ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2021 Legislative Summary

Reginald Byron Jones-Sawyer, Sr.
Chair

Tom Lackey
Vice Chair

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Rebecca Bauer-Kahan
Alex Lee
Bill Quirk
Miguel Santiago
Kelly Seyarto
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LEGISLATIVE SUMMARY 2021

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BACKGROUND CHECKS

Background Checks: Youth Service Organizations:

In recent years, ongoing efforts across the country to investigate and raise awareness of childhood sexual abuse have shed light on abuse which has occurred in schools, churches, sports teams, and youth organizations. In the case of the Boy Scouts of America (BSA), over 90,000 claims of abuse spanning several decades across the country have been filed. Evidence from litigation in Oregon showed internal BSA files tracking the identities and crimes of hundreds of perpetrators, but the suspected abuse was often not reported to police. Similarly, over 200 claims of childhood sexual abuse were filed against the Boys and Girls Club, which in some cases failed to report abuse to law enforcement or to run background checks on the staff accused of abuse.

Filings in the BSA bankruptcy case also reveal details of the organization's ongoing legal disputes with their liability insurance companies. Insurers have been and continue to drop BSA from liability coverage, arguing that the BSA was not only aware of the widespread abuse and failed to take preventative measures to stop it, but they also kept information on abuse from the insurers providing their liability coverage.

Many youth organizations have already adopted internal best practices which are proven to help prevent abuse of children. By helping to prevent abuse, these practices also lower the liability risk of future claims against the organizations, which can provide more assurance of solvency to the insurer. However there is still a lack of uniform standards for the prevention of abuse in youth organizations.

AB 506 (Gonzalez, L.)

Chapter 169, requires an administrator, employee, or "regular volunteer" of a youth service organization to complete child abuse and neglect identification training and to undergo a background check. Specifically, this new law:

- Requires an administrator, employee, or volunteer of a youth service organization who is a mandated reporter of child abuse and neglect to complete the online mandated reporter training.

- Requires that an administrator, employee, or volunteer of a youth service organization over 18 years of age undergo a Department of Justice background check to identify and exclude any persons with a history of child abuse.

- Defines a "regular volunteer" as one who is 18 years of age or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.

- Defines "youth service organization" as an organization that employs or utilizes the services of persons who, due to their relationship with the organization are mandated reporters under existing law.

- Requires a youth service to develop to implement child abuse prevention policies and procedures, including but not limited to, both of the following:

    - Policies to ensure the reporting of suspected incidents of child abuse to persons or entities outside of the organizations, including reports to specified law enforcement agencies; and

    - Policies requiring to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising children.

- States that before writing liability insurance for a youth service organization in this state, an insurer may request information demonstrating compliance with this section from the youth service organization as a part of the insurer's lost control program.

Prohibited Disclosure of Information: Arrest or Detention:

As a general matter, state law precludes employers from looking too closely at arrest information which resulted in something less than a conviction. Although arrests frequently show up in criminal history searches, if a specific arrest did not result in a conviction, an employer is prohibited from asking questions about that arrest, or seeking documentation about the arrest, such as police reports and court records. They are also prohibited from using arrest information in hiring or promotion decisions. Despite this general restriction on the use of arrest information that did not result in a conviction, there is an exemption in the law for peace officers. Because peace officers are charged with upholding the law they are subjected to a higher level of scrutiny than the average person.

While an arrest does not necessarily mean a person is guilty of a crime, the absence of a conviction also does not necessarily mean they have done no wrong. A finding of guilt requires proof beyond reasonable doubt; this is a lofty standard and sometimes cases are dismissed or a defendant is found not guilty due to a lack of evidence, rather than a lack of wrongdoing. For this reason, an employer of peace officers is permitted to look into the details of an arrest, giving the employer a better opportunity to evaluate the moral fitness of the applicant. This allows for a better understanding of how the applicant may handle the responsibility that comes along with upholding and enforcing the laws of the state. However, this exemption does not extend to other persons in criminal justice agencies who are not formally classified as peace officers.

AB 1480 (Rodriguez)

Chapter 158, allows a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention for specified offenses that did not result in a conviction. Specifically, this new law:

- Allows a criminal justice agency to inquire about, request, and utilize information concerning an arrest or detention that did not result in a conviction provided that the arrest or detention was for a violent felony, a serious felony, or a crime involving dishonesty or obstruction of legal processes, including, but not limited to, theft, embezzlement, fraud, extortion, falsifying evidence, falsifying or forging official documents, perjury, bribery, and influencing, intimidating, or threatening witnesses.

- Authorizes a criminal justice agency to do this only for nonsworn employees whose specific duties directly relate to the collection or analysis of evidence or property, the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders, or the collection, storage, dissemination, or usage of criminal offender record information.

- Authorizes criminal justice agencies to release information consistent with the above provisions.

BAIL

Supervised Release, Probation Violations: Release Pending Hearing:
Most individuals arrested and charged with a crime are entitled to some form of pretrial release. However, this is not the case when it comes to individuals arrested for a probation violation. Probation currently operates under separate release procedures where individuals can be denied release pending a probation violation hearing even if the person presents no danger to the community and can be expected to show up for their court appearances.

Those accused of violating probation are often arrested on a no-bail warrant. When arrested on a no-bail warrant, a person is held in custody and cannot be released by jail authorities until disposition of the case, which can place an immense amount of pressure on limited jail resources costing taxpayers more than $1.8 billion in supervision violations.

AB 1228 (Lee)

Chapter 533, specifies that persons released from custody prior to a probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. Specifically, this new law:

- States that all persons released by a court at or after the initial hearing and prior to a formal probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person's future appearance in court.

- Requires the court to make an individualized determination of the factors that do or do not indicate that the person would be a danger to the public, based on clear and convincing evidence, if released pending a formal revocation hearing.

- States that the court shall impose the least restrictive conditions of release necessary to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

- Prohibits the court from denying release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing, unless the person fails to comply with an order of the court, including an order to appear in court, in the underlying case.

- States that for a person on probation for felony conduct, the court shall not deny release before the court holds a formal revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to provide

reasonable protection of the public and reasonable assurance of the person's future appearance in court.

Bail: Fees.

Under the current cash bail system, accused people often lack sufficient financial resources to post bail. This system forces accused people and their families into entering bail bond contracts to avoid pretrial detention. Bail agents typically charge a consumer 10% of the total bail amount as the bail bond fee.

A 2017 UCLA study reported money bail disproportionately harms low-income people and communities of color. Black defendants are assigned higher average bail amounts than white defendants accused of similar offenses. Bail amounts assigned to black men average 35% higher than those for white men, even when controlling for the seriousness of the offense.

Additionally, a bail agent will require the bond to be secured through collateral such as a lien on a defendant's house. In this situation, the bail agent usually requires 10% of the fee in cash, with the remaining amount secured by the defendant's assets.

Renewal fees' are additional nonrefundable fees charged to defendant's that have not had their cases resolved within 12 months. Renewal fees are unnecessary because bail agents and insurers are well secured against any losses. 'Flight risk' of the defendant does not increase after 12 months; therefore, the fees are unfair because they penalize defendants with lengthy court proceedings.

AB 1347 (Jones-Sawyer)

Chapter 444, makes it unlawful for a bail agent to charge a renewal fee on a bail agreement.

CORRECTIONS

CDCR: Rehabilitative Programming:

Administrative barriers often make it difficult for people in prison to take advantage of programming and credit-earning opportunities. During normal operations, transfers to a new facility can be extremely disruptive to programming. Often, individuals are unable to complete a program they have spent months in, and they can be required to wait months, or even years, before a slot becomes available at the new facility. Lockdowns also cause significant disruptions to programming. For example, during the lockdown caused by the COVID-19 pandemic, all programming was suspended and most credit earning was halted.

AB 292 (Stone)

Chapter 579, directs the California Department of Corrections and Rehabilitation (CDCR) to conduct rehabilitative programming in a manner that meets specified requirements, such as minimizing program wait times and offering a variety of program opportunities to inmates regardless of security level or sentence length. Specifically, this new law:

- Requires CDCR to conduct programming in a manner that accomplishes all of the following:

- Minimizes transfers from institutions, facilities, or sections of the institutions or facilities from disrupting an incarcerated person's programming. To accomplish this, the department is required to solicit and prioritize voluntary facility transfers first;

- Prioritizes, to the greatest extent possible, an incarcerated person that has transferred from institutions, facilities, or sections of the institutions or facilities for non-adverse reasons to resume programming;

- Offers programming to the greatest extent possible, even if the institution, facility or a section of the facility is restricting in-person programming, for reasons including, but not limited to, a security or medical concern;

- Ensures alternatives to in-person programming are offered and that those alternatives do not limit or negatively affect the quality or quantity of in-person programming;

- Minimizes programming waitlist times to the greatest extent possible, especially in those institutions, facilities, or sections of institutions or facilities where programming waitlists exceed one year by, among other things, increasing virtual or in-person programming opportunities;

- Minimizes conflicts with an incarcerated person's work schedule;

- Is accessible in a timely manners to incarcerated persons that have recently changed status, security level, or facility; and,

- Offers a variety of programming opportunities to incarcerated persons regardless of security level or sentence length.

Private Detention Facilities: Regulations

Private detention centers, like jails and prisons, are epicenters for infectious diseases because of the higher prevalence of infection, the higher levels of risk factors for infection, the close contact in often overcrowded, poorly ventilated facilities, and the poor access to health-care services relative to that in community settings.

The humanitarian crisis posed by the spread of COVID-19 in private immigration detention facilities in California has had significant consequences for those detained in those facilities. Civil detention facilities which house immigrants have requirements in their federal contracts with respect to health and safety, but it appears that these private corporations routinely violate the health and safety requirements for these facilities in their daily operations and have not followed public health orders or protocols.

AB 263 (Arambula)

Chapter 294, requires a private detention facility operator to comply with all local and state public health orders and occupational safety and health regulations. Specifically, this new law:

- Specifies that a private detention facility operator shall comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

- Defines "private detention facility operator" and "private detention facility" for purposes of this bill.

- States that this law shall not be construed to limit or otherwise modify the authority, powers, or duties of state or local public health officers or other officials with regard to state prisons, county jails, or other state or local correctional facilities.

Medication Assisted Treatment: Re-entry Programs:

Data suggests that the risk of relapse to opioid use following release from a correctional setting is extremely high, and the majority of participants drop out of community-based treatment before completion. This can propagate a cycle of failure. California has a vested interest the continuity of care for persons who are leaving correctional settings. Drug treatment programs that are provided during incarceration should be complimented with policies that improve adherence to medications and treatment post-release.

Medication-assisted treatment (MAT) is a "whole-patient" approach to treating substance use disorders that uses medication in combination with counseling and behavioral therapies. MAT is clinically effective in treating substance use disorders, including opioid and alcohol use disorders. MAT is endorsed by the Substance Abuse and Mental Health Services Administration (SAMHSA) within the U.S. Department of Health and Human Services. MAT has been shown to improve patient survival, increase retention in treatment, decrease illicit opiate use and other criminal activity among people with substance use disorders, increase patients' ability to gain and maintain employment, and improve birth outcomes among women who have substance use disorders and are pregnant.

AB 644 (Waldron)

Chapter 59, changes the existing requirement for the California MAT Re-Entry Incentive Program that a person participate in an institutional substance abuse program in order to be eligible for a reduction to the period of parole to a requirement that the person has been enrolled or participated in a post-release substance abuse program.

Private Detention Facilities: Regulation:

The federal government contracts with private detention facilities throughout the country to house immigration detainees and federal criminal pretrial detainees. There are a variety of concerns regarding the use of private detention facilities.

The poor health and safety standards in these facilities is documented in numerous investigations: a 2016 U.S. A.G. report, 2017 U.S Homeland Security Report, and 2019 USA Today report depicting sexual assault, physical and mental abuse, inadequate medical care, and solitary confinement. In turn, California has taken a definitive stance to address the abusive and inhumane care towards detainees. Despite these efforts, operators' reluctance to adopt more rigorous standards raises alarms about the health and safety of people detained in these facilities which have been exacerbated by the COVID-19 pandemic.

According to USC researchers, continued violation of health and safety standards has been exacerbated by the COVID-19 pandemic, as deaths in immigration detention centers have skyrocketed across the U.S. due to delays in medical treatment and poor control of

infectious diseases including lack of access to soap, sanitizer, medical supplies, PPE, and social distancing. Among the first outbreaks reported in these facilities was one in Otay Mesa when at least 111 people in custody and 25 staffers tested positive and the first COVID-19 related death of a detainee.

SB 334 (Durazo)

Chapter 298, requires private detention facilities to operate in compliance with specified state and local codes and regulations. Also requires private detention facilities to maintain specified insurance coverages, including general, automobile, umbrella liability, and workers' compensation. Specifically, this new law:
States that a private detention facility responsible for the custody and control of a prisoner or a civil detainee shall comply with the following requirements:

- The private detention facility shall comply with all appropriate state and local building, zoning, health, safety, and fire statutes, ordinances, and regulations, and with the minimum jail standards established by regulations adopted by the BSCC;

- The private detention facility shall select and train its personnel in accordance with selection and training requirements adopted by Board of State and Community Corrections (BSCC), as specified;

- The private detention facility shall comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations, which standards shall meet or exceed the standards set forth above; and,

- The private detention facility shall maintain the following specified insurance coverages, which shall be obtained from an admitted insurer.

- States that the insurance policy shall require the private detention facility to comply with the requirements of the provisions of this new law, provide the insurer and Insurance Commissioner with an initial compliance report and subsequent annual compliance updates as required.

CDCR: Education Programs:

In 2014, California expanded access to face-to-face community college courses for incarcerated students through collaboration between the California Community Colleges (CCC) and the California Department of Corrections and Rehabilitation (CDCR). Under the initial policy and funding framework, four pilot colleges were selected to offer instruction inside prisons. Subsequently, other colleges were able to leverage resources to provide courses inside state prisons in their local areas. Recent research has documented the growth and efficacy of California's programs for incarcerated students. Conclusions have

been promising, finding benefits for participation, grades, and success rates for incarcerated students, particularly with male African Americans.

SB 416 (Hueso)

Chapter 766, requires CDCR to make college programs provided by the various California college systems or other regionally accredited, nonprofit colleges or universities in the state available to state prison inmates with a GED certificate or a high school diploma, establishes a set of criteria to be used to prioritize those college programs, and defines the responsibilities of those college education providers.

Incarcerated Persons: Identification Cards:

The California Department of Corrections and Rehabilitation (CDCR) administers the Cal-ID Program, which requires CDCR and the Department of Motor Vehicles (DMV) to ensure that all eligible inmates released from state prison have valid ID cards. ID cards are a necessity for those re-entering society. Not having one can become a roadblock to future employment and housing, among other things. Under current law, an eligible inmate means an inmate who has: (a) previously held a California driver's license or ID card; (b) a usable photo on file with the DMV that is not more than 10 years old; (c) no outstanding fees due for a prior California driver's license or ID card; and (d) provided, and the DMV has verified, the inmate's personal identifying information and legal residence. However, many inmates do not meet these requirements.

SB 629 (Roth)

Chapter 645, permits an inmate slated for release from custody of the CDCR to obtain an original California identification card, and expands eligibility for an inmate to obtain a replacement identification card by allowing an inmate to have a DMV-sanctioned photo taken while in custody. Specifically, this new law:

- Requires the eligible inmate to have California residency.
- Deletes the following "eligible inmate" requirements: (1) That the inmate's usable photo on file with DMV must be not more than 10 years old; and (2) That the inmate has no outstanding fees due for a prior California identification card.
- Requires a new photo to be taken if the inmate's photo is deemed unusable.
- Provides that if an inmate has not previously held a California driver's license or identification card, the inmate may still qualify to get an original identification card if:

- The inmate has signed and verified their application for an identification card under the penalty of perjury;

- The inmate has a usable photo taken;

- The inmate has provided a legible print of their thumb or finger; and,

- The inmate has provided acceptable proof of all other information required for "eligible inmate" status, which is subject to verification by the DMV.

- Establishes a reduced fee of $8 for an original identification card issued to an eligible inmate upon release from a state facility under the control of CDCR, as specified.

- Authorizes CDCR and DMV to provide a renewed driver's license in lieu of an identification card if the inmate meets specified eligibility criteria.

- Requires CDCR to provide the inmate with a photo prison identification card, if a valid California identification card is not obtained before release.

- Requires CDCR, to the extent administratively feasible and within available resources, to facilitate the process between an "eligible inmate" and the agencies holding documentation required for the issuance of an identification card, as specified.

- States the legislative intent that as many inmates as possible be provided with a valid California identification card or driver's license.

