an erroneous reference to the CSMMRC in various provisions of law.

Second-Hand Goods: Lost, Stolen, or Embezzled

The Legislature has enacted various laws to curtail the dissemination of stolen property and facilitate the recovery of stolen property, including laws regulating pawnbroker and second-hand dealer businesses, which may be utilized by individuals attempting to sell or pawn stolen or embezzled property. With the recent rise in the price of gold, individuals unlicensed to deal in the resale of second-hand goods are availing themselves of this opportunity to purchase gold and jewelry items for resale.

SB 762 (Hill), Chapter 318, clarifies the interests of licensed pawnbrokers and second-hand dealers relating to the seizure and disposition of property during a criminal investigation or criminal case. Specifically, this new law:

- Clarifies that if a peace officer has probable cause to believe that specified property in the possession of a licensed pawnbroker or second-hand dealer is lost, stolen, or embezzled, the peace officer may place a hold on the property not to exceed 90 days.

- Provides that a 90-day hold is created upon receipt by a licensed pawnbroker or second-hand dealer of a written notice from a peace officer that contains the following:
 - An accurate description of the property being placed on the 90-day hold;
 - An acknowledgment that the property is being placed on hold as specified, and denoting whether physical possession will remain with the licensed pawnbroker or second-hand dealer or will be taken by the law enforcement agency instituting the 90-day hold;
 - The law enforcement agency's police report or department record number, if issued, for which the property is needed as evidence; and,
 - The date the notice was delivered to the licensed pawnbroker or second-hand dealer that initiates the specified notification period.
- Provides that the hold will not exceed a period of 90 calendar days, but may be renewed, as specified.
- Provides that the hold may be renewed as often as required for a criminal investigation or criminal proceeding by any peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.
- Permits a peace officer to either take physical possession of the property as evidence, consistent with a peace officer's right to a plain view seizure for a criminal investigation or criminal proceeding, or to leave the property in the possession of the licensed pawnbroker or second-hand dealer as a custodian on behalf of the law enforcement agency.
- Requires the licensed pawnbroker or second-hand dealer to maintain physical possession of the property placed on hold and prohibits the property's release or disposal, except pursuant to the written authorization signed by a peace officer who is a member of the same law enforcement agency as the peace officer placing the hold on the property.
- Specifies that the hold terminates when the property is no longer needed as evidence in a criminal investigation or criminal proceeding at which time the property shall be disposed of, as specified.
- Specifies that the hold shall not be applicable to secure lost, stolen, or embezzled property found in the possession of an unlicensed pawnbroker or second-hand dealer who has not duly and correctly reported the acquisition, as specified; and allows, in such circumstance, a peace officer having probable cause to believe the property found in the possession of an unlicensed pawnbroker or second-hand dealer is lost,

stolen, or embezzled may seize the item or items consistent with the legal authority granted to the peace officer.

- Specifies that if property placed on hold is physically surrendered or delivered to a law enforcement agency during the period of the hold, the hold and the pawnbroker's lien against the property shall continue.
- Clarifies that whenever a law enforcement agency has knowledge that property in possession of a licensed pawnbroker or second-hand dealer has been reported lost, stolen, or embezzled, the law enforcement agency must, within two business days after placing a hold on the property, notify the person in writing who reported the property as lost, stolen or embezzled.
- Specifies that when property in possession of a licensed pawnbroker or second-hand dealer which is subject to a hold is no longer required for the purpose of an investigation or criminal proceeding, the law enforcement agency that placed the hold shall return the property to the licensed pawnbroker or second-hand dealer from which it was taken if the law enforcement agency took physical possession of the property.
- Specifies that a licensed pawnbroker or second-hand dealer shall not refuse a request to place property in his or her possession on hold, as specified, when a peace officer has probable cause to believe the property is lost, stolen, or embezzled. If a licensed pawnbroker or second-hand dealer refuses a request to place property on hold, as specified, the property may be seized with or without a warrant and the peace officer shall issue a receipt, as specified, left with the licensed pawnbroker or second-hand dealer and specifies that that property should be disposed of accordingly.
- Specifies that if a search warrant is issued for the search of a business of a licensed pawnbroker or second-hand dealer to secure lost, stolen or embezzled property that has been placed on hold, the hold shall continue for the duration that the property remains subject to the court's jurisdiction and specifies that when the property seized for a criminal investigation or criminal proceeding has concluded the property shall be disposed of, as specified.
- Specifies that if a civil or criminal court is called upon to adjudicate the competing claims of a licensed pawnbroker or second-hand dealer and another party claiming ownership or an interest in the property that is or was subject to a hold, as specified, the court shall award the possession of the property only after due consideration is given, as specified.
- Specifies that a licensed pawnbroker or second-hand dealer is not subject to civil liability for compliance, as specified.
- Specifies that if any person makes a claim of ownership, that person shall file a written statement, signed under penalty of perjury, stating the factual basis upon

