ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2020 Legislative Summary

Reginald Byron Jones-Sawyer, Sr.
Chair

Tom Lackey
Vice Chair

Members
Rebecca Bauer-Kahan
Tyler Diep
Sydney Kamlager
Bill Quirk
Miguel Santiago
Buffy Wicks

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2020

MEMBERS

Reginald Byron Jones-Sawyer, Sr., Chair
Tom Lackey, Vice Chair
Rebecca Bauer-Kahan-Member
Tyler Diep, Member
Sydney Kamlager, Member
Bill Quirk, Member
Miguel Santiago, Member
Buffy Wicks, Member

COMMITTEE STAFF

Gregory Pagan, Chief Counsel
Cheryl Anderson Counsel
David Billingsley, Counsel
Matthew Fleming, Counsel
Nikki Moore, Counsel

Elizabeth V. Potter, Committee Secretary
Nangha Cuadros, Committee Secretary

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

TABLE OF CONTENTS (Continued)

BACKGROUND CHECKS

SB 905 (Archuleta) – Criminal history information requests

Under existing law, specified people whose job or volunteer position includes authority over children are required to get a criminal background check. Such a background check may require a person submit their home address along with their fingerprints. Some organizations have found that while people are happy to volunteer they are not comfortable submitting always conformable submitting private information to a governmental agency. This bill would provide that a residence address would not be required to be submitted to the DOJ in order to perform a background check.

Federal law authorizes the Federal Bureau of Investigation (FBI) to exchange Criminal History Record Information (CHRI) with officials of state and local governmental agencies for licensing and employment purposes. This can only be authorized by a state statute which has been approved by the Attorney General of the United States. In order make such an approval, the Attorney General of the United States looks for specific language in the state statute. If the language is not present then the Attorney General will not approve the sharing of CHR. Over the years, this Legislature has enacted various background check laws that require federal criminal history information. While many state background check statutes contain the appropriate language for approval by the Attorney General of the United States, not all do.

SB 905 (Archuleta) Chapter 191, provides that a residence address shall not be required to be submitted to the Department of Justice (DOJ) for a background check of an individual applying to work with a minor and makes a technical amendment to facilitate the processing of background checks. Specifically, this new law:

- Provides that the DOJ shall not require the applicant's residence address for any request for criminal records pertaining to a person applying for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care.

- Adds "universal citation" language into California law to clarify that all agencies and entities that are authorized to get background checks can also receive federal background check information.

CHILD ABUSE

AB 1145 (Garcia, C.) – Child Abuse: reportable conduct

The Child Abuse Neglect and Reporting Act (CANRA) was established in 1981 for the purpose of protecting children from abuse and neglect. The law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. Under CANRA, "child abuse" includes "sexual abuse," and "sexual abuse" consists of "sexual assault" or "sexual exploitation." The definition of sexual assault includes specific crimes involving sexual contact.

In 2013, the Department of Consumer Affairs (DCA) evaluated the issue of whether CANRA requires practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation. Relying on case law and the legislative intent behind CANRA, DCA concluded that mandated reporters are not required to report consensual sex between minors of like age for any of the conduct listed as sexual assault unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of child abuse. Because sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated the same as all other conduct listed in the section (i.e. Penal Code Section 288), only instances involving acts that are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there are indicators of abuse. (See DCA, Memorandum on the Evaluation of CANRA Reform Proposal Related to Reporting Consensual Sex Between Minors (Apr. 11, 2013).)

AB 1145 (C. Garcia), Chapter 180, eliminates the requirement that mandated reporters under CANRA report specified consensual sexual conduct involving minors by redefining the scope of "sexual assault." Specifically, this new law:

- Specifies that "sexual assault" shall not include specified consensual sexual conduct for purposes of mandated reporting of child abuse under CANRA.

- States that "sexual assault" for the purposes of CANRA does not include voluntary conduct for sodomy, oral copulation, or sexual penetration with a foreign object, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

AB 1963 (Chu) – Child abuse or neglect: mandated reporters

Under existing law, the Child Abuse and Neglect Reporting Act (CANRA) requires a mandated reporter, as defined, to report, whenever they, in their professional capacity or within the scope of their employment, have knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure of a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable by up to six months in a county jail, by a fine not to exceed $1,000, or

by both that imprisonment and fine.

AB 1963 (Chu), Chapter 243, makes a human resource employee of a business that employs five or more employees and, also, employs minors a mandated reporter of child abuse or neglect, and a person whose duties require direct contact with and supervision of minors in the performance of the minors duties in the workplace a mandated reporter of sexual abuse for the purpose of CANRA.