COURT HEARINGS

Controlled Substance Offenses: Probation Eligibility

Mandatory minimum sentences for drug crimes contribute to the crisis of mass incarceration. These laws are rooted in the war on drugs era, which has been disproportionately waged against people of color. Imposing mandatory minimum sentences, for nonviolent drug crimes, tie the hands of judges and force them to incarcerate individuals, even when judges believe community supervision would be appropriate. Evidence shows that mandatory minimum sentences for drug crimes do not improve public safety or reduce drug use or sales, but instead exacerbate existing racial disparities in our criminal justice system and disproportionately affect those suffering from mental illness.

SB 73 (Wiener)

Chapter 537, authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation could only be granted in the unusual case where the interests of justice would be served. Specifically, this new law:

- Removes the following offenses from the prohibition against granting probation:
    - Possession for sale, sale of, or offering to sell, 14.25 grams or more of a substance containing heroin;
    - Possession for sale, sale, or offering to sell heroin, with one or more prior convictions for those offenses;
    - Possession for sale, sale of, or offering to sell, 14.25 grams or more of any salt or solution of phencyclidine (PCP), or any of its analogs or precursors;
    - Transporting for sale, importing for sale, administering, or offering to transport for sale, import for sale, or administer, or attempt to import for sale or transport for sale, PCP or any of its analogs or precursors;
    - Manufacture of PCP or any of its analogs or precursors, as specified;
    - Possession of specified substances, with intent to manufacture PCP or any of its analogs; and,
    - Possession for sale, sale, or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for those offenses;
    - Possession for sale or sale of a substance containing 28.5 grams or more of cocaine, cocaine base, or methamphetamine;

- Manufacture of specified controlled substances, except PCP;

- Manufacture or sale of methamphetamine, with one or more specified prior convictions involving methamphetamine.

- Authorize the court to grant probation for drug offenses involving minors only in the unusual case where the interests of justice would best be served.

Incompetence to Stand Trial:

In recent years, there has been substantial backlogs for defendants that have been found incompetent to stand trial (IST) to get bed space at the Department of State Hospitals (DSH). This has resulted in delays in treatment which have been substantial enough to implicate the defendant's constitutional due process rights. An opinion from the California First District Court of Appeal, released earlier this year, addressed the lengthy delays in admitting IST defendants to DSH. The court noted that that the rate of referrals at DSH had been increasing over the previous five years beyond the ability of DSH to admit, creating an increase in the waitlist. The court discussed how these delays can constitute due process violations if it results in a defendant being held longer than the reasonable period of time necessary to determine whether there is a substantial probability that they will attain competency in the foreseeable future.

SB 317 (Stern)

Chapter 599, revises the procedures when a defendant is found IST on misdemeanor charges and allows a defendant to earn conduct credits when he or she is committed to a state hospital or other mental health treatment facility as IST in the same manner as if they were held in county jail. Specifically, this new law:

- Specifies that if the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may either dismiss the charges or conduct a hearing to determine if the defendant is eligible for mental health diversion.

- States that if the court finds the defendant ineligible for mental health diversion, as specified, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

    - Order modification of the treatment plan in accordance with a recommendation from the treatment provider;

    - Refer the defendant to assisted outpatient treatment under Laura's Law, as specified. A referral for assisted outpatient treatment may occur only in a county where Laura's Law services are available, and the agency agrees to accept responsibility for treatment of the defendant; or,

- Refer the defendant to the county conservatorship investigator for the county of commitment for possible Lanterman Prentis Short (LPS) conservatorship proceedings for the defendant, as specified.

- Specifies that when a person is confined in or committed to a state hospital or other mental health treatment facility because they have been found IST, they are entitled to earn conduct credits in the same manner as if they were in county jail.

CRIMINAL JUSTICE PROGRAMS

Medicated Assisted Treatment Grant Program:

In 2018, the Department of Corrections and Rehabilitation (CDCR) estimated that approximately 80 percent of incarcerated individuals had Substance Abuse Disorders (SUD) and, of these, approximately 26% have Substance Use Disorders related to opiate drugs. Medication Assisted Treatment is a 'whole-patient' approach to treating substance use disorders that uses medication in combination with counseling and behavioral therapies. Medication-Assisted Treatment (MAT) is clinically effective in treating substance use disorders, including opioid and alcohol use disorders.

Individuals who are struggling with substance use disorders are at high risk of fatal drug overdoses in the period after release from custody (a three to eightfold increased risk of drug related deaths within the first 2 weeks of release from prison).

AB 653 (Waldron)

Chapter 745, establishes the MAT Grant Program, in order for the Board of State and Community Corrections (BSCC) to award grants to counties for purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment. Specifically, this new law:

- Requires BSCC to establish minimum standards, funding schedules, and procedures for awarding grants.
- Allows MAT Grant Program funds to be used by recipient counties for specified activities.
- Specifies that MAT Grant Program funds shall not be used to supplant existing resources for medication-assisted treatment services delivered in county jails or in the community.
- States that counties that receive grants pursuant to this bill shall collect and maintain data pertaining to the effectiveness of the program, as indicated by BSCC in the request for proposals, including data on drug overdoses of, and the rate of recidivism for, inmates and persons under criminal justice supervision who receive county-administered, medication-assisted treatment services.
- Establishes a sunset date of January 1, 2026.

Comprehensive Statewide Domestic Violence Program:

The Comprehensive Statewide Domestic Violence Program in the Office of Emergency Services (Cal OES) provides assistance to Domestic Violence service providers across the state. Existing law requires the office to provide financial and technical assistance to local domestic violence centers in implementing specified services, including 24-hour crisis "hotlines" which have historically been interpreted to be phone lines. Domestic Violence service providers that want to provide other types of crisis response communication services in addition to 24-hour phone lines, such as online chat or text-message based services, are precluded from receiving funding or technical assistance for these additional services under current statute. As a result, Cal OES does not collect or evaluate data about these additional communication services, to better understand demand for them and best practices.

AB 689 (Petrie-Norris)
Chapter 152, requires Cal OES to provide financial and technical assistance to local domestic violence centers in implementing 24-hour crisis communication systems that include 24-hour phone services and may also include other communication methods offered on a 24-hour or intermittent basis, such as text messaging or computer chat.

Grant Funding: Domestic Violence Centers:

In order to provide support to domestic violence shelter service providers the California Governor's Office of Emergency Services (Cal OES) administers the Domestic Violence Assistance Program (DVAP). Cal OES distributes $20.6 million in state funds for services that target domestic violence survivors. DVAP also receives $33 million in federal funding, and in total distributes $53 million to 102 shelter-based providers throughout California. While working through COVID-19, service providers have also had to deal with delays in receiving reimbursement from Cal OES due to issues with its reimbursement system. At times, DVAP recipients have had to wait two or three months to receive funding. Some service providers took loans in order to keep their doors open, and then had to spend some of the funding they receive on paying off those loans. Other service providers have been concerned that they can't survive the gap between providing services and being reimbursed, and have chosen to not provide a service and leave grant funding unspent and unused.

AB 673 (Salas)
Chapter 680, requires that the portion of any grant funding awarded through Cal OES to local domestic violence centers from the state be distributed to the recipient in a single disbursement at the beginning of the grant period.

CRIMINAL OFFENSES

Organized Theft:

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services.

After the passage of Proposition 47, opponents of the measure argued that because shoplifting had to be charged as a misdemeanor unless the amount stolen exceeds $950, repeat offenders and those who work in concert with others in an organized retail theft ring were not being appropriately punished.

In 2018, the Legislature passed AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, which established the crime of organized retail theft, alternatively punishable as a felony or misdemeanor (wobbler), and created the California Highway Patrol property crimes task force. AB 1065 included a sunset date of January 1, 2021. The sunset date was extended to July 1, 2021, in a budget bill.

AB 331 (Jones-Sawyer)

Chapter 113, reenacts the crime of organized retail theft and the property task force until January 1, 2026, and contains an urgency clause allowing these provisions to take effect immediately.

Participation in a Criminal Street Gang: Enhanced Sentence:

In 1988, the Legislature enacted the California Street Terrorism Enforcement and Prevention Act (the STEP Act). The underlying purpose of the STEP Act was to eradicate criminal activity by street gangs.

On January 1, 2020, the Committee on the Revision of the Penal Code was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. In its first annual report, the Committee noted the "disparate racial impact" of California's STEP Act. The Committee further noted that all 50 states and the District of Columbia have some type of anti-gang provisions. However, in comparison to California, "other states require more evidence of connection or organization between gang members for gang enhancements to apply." At least three states require gang sentence enhancements to be tried separately from the guilt phase of trial.

AB 333 (Kamlager)

Chapter 699, redefines the terms "pattern of criminal gang activity" and "criminal street gang" for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related. Specifically, this new law:

- Requires that the offenses used to establish a "pattern of criminal gang activity" have commonly benefited a criminal street gang and that the common benefit from the offenses be more than reputational.
- Removes looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a "pattern of criminal gang activity."
- Prohibits the use of the currently charged crime to prove the "pattern of criminal gang activity."
- Requires the prosecution to prove that the offenses used to establish a "pattern of criminal gang activity" were committed within three years of the date of the current offense.
- Redefines "criminal street gang" to require the prosecution to prove an ongoing, organized association or group of three or more persons instead of an ongoing organization, association, or group of three or more persons.
- Specifies that to "benefit, promote, further, or assist" means "to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant."
- Requires, if requested by the defense in a case where a gang enhancement is alleged, that the defendant's guilt of the underlying offense first be proved and that a separate proceeding on the enhancement occur after a finding of guilt.
- Requires that a gang offense be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. The charge may be tried in the same proceeding as a gang enhancement or alternate penalty.
- Extends the sunset date to continue allowing judges the discretion to impose the lower, middle, or upper term of imprisonment authorized by the gang enhancement until January 1, 2023.

Hate crimes: Immigration status:

A number of protected classes qualify for protection under California's hate crime laws. These protected classes include disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. Although nationality arguably includes immigrant status, some groups have expressed concern that certain jurisdictions do not follow this interpretation.

AB 600 (Arambula)

Chapter 295, clarifies that "immigration status" is included in the scope of a "hate crime" based on "nationality," and provides that this is declarative of existing law.

Filing False Police Reports:

Under current state law, any peace officer who files a report with a false statement is guilty of filing a false police report. However, this current law is limited to the officer who knowingly makes and files a false report themselves, and does not include officers who make a false statement to the officer writing and filing the report. Thus, an officer who makes a false statement to the report-writing officer is not held responsible for their falsified statement, while the report-writing officer is not held responsible because the law does not apply to statements made by other officers.

In 2020, the Orange County District Attorney's Office conducted a review of 31 cases against deputy sheriffs involving systemic problems with report-writing and evidence-booking in the Orange County Sheriff's Department. During their review, the office found a deputy knowingly wrote and filed a false report so the officer making the false statement could not be prosecuted. Both were exempt from prosecution as the officer making the falsified statement was not the report-writing officer.

AB 750 (Jones-Sawyer)

Chapter 267, expands the crime of a peace officer making a false report to include any material statement made or cause to be made in a peace officer report or to another peace officer, regarding the commission or investigation of any crime, knowing the statement to be false. Specifically, this new law:

- States that every peace officer who, in their capacity as a peace officer, knowingly and intentionally makes, or causes to be made, any material statement in a peace officer report, or to another peace officer and the statement is included in a peace officer report, regarding the commission or investigation of any crime, knowing the statement to be false, is guilty of filing a false report, punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years.

- Specifies that this law does not apply to a peace officer writing or making a peace officer report, with regard to a false statement that the peace officer included in the report that is attributed to any other person, unless the peace officer writing or making the report knows the statement to be false and is including the statement to present the statement as being true.

Contempt of Court: Stalking Offenses:

When a person is convicted of the criminal offense of stalking in California, the court is required to consider imposing a restraining order against the defendant. The purpose of the restraining order is to prohibit the defendant from having any contact with the victim. The court can impose such an order for up to ten years. Courts routinely impose these restraining orders. With a restraining order in place, if the defendant commits the offense of stalking again, they can be prosecuted for a felony stalking offense, punishable by up to four years in state prison. If the defendant makes contact with the victim in a manner that falls short of a new stalking offense, they can be prosecuted for contempt of court for willful disobedience of the court's restraining order. Typically, willful disobedience of a court order is a contempt of court offense that is punishable as a misdemeanor with a maximum punishment of 6 months in county jail. That maximum punishment is increased to one year in county jail (a "gross misdemeanor") with a higher maximum fine if the defendant was convicted of stalking and they initiate contact with the victim directly, by telephone, or by mail.

AB 764 (Cervantes)

Chapter 704, increases the maximum punishment for the misdemeanor offense of contempt of court that applies when a person who has previously been convicted of stalking, willfully contacts a victim by social media, electronic communication, or electronic communication device, from six months in jail to one year in jail.

Grand Theft: Intentional Theft of Wages:

Workers who have been unlawfully deprived of their wages have several, lengthy, complex processes they can pursue to attempt to recover their loss. They can pursue wage claims through the Labor Commissioner's office to seek recovery of unpaid wages and other damages, file smaller wage claims in the Small Claims Court, or bring a lawsuit in state or federal court for themselves or as part of a class action. Each year, over 30,000 workers in California file claims of wage theft, though the share of workers owed unpaid wages is likely greater. These workers face processes for recovering their wages that are lengthy, burdensome, or often unsuccessful in changing employer behavior.

Wage theft is considered to be detrimental to California's economy, responsible businesses, and workers, particularly low wage workers who can least afford to lose earnings. The COVID-19 pandemic exacerbated the financial desperation low wage workers are facing, making many workers more vulnerable to wage theft.

AB 1003 (Gonzalez, L.)

Chapter 325, creates a new type of grand theft for the intentional theft of wages in an amount greater than $950 from any one employee, or $2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period.

Rape of a Spouse:

Before 1979, the law in California did not recognize that a wife could be raped by her husband. AB 546 (Mori) enacted a spousal rape law and distinguished between marital and non-marital rape. In the years that followed, the Legislature has amended the spousal rape law several times. These amendments have better defined spousal rape to correspond with, and mostly mirror, the language of non-spousal rape. Nonetheless, trying to balance tensions between treating rape as rape irrespective of the marital status with the considerations presented by marital units, limited distinctions have remained between the two statutes: probation eligibility and discretionary sex offender registration. These distinctions no longer makes sense from a legal or public policy perspective. The consequences for rape victims and spousal rape victims are the same. When martial rape is not treated as seriously as other forms of rape, it invalidates the victims' traumatic experiences and continues to promote rape culture.

AB 1171 (Garcia, C.)

Chapter 626, repeals the existing stand-alone provision of law relating to spousal rape and, except as specified, expands the definition of rape to include the rape of a spouse, thereby making a state prison sentence mandatory in most circumstances, and requiring the convicted spouse to register as a sex offender. Specifically, this new law:

- Repeals the provisions relating to spousal rape.
- Expands the circumstances under which sexual intercourse with a spouse is rape, to include:
    - Where a spouse submits under false pretenses (one spouse gains consent by pretending to be someone known to the victim other than their spouse); or
    - Where the accused spouse fraudulently represented that the sexual penetration served a professional purpose.

- Clarifies that when spouses have sexual intercourse and one of the spouses has specified mental disorders or disabilities, prosecution for rape is not precluded under any other provision of the law.

- Prohibits probation and requires a mandatory state prison sentence for rape of a spouse accomplished under the following circumstances:

    - Against the spouse's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the spouse or another;

    - When a spouse is prevented from resisting by an intoxicating, anesthetic, or controlled substance, and this condition was known, or should have been known, to the accused spouse;

    - Where the spouse was unconscious of the nature of the act; and,

    - Against the spouse's will by threat of retaliation, as defined.

- Eliminates, except in unusual circumstances, the court's discretion to grant probation and requires a mandatory state prison sentence where spousal rape is accomplished against the spouse's will by threat of authority, as defined.

- Requires a person convicted of rape of their spouse to register as a sex offender.

- Requires a person convicted of rape of their spouse, to be listed on the Megan's Law website, except as specified.

- Removes the court's authority to impose specified conditions in lieu of a fine when probation is granted to a perpetrator who is the victim's spouse.

Reproductive Health Care Services:

In 2001, the Legislature enacted the California Freedom of Access to Clinic (FACE) Act, mirroring the federal FACE Act. The FACE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. The law has not been updated to address organized harassment by anti-abortion groups, who increasingly use technology like the internet and social media to attack patients and providers.

AB 1356 (Bauer-Kahan)

Chapter 191, creates new crimes under the Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility ("buffer" zone) or disclosing or distributing those images; increases misdemeanor penalties for violations of the Act; and updates and expands online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. Specifically,

this new law:

- Makes the crime of posting a home address applicable to the knowing distribution, in any forum, of the personal information or image of a reproductive health care services patient, provider, or assistant with the intent that another person use that information to commit a crime of violence or a threat of violence, and increases the penalty by making the offense punishable as a misdemeanor by imprisonment up to one year in the county jail, a fine of up to $10,000, or both that fine and imprisonment. If bodily injury occurs, the maximum fine is up to $50,000.