which he or she claims ownership or an interest in the property with the person having custody of the property and shall notify the pawnbroker of the claim by providing a true and correct copy of the claim to the pawnbroker.

- Specifies that in adjudicating the competing claims of a pawnbroker and a person claiming ownership or an interest in the property seized from a pawnbroker, the adjudicating court shall give due consideration to the specified effect on the claim.
- Specifies that at least 30 calendar days before any hearing adjudicating any competing claims of a pawnbroker and a person claiming ownership or an interest in the property, the person having custody of the property shall deliver to the pawnbroker a true and correct copy of the police report, redacted as may be required by law and consistent with due process of law, substantiating the basis of the seizure.
- Provides that the return of property by a law enforcement agency required to be made to a person claiming to be entitled to possession of a lost or stolen vehicle is not required if the report of the theft or loss of the vehicle into the automated property system preceded the report of the acquisition of the property by a licensed pawnbroker.

Controlled Substances: Reporting

Prescription drug abuse is the nation's fastest growing drug problem and has been classified as a public health epidemic by the Centers for Disease Control and Prevention. One hundred people die from drug overdoses every day in the United States and prescription painkillers are responsible for 75 percent of these deaths, claiming more lives than heroin and cocaine combined, and fueling a doubling of drug-related deaths in the United States over the last decade. In California, on average, there are six deaths every day from prescription drug overdose and 1.2 million emergency room visits related to the misuse or abuse of pharmaceuticals.

Under current law, California practitioners and pharmacies are required to report to the Department of Justice (DOJ) every Schedule II, III, and IV prescription filled. In 2009, DOJ launched its automated Prescription Drug Monitoring Program (PDMP) within the Controlled Substances Utilization Review and Evaluation System (CURES). The program allows licensed health care practitioners eligible to prescribe Schedule II, III, and IV controlled substances access to patient controlled substance prescription information in real time, 24 hours per day, at the point of care. Practitioners and pharmacists use PDMP to make informed decisions about patient care and detect patients who may be abusing controlled substances by obtaining multiple prescriptions from various practitioners.

While the automated PDMP within CURES is a valuable investigative, preventative, and educational tool for law enforcement, regulatory boards, and health care providers, recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support PDMP. The program is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate

prescription drug diversion. Without a dedicated funding source, CURES' PDMP is not sustainable.

SB 809 (DeSaulnier), Chapter 400, establishes a funding mechanism to update and maintain CURES and PDMP, requires all prescribing health care practitioners to apply to access CURES information, and establishes processes and procedures for regulating prescribing licensees through CURES and securing private information. Specifically, this new law:

- Assesses an annual \$6 fee on specified licensees to pay the reasonable costs associated with operating and maintaining CURES for the purpose of regulating those licensees.
- Requires, beginning April 1, 2014, the assessed fee to be billed and collected by the regulating agency of each licensee at the time of the licensee's license renewal, and states that if the reasonable regulatory cost of operating and maintaining CURES is less than \$6 per licensee, the Department of Consumer Affairs (DCA) may, by regulation, reduce the fee to the reasonable regulatory cost.
- Requires the fees collected to be deposited in the CURES Fund and, upon appropriation by the Legislature, available to DCA to reimburse the DOJ for costs to operate and maintain CURES for the purposes of regulating the specified licensees.
- Requires DCA to contract with DOJ on behalf of the Medical Board of California (MBC), the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Board of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board, the State Board of Optometry, and the California Board of Podiatric Medicine to operate and maintain CURES for the purposes of regulating licensees.
- Requires DOJ, in conjunction with DCA and the appropriate boards and committees, to do all of the following:
 - Identify and implement a streamlined application and approval process to provide access to the CURES' PDMP database for pharmacists and licensed health care practitioners eligible to prescribe, order, administer, furnish, or dispense Schedule II, III, or IV controlled substances, and requires every reasonable effort be made to implement a streamlined application and approval process that a licensed health care practitioner or pharmacist can complete at the time that he or she is applying for licensure or renewing his or her license;
 - Identify necessary procedures to enable licensed health care practitioners and pharmacists with access to CURES' PDMP to delegate their authority to order reports from CURES' PDMP; and,

- Develop a procedure to enable health care practitioners who do not have a federal Drug Enforcement Administration number to opt out of applying for access to CURES' PDMP.
- Requires MBC to periodically develop and disseminate information and educational material regarding assessing a patient's risk of abusing or diverting controlled substances and information relating to CURES to each licensed physician and surgeon and to each general acute care hospital in this state; and further requires MBC to consult with the State Department of Public Health, appropriate boards and committees, and DOJ in developing the materials to be distributed.
- Requires a California pharmacy to report dispensing a Schedule IV controlled substance issued by a prescriber in another state for delivery to a patient in another state to CURES.
- Authorizes pharmacies to dispense Schedule III, IV, and V controlled substances prescriptions from out-of-state prescribers as specified.
- Requires DOJ to maintain CURES to assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances.
- Deletes provisions stating that the reporting of Schedule III and IV controlled substances shall be contingent upon the availability of adequate funds from DOJ.
- Requires DOJ to report annually to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.
- Permits DOJ to seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES.
- Requires CURES to comply with all applicable federal and state privacy and security laws and regulations.
- Requires DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, disclosure, management, implementation, operation, storage, and security of the information within CURES.
- Requires a pharmacy, clinic, or other dispenser to report specified information, including a prescribers national provider identifier number, to DOJ as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed.
- Permits DOJ to invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper

administration and enforcement of the CURES database. All prescriber and dispenser invitees must be licensees, as specified, in active practice in California, and a regular user of CURES.

- Requires DOJ, prior to upgrading CURES, to consult with prescribers licensed by one of the relevant boards or committees, the boards or committees themselves, and any other stakeholders for the purpose of identifying desirable capabilities and upgrades to CURES' PDMP.
- Permits DOJ to establish a process to educate authorized subscribers of the CURES PDMP on how to access and use CURES' PDMP.
- Requires a health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II-IV controlled substances or a pharmacist to submit, before January 1, 2016, or upon receipt of a federal DEA registration, whichever occurs later, an application to DOJ to access information online regarding the controlled substance history of a patient, as specified.
- Requires DOJ, upon approval of an application to access patient information, release to the practitioner or pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in CURES' PDMP.
- States that a health care practitioner authorized to prescribe Schedules II-IV controlled substances shall be deemed to have completed the requirements to access individual patient information if he or she has applied to access CURES' PDMP at the time he or she applied for licensure or renewal.
- Requires a pharmacist to submit an application, as specified, to obtain approval to access CURES' PDMP.
- Permits DOJ to seek voluntarily contributed private funds from insurers, health care service plans, and qualified manufacturers for the purpose of supporting CURES. Insurers, health care service plans, qualified manufacturers, and other donors may contribute by submitting their payment to the Controller for deposit into the CURES Fund. Contributions to the CURES Fund shall be nondeductible for state tax purposes.