AB 2741 (Rubio, B.) – Children's advocacy centers

Children's Advocacy Centers (CAC's) are at the forefront of the fight against the abuse and exploitation of vulnerable individuals. CAC's are able to address a continuum of care for abused children with a wide breadth of personnel including law enforcement, child protection entities, and medical professionals. These services are a critical foundation to ensuring abused children receive the resources and protections they require. However, without a statutory definition of the services that must be provided at these centers, there can be confusion as to what services are available to the children and the families served by them.

AB 2741 (Blanca Rubio), Chapter 353, authorizes counties to create CAC's in order to implement coordinated multidisciplinary responses to child abuse. Specifically, this new law:

- Authorizes counties to utilize a CAC in order to implement coordinated multidisciplinary responses to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment.

- Requires any county that utilizes a CAC to coordinate its multidisciplinary response to meet the following standards:

    - The multidisciplinary team associated with the CAC shall consist of a representative of the CAC and at least one representative from each of the following disciplines: law enforcement, child protective services, district attorney's office, medical providers, mental health providers, victim advocate, or a representative of the CAC. Members of the multidisciplinary team may fill more than one role as needed;

    - The multidisciplinary team, as utilized through the CAC, shall have cultural competency and diversity training to meet the needs of the community it serves;

    - The CAC shall have a designated legal entity responsible for the governance of its operations. This entity shall oversee ongoing business practices of the CAC, including setting and implementing administrative policies, hiring and managing personnel, obtaining funding, supervising program and fiscal

operations, and long-term planning;

- The CAC shall provide a dedicated child-focused setting designed to provide a safe, comfortable and neutral place where forensic interviews and other CAC services can be appropriately provided for children and families;

- The CAC shall produce written protocols for case review and case review procedures. Additionally, the CAC shall use a case tracking system to provide information on essential demographics and case information;

- The CAC shall verify that members of the multidisciplinary team responsible for medical evaluations have specific training in child abuse or child sexual abuse examinations;

- The CAC shall verify that members of the multidisciplinary team responsible for mental health services are trained in, and deliver, trauma-focused, evidence supported, mental health treatments; and,

- The CAC shall verify that interviews conducted in the course of investigations are conducted in a forensically sound manner and occur in a child-focused setting designed to provide a safe, comfortable and dedicated for children and families.

- Provides that counties are not limited to utilizing only one CAC.

- States that the files, reports, records, communications, and working papers used or developed in providing services through a CAC are confidential and not public records.

- Authorizes a multidisciplinary team at a CAC to share with other multidisciplinary team members any information or records concerning the child and family and the person who is the subject of the investigation of suspected child abuse or neglect for the sole purpose of facilitating a forensic interview or case discussion or providing services to the child or family; provided, however, that the shared information or records shall be treated as privileged and confidential to the extent required by law by the receiving multidisciplinary team members.

CORRECTIONS

AB 732 (Bonta) – County jails: prisons: incarcerated pregnant persons

Existing law requires the Board of State and Community Corrections to establish minimum standards for state and local correctional facilities. The standards include specific ones for pregnant incarcerated persons. (Pen. Code, § 6030.) A 2016 report by the American Civil Liberties Union (ACLU) of California noted that "protections that address obstetric care, housing accommodations, and the presence of a support person during labor and delivery, among other issues, are confined to a section of the California Code of Regulations that applies to prisons but not jails." (*Reproductive Health Behind Bars in California, supra,* at p. 28.) The report recommended aligning policies to ensure that pregnant incarcerated individuals throughout California are treated equitably. (*Ibid*.) The report also recommended adopting policies with gender-neutral language. (*Ibid*.)

AB 732 (Bonta), Chapter 321, requires jails and prisons to offer incarcerated persons who are possibly pregnant or capable of becoming pregnant a pregnancy test, and requires specified medical treatment and services for incarcerated persons in county jail and state prison who are pregnant. Specifically, this new law:

- Provides that if an incarcerated person is identified as possibly pregnant or capable of becoming pregnant, the incarcerated person shall be offered the opportunity to voluntarily take a pregnancy test.

- Protects access to reproductive services, including abortions, and requires unbiased counseling on options that includes information on prenatal health care, adoption, and abortion.

- States that if an incarcerated person is confirmed to be pregnant, then an examination must be scheduled within seven days of arrival at the jail or prison.

- Provides a schedule for prenatal care visits.