- Creates a "buffer" zone by making it a new crime under the Act, to within 100 feet of the entrance to or within a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.

- Makes it a new crime under the Act to intentionally disclose or distribute material knowingly obtained in violation of the "buffer" zone provision with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated. "Social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or internet website profiles or locations.

- Makes a first violation of these new crimes under the Act punishable as a misdemeanor by imprisonment in the county jail for a period of not more than one year, a fine up to $10,000, or both that fine and imprisonment. Makes the maximum fine for a second violation $25,000.

- Increases the penalties for the existing crimes under the Act, as follows:

    - Makes a first violation involving nonviolent physical obstruction punishable as a misdemeanor by imprisonment in the county jail for a period of not more than one year, a fine up to $10,000, or both that fine and imprisonment;

    - Increases the fine for a second or subsequent violation involving nonviolent physical obstruction to up to $25,000.

    - Makes a first violation involving intentional property damage a misdemeanor punishable by up to one year in the county jail, a fine of $25,000, or both that fine and imprisonment;

- Makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence punishable either as a misdemeanor by imprisonment in a county jail for a period not more than one year, a fine up to $25,000, or both that fine and imprisonment; and,

- Increases the fine for a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property to up to $50,000.

- Requires local law enforcement agencies to report, in a manner prescribed by the Attorney General (AG), the number of anti-reproductive-rights crime-related calls for assistance, the total number of arrests for anti-reproductive-rights crimes, and the total number of cases in which the district attorney charged an individual, as specified. Beginning January 1, 2023, the AG must annually report this information to the Legislature.

- Provides that subject to an appropriation in the budget, the Commission on Peace Officer Standards and Training shall develop and update every seven years, or on a more frequent basis if deemed necessary by either the Commission on the Status of Women and Girls or the AG, an interactive training course on anti-reproductive rights crimes.

- Requires all law enforcement agencies to develop, adopt, and implement written policies and standards for responding to anti-reproductive-rights calls by January 1, 2023.

Elections: Prohibited Activities:

Californians have embraced an expanding array of options for casting their ballots. But state law intended to protect voters from intimidation and partisan harassment has not kept pace. Buffer zones that may have provided adequate protection to voters in the past are becoming less effective forms of protection for voters who may now wait in lines that stretch far outside of early and day-of polling places due to social distancing restrictions, increasing voter engagement, and work and family obligations that limit the times of day that many Californians are available to vote. Further, the law does not clearly provide enough protections to a growing number of early voters who cast their ballots in official vote-by-mail ballot drop boxes.

SB 35 (Umberg)

Chapter 318, expands prohibited electioneering and political activities near voting sites, and prohibits activities related to deceptive unofficial ballot collection containers. Specifically this new law:

- Modifies the distance from which electioneering and other specified political activities near a polling location are prohibited from the 100-foot radius of

protected voting space from the room or rooms in which voters are signing the roster and casting ballots to instead the 100 feet from the entrance to a building that contains a polling place and an outdoor voting area where a voter may cast their ballot or drop off a ballot.

- Prohibits obstructing access to, loitering near, or disseminating visible or audible electioneering information at a vote by mail ballot drop box.

- Prohibits obstructing ingress, egress, or parking with the intent of dissuading another person from voting within 100 feet of a voting site.

- Prohibits engaging in specified political activities and electioneering in the immediate vicinity of a voter in line to cast or drop off a ballot, as specified.

- Prohibits displaying a ballot collection container with the intent to deceive a voter into casting a ballot in an unofficial ballot box and directing or soliciting a voter to cast a ballot into an unofficial ballot collection container.

- Requires notices regarding the prohibitions on electioneering and the prohibitions on activity related to corruption of the voting process be provided to the public, and requires the Secretary of State to promulgate regulations specifying the manner in which these notices are provided.

Vaccination Sites: Obstructing, Intimidating, Harassing:

For over a year, health care workers and scientists have worked side-by-side to develop and distribute effective coronavirus vaccines. The scope of COVID-19 vaccination efforts has required the use of spaces such as stadiums, fairgrounds, and pop-up sites not traditionally utilized for healthcare distribution. Mass gatherings and protests pose the risk of transmission of COVID-19 virus and other diseases. While a person may choose to attend a rally and expose themselves to political speech, in large part they cannot choose where they receive medical services. Californians who choose to receive the COVID-19 vaccine to protect their health and the health of others or to abide by California state laws requiring proof of vaccination to return to school and the work place, should be able to get immunized safely and with their privacy protected.

SB 742 (Pan)

Chapter 737, makes it a misdemeanor for a person to engage in the physical obstruction, intimidation, or picketing target at a vaccination site. Specifically, this new law:

- Provides that it is a misdemeanor to knowingly approach within 30 feet of any person while a person is within 100 feet of the entrance or exit of a vaccination site and is seeking to enter or exit a vaccination site, or any occupied vehicle seeking entry or exit to a site for the purpose of obstructing,

injuring, harassing, intimidating or interfering with that person or vehicle occupant. It is punishable by up to six months in jail, a fine not to exceed $1,000, plus penalty assessments, or both.

- Defines "harassing" as knowingly approaching, without consent, within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with, that other person in a public way or on a sidewalk area.

- Provides that "interfering with" means restricting a person's freedom of movement.

- Defines "intimidating" as making a true threat directed to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

- Defines "obstructing" as rendering ingress to or egress from a vaccination site, or rendering passage to or from a vaccination site, unreasonably difficult or hazardous.

- Defines "true threat" as a statement in which the speaker means to communicate a serous expression of an intent to commit an act of unlawful violence to a particular person or group of persons regardless of whether the person actually intends to act on the threat.

- Defines "vaccination site" as the physical location where vaccination services are provided, including, but not limited to, a hospital, physician's office, clinic, or any retail space or pop-up location made available for vaccination services.

- Provides that it is not a violation of this section to engage in lawful labor picketing.

CRIMINAL PROCEDURE

Arrest Warrants: Declaration of Probable Cause:

There are a variety of procedures by which a person suspected of a crime can be arrested and charged in California. One common method is that a peace officer writes out a statement of probable cause that a defendant committed a crime. A magistrate then reviews that statement and upon a finding that the offense was committed and that there is reasonable grounds to believe that the defendant was the one who committed it, the magistrate issues a warrant of arrest. A peace officer must sign the application for a warrant.

Unlike arrest warrants, applications for search warrants are not required to be signed by a peace officer. The examination procedure and standards involved in obtaining a search warrant are similar to that of arrest warrants, but applications for search warrants may be made by citizens who are not peace officers.

AB 127 (Kamlager)

Chapter 20, authorizes an employee of a public prosecutor's office to make a declaration of probable cause to arrest to a magistrate if the defendant is a peace officer.

Discovery: Victim and Witness Privacy:

The Penal Code prohibits the disclosure of a victim or witness's address or telephone number to a defendant, a member of the defendant's family, or anyone else unless specifically permitted by the court. This protects victims and witnesses from the risk of threats or harassment by defendants. However, a victim or witness's social security number, birthdate, and biometric information, are not similarly protected; a defendant or their family could theoretically request and receive that information without a court order.

AB 419 (Davies)

Chapter 91, expands the prohibition of an attorney disclosing personal identifying information to a defendant, members of the defendant's family, or anyone else, to include any personal identifying information, as defined, of the victim or witness. Specifically this new law:

- Defines "personal identifying information," by cross reference, as follows: "any address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password,

alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person."

- Eliminates the misdemeanor penalty for willfully disclosing such information.

Juveniles: Transfer to Court of Criminal Jurisdiction: Appeals:

Under current law, the prosecution may move to transfer any minor 16 years of age or older to adult court who is alleged to have committed a felony offense. The prosecution may also move to transfer a minor 14 or 15 years of age to adult court who is alleged to have committed a specified serious offense but was not apprehended prior to the end of juvenile court jurisdiction.

Despite the consequences of a transfer order, California law currently provides no right to directly appeal a judge's decision transferring a minor's case from juvenile court to adult court for prosecution. California law provides only discretionary review on the merits via an extraordinary writ.

California contrasts other states, including Georgia, Oklahoma, and Utah, which have enacted legislation providing for minors to appeal transfer decisions on an expedited timeframe. In 2020, the Supreme Court of Missouri concluded minors have a statutory right to appeal transfer decisions.

AB 624 (Bauer-Kahan)

Chapter 195, authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. Specifically, this new law:

- Authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. The transfer order may not be heard on appeal from the judgment of conviction.

- Provides that upon request of the minor, the superior court must issue a stay of the criminal court proceedings until a final determination of the appeal. The superior court retains jurisdiction to modify or lift the stay upon request of the minor.

- States that the appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.

- Requires the Judicial Council to adopt rules of court to ensure:

    - The juvenile court advises the minor of the right to appeal, of the necessary steps and time for taking an appeal, and of the right to the appointment of counsel if the minor is unable to retain counsel;

    - The record is promptly prepared and transmitted from the superior court to the appellate court; and,

    - Adequate time requirements exist for counsel and court personnel to implement the objectives of this provision.

- States the Legislature's intent that this provision provide for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction.

Criminal Procedure: Arraignment and Trial:

A criminal defendant has the right to be present at his trial under the Sixth and Fourteenth Amendments to the federal Constitution and under article I, section 15, of the California Constitution. The Penal Code also specifies that right. However, the right to be present at trial is not absolute. It may be expressly or impliedly waived.

For example, under Penal Code section 1043, subdivision (b)(2), a noncapital felony trial that has commenced may continue in a defendant's absence, if the defendant was present when trial began, then later voluntarily absents himself. If the trial court finds that the defendant voluntarily waived the right to be present at trial, the trial court has discretion to proceed with the trial without the defendant. Under Penal Code section 1043.5, subdivision (b)(2), similar rights pertain to a defendant with regard to preliminary hearings.

A court has no comparable statutory discretion where the trial or preliminary examination has not commenced in the defendant's presence. Courts have run into problems with defendants in custody who refuse to come to court for the commencement of these proceedings. Though defendants may be estopped from complaining on appeal if a court proceeds in their voluntary absence, some judges are reluctant to do so because it is still a statutory error.

A similar problem arises in felony cases when the defendant refuses to appear for "arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence" or at any other proceeding when no written waiver in open court has been

obtained. This is because, subject to specified exceptions, the statute requires the defendant's personal presence at these proceedings.

AB 700 (Cunningham)

Chapter 196, allows a defendant who is in custody to appear by counsel in criminal proceedings, with or without a written waiver, if the court makes specified findings on the record by clear and convincing evidence. Specifically, this new law:

- Provides that the court may allow a defendant to appear by counsel at a trial, hearing, or other proceeding, with or without a written waiver, if the court finds by clear and convincing evidence:
    - The defendant is in custody and refusing, without good cause, to appear in court for that particular trial, hearing, or other proceeding;
    - The defendant has been informed of their right and obligation to be personally present in court;
    - The defendant has been informed that the trial, hearing, or other proceeding will proceed without their personal presence;
    - The defendant has been informed that they have the right to remain silent during the trial, hearing, or other proceeding;
    - The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront any witnesses against them or to testify on their own behalf; and,
    - The defendant has been informed whether or not defense counsel will be present.
- Requires the court to state the reasons for its findings on the record and cause those findings and reasons to be entered into the minutes.
- Provides that if the trial, hearing, or other proceeding lasts more than one day, the court is required to make the findings required by this provision anew for each day that the defendant is absent.
- States that these provisions do not apply to any trial, hearing, or other proceeding in which the defendant was personally present in court at the commencement of the trial, hearing, or other proceeding.
- Provides that a trial or preliminary hearing shall be deemed to have "commenced in the presence" of a defendant who is in custody and refuses to appear in court, under the circumstances stated above.

Computer Crimes: Statute of Limitations:

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.) The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality.

The amount of time during which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) There are, however, some statutes of limitations not necessarily based on the seriousness of the offense. Some crimes by their design are difficult to detect and may not be immediately discoverable upon their completion.

Computer crimes, for example, are often not detected at the time of commission. Under existing law, felony computer crimes described in Penal Code section 502 must be prosecuted within three years of the offense date.

AB 1247 (Chau)

Chapter 206, tolls the statute of limitations for the prosecution of a felony offense for specified computer crimes until the discovery of the commission of the offense, or within three years after the offense could have reasonably been discovered, but no more than six years from the commission of the offense, for crimes committed after January 1, 2022, or for crimes for which the statute of limitations has not lapsed as of that date.

Expiration of Restraining Orders: Expungement:

The process of expungement allows defendants to get their cases dismissed once they have successfully completed probation or other sentence imposed by the court. When a conviction is expunged, the person is generally released from "all penalties and disabilities" resulting from the conviction. However, the law is silent on what should happen to criminal protective orders issued in serious cases such as domestic violence, stalking, and elder abuse where courts may issue a protective order for up to 10 years.

AB 1281 (Rubio, B.)

Chapter 209, provides that expungement of a criminal conviction does not release the defendant from specified, unexpired criminal protective orders issued by the court in the underlying case. Specifically, this new law:

- States that dismissal of an accusation or information following successful completion of probation or other sentence, or whose conviction have automatically been expunged, does not release the defendant from the terms

and conditions of an unexpired criminal protective order that has been issued by the court in connection with an underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.

- States that for all such dismissals, the protective order shall remain in full force and effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

Deferred Entry of Judgement: Pilot Program:

SB 1004 (Hill), Chapter 865, Statutes of 2016, authorized five counties – Alameda, Butte, Napa, Nevada, and Santa Clara – to operate a three-year pilot program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The legislation recognized that although 18 to 21 year olds are legally adults, young offenders…are still undergoing significant brain development and…may be better served by the juvenile justice system with corresponding age appropriate intensive services.

The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program then the criminal charges are dismissed. To be eligible, the defendant must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex offense. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall. The pilot program was set to expire on January 1, 2022.

AB 1318 (Stone)

Chapter 210, extends the operative date of the exiting Transition Age Youth pilot program to January 1, 2024, and establishes a December 31, 2022 deadline by which a report on the program must be delivered to the Senate and Assembly Public Safety Committees.

Revenge Porn: Statute of Limitations:

Under existing law, the crime of "revenge porn," which is the unauthorized distribution of intimate images, must be prosecuted within one year from the date the photo was first distributed. However, victims often will not discover until years later that an image intended to be kept private has been shared.

The Legislature has acknowledged that some crimes by their design are difficult to detect and may be undiscoverable at the time of their completion. For example, crimes involving fraud,

breach of a fiduciary duty, bribes to a public official or employee, and those involving hidden recordings have statutes of limitations which begin to run upon discovery that the crime was committed.

SB 23 (Rubio)

Chapter 483, extends the statute of limitations applicable to the crime of "revenge porn" to allow prosecution to commence within one year of the discovery of the offense, but not more than four years after the image was distributed.

DOMESTIC VIOLENCE

Grant Funding: Domestic Violence Centers:

In order to provide support to domestic violence shelter service providers the California Governor's Office of Emergency Services (Cal OES) administers the Domestic Violence Assistance Program (DVAP). Cal OES distributes $20.6 million in state funds for services that target domestic violence survivors. DVAP also receives $33 million in federal funding, and in total distributes $53 million to 102 shelter-based providers throughout California. While working through COVID-19, service providers have also had to deal with delays in receiving reimbursement from Cal OES due to issues with its reimbursement system. At times, DVAP recipients have had to wait two or three months to receive funding. Some service providers took loans in order to keep their doors open, and then had to spend some of the funding they receive on paying off those loans. Other service providers have been concerned that they can't survive the gap between providing services and being reimbursed, and have chosen to not provide a service and leave grant funding unspent and unused.

AB 673 (Salas)

Chapter 680, requires that the portion of any grant funding awarded through Cal OES to local domestic violence centers from the state be distributed to the recipient in a single disbursement at the beginning of the grant period.

Comprehensive Statewide Domestic Violence Program:

The Comprehensive Statewide Domestic Violence Program in the Office of Emergency Services (Cal OES) provides assistance to Domestic Violence service providers across the state. Existing law requires the office to provide financial and technical assistance to local domestic violence centers in implementing specified services, including 24-hour crisis "hotlines" which have historically been interpreted to be phone lines. Domestic Violence service providers that want to provide other types of crisis response communication services in addition to 24-hour phone lines, such as online chat or text-message based services, are precluded from receiving funding or technical assistance for these additional services under current statute. As a result, Cal OES does not collect or evaluate data about these additional communication services, to better understand demand for them and best practices.

AB 689 (Petrie-Norris)

Chapter 152, requires Cal OES to provide financial and technical assistance to local domestic violence centers in implementing 24-hour crisis communication systems that include 24-hour phone services and may also include other communication methods offered on a 24-hour or intermittent basis, such as text messaging or computer chat.

Domestic Violence Restraining Orders: Possession of Firearms:

Research has shown that large numbers of men and women will experience some form of domestic violence during their lifetimes. In addition, the presence of a firearm in the home during an incident of domestic violence dramatically increases the risk of homicide. When a person is the subject of a domestic violence restraining order they automatically become a prohibited person, meaning they lose the ability to possess of firearm. California Rules of Court lay out the procedures courts should take to ensure relinquishment and to coordinate with law enforcement where necessary. However, there are reports that the Rules of Court have been implemented inconsistently throughout the State.

SB 320 (Eggman)

Chapter 685, codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order. Specifically, this new law:

- Requires the court to provide information about how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.

- Provides that a court holding a hearing on the matter of whether the respondent has relinquished any firearms or ammunition shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.

- States that violations of the firearms prohibition of any civil domestic violence restraining order shall be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

- States that if the results of the court's search of records and databases indicate that the subject of the order owns a registered firearm or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm. If evidence of compliance is not provided as required, the court shall order the court of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address the

violation of the order as appropriate and as soon as practicable.

- Requires that the court consider whether a party is a restrained person in possession or control of a firearm or ammunition when making specified determinations related to child custody and visitation matters.

- Requires the juvenile court to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition.

Restraining Orders: Electronic Filings and Appearance:

The Domestic Violence Prevention Act seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to create safety. The Act enables a party to seek a protective order, also known as a restraining order, which may be issued to protect a petitioner who presents reasonable proof of a past act or acts of abuse. California's gun violence restraining order laws are modeled after domestic violence restraining order laws, and they went into effect on January 1, 2016. A gun violence restraining order prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The COVID-19 pandemic reduced court operations and made court intervention more difficult, despite the increased need for access to the courts during the pandemic. Recognizing the critical nature of some domestic situations and the temporary nature of existing family law orders, the Judicial Council issued emergency rules to protect family law litigants, facilitate the electronic filing of protective orders, and allow court hearings to be conducted in a remote manner. These rules were temporary in nature.

SB 538 (Rubio)

Chapter 686, facilitates the filing of a domestic violence restraining order (DVRO) and gun violence restraining order (GVRO) by allowing petitions to be submitted electronically and hearings to be held remotely. Specifically, this new law:

- Requires, by July 1, 2023, that a court or court facility that receives petitions for domestic violence or gun violence restraining orders to permit those petitions to be submitted electronically during and after normal business hours.

- Provides that a party or witness may appear remotely at the hearing on a petition for a domestic violence or gun violence restraining order. Requires the superior court of each county to develop local rules and instructions for remote appearances and requires they be posted on its internet website.

- Requires that the superior court of each county provide, and post on its internet website, a phone number for the public to call to obtain assistance regarding remote appearances. Requires the phone number be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

- Provides that there is no fee for any filings related to a petition filed to obtain a domestic violence or gun violence restraining order.

EVIDENCE

Credibility of a Witness: Evidence of Sexual Conduct in Social Media Accounts:

The Legislature created limitations on the introduction of evidence in specific sex-related cases to recognize that victims of sex-related offenses deserve heightened protection against "surprise, harassment, and unnecessary invasions of privacy." These limitations are known as the Rape Shield Law. The Rape Shield Law generally prevents the introduction of evidence against an alleged victim about that person's prior sexual conduct in order to show that the person consented to the sexual act in question. However, impeachment evidence of an alleged victim, or a witness, that relates to sexual conduct may be introduced by following a procedure — filing a written motion with the court in a criminal jury trial where the judge will make a ruling on admissibility of that evidence.

In some sexual assault cases, defense lawyers are looking through the social media accounts of sexual assault victims to discover information that can be used against the victim. The law needs to be clarified and updated to recognize that sexual conduct exhibited on a social media account presents the same concerns as any other type of evidence of sexual conduct.

AB 341 (Boerner-Horvath)

Chapter 24, provides that "evidence of sexual conduct" for purposes of the Rape Shield Law, includes those portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense.

Sex Offenses: Admission of Evidence:

Evidence offered in a criminal case is generally admissible if it is relevant to any issue in the case. For evidence of the victim's clothing to be admissible in a sexual assault case, as evidence of either consent or lack thereof, there is special procedure that must take place prior to its admission. The party seeking to introduce the evidence must first make an offer of proof as to how the evidence would be relevant. That offer of proof must take place outside the presence of the jury. Once the offer of proof has been made, the judge must determine that the evidence is, in fact, relevant to the issue of consent, and also that admitting the evidence would be in the interests of justice. The court must also state the reasons for making the determination on the record.

AB 939 (Cervantes)

Chapter 529, prohibits the court from admitting evidence of the manner in which the victim was dressed during the prosecution of specified sex crimes, by either the prosecution or defense on the issue of consent, regardless of whether the evidence is relevant or admissible in the interests of justice.

FIREARMS

Restraining Orders: Seizure of Firearms:

A Gun Violence Restraining Order (GVRO) prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession. Similarly, a person who is the subject of a domestic violence restraining order (DVRO) is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect.

Under existing law, law enforcement is currently only able to seize complete firearms from a person who is the subject of a GVRO or DVRO. The definition does not cover precursor parts of a weapon that can be readily converted to the functional condition of a finished frame or receiver. Additionally under existing law, ghost guns cannot be seized when a judge issues an emergency GVRO or DVRO.

AB 1057 (Petrie-Norris)

Chapter 682, includes in the definition of "firearm" a frame, receiver, or precursor part for the purpose of surrender or seizure pursuant to a (GVRO) and a domestic violence restraining order (DVRO). Specifically, this new law:

- Defines "firearm" for purposes of a GVRO and for purposes of a DVRO to include a frame or receiver of the weapon or a firearm precursor part.
- Delays implementation until July 1, 2022.

Lost and Stolen Firearms:

According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives, "Lost and stolen firearms pose a substantial threat to public safety and to law enforcement. Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun. Lost firearms pose a similar threat. Like stolen firearms, they are most often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions."

Such lost or stolen firearms may become "crime guns" which are defined as, "any firearm used in a crime or suspected to have been used in a crime. This may include firearms abandoned or otherwise taken into law enforcement custody that are either suspected to have been used in a crime or whose proper disposition can be facilitated through a firearms trace." Tracing a crime gun back to its origins can help law enforcement identify patterns in the supply of gun trafficking by locating, and investigating, the circumstances surrounding a gun that leaves the legal marketplace and enters the illicit secondary market.

AB 1191 (McCarty)

Chapter 683, requires the Department of Justice, to analyze information reported by law enforcement agencies regarding the history of a recovered firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime and provide a report of their findings to the legislature.

Gun Shows: Orange County Fair and Event Center:

Gun shows are essentially a flea market for firearms and accessories. At gun shows, individuals may buy, sale, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. According to research, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show. However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Although violent criminals do not buy most of their guns directly from gun shows, gun shows can be a critical moment in the chain of custody for many guns, the point at which they move from the regulated, legal market to the illegal market.

SB 264 (Min)

Chapter 684, prohibits the sale of firearms, firearm precursor parts, or ammunition on the property of the 32nd District Agricultural Association (Orange County Fair and Event Center). Specifically, this new law:

- Prohibits an officer, employee, operator, lessee, or licensee of the 32nd District Agricultural Association, as defined, from contracting for, authorizing, or allowing the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the Orange County Fair and Event Center, as specified.

- Exempts from its provisions a gun buyback event held by a law enforcement agency, the sale of a firearm by a public administrator, public guardian, or public conservator within the course of their duties, a sale that occurs pursuant to a contract that was entered into before January 1, 2022, and the purchase of ammunition on state property by a law enforcement agency in the course of its regular duties. Because a violation of this prohibition would be a crime, this bill imposes a state-mandated local program.

Investigations and Transfers: Firearms:

California's laws pertaining to firearms are numerous and complex. Each year new legislation is passed to expand the regulation of firearms within the state. According to one source, California has five times the number of laws that regulate the use, ownership or transactions of firearms as compared to the national median. In addition to new legislative policies, there is nearly constant maintenance and upkeep of these provisions to provide

clarity and consistency. Recently the Attorney General was granted the authority to investigate officer shootings of unarmed civilians, but there has been debate about the extent of this authority when the question of whether the civilian was armed or not is unknown. In addition, the Poway synagogue shooting in 2019 was apparently carried out by a minor who had purchased a weapon with an expired hunting license.

SB 715 (Portantino)

Chapter 250, clarifies what qualifies as an "unarmed" civilian to trigger investigations of officer-involved shootings by the Attorney General's Office, prohibits a minor from purchasing a firearm with an expired hunting license from the year previous to the purchase, makes changes to existing firearms transfer laws, and deletes obsolete provisions of law.

IMMIGRATION

Private Detention Facilities: Regulations:

Private detention centers, like jails and prisons, are epicenters for infectious diseases because of the higher prevalence of infection, the higher levels of risk factors for infection, the close contact in often overcrowded, poorly ventilated facilities, and the poor access to health-care services relative to that in community settings.

The humanitarian crisis posed by the spread of COVID-19 in private immigration detention facilities in California has had significant consequences for those detained in those facilities. Civil detention facilities which house immigrants have requirements in their federal contracts with respect to health and safety, but it appears that these private corporations routinely violate the health and safety requirements for these facilities in their daily operations and have not followed public health orders or protocols.

AB 263 (Arambula)

Chapter 294, requires a private detention facility operator to comply with all local and state public health orders and occupational safety and health regulations. Specifically, this new law:

- Specifies that a private detention facility operator shall comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

- Defines "private detention facility operator" and "private detention facility" for purposes of this bill.

- States that this law shall not be construed to limit or otherwise modify the authority, powers, or duties of state or local public health officers or other officials with regard to state prisons, county jails, or other state or local correctional facilities.

Hate Crimes: Immigration Status:

A number of protected classes qualify for protection under California's hate crime laws. These protected classes include disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. Although nationality arguably includes immigrant status, some groups have expressed concern that certain jurisdictions do not follow this interpretation.

AB 600 (Arambula)

Chapter 295, clarifies that "immigration status" is included in the scope of a "hate crime" based on "nationality," and provides that this is declarative of existing law.

Motion to Vacate: Immigration Consequences:

In response to the limitations on when a writ of habeas corpus can be filed, the Legislature enacted AB 813 (Gonzalez), Chapter 739, Statutes of 2016. AB 813 created Penal Code section 1473.7 to provide a process for individuals who are no longer in custody to challenge the legal validity of old convictions. Grounds for challenging an old conviction include when the person convicted failed to meaningfully understand, defend against, or knowingly accept the immigration consequences of pleading to a specific crime that could later become grounds for detention or deportation. Relief under Penal Code section 1473.7 applied only to convictions resulting after a guilty or no contest plea. It did not apply to convictions resulting after a trial where the person convicted failed to meaningfully understand the immigration consequences of taking their criminal case to trial.

AB 1259 (Chiu)

Chapter 420, expands eligibility for post-conviction relief based on prejudicial error damaging a person's ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction, to include convictions resulting after trial.

Private Detention Facilities: Regulations:

The federal government contracts with private detention facilities throughout the country to house immigration detainees and federal criminal pretrial detainees. There are a variety of concerns regarding the use of private detention facilities.

The poor health and safety standards in these facilities is documented in numerous investigations: a 2016 U.S. A.G. report, 2017 U.S Homeland Security Report, and 2019 USA Today report depicting sexual assault, physical and mental abuse, inadequate medical care, and solitary confinement. In turn, California has taken a definitive stance to address the abusive and inhumane care towards detainees. Despite these efforts, operators' reluctance to adopt more rigorous standards raises alarms about the health and safety of people detained in these facilities which have been exacerbated by the COVID-19 pandemic.

According to USC researchers, continued violation of health and safety standards has been exacerbated by the COVID-19 pandemic, as deaths in immigration detention centers have skyrocketed across the U.S. due to delays in medical treatment and poor control of infectious diseases including lack of access to soap, sanitizer, medical supplies, PPE, and social distancing. Among the first outbreaks reported in these facilities was one in Otay Mesa when at least 111 people in custody and 25 staffers tested positive and the first COVID-19 related death of a detainee.

SB 334 (Durazo)

Chapter 298, requires private detention facilities to operate in compliance with specified state and local codes and regulations. Also requires private detention facilities to maintain specified insurance coverages, including general, automobile, umbrella liability, and workers' compensation. Specifically, this new law:

- States that a private detention facility responsible for the custody and control of a prisoner or a civil detainee shall comply with the following requirements:
    - The private detention facility shall comply with all appropriate state and local building, zoning, health, safety, and fire statutes, ordinances, and regulations, and with the minimum jail standards established by regulations adopted by the BSCC;
    - The private detention facility shall select and train its personnel in accordance with selection and training requirements adopted by Board of State and Community Corrections (BSCC), as specified;
    - The private detention facility shall comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations, which standards shall meet or exceed the standards set forth above; and,
    - The private detention facility shall maintain the following specified insurance coverages, which shall be obtained from an admitted insurer.
- States that the insurance policy shall require the private detention facility to comply with the requirements of the provisions of this new law, provide the insurer and Insurance Commissioner with an initial compliance report and subsequent annual compliance updates as required.

JUVENILES

Juveniles: Transfer to Court of Criminal Jurisdiction: Appeals:

Under current law, the prosecution may move to transfer any minor 16 years of age or older to adult court who is alleged to have committed a felony offense. The prosecution may also move to transfer a minor 14 or 15 years of age to adult court who is alleged to have committed a specified serious offense but was not apprehended prior to the end of juvenile court jurisdiction.

Despite the consequences of a transfer order, California law currently provides no right to directly appeal a judge's decision transferring a minor's case from juvenile court to adult court for prosecution. California law provides only discretionary review on the merits via an extraordinary writ.

California contrasts other states, including Georgia, Oklahoma, and Utah, which have enacted legislation providing for minors to appeal transfer decisions on an expedited timeframe. In 2020, the Supreme Court of Missouri concluded minors have a statutory right to appeal transfer decisions.

AB 624 (Bauer-Kahan)

Chapter 195, authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. Specifically, this new law:

- Authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. The transfer order may not be heard on appeal from the judgment of conviction.

- Provides that upon request of the minor, the superior court must issue a stay of the criminal court proceedings until a final determination of the appeal. The superior court retains jurisdiction to modify or lift the stay upon request of the minor.

- States that the appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.

- Requires the Judicial Council to adopt rules of court to ensure:

    - The juvenile court advises the minor of the right to appeal, of the necessary steps and time for taking an appeal, and of the right to the appointment of counsel if the minor is unable to retain counsel;

- The record is promptly prepared and transmitted from the superior court to the appellate court; and,

- Adequate time requirements exist for counsel and court personnel to implement the objectives of this provision.

- States the Legislature's intent that this provision provide for an expedited review on the merits by the appellate court of an order transferring the minor from the juvenile court to a court of criminal jurisdiction.

Informal Supervision: Deferred Entry of Judgment:

Under current law, if a youth is at least 14 years of age and charged with any felony offense, they are presumptively ineligible for informal supervision (a pre-adjudication diversion program). The presumption can be overcome only in unusual cases where the court determines the interest of justice would be served. This can prevent the judge from offering a youth who made a first-time mistake the opportunity to have their case handled informally, even if all parties were to agree.

When a youth commits a crime in another county and is later transferred into their county of residence, the county of residence is procedurally restricted from offering deferred entry of judgment (DEJ – a post-adjudication, pre-disposition diversion program) to the youth. Courts in one county may be unaware of the services offered in the youth's county of residence. This procedural restriction prevents the court in the county of residence from evaluating and offering these services, as if the youth had committed the crime in-county.

SB 383 (Cortese)

Chapter 603, authorizes a court receiving a juvenile transfer case to determine whether an eligible minor is suitable for DEJ if the transferring court did not do so and expands the circumstances under which a minor is eligible for informal supervision. Specifically, this new law:

- Removes the restrictions making minors presumptively ineligible for informal supervision if they are alleged to have sold or possessed for sale a controlled substance, are alleged to have possessed specified controlled substances while on school grounds, or are alleged to have committed a felony offense when they were at least 14 years of age.

- Removes the requirement, that in order for a court to grant informal supervision to presumptively ineligible minors, other than those who are alleged to have committed specified violent or serious offenses, it must be an "unusual case" where the interests of justice would best be served. Requires instead that it simply be where the interests of justice would best be served.

- Prohibits finding a minor ineligible for informal supervision or finding the minor has failed to comply with the terms of informal supervision where they are unable

to pay victim restitution due to indigency.

- Provides that if a minor is eligible for DEJ, but the minor resides in a different county where the case will be transferred, as described, the court may adjudicate the case without determining the minor's suitability for DEJ to enable the court in the minor's county of residence to make that determination.