- Mandates that pregnant incarcerated persons have access to prenatal vitamins and newborn care.

- Requires that a pregnant person incarcerated in a multi-tier housing unit be assigned to a lower bunk and lower tier housing.

- States that eligible pregnant incarcerated persons are to be given notice of and access to community-based programs serving pregnant, birthing, or lactating incarcerated persons.

- Prohibits the use of tasers, pepper spray, or any other chemical weapons on pregnant incarcerated persons.

- States that pregnant incarcerated persons who have used opioids prior to incarceration, or who are currently receiving methadone treatment, shall be offered medication assisted treatment with methadone or buprenorphine. They must also be given information on the risks of withdrawal.

- Requires each incarcerated pregnant person be referred to a social worker who must discuss options for placement and care of the child after delivery, assist with phone access to contact relatives for purposes of placement of the newborn, and oversee the placement.

- States that a pregnant incarcerated person shall be taken to a hospital for purposes of giving birth. They may also have a verified support person present during labor, childbirth, and during postpartum recovery while hospitalized.

- Requires postpartum examinations by a medical provider once the incarcerated person is back in jail or prison.

- Requires that incarcerated persons be provided materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

AB 3043 (Jones-Sawyer) – Corrections: confidential calls

The United States Constitution and the California Constitution guarantee the right to the assistance of an attorney for persons who are the subject of criminal prosecutions. The right to an attorney applies at the trial stage of a criminal proceeding and also during appeal. Communication with counsel is critical to the attorney-client relationship and necessary in order to provide adequate representation. Existing law provides inmates the right to communicate confidentially with a member of the California State Bar. However, it appears that this law is not considered applicable to telephone calls. Per California Department of Corrections and Rehabilitation (CDCR) regulations, an inmate who wishes to conduct a confidential telephone call with an attorney must navigate the application process by which an attorney must be approved in order to conduct a confidential call with his or her client. Once that application is completed and approved, CDCR retains the authority to approve or deny confidential calls on a case-by-case basis. Facilities differ in their procedures and willingness to accommodate confidential attorney calls.

AB 3043 (Jones-Sawyer) Chapter 333, provides that CDCR must approve an attorney's request to make a confidential call to a client they represent at a CDCR facility, and requires CDCR to provide the inmate at least 30 minutes per month, per inmate, per case, to make such calls unless the attorney or the inmate requests less time.

SB 132 (Weiner) – Corrections

Transgender inmates are particularly vulnerable to abuse from staff and other prisoners. According to the National Center for Transgender Equality, placing transgender inmates in facilities based on their anatomy "often put[s] them at extremely high risk of violence and abuse." (National Center for Transgender Equality, *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights* (Oct. 2018) p.14.) In a 2011-2012 survey conducted by the Bureau of Justice Statistics, almost 40% of transgender inmates reported that they experienced at least one incident of sexual victimization in state or federal prison in the last 12 months or since admission to the facility, if less than 12 months. (See U.S. Department of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12, Supplemental Tables: Sexual Victimization Among Transgender Inmate Adults* (Dec. 2014) p. 2.)

The Prison Rape Elimination Act (PREA) was passed by Congress in 2003. (34 U.S.C. § 30301 et seq.) Among the many stated purposes for the PREA are: to establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase of the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. (34 U.S.C. § 30302.) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape. (34 U.S.C. § 30306.) Regarding transgender or intersex inmates, the PREA requires that decisions about where the inmates will be housed should be made on a case-by-case basis, and their own views with respect to safety must be given serious consideration. (PREA Standard 115.42(c) & (e).)

CDCR has multiple policies in place regarding transgender inmates. Regarding CDCR housing, inmates identified or diagnosed by CDCR medical staff as transgender or as having gender dysphoria are referred to a classification committee for a determination of appropriate housing at a designated institution." (Cal. Code Regs., tit. 15, § 3269, subd. (g).)

> **SB 132 (Wiener), Chapter 182,** requires CDCR to take into account an incarcerated person's gender identity and perception of safety when determining where they will be housed. Specifically, this new law:
>
> - Finds that, nationwide, incarcerated transgender individuals experience exceptionally high rates of sexual victimization.
>
> - Requires CDCR, in a private setting, to ask each individual entering into the custody of the department to specify their gender identity, whether they identify as transgender, nonbinary, or intersex, and their gender pronoun and honorific.
>
> - Prohibits CDCR from disciplining an incarcerated individual for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to this provision.

- Provides that at any time, a person under the jurisdiction of CDCR may inform the facility staff of their gender identity, and facility staff must promptly repeat the process of offering the individual an opportunity to specify the gender pronoun and honorific most appropriate for staff to use in reference to that individual, as specified above.

- Requires CDCR staff, contractors, and volunteers to consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual.

- Defines "gender pronoun" as a third-person singular personal pronoun such as "he," "she," or "they."

- Defines "honorific" as a form of respectful address typically combined with an individual's surname.

- Requires that an individual incarcerated by CDCR who is transgender, nonbinary, or intersex, regardless of anatomy, be:

    - Addressed in a manner consistent with the incarcerated individual's gender identity;

    - Searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual's search preference;

    - Searched according to the gender designation of the facility where the incarcerated individual is housed if their preference or gender identity cannot be determined;

    - Housed at a correctional facility designated for men or women based on the individual's preference, including, if eligible, at a residential program for individuals under the jurisdiction of the department; and

    - Have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed, and the reasons for the department's denial of an alternative on this basis documented and shared with the individual.

- Provides that if CDCR has management or security concerns with an incarcerated individual's search or housing preference, CDCR must certify in writing a specific and articulable basis as to why the department cannot accommodate that search or housing preference.

- Prohibits CDCR from denying an individual's search or housing preference based on any discriminatory reason, including but not limited to:
    - The anatomy, including, but not limited to, the genitalia or other physical characteristics, of the incarcerated person;
    - The sexual orientation of the incarcerated person; or
    - A factor present among other people incarcerated at the preferred type of housing facility.
- Requires that an incarcerated individual's housing and placement be reassessed if the individual raises concerns for their health or safety at any time.

COURT HEARINGS

AB 1927 (Boerner-Horvath) – Witness testimony in sexual assault cases: inadmissibility in a separate prosecution

Existing law provides for the granting of immunity upon the petition of the prosecution and a finding by the court that such immunity is in the public interest. A victim or witness may be granted immunity for their testimony in a felony prosecution through a process known as "compelled testimony." In that procedure, the victim or witness must first formally refuse to testify or provide evidence, invoking the rationale that doing so may incriminate them. The court can then "compel" the person to testify, granting immunity from prosecution for their statements and evidence in the process. A grant of immunity means that the prosecution cannot use the witness' testimony again them in any future prosecution.

The compelled testimony procedure can be traumatic and complicated for victims and witnesses, who have often already been traumatized by virtue of being the witness to, or victim of, a sexual assault. Reports have shown that sexual assaults often go unreported and some believe that the procedure of compelled testimony may be a factor in deterring people from coming forward. This may be particularly true when drugs or alcohol are being consumed at or around the time of a sexual assault, such as one that takes place at a house party or on or around a college campus.

AB 1927 (Boerner Horvath), Chapter 241, provides that the testimony of a victim or witness in a felony prosecution for specified sex crimes that the victim or witness, at or around the time of crime, unlawfully possessed or used a controlled substance or alcohol inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol. Specifically, this new law:

- States that the testimony of a victim or witness in a felony prosecution for assault or burglary with the intent to commit specified sex crimes, sexual battery, rape, statutory rape, sodomy, oral copulation, lewd or lascivious acts, sexual penetration, that the victim or witness, at or around the time of the sex crime unlawfully possessed or used a control substance or alcohol is inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol.

- Specifies that evidence that the testifying witness unlawfully possessed or used a controlled substance or alcohol is not excluded from use in the felony prosecution for a violation or attempted violation of specified sex crimes.

- Specifies that evidence that a witness received use immunity for testimony is not excluded in the felony prosecution of a violation or attempted violation of specified sex crimes.

AB 2147 (Reyes) – Convictions: expungement: inmate hand crews

California Department of Corrections and Rehabilitation (CDCR), in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operates 43 conservation camps, commonly known as fire camps, located in 27 counties. All camps are minimum-security facilities and all are staffed with correctional staff.

Overall, there are approximately 3,100 inmates working at fire camps currently. All inmates receive the same entry-level training that CAL FIRE's seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program. An inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have "minimum custody" status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison and participation in rehabilitative programming.

Existing law provides procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her conviction dismissed or "expunged." Under existing law, an expungement does not relieve a person of the duty to disclose such a conviction when seeking licensing by the state. California has a large number of professions which require an individual to be licensed in order to engage in those activities. Inmate firefighters can have difficulty getting an EMT license because of their prior convictions. Without an EMT license, these same individuals can be excluded from jobs with firefighting organizations.