- Provides that if a minor is eligible for DEJ, but the court did not determine the minor's suitability for it, upon transfer of the case to the minor's county of residence, the receiving court may determine the minor's suitability before determining the disposition of the case and modify the transferring court's finding accordingly. Allows the receiving court to order a probation report regarding the minor's suitability for DEJ.

- Removes the notice requirement pertaining to using a minor's failure to comply with the terms of DEJ as the basis for finding the minor unfit to be tried in juvenile court.

PEACE OFFICERS

Peace Officers: Duty to Intercede:

Current law requires that every law enforcement agency have a policy that requires an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. That requirement was established by SB 230 (Caballero), Chapter 285, Statutes of 2019.

On May 25, 2020, George Floyd was arrested for allegedly using a counterfeit bill. During the arrest, the supervising officer knelt on Floyd's neck for over eight minutes while he was handcuffed with two additional officers further restraining him. A fourth officer stood watch to ensure that the gathering crowd did not become involved.

During his restraint, Floyd continued to plead that he could not breathe. After nearly six minutes, Floyd became motionless. One of the officers checked his pulse and informed the supervising officer (still kneeling on Floyd's neck) that he did not feel Floyd's pulse and asked the supervising officer if Floyd should be placed on his side, to which the supervising officer replied, "no." In fact, the supervising officer kept his knee on Floyd's neck for nearly a minute after the paramedics arrived as Floyd was motionless. Floyd died at the Hennepin County Medical Center emergency room.

AB 26 (Holden)

Chapter 403, requires use of force policies for law enforcement agencies to include the requirement that officers "immediately" report potential excessive force, and further describes the requirement to "intercede" if another officer uses excessive force. Specifically, this new law:

- Specifies that "intercede" includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer's excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer's name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.

- Prohibits retaliation against officers that report violations.

- Requires that an officer who fails to intercede be disciplined up to and including in the same manner as the officer who used excessive force.

- Prevents an officer who has had a finding of misconduct for use of excessive force from training other officers for three-years, as specified.

Law Enforcement: Use of Force:

When it comes to use of force by law enforcement against a member of the public, the general rule for how much force a law enforcement officer can use in response to a given situation is determined by a reasonableness test. In other words, was the amount and type of force reasonably necessary in light of the police need to prevent the person from doing whatever it was that they were doing at the time the use of force happened. Three important factors to that test are 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the person is actively resisting arrest or attempting to evade arrest by flight.

During the numerous protests and marches during 2020, protesters, bystanders, and journalists were injured by 'less lethal' weapons such as rubber bullets, beanbag rounds, and tear gas deployed by law enforcement groups attempting to control large, and sometimes dangerous crowds. When kinetic projectiles are fired at a close range, as seen in many of the recent protests, they can penetrate the skin, break bones, fracture the skull, and explode the eyeball, cause traumatic brain injuries, serious abdominal injury, internal bleeding and major blood vessel injuries. At longer distances, they can unintentionally injure bystanders and non-violent demonstrators. Tear gas and pepper spray can also have significant health impacts. The main effect of tear gas and other chemical agents is to irritate sensitive tissues in the nose, mouth and lungs and cause an intense burning pain in the eyes. However, if deployed in enclosed spaces, it can cause more severe injuries such as chemical burns, blurred vision, corneal erosions, ulcers, nerve damage and permanent vision loss.

AB 48 (Gonzalez, L.)

Chapter 404, provides that the use of kinetic energy projectiles or chemical agents, as defined, shall only be used by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training (POST) for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and in compliance with specified requirements. Specifically, this new law:

- Mandates that, except as specified, kinetic energy projectiles and chemical agents shall not be used by law enforcement agencies to disperse assemblies, protests, or demonstrations.

- Specifies that projectiles and chemical agents may only be deployed under limited circumstances. Specifically, they may only be deployed by a peace officer that has received training on their proper use by POST for crowd control when the use is objectively reasonable to defend against a threat to

life or serious bodily injury to an individual, including the peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control and with specified requirements.

- Disallows, specifically, the use of energy projectiles or chemical agents, even with the exemptions, solely due to a violation of an imposed curfew, a verbal threat, or noncompliance with a law enforcement directive.

- Permits only the commanding officer at the scene of an assembly to authorize the use of tear gas.

- Defines "kinetic energy projectiles" as any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

- Defines "chemical agents" as any chemical which can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

- Requires that each agency shall provide within 60 days of each incident, a summary on its website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent for crowd control. However, agencies may extend that period for 30-days, but no longer than 90-days from the time of the incident upon a showing of just cause.

Peace Officers: Hate Crimes Training:

According to the Los Angeles Police Department, hate crimes in the City of Los Angeles increased 40% from 2016 to 2019. Even more concerning is that data collected by the U.S. Department of Justice suggests that hate crimes occur 24 to 28 times more frequently than they are reported.

In 2018, the State Auditor released a report on hate crimes in California. Notably, the report found that law enforcement agencies failed to identify and report a significant percentage of hate crimes to the California Department of Justice (DOJ), and recommended that the DOJ provide better guidance to assist local law enforcement agencies with the identification and investigation of hate crimes and outreach to vulnerable communities.

Ultimately, the audit concluded that "law enforcement agencies' inadequate policies and the DOJ's lack of oversight have resulted in the underreporting of hate crimes in the DOJ's Hate Crime Database."

AB 57 (Gabriel)

Chapter 691, requires the basic peace officer course curriculum to include instruction on the topic of hate crimes, which shall incorporate a specified hate crimes video developed by the Commission on Peace Officer Standards and Training (POST). Specifically, this new law:

- Specifies that POST shall consult with subject-matter experts, including law enforcement agencies, civil rights groups, academic experts, and the DOJ in developing hate crimes training for law enforcement officers.

- Requires that POST shall incorporate the video course developed by the commission entitled "Hate Crimes: Identification and Investigation," or any successor video into the basic course curriculum and make the video course available to stream via the learning portal.

- Requires that each peace officers shall be required to complete the "Hate Crimes: Identification and Investigation" course, or any other POST-certified hate crimes course via the learning portal or in-person instruction.

- Specifies that POST shall develop and periodically update an interactive course of instruction and training for in-service peace officers on the topic of hate crimes and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crime incidents, and shall include updates on recent changes in the law, hate crime trends, and the best enforcement practices.

- Specifies that POST shall require the hate crimes course be taken by in-service peace officers every six years.

Peace Officers: Certification:

In California, peace officers currently only need to be 18 years of age and hold a high school diploma or pass an equivalent test. Neurological research shows that cognitive brain development, especially in areas affecting decision-making and judgment, continues well beyond age 18 and into early adulthood. Studies also show that college educated officers not only perform better overall but also rely on force less often.

AB 89 (Jones-Sawyer)

Chapter 405, raises the minimum age for peace officers to 21 and requires the Commission on Peace Officer Standards and Training (POST) and educational stakeholders develop a modern policing degree program. Specifically, this new law:

- Increases the minimum qualifying age from 18 to 21 years for specified peace officers for individuals who are not enrolled in an academy or employed as a peace officer in California by December 31, 2024.

- Requires the office of the Chancellor of California Community Colleges to develop a modern policing degree program with POST and other stakeholders and submit a report on the recommendations to the Legislature outlining a plan to implement the program on or before June 1, 2023.

- Requires the report to include recommendations to adopt financial assistance for students of historically underserved and disadvantaged communities with barriers to higher education access.

- Requires POST to adopt the recommended criteria within 2 years of when the office of the Chancellor of the California Community Colleges submits its report to the Legislature.

Law Enforcement Agencies: Funding, Acquisition and use of Military Equipment:

Local law enforcement agencies can and do purchase surplus military equipment from private companies or the federal government. The purchases are often made at discounted rates using federal grants, and can range from Mine Resistant Ambush Protected vehicles (MRAPs) to riot helmets. While the acquisition of military equipment by local law enforcement has become more common in recent years, the public is rarely aware of these purchases. There is concern that some of these purchases have been made in violation of public disclosure laws, and without a stated purpose of protecting the community they serve. Over the past year, military equipment has been used against peaceful protestors, with the decisions to implement this sensitive gear left to officers on the scene who may not have uniform protocols or training processes.

AB 481 (Chiu)

Chapter 406, requires law enforcement to follow specified procedures prior to the acquisition or use of surplus federal military equipment, including obtaining approval from a local governing body. Specifically, this new law:

- Requires specified law enforcement agencies to obtain approval of applicable governing bodies prior to taking actions related to funding, acquisition, or use of military equipment. The approval requires the adoption of a military equipment use policy by ordinance or at a regular meeting held pursuant to open meeting laws.

- Requires similar approval for the continued use of military equipment acquired prior to January 1, 2022.

- Allows the applicable governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines the military equipment meets specified standards.

- Requires the governing body annually review the ordinance under specified guidelines.

- Specifies that these provisions do not preclude counties or local municipalities from implementing additional requirements or standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

- Requires state agencies, as defined, to create military equipment use policies before engaging in certain activities, publish the policy on the internet, and provide a copy of the policy to the Governor, as specified.

- Requires state agencies to create military equipment use policies that purchased equipment prior to the effective date of the legislation.

California Science Center and Exposition Park: Security Officers:

California Science Center Museum security officers are responsible for keeping visitors safe. There is currently a memorandum of understanding (MOU) between the State of California and the Statewide Law Enforcement Association (CSLEA) which includes Science Center security officers. However, the MOU does not characterize Science Center security officers as peace officers.

The MOU states: "The State of California and the California Science Center agree to support legislation and any necessary SPB Board Item(s) to reclassify and/or reassign the Museum Security Officers and Supervising Museum Security Officers at the California Science Center Law Enforcement classifications."

AB 483 (Jones-Sawyer)

Chapter 411, grants peace officer status to security and safety officers at the California Science Center at Exposition Park. Specifically, this new law:

- Makes security officers at Exposition Park peace officers whose authority extends to any place in the state while performing their primary duties.

- Requires that these officers complete the Commission on Peace Officer Standards and Training certified regular basic training course.

Arrests: Positional Asphyxia:

In 2020, the Legislature passed, and the Governor signed, AB 1196 (Gipson) Chapter 324, Statutes of 2020, which codified a ban on choke holds in California and banned the use of carotid restraint in the state.

While current statewide use-of-force policy prohibits law enforcement from using any type of chokehold, including the carotid restraint, it does not explicitly address using a "personal body weapon" that reduces one's ability to breathe. There is no uniform statewide policy on restraints that cause positional asphyxia to ensure that they cannot be improperly applied.

AB 490 (Gipson)

Chapter 407, bans law enforcement agencies from authorizing techniques or transportation methods that involve a substantial risk of positional asphyxiation. Specifically, this new law:

- Prohibits law enforcement agencies from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia.

- Defines positional asphyxia as situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes the use of any physical restraint that causes the person's respiratory airway to be compressed or impairs the persons breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back, or positioning a restrained person without reasonably monitoring for signs of asphyxia.

Filing False Police Reports:

Under current state law, any peace officer who files a report with a false statement is guilty of filing a false police report. However, this current law is limited to the officer who knowingly makes and files a false report themselves, and does not include officers who make a false statement to the officer writing and filing the report. Thus, an officer who makes a false statement to the report-writing officer is not held responsible for their falsified statement, while the report-writing officer is not held responsible because the law does not apply to statements made by other officers.

In 2020, the Orange County District Attorney's Office conducted a review of 31 cases against deputy sheriffs involving systemic problems with report-writing and evidence-booking in the Orange County Sheriff's Department. During their review, the office found a deputy knowingly wrote and filed a false report so the officer making the false statement could not be prosecuted. Both were exempt from prosecution as the officer making the falsified statement was not the report-writing officer.

AB 750 (Jones-Sawyer)

Chapter 267, expands the crime of a peace officer making a false report to include any material statement made or cause to be made in a peace officer report or to another peace officer, regarding the commission or investigation of any crime, knowing the statement to be false. Specifically, this new law:

- States that every peace officer who, in their capacity as a peace officer, knowingly and intentionally makes, or causes to be made, any material statement in a peace officer report, or to another peace officer and the statement is included in a peace officer report, regarding the commission or investigation of any crime, knowing the statement to be false, is guilty of filing a false report, punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years.

- Specifies that this law does not apply to a peace officer writing or making a peace officer report, with regard to a false statement that the peace officer included in the report that is attributed to any other person, unless the peace officer writing or making the report knows the statement to be false and is including the statement to present the statement as being true.

Peace Officers: Deputy Sheriffs:

Penal Code section 830.1 subdivision (c) custodial deputy sheriffs classification is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code sections 831 and 831.5 are not peace officers, whereas a Penal Code section 830.1 subdivision (c) custodial deputy sheriff is a peace officer, who is employed to perform duties exclusively or initially relating to custodial assignments. One of the most significant differences between the section 830.1 subdivision (c) custodial deputy sheriffs and section 831 and 831.5 custodial officers is that as "peace officers" the custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights Act.

All counties may utilize Penal Code section 831 non-peace officer custodial officers; however, these officers may not carry firearms. However, there are limitations on the authority and use of Penal Code section 831.5 custodial officers. For example, Penal Code section 831.5 custodial officers may not perform strip searches (unless they are employed in Santa Clara County, Napa County, or Madera County), have limited arrest powers, and are limited in their "armed duty" roles. Another limitation on the use of both Penal Code section 831 and 831.5 non-peace officer custodial officers is that whenever 20 or more of such officers are on duty there must be at least one section 830.1 peace officer, who has received the full 664-plus hour basic training for deputy sheriffs, on duty at the same time to supervise the custodial officers.

AB 779 (Bigelow)

Chapter 588, adds the Counties of Del Norte, Madera, Mono, and San Mateo to the list of specified counties that employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments, including the custody, care, supervision, security, movement, and transportation of inmates, and are peace officers whose authority extends to any place in the state only while engaged in the performance of duties related to his or her employment.

Law Enforcement Agencies: Gangs:

Reports of gang activity within the ranks of law enforcement agencies in certain parts of the state have been widely reported. Recently, a research group located in Los Angeles released a detailed, comprehensive report about the "fifty year history" of how sheriff deputy gangs have negatively impacted policing in Los Angeles and infected the fairness of legal proceedings in Los Angeles Superior Court. There have also been allegations of improper, gang activity within the Vallejo Police Department and elsewhere. Only Los Angeles has a policy against the formation and participation in law enforcement gangs.

AB 958 (Gipson)

Chapter 408, defines law enforcement gangs and sets a statewide minimum standards for law enforcement agencies to discipline officers who participate in the activities of law enforcement gangs. Specifically, this new law:

- Defines a "law enforcement gang" as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

- Requires that law enforcement agencies maintain a policy that prohibits participation in a law enforcement gang and that makes violation of that policy grounds for termination. A law enforcement agency shall cooperate in any investigation into these gangs by an inspector general, the Attorney General, or any other authorized agency. Notwithstanding any other law,

local agencies may impose greater restrictions on membership and participation in law enforcement gangs, including for discipline and termination purposes.

- Provides that except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement gang to another law enforcement agency conducting a pre-employment background investigation of that former peace officer.

Transportation: San Francisco Bay Area Rapid Transit District (BART): policing responsibilities:

Specified transit districts, including BART, are authorized to issue prohibition orders denying passengers committing certain illegal behaviors entry onto transit vehicles and facilities. This authority applies to property, facilities or vehicles of a transit district.

Additionally, under current law, any person who enters or remains on any transit-related property without permission or whose entry, presence or conduct on the property interferes with, interrupts or hinders the safe and efficient operation of the transit-related facility is guilty of a misdemeanor punishable by a maximum of six months in the county jail. Specified acts committed with respect to the property, facilities, or vehicles of a transit district are infractions.

In June 2020, BART in partnership with the Santa Clara Valley Transportation Authority (VTA) extended service into Santa Clara County. The extension included two new stations - Milpitas and Berryessa/North San Jose. VTA was responsible for the design, engineering, and construction of the extension and maintains ownership of all facilities, equipment, and related infrastructure. The extension is managed through a comprehensive operations and maintenance agreement between BART and VTA, which includes policing responsibilities. BART Police patrol areas such as train cars, station platforms, and concourse areas. State law has not been updated to reflect this agreement.

AB 1337 (Lee)

Chapter 534, extends BART's authority to issue prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government, and expands the crime of entering or remaining on "transit-related property" without permission to include these properties.

Law Enforcement: Social Media:

When a person is first arrested they have had minimal involvement with the criminal justice system, and have not been afforded the constitutionally required safeguards of due process of law in order to be convicted of committing a crime. In fact, a peace officer may make an arrest upon a "probable cause" standard. Probable cause is a somewhat abstract concept, and courts generally have to determine whether there was probable cause to

arrest on a case-by-case basis. Probable cause is certainly not a standard that indicates that a person actually committed a crime.