AB 2147 (Reyes), Chapter 60, allows a defendant who successfully participated in Fire Camp, as specified, to petition for a dismissal of their conviction, releasing the defendant from all penalties and disabilities resulting from the offense, except as provided. A defendant granted this dismissal shall not be required to disclose the conviction on an application for licensure by any state or local agency, with certain exceptions. Specifically, this new law:

- Provides that a defendant who has successfully participated in a Fire Camp, as determined by the Secretary of the Department of Corrections and Rehabilitation (CDCR), or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, and has been released from custody, the defendant is eligible for expungement relief, except that incarcerated individuals who have been convicted of specified serious crimes.

- Specifies that to be eligible for relief, the defendant is not required to complete the term of their probation, parole, or supervised release.

- States that expungement relief is available for all convictions for which the defendant is serving a sentence at the time the defendant successfully participates in one of the required programs.

- Provides that if all of the requirements are met, the court, in its discretion and in the interest of justice, may dismiss the accusations or information against the defendant and

the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which the defendant has been convicted, except as specified.

- Specifies that a defendant who is granted expungement shall not be required to disclose the conviction on an application for licensure by any state or local agency, except in an application for licensure by the Commission on Teacher Credentialing, a position as a peace officer, public office, or for contracting with the California State Lottery Commission.

AB 2512 (Stone, M.) – Death Penalty: person with an intellectual disability

In 2002, the United States Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability. (*Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*).) The Court left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id*. at p. 317, quoting *Ford v. Wainwright* (1986) 477 U.S. 399, 416-417.) The following year, the Legislature added Penal Code section 1376 to implement this decision. The intellectual disability standard set forth in the statute was derived from the two clinical definitions referenced by the Court in *Atkins*. (*In re Hawthorne* (2005) 35 Cal.4th 40, 44, 47-48.) Unfortunately, despite the fact that clinical standards have changed over the years, the statute has not been updated.

Regarding post-conviction relief, California Supreme Court guidance provides that a claim of intellectual disability should be raised by a petition for writ of habeas corpus. By its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings. However, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra*, 35 Cal.4th at p. 47.)

AB 2512 (Stone), Chapter 331, authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability. Specifically, this new law:

- States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

- Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

- Authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard.

- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

- Provides that the state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence.

- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

AB 2542 (Kalra) – Criminal procedure: discrimination

In 1987, the United States Supreme Court issued a landmark ruling on the issue of racial bias and prejudice in the American Court System – *McCleskey v. Kemp* (1987) 481 U.S. 279 (*McCleskey*). The *McCleskey* opinion has had far-reaching effects on a wide array of equal protection claims. “The precedent impairs constitutional challenges based on widespread racial disparities not just in capital sentencing, but in the criminal-justice system more widely; it requires defendants to prove discrimination on a specific basis, providing clear evidence that they were explicitly targeted because of their race. If police officers, prosecutors, judges, or others don’t openly acknowledge their own prejudices, defendants face a prohibitively high bar

fighting for their Fourteenth Amendment rights in court." (Neklason, The "Death Penalty's *Dred Scott*" Lives on, The Atlantic (June 14, 2019).)

AB 2542 (Kalra), Chapter 317, prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin. Specifically, this new law:

- Prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.
- Applies prospectively in cases in which a judgment has not been entered prior to January 1, 2021.
- States that a violation of this prohibition is established if the defendant proves, by a preponderance of the evidence, any of the following:
    - The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;
    - During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, except as specified, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful;
    - The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;
    - A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,
    - A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed.

- States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the prohibition.

- States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation, the court shall hold a hearing.

- Provides that at the hearing, evidence may be presented by either party, including but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert.

- States that the defendant shall have the burden of proving the violation by a preponderance of the evidence and at the conclusion of the hearing, the court shall make findings on the record.

- Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the prohibition that is in the possession or control of the state. Upon a showing of good cause, and if the records are not privileged, the court shall order the records to be released. Upon a showing of good cause, the court may permit the prosecution to redact information prior to disclosure.

- States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the prohibition, the court shall impose a remedy specific to the violation found from the following list of remedies:

    - Before a judgment has been entered, the court may reseat a juror removed by use of a peremptory challenge, declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges;

    - When judgment has been entered:

        - If the court finds that the conviction was sought or obtained in violation of the prohibition, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings;

        - If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the judgment and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,

        - If the court finds that only the sentence was sought, obtained, or imposed in violation of the prohibition, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed.

- Prohibits imposition of the death penalty where the court finds a violation of the prohibition.

- Provides that the remedies available under this provision do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

- Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system.

- Provides that these provisions do not prevent the prosecution of hate crimes.

- Defines "more frequently sought or obtained" or "more frequently imposed" as meaning that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity.

- Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the prohibition occurred. “Substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

- Defines "racially discriminatory language" as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

- Defines “state” as including the Attorney General, a district attorney, or a city prosecutor.

- Provides that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition.

- Specifies that a writ of habeas corpus may be prosecuted after a judgment has been entered based on evidence of a violation of the prohibition if the judgment was entered on or after January 1, 2021.

- States that a petition raising such a claim for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.

- Provides that if a petitioner already has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim of a violation of the prohibition.

- Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the prohibition or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

- Requires the court to review the petition and if the court determines the petitioner has made a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause.

- Provides that the defendant shall appear at the hearing by video unless counsel indicates that their presence is needed.

- States that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

- Makes conforming changes to allow a person who is no longer in custody to vacate a conviction or sentence based on a violation of the prohibition.

- Contains a severability clause.

- Makes a number of Legislative findings and declarations including that it is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California.

CRIMINAL JUSTICE PROGRAMS

AB 1304 (Waldron) – California MAT RE-entry Incentive Program

In 2016, Governor Brown approved SB 843 which required the California Department of Corrections and Rehabilitation (CDCR), under the direction of the Undersecretary of Health Care Services, to develop and implement a three-year medically assisted treatment (MAT) pilot program at one or more of CDCR's institutions. The program operated at three state prisons.

The original three pilots were the foundation for what is now CDCR's Integrated Substance Use Disorder Treatment Program (ISUDT). The elements of the ISUDT program -- (1) intake assessments, (2) cognitive behavioral interventions (aka DRP programming), (3) supportive housing, (4) MAT, (5) enhanced pre-release processes with American Society of Addiction Medicine assessments, and (5) transition to community – are operating statewide with over 4580 program participants receiving MAT statewide.

Most individuals in state prisons will eventually return to communities, and there is a need to enable and encourage their successful reintegration. The addition of MAT for the treatment of justice-involved individuals increases the likelihood of successful treatment and reduces recidivism. (National Sheriffs' Association, *Reducing Recidivism with Medication Assisted Treatment in Jails* (Nov. 2017) p. 1.)

AB 1304 (Waldron), Chapter 325, establishes the California MAT Re-Entry Incentive Program which makes a person on parole under the supervision of CDCR, except as specified, eligible for a reduction in the period of parole if the person successfully participates in a substance abuse treatment program, as specified, including medication-assisted treatment. Specifically, this new law:

- Establishes the California MAT Re-Entry Incentive Program.
- Makes a person eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction, if the person meets all of the following requirements:
    - The person has been released from state prison on parole supervision by CDCR;
    - The person has been enrolled in, or successfully participated in, an institutional substance abuse program; and,
    - The person successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food and Drug Administration approved MAT, and, whenever possible, is provided through a program licensed or certified by the State Department of Health Care Services, including federally qualified health

centers (FQHS), community clinics, and Native American Health Centers.

- Specifies that the sentence reduction shall be contingent upon successful participation in treatment, as determined by the treatment provider.

- Provides that this incentive program does not apply to the following:

    - Inmates who have been sentenced for a violent sex offense, as specified;

    - Inmates who have been convicted of an offense for which the inmate has received a life sentence for kidnapping during the course of a carjacking, with the intent to commit a specified sex offense, or other specified sex offenses; or,

    - Inmates who have been convicted of and are required to register as a sex offender for the commission of a specified sex offense in which one or more of the victims of the offense was a child under 14 years of age.

- Makes operation of this program contingent upon the appropriation to the State Department of Health Care Services of funds received pursuant to a federal Substance Abuse and Mental Health Services Administration (SAMHSA) opiod use disorder or substance use disorder grant. To the extent consistent with the terms of the grant, the sum of one million dollars ($1,000,000) of the grant funds appropriated for these purposes shall be allocated to CDCR for use in implementing this program.

- Requires CDCR to collect data and analyze utilization and program outcomes and to provide that information in the report required pursuant to the medication assisted treatment for substance abuse pilot program.