The release of a mugshot on a law enforcement social media account tells not only the community, but any user of the internet that a particular named individual was arrested for an offense. It has the practical effect of giving the impression to the community, and anyone searching for the person, that they committed whatever crime they were arrested for. Additionally, unlike many records that can be sealed, a social media post by a law enforcement agency is there indefinitely until the agency decides to remove it.

AB 1475 (Low)

Chapter 126, prohibits law enforcement agencies from sharing booking photographs of persons arrested on suspicion of committing a non-violent offense on social media, with some exceptions. Specifically, this new law:

- Prohibits a police department or sheriff's office from sharing on social media booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any of the following circumstances exist:
    - The agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat; or
    - There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.
- Provides that if a law enforcement agency shares booking photos or the identity of an individual on social media, it shall remove the information from its social media page within 14-days, upon the request of the individual who is the subject of the social media post or the individual's representative unless they are a fugitive, imminent threat to others, or there are exigent circumstances necessitating the dissemination of the suspect's image, as specified.
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- Provides that a law enforcement agency that shares, on social media, a booking photo of an individual arrested for the suspected commission of a "violent crime" shall remove the booking photo from its social media page within 14 days, upon the request of the individual who is the subject of the social media post or the individual's representative, if the individual or their representative provides information that their record has been sealed, expunged, charges were dismissed, etc.

Decertification of Peace Officers: Civil Rights:

The Commission on Peace Officer Standards and Training (POST) was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. Their mandate includes establishing minimum standards for training of peace officers in California. As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. POST issues seven professional certificates to peace officers. The Basic Certificate is awarded to currently full-time peace officers of a POST-participating agency who have satisfactorily completed the prerequisite Basic Course requirement and the employing agency's probationary period. Other certificates that POST provides to officers include the Intermediate, Advanced, Supervisory, Management, Executive, and Reserve Officer.

Despite the certification process required for peace officers, California is one of only four states in the nation that does not have a process for their decertification when they engage in acts of misconduct. In 2003 POST lost the ability to deny or revoke an officers' certification by statute. Other professions in the State that require a large degree of public trust have robust organizations that may decertify persons from practicing in a field (e.g. the State Bar of California for attorneys, or the Medical Board of California for doctors).

The current practice in California has been for employing public safety agencies to do investigations into their own officers in order to determine whether their actions merit termination. There have been several problems reported about this system that make it difficult to hold officers accountable when they act in a way that is unbecoming of a peace officer. For example, some officers have apparently quit their job during the pendency of an investigation, waited until the public has lost interest in the case, and then applied for a new peace officer position with a new agency, thereby circumventing any discipline for their actions.

SB 2 (Braford)
Chapter 409, grants new powers POST to investigate and determine peace officer fitness and to decertify or suspend officers who engage in "serious misconduct"; makes changes to the Bane Civil Rights Act to limit immunity for peace and custodial officers, or public entities employing peace or custodial officers. Specifically, this new law:

- Requires POST to adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for suspension, revocation, or ineligibility for peace officer certification. The bill sets out a number of criteria that shall be included as serious misconduct.

- Grants POST the power to investigate and determine the fitness of any person to serve as a peace officer in the state of California and to audit any law enforcement agency that employs peace officers without cause at any

time by creating and empowering a new division.

- Creates the Accountability Division within POST to investigate and prosecute proceedings to take action against a peace officer's certification.

- Requires the Division to review and investigate grounds for decertification or suspension and make findings as to whether the grounds for action against an officer's certification exist.

- Requires the Division to notify the officer subject to decertification of their findings and allow the officer to request review.

- Creates the Advisory Board to provide recommendations to POST on actions to be taken against peace officers who commit serious misconduct and sets forth the membership qualifications and a three-year term of service.

- Requires that the Advisory Board hold public meetings to review the findings after an investigation made by the Division and to make a recommendation to POST.

- Requires that POST review and vote on the recommendations of the Advisory Board and if action is to be taken against an officer's certification, return the determination to the Division to commence formal proceedings before an administrative law judge consistent with the Administrative Procedures Act. Provides that the determination of the administrative law judge shall be subject to judicial review. Requires that POST notify the employing agency of the officer as well as the district attorney of the county in which the officer is employed of their decision.

- Declares certificates or proof of eligibility awarded by POST to be the property of POST and authorizes POST to revoke a proof of eligibility or certificate on grounds including the use of excessive force, sexual assault, making a false arrest, or participating in a law enforcement gang.

- Requires law enforcement agencies only employ peace officers with current, valid certification or pending certification.

- Directs POST to issue or deny certification, including a basic certificate or proof of eligibility to a peace officer.

- Requires POST to issue a proof of eligibility or basic certificate to persons employed as a peace officers on January 1, 2022, who do not otherwise possess a certificate.

- Makes all records related to the revocation of a peace officer's certification public and requires that records of an investigation be retained for 30 years.

- Eliminates specified immunity provisions for peace and custodial officers, or public entities employing peace or custodial officers sued under the Tom Bane Civil Rights Act.

Peace Officers: Release of Records:

SB 1421 (Skinner), Chapter 988, Statutes of 2018, amended Penal Code section 832.7 to loosen the protections afforded to specified peace officer records relating to certain use of force, sustained findings of sexual assault on a member of the public and pertaining to sustained findings of dishonesty in reporting, investigating, or prosecuting a crime. This gave the general public access to otherwise confidential police personnel records relating to serious police misconduct in an effort to increase transparency. Release of the personnel records specified in SB 1421 was intended to promote public scrutiny of, and accountability for, law enforcement. While SB 1421 was a hard fought breakthrough, the public's right to obtain records on police misconduct is limited. California remains an outlier when it comes to the public's right to know about those who patrol our streets and enforce our laws.

SB 16 (Skinner)

Chapter 402, expands the categories of personnel records of peace officers and custodial officers that are subject to disclosure under the California Public Records Act (CPRA), imposes certain requirements regarding the time frames and costs associated with CPRA requests, and provides that the lawyer-client privilege does not prohibit disclosure of factual information and billing records, as specified. Specifically, this new law:

- Expands the use of force category subject to disclosure under the CPRA to include:

    - A complaint alleging unreasonable or excessive force; and

    - A sustained finding that an officer failed to intervene against another officer who was using clearly unreasonable or excessive force.

- Adds new categories of disclosure under the CPRA for:

    - Records relating to an incident in which a sustained finding was made of conduct involving prejudice or discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran

status; and

- Records relating to sustained findings of unlawful arrests and unlawful searches.

- Provides that records otherwise subject to disclosure shall be released when an officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

- States that the identity of victims and whistleblowers may be redacted, in addition to witnesses and complainants, to preserve anonymity.

- Specifies that persons who request records subject to disclosure are responsible for the cost of duplication, but not the cost of editing and redacting the records.

- Clarifies that agencies may withhold records pending criminal or administrative investigations or proceedings, as specified, to include all records of misconduct or use of force. Eliminates the option to withhold records until 30 days after the close of a criminal investigation relating to the incident.

- Requires records subject to disclosure be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except where records are permitted to be withheld for a longer period due to specified conditions involving ongoing investigations.

- Provides that for purposes of releasing peace officer and custodial officer records under the CPRA, the lawyer-client privilege does not prohibit the disclosure of either of the following:

  - Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney; or

  - Billing records related to the work done by the attorney so long as those records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

- Specifies that this does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

- Makes the five-year minimum retention period for complaints against officers and any related reports and findings applicable to records in which there was not a sustained finding of misconduct. Requires retention for a minimum of 15 years for records where there was a sustained finding of misconduct. Provides that a

record shall not be destroyed while a request related to that record is being processed or litigated.

- Modifies the evidentiary limitation relating to law enforcement records in court proceedings so that courts cannot automatically exclude from discovery or disclosure information consisting of complaints concerning conduct that took place more than five years before the event that is the subject of the litigation.

- Requires each department or agency to request and review a peace officer's personnel file prior to hiring the officer.

- Requires every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency.

- Provides a phased-in implementation of this bill so that records that relate to the new categories of misconduct added by this bill and occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023.

Protests: Media Access:

When natural disasters such as earthquakes or wildfires occur, state law authorizes peace officers to close certain areas to the public during emergencies, but authorized members of the press are granted unique exemptions from these restrictions, as press provide information to the public on what is going on. Members of the press often need to put themselves in harm's way in order to evaluate the scene of an emergency and report.

Currently, members of the press are not allowed to interfere with, hinder, or obstruct emergency operations. Restrictions on media access may be imposed for only so long and only to such extent as is necessary to prevent actual interference. While California law protects members of the press from being stopped when entering closed areas during emergencies and natural disasters to gather information, these protections don't extend to protest events such as demonstrations, marches, protests, or rallies where individuals largely engage their First Amendment right to speech.

SB 98 (McGuire)

Chapter 759, provides that if peace officers close an area surrounding an emergency field post, command post, police line etc. at a demonstration, march, protest or rally pursuant to the First Amendment, duly authorized representatives of any news service, online news service, newspaper or radio or television station or network may enter the closed areas. Specifically, this new law:

- Provides that a peace officer or other law enforcement officer shall not intentionally assault, interfere with, or obstruct the reporter who is gathering, receiving, or processing information for communication to the public.

- Provides that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for the failure to disperse, violation of a curfew or resisting arrest. If the reporter is detained by a peace officer the representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

Peace Officers: Decertification:

California is one of only four states in the nation that does not have a process for peace officer decertification when they engage in acts of misconduct. In 2003, the Commission on Peace Officer Standards and Training (POST) lost the ability to deny or revoke an officers' certification by statute. Other professions in the State that require a large degree of public trust have robust organizations that may decertify persons from practicing in a field (e.g. the State Bar of California for attorneys, or the Medical Board of California for doctors).

The current practice in California has been for employing public safety agencies to do investigations into their own officers in order to determine whether their actions merit termination. There have been several problems reported about this system that make it difficult to hold officers accountable when they act in a way that is unbecoming of a peace officer. For example, some officers have apparently quit their job during a pending investigation, waited until the public has lost interest in the case, and then applied for a new peace officer position with a new agency, thereby circumventing any discipline for their actions.

SB 2 (Braford) Chapter 409, Statutes of 2021, will give POST the ability to investigate and determine peace officer fitness and to decertify or suspend officers who engage in "serious misconduct."

SB 586 (Bradford)

Chapter 429, corrects a technical drafting error by Legislative Counsel to SB 2 (Bradford) of this Legislative session regarding the collateral estoppel provision.

POST-CONVICTION RELIEF

Human Trafficking: Vacatur Relief for Victims:

In California, a victim of human trafficking may request that a court vacate a non-violent conviction that was a direct result of being a victim of human trafficking. By vacating the conviction, the remedy is more forceful than other forms of relief, such as an expungement. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed, as specified.

Despite this protection, victims of human trafficking often have difficulty finding a job if they have committed some types of offense that winds up on their record during the time they were a victim. It is therefore difficult to pay fines associated with these offenses. In some counties, the court waives this requirement and others do not; it is up to the discretion of the judge and their interpretation of code. Some have criticized this situation as a "catch 22," having a record prevents victims from building a successful life and finding meaningful employment, yet they cannot petition to have their records cleared until all fines and fees are paid in full. This barrier stops victims from addressing one of the most vital issues preventing them from starting a new life: clearing their record.

It has also been suggested that California law is unclear about specific procedures relating to how and when a victim of human trafficking can clear their record. For example, how long a victim has to file a petition to have their record cleared. Some have asserted that this ambiguity has caused confusion for survivors and the courts alike. Similar criticisms have been directed at the timeline for when a survivor must apply for vacatur relief, and whether the victim must appear in person to have their petition heard.

AB 262 (Patterson)

Chapter 193, provides additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. This law allows a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removes time limitations to bring the petition. Specifically, this new law:

- Specifies that with the exception of victim restitution, the collection of fines imposed as a result of a nonviolent offense that is the subject of the petition be stayed while the petition is pending.
- States that if the petition to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel.

- Specifies that if the petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means established by the court.

- States that a petition can be made and heard at any time after the person has ceased to be a victim of human trafficking, or at any time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later.

- Provides that the right to petition for relief on a non-violent conviction, as described in this bill, does not expire with the passage of time.

- Provides that if the court issues an order for vacatur relief it shall also order any law enforcement agency that has taken action or maintains records because of the offense including, but not limited to, departments of probation, rehabilitation, corrections, and parole.

- Requires that, if the court issues an order for vacatur relief, it shall also order specified entities to seal and destroy the arrest records within one year of the date of arrest, or 90 days from the date the court order for vacatur relief is granted, whichever is later.

- Requires agencies who are ordered to seal and destroy their records to comply with the order within one year of the date of the court order.

- Requires that, if the court issues an order for vacatur relief, it shall also provide the petitioner and their counsel with a copy of any form the court submits to any agency related to the sealing and destruction of arrest records.

Criminal Records: Automatic Conviction Record Relief:

If a person is convicted of an offense in a county where they do not live, their case is generally transferred to the county of residence if the person is on formal probation. If a receiving court reduces or dismisses their conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court's case file may be inaccurate. This can make it difficult for people to obtain employment and housing, among other things. Under current law, there is no statutory direction to ensure consistency among transferring and receiving courts on how records are maintained or updated when a reduction or dismissal occurs.

In 2018 and 2019, the Legislature passed significant automatic conviction record relief bills, which transferred the burden of seeking relief from a defendant-petitioner to government agencies. AB 1793 (Bonta) Chapter 993, Statutes of 2018, provided automated

relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. AB 1076 (Ting), Chapter 578, Statutes of 2018, required the Department of Justice (DOJ) to review convictions in its summary criminal history database for any crimes occurring after January 1, 2021, that may be eligible for expungement or removal from the database and to grant that relief automatically. The DOJ is required to inform the court having jurisdiction over criminal matters of all cases for which a complaint was filed in that jurisdiction and for which relief automatic conviction relief was granted.

A court may not disclose information concerning a conviction granted automatic conviction relief or a dismissal under this legislation except in limited circumstances. Because DOJ has disposition information only from the county of conviction (the transferring court), if a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file.

AB 898 (Lee)

Chapter 202, provides that if probation is transferred to another county, and a prosecutor or probation department in either county is seeking to file a petition to prohibit the DOJ from granting automatic conviction record relief, the petition must be filed in the county of current jurisdiction, and expands notice provisions regarding conviction record relief to include probation transfer cases. Specifically, this new law:

- Requires DOJ, in cases where probation has been transferred, to electronically submit notice of conviction record relief to both the transferring court and any subsequent receiving court.

- Requires a receiving court that reduces a felony to a misdemeanor or dismisses a conviction under specified provisions to provide a disposition report to DOJ with the original case number from the transferring court; DOJ must electronically submit a notice to the court that sentenced the defendant.

- Provides that if probation was transferred multiple times, DOJ must electronically submit notice to all involved courts.

- States that any court receiving notice of a reduction or dismissal must update its records to reflect the same.

- Prohibits a court receiving notification of dismissal, as specified, from disclosing information concerning the dismissed conviction except to the person whose conviction was dismissed or a criminal justice agency, as specified.

- States that a prosecuting attorney or probation department, in either the receiving county or transferring county, seeking to file a petition to prohibit the department

from granting automatic conviction record relief must file the petition in the county of current jurisdiction.

- Requires DOJ, in cases where relief is denied, to electronically submit notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts. Requires DOJ to provide similar notice if relief is subsequently granted.

- Requires the receiving court to provide a receipt of records from the transferring court, including the new case number.

- Provides that the transferring court must report to the DOJ that probation was transferred and identify the receiving court and new case number, if applicable.

Motion to Vacate: Immigration Consequences:

In response to the limitations on when a writ of habeas corpus can be filed, the Legislature enacted AB 813 (Gonzalez), Chapter 739, Statutes of 2016. AB 813 created Penal Code section 1473.7 to provide a process for individuals who are no longer in custody to challenge the legal validity of old convictions. Grounds for challenging an old conviction include when the person convicted failed to meaningfully understand, defend against, or knowingly accept the immigration consequences of pleading to a specific crime that could later become grounds for detention or deportation. Relief under Penal Code section 1473.7 applied only to convictions resulting after a guilty or no contest plea. It did not apply to convictions resulting after a trial where the person convicted failed to meaningfully understand the immigration consequences of taking their criminal case to trial.

AB 1259 (Chiu)

Chapter 420, expands eligibility for post-conviction relief based on prejudicial error damaging a person's ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction, to include convictions resulting after trial.

Post-Conviction Relief, Recall and Resentencing:

California's Penal Code allows for law enforcement authorities to request a person be resentenced if the circumstances have changed since the original sentencing and/or if the person's incarceration is no longer in the interest of justice. Although the requests for resentencing are made by law enforcement authorities, the ultimate decision to recall a person's sentence and reduce their punishment remains with the courts.