AB 2741 (Rubio, B.) – Children's advocacy centers

Children's Advocacy Centers (CAC's) are at the forefront of the fight against the abuse and exploitation of vulnerable individuals. CAC's are able to address a continuum of care for abused children with a wide breadth of personnel including law enforcement, child protection entities, and medical professionals. These services are a critical foundation to ensuring abused children receive the resources and protections they require. However, without a statutory definition of the services that must be provided at these centers, there can be confusion as to what services are available to the children and the families served by them.

AB 2741 (Blanca Rubio), Chapter 353, authorizes counties to create CAC's in order to implement coordinated multidisciplinary responses to child abuse. Specifically, this new law:

- Authorizes counties to utilize a CAC in order to implement coordinated multidisciplinary responses to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment.

- Requires any county that utilizes a CAC to coordinate its multidisciplinary response to meet the following standards:

    - The multidisciplinary team associated with the CAC shall consist of a representative of the CAC and at least one representative from each of the following disciplines: law enforcement, child protective services, district attorney's office, medical providers, mental health providers, victim advocate, or a representative of the CAC. Members of the multidisciplinary team may fill more than one role as needed;

    - The multidisciplinary team, as utilized through the CAC, shall have cultural competency and diversity training to meet the needs of the community it serves;

    - The CAC shall have a designated legal entity responsible for the governance of its operations. This entity shall oversee ongoing business practices of the CAC, including setting and implementing administrative policies, hiring and managing personnel, obtaining funding, supervising program and fiscal operations, and long-term planning;

    - The CAC shall provide a dedicated child-focused setting designed to provide a safe, comfortable and neutral place where forensic interviews and other CAC services can be appropriately provided for children and families;

    - The CAC shall produce written protocols for case review and case review procedures. Additionally, the CAC shall use a case tracking system to provide information on essential demographics and case information;

    - The CAC shall verify that members of the multidisciplinary team responsible for medical evaluations have specific training in child abuse or child sexual abuse examinations;

    - The CAC shall verify that members of the multidisciplinary team responsible for mental health services are trained in, and deliver, trauma-focused, evidence supported, mental health treatments; and,

    - The CAC shall verify that interviews conducted in the course of investigations are conducted in a forensically sound manner and occur in a child-focused setting designed to provide a safe, comfortable and dedicated for children and families.

- Provides that counties are not limited to utilizing only one CAC.

- States that the files, reports, records, communications, and working papers used or developed in providing services through a CAC are confidential and not public records.

- Authorizes a multidisciplinary team at a CAC to share with other multidisciplinary team members any information or records concerning the child and family and the person who is the subject of the investigation of suspected child abuse or neglect for the sole purpose of facilitating a forensic interview or case discussion or providing services to the child or family; provided, however, that the shared information or records shall be treated as privileged and confidential to the extent required by law by the receiving multidisciplinary team members.

AB 3099 (Ramos) – Department of Justice: law enforcement assistance with tribal issues

According to most recent census data, California is home to more people of Native American and Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes and over 70 non-federally recognized tribes in California. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian country."

In passing Public Law 83-280, Congress expressly granted California concurrent criminal jurisdiction with California's tribal governments over specified areas of Indian country within the state for the enforcement of statewide criminal laws. A lack of consistency in the application of Public Law 280 on California Indian country currently exists statewide as advocates argue that this creates jurisdictional uncertainty for local law enforcement and California tribes with Indian land. This uncertainty applies specifically in the context of missing persons.

Existing law establishes a California missing persons registry, in addition to other missing persons networks and databases that are designed to assist law enforcement in their investigations of missing and unidentified persons in California. However, there is public concern that when crimes are committed on these lands, they are not properly documented and investigated

AB 3099 (Ramos) Chapter 170, requires the Department of Justice, upon funding, to provide technical assistance relating to tribal issues to local law enforcement agencies, as specified, and tribal governments with Indian lands. Specifically, this new law:

- Provides that to improve upon the implementation of concurrent criminal jurisdiction on California Indian lands, the Department of Justice shall, subject to an appropriation by the Legislature, in a manner to be prescribed by the department, provide technical assistance to local law enforcement agencies that have Indian lands within or abutting their jurisdictions, and to tribal governments with Indian lands, including those with and without tribal law enforcement agencies, to include, but not be limited to, all of the

following:

- Providing guidance for law enforcement education and training on policing and criminal investigations on Indian lands that supports consistent implementation of California's responsibilities for enforcing statewide criminal laws on Indian lands that protect the health, safety, and welfare of tribal citizens on Indian lands;

- Providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools for conducting police investigations of statewide criminal laws on Indian lands;

- Providing educational materials about the complexities of concurrent criminal jurisdiction with tribal governments and their tribal law enforcement agencies, specifically to tribal citizens on Indian lands, including information on how to report a crime, and information relating to victim's rights and victim services in California; and,

- Facilitating and supporting improved communication between local law enforcement agencies and tribal governments or tribal law enforcement agencies for purposes of consistent implementation of concurrent criminal jurisdiction on California Indian lands.