On January 1, 2020, the Committee on Revision of the Penal Code (Committee) was formed. The Committee examined the provisions regarding resentencing recommendation from law enforcement authorities. The Committee noted that although the Legislature had made expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many

trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the parties, appointing counsel, or giving parties an opportunity to be heard.

AB 1540 (Ting)

Chapter 719, requires the court to provide counsel for the defendant when there is recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence and creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above. Specifically, this new law:

- Recasts the provision on recall and resentencing and adds that the court may also vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the prosecutor.

- Requires when a resentencing request is from the Secretary of CDCR, BPH, a county correctional administrator, a district attorney, or the Attorney General, all of the following:

    - The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant; and

    - There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined

- States that resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection.
- Provides that if a hearing is held, the defendant may, at the request of counsel, appear remotely and the court may, at the request of the defendant's counsel, conduct the hearing through the use of remote technology.

Factual innocence:

Existing law allows a person who has been wrongfully convicted of a felony and imprisoned to file a claim for compensation at a rate of $140 per day of imprisonment. If a claimant has first obtained a declaration of factual innocence from a court, this finding is binding on the California Victim Compensation Board (CVCB). No hearing is required; the finding is sufficient grounds for payment of compensation. Similarly, if in a contested proceeding, the

court has granted a writ of habeas corpus or vacated a judgment, and has found that the person is factually innocent, that finding is binding on the CVCB and is sufficient grounds for payment of compensation without a hearing.

On the other hand, if in a contested or uncontested proceeding, the court has granted a writ of habeas corpus or vacated a judgment based on newly discovered evidence of fraud, misconduct, or false testimony of a government official, or newly discovered evidence of actual innocence, that finding is insufficient grounds in-and-of-itself for payment of compensation without a hearing. Instead, the claimant must obtain a finding of factual innocence, demonstrating by a preponderance of evidence that the crime with which they were charged was not committed at all or, if committed, was not committed by them.

SB 446 (Glazer)

Chapter 490, changes existing procedures related to wrongful conviction compensation claims by shifting the burden onto the state to prove that the claimant is not entitled to compensation where their charges were dismissed or they were acquitted on retrial following the granting of a petition for writ of habeas corpus or motion to vacate the judgment. Specifically, this new law:

- Specifies that if a state or federal court has granted a writ of habeas corpus, or if a state court has vacated a judgment, and in doing so made a finding of factual innocence under the standard that applies in those proceedings, that finding is binding on the CVCB.

- Makes a finding of factual innocence at an uncontested hearing, in addition to a contested hearing, binding on the CVCB for purposes of a wrongful conviction compensation claim.

- Provides that failure to move for, or obtain a finding of, factual innocence for purposes of wrongful conviction compensation does not preclude litigating factual innocence in any other proceedings based on principles of res judicata (re-litigating a claim) or collateral estoppel (re-litigating an issue).

- Provides that if a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate based on newly discovered evidence of fraud, misconduct, or false testimony of a government official, or newly discovered evidence of actual innocence, and the charges are subsequently dismissed, or the person was acquitted of the charges on a retrial, the CVCB shall, upon application of the person, and without a hearing, calculate the compensation and recommend to the Legislature that the sum be paid, unless the Attorney General establishes that the claimant is not entitled to compensation.

- Specifies that the Attorney General has 45 days from when the claim is filed to object in writing. The Attorney General may request a single 45-day extension of

time, upon a showing of good cause.

- Authorizes the CVCB to issue its recommendation for payment to the Legislature within 60 days after the allotted time period, if the Attorney General declines to object.

- Provides that upon receipt of the Attorney General's objection, the CVCB shall fix a time and place for the hearing of the claim, and shall provide notice to the claimant and the Attorney General at least 15 days prior to the fixed time for the hearing. At the hearing the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the Attorney General fails to meet this burden, the CVCB shall recommend to the Legislature payment of the compensation sum.

- States that a conviction which is reversed and dismissed is no longer valid, thus to establish that a claimant is not entitled to compensation, the Attorney General may not rely on the following facts to establish that the claimant is not entitled to compensation:

    - That the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted;

    - That the state defended the conviction against the claimant through court litigation; or,

    - That there was a conviction.

- States the Attorney General may not rely solely on the trial record to establish that the claimant is not entitled to compensation.

- Provides that a presumption does not exist in any other proceeding if the claim for compensation is denied, and no res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied.

- Makes other conforming changes.

Resentencing: Prior Conviction and Prior Prison Term Enhancement:

In 2017 and 2019, the Legislature and Governor repealed ineffective sentence enhancements that added three years of incarceration for each prior drug offense (SB 180, (Mitchell), Chapter 667, Statutes of 2017) and one year for each prior prison or felony jail term (SB 136, (Wiener), Chapter 590, Statutes of 2019). However, the reforms applied only prospectively to cases filed after these important bills became law. People in California jails and prisons who were convicted prior to these changes are still burdened by mandatory enhancements. Recently, the California Committee on Revision of the Penal Code unanimously recommended the retroactive elimination of these enhancements.

SB 483 (Allen)

Chapter 728, applies the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances retroactively. Specifically, this new law:

- States that any sentence enhancement imposed prior to January 1, 2018, for a specified prior drug conviction, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance, is legally invalid.

- States that any enhancement imposed prior to January 1, 2020, for a prior separate prison or county jail felony term, except if the enhancement was for a prior conviction of a sexually violent offense, as specified, is legally invalid.

- Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term that includes one of the repealed enhancements and to provide the name of each person, along with the person's date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

    - By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the repealed enhancement. For purposes of this deadline, CDCR shall consider all other enhancements to have been served first; and

    - By July 1, 2022, for all other individuals.

- Provides that upon receiving the information, the court shall review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

    - By October 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the repealed enhancement; and

    - By December 31, 2023, for all other individuals.

- Creates a presumption that resentencing shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.

Felony Murder: Resentencing:

There are legal theories under which a person may be convicted of murder even if they do not personally kill anyone or even if they do not intend to kill anyone. SB 1437 (Skinner), Chapter 1015, Statutes of 2018, changed the law by limiting the legal bases for convicting someone of the crime of murder. In particular, it limited the scope of vicarious liability (accomplice liability) for the crime of murder by changing the mens rea (mental state) requirement for that offense. SB 1437 provided that, except in limited circumstances, in order to be convicted of murder, a principal in a crime had to act with malice aforethought.

SB 1437 precluded malice from being imputed to a person based solely on their participation in a crime. SB 1437 made these changes to the felony murder rule and the natural and probable consequences doctrine retroactive. However, courts continue to debate whether SB 1437 applies to attempted murder and manslaughter. Courts have also grappled with various procedural aspects of implementing SB 1437, including the burden of proof and when to appoint counsel.

SB 775 (Becker)

Chapter 551, clarifies that persons who were prosecuted under a theory of felony murder or the natural and probable consequences doctrine, and who were convicted of attempted murder or manslaughter, may apply for the same resentencing relief as persons who were convicted of murder under the same theories. Specifically, this new law:

- Clarifies that the petition process through which qualifying defendants can have their convictions of felony murder or murder under the natural and probable consequences doctrine vacated and be resentenced, when specified conditions are satisfied, also applies to:
    - Attempted murder convictions under the natural and probable consequences doctrine; and
    - Manslaughter convictions.
- Provides that the petition process also applies to qualifying defendants who were convicted of murder under any theory in which malice is imputed based solely on the defendant's participation in a crime, when specified conditions are satisfied.
- Clarifies that upon receiving a petition in which the required information is set forth or readily ascertainable, the court shall appoint counsel if the petitioner has requested counsel.
- Provides that a single prima facie hearing on a petition is to be held after briefing has been submitted.

- Requires a court that declines to issue an order to show cause to provide a statement fully setting forth its reasons for declining to do so.

- Specifies that when the court issues an order to show cause and holds a hearing to determine whether the petitioner is entitled to relief, the rules of evidence apply at that hearing, except:

    - The court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed;

    - The court may consider the procedural history of the case recited in any prior appellate opinion; and,

    - The court must exclude evidence that was admitted in a preliminary hearing as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule.

- Clarifies that at the hearing, the burden is on the prosecution to prove beyond a reasonable doubt that the petitioner is guilty of murder or attempted murder under the current law.

- Clarifies that a finding that there is substantial evidence to support a conviction of murder, attempted murder, or manslaughter is insufficient to prove beyond a reasonable doubt that the petitioner is ineligible for resentencing.

- States that a person convicted of murder, attempted murder, or manslaughter, whose conviction is not final, may challenge the validity of that conviction on direct appeal rather than via the petition.

- Reduces the time a judge may place a resentenced petitioner on parole following completion of their sentence from three years to two years.

RESTRAINING ORDERS

Restraining Orders: Seizure of Firearms:

A Gun Violence Restraining Order (GVRO) prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession. Similarly, a person who is the subject of a domestic violence restraining order (DVRO) is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect.

Under existing law, law enforcement is currently only able to seize complete firearms from a person who is the subject of a GVRO or DVRO. The definition does not cover precursor parts of a weapon that can be readily converted to the functional condition of a finished frame or receiver. Additionally under existing law, ghost guns cannot be seized when a judge issues an emergency GVRO or DVRO.

AB 1057 (Petrie-Norris)

Chapter 682, includes in the definition of "firearm" a frame, receiver, or precursor part for the purpose of surrender or seizure pursuant to a (GVRO) and a domestic violence restraining order (DVRO). Specifically, this new law:

- Defines "firearm" for purposes of a GVRO and for purposes of a DVRO to include a frame or receiver of the weapon or a firearm precursor part.
- Delays implementation until July 1, 2022.

Expiration of Restraining Orders: Expungement:

The process of expungement allows defendants to get their cases dismissed once they have successfully completed probation or other sentence imposed by the court. When a conviction is expunged, the person is generally released from "all penalties and disabilities" resulting from the conviction. However, the law is silent on what should happen to criminal protective orders issued in serious cases such as domestic violence, stalking, and elder abuse where courts may issue a protective order for up to 10 years.

AB 1281 (Rubio, B.)

Chapter 209, provides that expungement of a criminal conviction does not release the defendant from specified, unexpired criminal protective orders issued by the court in the underlying case. Specifically, this new law:

- States that dismissal of an accusation or information following successful completion of probation or other sentence, or whose conviction have automatically been expunged, does not release the defendant from the terms and conditions of an unexpired criminal protective order that has been issued by the court in connection with an underlying offense for specified sex

offenses, domestic violence, elder or dependent adult abuse, or stalking.

- States that for all such dismissals, the protective order shall remain in full force and effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

Possession of Firearms: Domestic Violence Restraining Orders:

Research has shown that large numbers of men and women will experience some form of domestic violence during their lifetimes. In addition, the presence of a firearm in the home during an incident of domestic violence dramatically increases the risk of homicide. When a person is the subject of a domestic violence restraining order they automatically become a prohibited person, meaning they lose the ability to possess of firearm. California Rules of Court lay out the procedures courts should take to ensure relinquishment and to coordinate with law enforcement where necessary. However, there are reports that the Rules of Court have been implemented inconsistently throughout the State.

SB 320 (Eggman)

Chapter 685, codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order. Specifically, this new law:

- Requires the court to provide information about how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.

- Provides that a court holding a hearing on the matter of whether the respondent has relinquished any firearms or ammunition shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.

- States that violations of the firearms prohibition of any civil domestic violence restraining order shall be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

- States that if the results of the court's search of records and databases indicate that the subject of the order owns a registered firearm or if the court receives evidence of the subject's possession of a firearm or ammunition, the

court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm. If evidence of compliance is not provided as required, the court shall order the court of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.

- Requires that the court consider whether a party is a restrained person in possession or control of a firearm or ammunition when making specified determinations related to child custody and visitation matters.

- Requires the juvenile court to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition.

Electronic Filings and Appearance: Restraining Orders:

The Domestic Violence Prevention Act seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to create safety. The Act enables a party to seek a protective order, also known as a restraining order, which may be issued to protect a petitioner who presents reasonable proof of a past act or acts of abuse. California's gun violence restraining order laws are modeled after domestic violence restraining order laws, and they went into effect on January 1, 2016. A gun violence restraining order prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The COVID-19 pandemic reduced court operations and made court intervention more difficult, despite the increased need for access to the courts during the pandemic. Recognizing the critical nature of some domestic situations and the temporary nature of existing family law orders, the Judicial Council issued emergency rules to protect family law litigants, facilitate the electronic filing of protective orders, and allow court hearings to be conducted in a remote manner. These rules were temporary in nature.

SB 538 (Rubio)

Chapter 686, facilitates the filing of a domestic violence restraining order (DVRO) and gun violence restraining order (GVRO) by allowing petitions to be submitted electronically and hearings to be held remotely. Specifically, this new law:

- Requires, by July 1, 2023, that a court or court facility that receives petitions for domestic violence or gun violence restraining orders to permit those petitions to be submitted electronically during and after normal business hours.

- Provides that a party or witness may appear remotely at the hearing on a petition for a domestic violence or gun violence restraining order. Requires the superior court of each county to develop local rules and instructions for remote appearances and requires they be posted on its internet website.

- Requires that the superior court of each county provide, and post on its internet website, a phone number for the public to call to obtain assistance regarding remote appearances. Requires the phone number be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

- Provides that there is no fee for any filings related to a petition filed to obtain a domestic violence or gun violence restraining order.

SENTENCING

Human Trafficking and Domestic Violence Victims: Affirmative Defense and Sentencing:

According to the American Civil Liberties Union, almost 60% of female state prisoners nationwide and more than 90% of certain female prison populations experienced physical or sexual abuse prior to being incarcerated. Research shows that the effect of trauma and abuse drives girls into the juvenile and criminal justice systems. Yet, California's legal system typically overlooks the full context of the trauma that contributed to a survivor's actions or inactions.

AB 124 (Kamlager)

Chapter 695, requires courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expands the affirmative defense of coercion for human trafficking victims and extends it and vacatur relief to victims of intimate partner violence and sexual violence. Specifically, this new law:

- Requires the court to impose the lower term where any of the following was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances outweigh the mitigating circumstances so that imposition of the lower term would be contrary to the interests of justice:
    - The person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence (hereinafter "trauma");
    - The person is a youth, or was a youth, as defined, at the time of the commission of the offense (hereinafter "youthfulness"); or,
    - Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.
- Defines youthfulness as including any person under 26 years of age at the time of the offense.
- Requires the court, when recalling and resentencing an inmate, to consider whether trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.

- Allows the court, when recalling and resentencing a defendant who was under 18 years of age at the time of the offense, was sentenced to life without the possibility of parole, and who has been incarcerated for at least 15 years, to impose a term less than the original sentence if trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.

- States that in the interest of justice, and in order to reach a just resolution during plea negotiations, the prosecutor must consider, among other factors in support of a mitigated sentence, whether trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.

- Expands the existing affirmative defense of coercion for victims of human trafficking to apply to all crimes except violent felonies.

- Creates a new affirmative defense of coercion for victims of intimate partner violence or sexual violence which mirrors the human trafficking affirmative defense.

- Provides that the defendant may present evidence relevant to their identification as a victim of human trafficking or intimate partner violence or sexual violence that is contained in government reports, as specified, even if the peace officer did not identify them as a victim.

- Creates vacatur relief for victims of intimate partner violence or sexual violence which mirrors the vacatur relief for victims of human trafficking.

Sentencing: Violations Punishable in Multiple Ways:

In 1997, the Legislature eliminated judicial discretion in sentencing when a person may be subject to sentencing for multiple crimes for a single act, mandating that a judge impose the harshest sentence.

California has since taken steps to reverse the tough-on-crime policies of the past, which often constrained judges. In the last decade, lawmakers have enacted more than a dozen laws restoring the discretion of judges. Mandating the harshest sentence in every case deprives the judiciary of an important decision which it is in the best position to make — the court has heard and considered the facts and circumstances of the case and should have discretion to formulate an appropriate sentence.

AB 518 (Wicks)

Chapter 441, deletes the requirement that a defendant be punished under the provision that provides for the longest potential term of imprisonment and instead authorizes punishment under any of the applicable provisions.

Sentencing: Dismissal of Enhancements:

California's Penal Code has over 150 sentence enhancements that can be added to a criminal charge to increase the penalty for the underlying crime. While the application of an enhancement may appear straightforward, research reviewed last year by the Committee on the Revision of the Penal Code revealed inconsistency in their use. So, the Committee recommended providing guidance for judges considering sentence enhancements. According to the Committee's report:

> Sentence enhancements can be dismissed by sentencing judges. The current legal standard instructs judges to dismiss a sentence enhancement when "in furtherance of justice." Courts have not clarified or defined this standard, and the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an "amorphous concept." As a result, this discretion may be inconsistently exercised and underused because judges do not have guidance on how courts should exercise the power.
>
> The lack of clarity and guidance is especially concerning given demographic disparities in sentences. As noted, Three Strikes sentences and gang enhancements in California are disproportionately applied against people of color. People suffering from mental illness are also overrepresented among people currently serving life sentences under the Three Strikes law for nonviolent crimes.
>
> The Committee recommendation follows legal guidance provided to judges when exercising sentencing discretion in other contexts. For example, California law directs judges on how to exercise their sentencing discretion in the context of probation. Furthermore, our recommendation builds on existing California Rules of Court that guide judges on what circumstances they should consider in aggravation and mitigation in imposing a felony sentence, such as prior abuse, recency and frequency of prior crimes, and mental or physical condition of the defendant. The Committee recommendations are also informed by the California Surgeon General's recent annual report, which recommends that the criminal legal system implement policies and practices that address trauma in justice-involved youth and adults.
>
> Finally, the Committee believes that judges should retain authority to impose sentence enhancements in appropriate cases. The Committee's recommendation leaves to judges the authority to impose sentence enhancements to protect public safety. But providing guidance on how and when judges should evaluate the appropriateness of sentence enhancements would provide more consistency, predictability, and reductions in unnecessary incarceration while ensuring that punishments are focused on protecting public safety.

(Annual Report and Recommendations 2020, Committee on Revision of the Penal Code, pp. 40-41, fn. omitted.)

SB 81 (Skinner)
Chapter 721, requires the court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal is prohibited by an initiative statute. Specifically, this new law:

- Requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if its dismissal is prohibited by an initiative statute.
- Requires the court, when exercising discretion to dismiss an enhancement, to give great weight to any evidence offered by the defendant to prove any of the following mitigating circumstances:
    - Application of the enhancement would result in a discriminatory racial impact;
    - Multiple enhancements are alleged in a single case. In this case, all enhancements beyond a single enhancement shall be dismissed;
    - The application of an enhancement could result in a sentence of over 20 years, in which case the enhancement shall be dismissed;
    - The current offense is connected to mental illness;
    - The current offense is connected to prior victimization or childhood trauma, as defined;
    - The current offense is not a violent felony, as specified;
    - The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement;
    - The enhancement is based on a prior conviction that is over five years old; or,
    - Though a firearm was used in the commission of the current offense, it was inoperable or unloaded.
- Specifies that these provisions apply prospectively.

Sentencing: Imposition of Upper Term:

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province and not the fact finder's. The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the

jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the middle term to the upper term and, therefore, the sentence was constitutionally flawed.

SB 40 (Romero), Chapter 3, Statutes of 2007, was the initial legislative fix for this problem and it authorized a court to choose a sentence from the triad based on factors in aggravation and mitigation and required the court to state those reasons on the record. SB 40 also imposed a sunset date on the fix so that the Legislature could develop a more permanent solution. Following SB 40, several bills have extended the sunset date on the amended DSL to continue allowing judges the discretion to impose the lower, middle or upper term of imprisonment authorized by statute. The amended DSL will sunset on January 1, 2022.

SB 567 (Bradford)

Chapter 731, requires that the facts underlying any aggravating circumstances relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of facts and found to be true, or be admitted by the defendant. Specifically, this new law:

- Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as provided below.

- Allows a court to impose a sentence exceeding the middle term when there are circumstances in aggravation that justify a term of imprisonment exceeding the middle term and when those facts have been stipulated to by the defendant, or found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

- Requires the court, upon the request of the defendant, to bifurcate the trial on the circumstances in aggravation from the trial of charges and enhancements. Except the defendant cannot request a bifurcated trial on enhancements that are an element of the charged offense or where it is otherwise authorized by law.

- Provides that the jury shall not be informed of the bifurcated allegations until there has been a conviction on the charged offense.

- Specifies, however, that the court may consider the defendant's prior conviction in determining sentencing based on a certified record of conviction without submitting the prior conviction to a jury.

- States that there is a right to a jury trial with regards to enhancements imposed on prior convictions.

- Clarifies the requirements in existing law that the court shall set forth on the record the facts and reasons for choosing the sentence imposed and that the court may not impose an upper term by using the fact of any enhancement upon which the sentence is imposed.

SUPERVISED RELEASE

Supervised Release, Probation violations: Release Pending Hearing:

Most individuals arrested and charged with a crime are entitled to some form of pretrial release. However, this is not the case when it comes to individuals arrested for a probation violation. Probation currently operates under separate release procedures where individuals can be denied release pending a probation violation hearing even if the person presents no danger to the community and can be expected to show up for their court appearances.

Those accused of violating probation are often arrested on a no-bail warrant. When arrested on a no-bail warrant, a person is held in custody and cannot be released by jail authorities until disposition of the case, which can place an immense amount of pressure on limited jail resources costing taxpayers more than $1.8 billion in supervision violations.

AB 1228 (Lee)

Chapter 533, specifies that persons released from custody prior to a probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. Specifically, this new law*:*

- States that all persons released by a court at or after the initial hearing and prior to a formal probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person’s future appearance in court.

- Requires the court to make an individualized determination of the factors that do or do not indicate that the person would be a danger to the public, based on clear and convincing evidence, if released pending a formal revocation hearing.

- States that the court shall impose the least restrictive conditions of release necessary to provide reasonable protection of the public and reasonable assurance of the person’s future appearance in court.

- Prohibits the court from denying release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing, unless the person fails to comply with an order of the court, including an order to appear in court, in the underlying case.

- States that for a person on probation for felony conduct, the court shall not deny release before the court holds a formal revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

Controlled Substance Offenses: Probation Eligibility

Mandatory minimum sentences for drug crimes contribute to the crisis of mass incarceration. These laws are rooted in the war on drugs era, which has been disproportionately waged against people of color. Imposing mandatory minimum sentences, for nonviolent drug crimes, tie the hands of judges and force them to incarcerate individuals, even when judges believe community supervision would be appropriate. Evidence shows that mandatory minimum sentences for drug crimes do not improve public safety or reduce drug use or sales, but instead exacerbate existing racial disparities in our criminal justice system and disproportionately affect those suffering from mental illness.

SB 73 (Wiener)

Chapter 537, authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation could only be granted in the unusual case where the interests of justice would be served. Specifically, this new law:

Juveniles: Informal Supervision: Deferred Entry of Judgment:

Under current law, if a youth is at least 14 years of age and charged with any felony offense, they are presumptively ineligible for informal supervision (a pre-adjudication diversion program). The presumption can be overcome only in unusual cases where the court determines the interest of justice would be served. This can prevent the judge from offering a youth who made a first-time mistake the opportunity to have their case handled informally, even if all parties were to agree.

When a youth commits a crime in another county and is later transferred into their county of residence, the county of residence is procedurally restricted from offering deferred entry of judgment (DEJ – a post-adjudication, pre-disposition diversion program) to the youth. Courts in one county may be unaware of the services offered in the youth's county of residence. This procedural restriction prevents the court in the county of residence from evaluating and offering these services, as if the youth had committed the crime in-county.

SB 383 (Cortese)

Chapter 603, authorizes a court receiving a juvenile transfer case to determine whether an eligible minor is suitable for DEJ if the transferring court did not do so and expands the circumstances under which a minor is eligible for informal supervision. Specifically, this new law:

- Removes the restrictions making minors presumptively ineligible for informal supervision if they are alleged to have sold or possessed for sale a controlled substance, are alleged to have possessed specified controlled substances while on school grounds, or are alleged to have committed a felony offense when they were at least 14 years of age.

- Removes the requirement, that in order for a court to grant informal supervision to presumptively ineligible minors, other than those who are alleged to have committed specified violent or serious offenses, it must be an "unusual case" where the interests of justice would best be served. Requires instead that it simply be where the interests of justice would best be served.

- Prohibits finding a minor ineligible for informal supervision or finding the minor has failed to comply with the terms of informal supervision where they are unable to pay victim restitution due to indigency.

- Provides that if a minor is eligible for DEJ, but the minor resides in a different county where the case will be transferred, as described, the court may adjudicate the case without determining the minor's suitability for DEJ to enable the court in the minor's county of residence to make that determination.

- Provides that if a minor is eligible for DEJ, but the court did not determine the minor's suitability for it, upon transfer of the case to the minor's county of residence, the receiving court may determine the minor's suitability before determining the disposition of the case and modify the transferring court's finding accordingly. Allows the receiving court to order a probation report regarding the minor's suitability for DEJ.

- Removes the notice requirement pertaining to using a minor's failure to comply with the terms of DEJ as the basis for finding the minor unfit to be tried in juvenile court.

MISCELLANEOUS

Discovery: Victim and Witness Privacy:

The Penal Code prohibits the disclosure of a victim or witness's address or telephone number to a defendant, a member of the defendant's family, or anyone else unless specifically permitted by the court. This protects victims and witnesses from the risk of threats or harassment by defendants. However, a victim or witness's social security number, birthdate, and biometric information, are not similarly protected; a defendant or their family could theoretically request and receive that information without a court order.

AB 419 (Davies)

Chapter 91, expands the prohibition of an attorney disclosing personal identifying information to a defendant, members of the defendant's family, or anyone else, to include any personal identifying information, as defined, of the victim or witness. Specifically this new law:

- Defines "personal identifying information," by cross reference, as follows: "any address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person."

- Eliminates the misdemeanor penalty for willfully disclosing such information.

State Public Defender: Indigent Defense: Study:

Both the U.S. and California Constitutions guarantees an individual's right to counsel. States have developed systems for providing attorneys to defendants who are unable to pay for representation in criminal cases. In a recent Legislative Analyst's Office analysis, various statewide and county trends were identified that suggest that indigent defense is generally less resourced than district attorney offices. This jeopardizes the constitutional guarantee of adequate legal representation in criminal cases.

AB 625 (Arambula)

Chapter 583, requires the State Public Defender to manage a study to analyze and determine appropriate workloads for public defenders and indigent defense attorneys and submit their findings to the Legislature on or before January 1, 2024.

Collateral Recovery:

The Collateral Recovery Act (Act) provides for the licensing and regulation of repossessors. Among other things, the Act specifies standards for education, experience, and repossession procedures. A licensed repossession agency contracts with the legal owner of property to locate and recover personal property sold under a security agreement. In order to be eligible for licensure as a repossession agency, a business must designate a "qualified manager" who is in active control of the business and meets specified criteria, including passing a background check and passing an examination.

Outdated definitions in the Act lead to confusion and conflicting approaches in the repossession industry. Clarifications need to be made to ensure that consumers are protected, and that the profession is able to efficiently and effectively operate. In addition, the Act needs to be updated to clarify that notices that must be given by a licensed repossession agency to the debtor when collateral is repossessed may be delivered to debtor by email.

AB 913 (Smith)

Chapter 416, clarifies and updates definitions used in the Collateral Recovery Act to conform to current practices and align with other provisions of law. Specifically, this new law:

- Updates the definition of "deadly weapon" to include a "firearm."
- Updates the definition of "legal owner" to conform to the corresponding legal definition of "registered owner."
- Defines "repossession" as any of the following:
    - When the repossessor gains entry to the collateral;
    - The collateral becomes connected to a tow truck or to a repossessor's tow vehicle;
    - The repossessor moves the entire collateral present;
    - The repossessor gains control of the collateral; or,
    - The repossessor disconnects any part of the collateral from any surface where it is mounted or attached.

Infractions: Community Service:

Infractions are the lowest level criminal offense. Infractions do not subject a defendant to incarceration, or probation, and there is no right to a jury, or free defense counsel. Persons are usually cited via a "ticket." Infraction tickets are most commonly seen in traffic violations.

Currently, law allows judges to provide alternative payment options for individuals who would face financial hardship in paying fees related to an infraction. Options may include paying in installments or completing community service hours in lieu of the total fine. However, the community service alternative, which is intended to aide struggling families, can become inaccessible and overwhelming when the assigned hours for completion are steep. For low-income households, completing the community service hour requirement can become a hindrance to maintaining employment, attending school and/or caring for family.

SB 71 (McGuire)

Chapter 598, allows a court to permit a person to participate in an educational program as part of their community service to pay off the fine imposed for an infraction.

DNA Evidence:

After a sexual assault has occurred, a victim of the crime may choose to be seen by a medical professional, who collects evidence from the victim. The evidence collected is called a sexual assault kit.

In 2015, the Department of Justice created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database to collect data regarding the status of sexual assault kits in the possession of law enforcement agencies and crime laboratories. Until the end of 2017, law enforcement agencies and crime laboratories entered this data into the SAFE-T database on a voluntary basis. However, due to public and legislative interest in clearing backlogs of untested sexual assault evidence kits, the Legislature passed AB 41 (Chiu), Chapter 694, Statutes of 2017, which mandated reporting in the SAFE-T database of all victim sexual assault evidence kits collected as of January 1, 2018.

Upon a sexual assault victim's request, a law enforcement agency must inform them of the status of the DNA testing of their rape kit or other evidence from their case, if they request it. This process is not sensitive to the victim. A survivor should not have to contact law enforcement in order to find out the status of their sexual assault kit. Several other states have established online rape kit tracking portals.

SB 215 (Leyva)

Chapter 634, provides sexual assault survivors the ability to privately, securely, and electronically track their own sexual assault evidence kit through the SAFE-T database, on or before July 1, 2022.

Sexually Violent Predators: In Custody Offenses:

The Sexually Violent Predator Act establishes an extended civil commitment scheme for sex offenders who are about to be released from California Department of Corrections and Rehabilitation (CDCR), but are referred to the Department of State Hospitals (DSH) for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others.

Originally, a Sexually Violent Predator (SVP) commitment was for two years. In 2006, the SVP law was amended to create an indeterminate commitment, until it is shown the defendant no longer poses a danger to others.

When the SVP law changed from two-year commitments to indeterminate commitments, the laws governing screening of CDCR inmates as potential SVPs did not change. Existing law does not differentiate the screening process between a person in the custody of CDCR that has not been screened as an SVP and one that has already been determined to be a SVP and returned to CDCR custody for a crime committed while held in a state hospital as an SVP. As a result, a person who is committed to the state hospital as a SVP for an indeterminate term, who later receives a new prison commitment, would need to be re-screened by CDCR as an SVP after serving their new prison commitment.

SB 248 (Bates)

Chapter 383, requires the CDCR to refer a person directly to the DSH for an evaluation as to whether the person still meets the criteria as a SVP if the person is in CDCR for an offense committed while the person was previously serving an indeterminate term in DSH as an SVP. Specifically, this new law:

- Modifies the procedures for the SVP evaluations of individuals in the custody of CDCR for a new offense committed while they were serving an indeterminate term in a state hospital as an SVP as follows:
    - For persons in the custody of CDCR for the commission of a new offense committed while serving in a state hospital as an SVP, CDCR shall at least 6-months prior to the individual's scheduled release date, refer the person directly to the DSH for a full SVP evaluation;
    - If the inmate was received by CDCR with less than 9-months of their sentence to serve, or if the inmate's release date is modified by a judicial or administrative action, CDCR may refer the person for evaluation at a date that is less than 6-months prior to the inmate's scheduled release;
    - If both evaluators concur that the person has a diagnosed mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of State Hospitals shall forward a request for a court order, no less than 20-

calendar-days prior to the person's scheduled release date, authorizing a transfer of the individual from the CDCR to the DSH to continue serving the remainder of the individual's original indeterminate commitment as a sexually violent predator if the original petition has not been dismissed; and

- If the petition has previously been dismissed, the Director of State Hospitals shall forward a request for a new petition to be filed for commitment, as specified, no less than 20-calendar days prior to the scheduled release date of the person.

Code Enforcement Officers: Safety Standards:

Code enforcement officers enforce the regulations and standards of state and local governments. Because code enforcement officers are responsible for investigating violations and ensuring compliance with the law, they are in an adversarial position. As a result, code enforcement officers are often the victims of violence in the performance of their duties. In a 2001 survey of members of the California Association of Code Enforcement Officers, 63% of those who responded to the survey reported having been assaulted or threatened.

SB 296 (Limon)

Chapter 637, requires each local jurisdiction that employs code enforcement officers to develop code enforcement officer safety standards appropriate for the code enforcement officers employed in their jurisdiction.

Public Safety Omnibus:

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

SB 827 (Committee on Public Safety)

Chapter 434, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating generally to criminal justice laws. Specifically, this new law:

- Provides that AdvancED and Cognia are qualifying education programs for peace officers.

- Repeals a provision of law criminalizing the abandonment of an animal, as specified, and allowing its seizure.

  Repeals the provision of law that allows a juvenile offender who was direct filed upon in adult court and then ultimately convicted of something not

eligible for direct file to request that their sentencing/disposition be sent back to juvenile court.

- Deletes the prohibition on possession of a nunchaku and provides that the definition of billy, blackjack or slugshot does not include a nunchaku.

- Streamlines the process for a youth offender to be placed in the youth offender program at the Department of Corrections.

- Makes a number of technical amendments to update rules and regulations governing the Board of Parole Hearings.

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