- States that to address the issues involving missing and murdered Native Americans in California, particularly missing and murdered Native American women and girls, the department shall, subject to an appropriation by the Legislature, in a manner to be prescribed by the department, conduct a study to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls. The study shall include all of the following:

    - A determination of the scope of the issue of missing and murdered Native Americans in California, particularly women and girls;

    - Identification of barriers in reporting or investigating missing Native Americans in California, particularly women and girls; and,

    - Ways to create partnerships to increase cross-reporting and investigation of missing Native Americans in California, particularly women and girls, between federal, state, local, and tribal governments, including tribal governments without tribal law enforcement agencies.

- States that as part of the study, the department shall conduct outreach to tribal governments in California, Native American communities, local, tribal, state, and federal

law enforcement agencies, and state and tribal courts.

- Requires the department to submit a report to the Legislature upon completion of the study. The report shall include all of the following:
    - Data and analysis of the number of missing Native Americans in California, particularly women and girls;
    - Identification of the barriers to providing state resources to address the issue; and,
    - Recommendations, including any proposed legislation, to improve the reporting and identification of missing Native Americans in California, particularly women and girls.

AB 3234 (Ting) – Public Safety

Multiple diversion programs exist under current law, including for misdemeanors generally. (See Pen. Code, §§ 1001 et seq., 1001.50 et seq.) The Legislature has authorized the prosecution to approve a local misdemeanor diversion program. No program can continue without the prosecution's approval, and no person can be diverted unless the program has been approved by the prosecution. (Pen. Code, §§ 1001.2, subd. (b), 1001.50, subd. (b).) The prosecution is not, however, authorized to determine whether a particular defendant is diverted. (*Ibid.*)

The Legislature has not provided the trial courts with a general grant of power to institute diversion programs on their own initiative. (*People v. Tapia* (1982) 129 Cal.App.3d Supp. 1, 9.) A trial court cannot grant diversion to a defendant, outside a diversion program mandated by the state or by local government, and over the objection of the prosecuting attorney. (*Ibid.*, *People v. Marroquin* (2017) 15 Cal.App.5th Supp. 31, 37.)

In 2017, the Legislature passed AB 1448 (Weber), Chapter 676, which established the Elderly Parole Program to be administered by the Board of Parole Hearings (BPH). (Pen. Code, § 3055.) Under the Elderly Parole Program, inmates who are 60 years of age or older and have served 25 years of continuous incarceration on their current sentence are to have their parole suitability considered. (Pen. Code, § 3055, subd. (a).)

The Elderly Parole Program does not apply to an individual who has been sentenced under the "Three Strikes" Law, who has been sentenced to life in prison without the possibility of parole or death, or who has been convicted of first-degree murder of a peace officer, as specified. (Pen. Code, § 3055, subds. (g) & (h).) When considering release of an individual under the program, the BPH must consider "whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence." (Pen. Code, §, 3055, subd. (c).)

AB 3234 (Ting), Chapter 334, creates a court-initiated misdemeanor diversion program and lowers the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20 years. Specifically, this new

law:

- Authorizes a superior court judge to offer diversion to a person charged with a misdemeanor over the objection of a prosecuting attorney, except that a defendant may not be offered diversion for any of the following currently charged offenses:
    - Any offense for which a person, if convicted, would be required to register as a sex offender;
    - A domestic violence offense; or
    - A stalking offense.
- Provides that a judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.
- States that if the defendant has complied with the imposed terms and conditions, at the end of the diversion period, the judge must dismiss the action against the defendant.
- Requires the court to provide the defendant notice and hold a hearing to determine whether criminal proceedings should be reinstated if it appears to the court that the defendant is not complying with the terms and conditions of diversion. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.
- Provides that in order for a defendant who is diverted pursuant to this provision to have their action dismissed, they must complete all conditions ordered by the court, make full restitution, and comply with any court-ordered protective order, stay-away order, or order prohibiting firearm possession. However, a defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- States that upon successful completion of the court-ordered terms, conditions, or programs of diversion, the arrest upon which diversion was imposed shall be deemed to never have occurred. The defendant may indicate in response to any question concerning their prior criminal record that they were not arrested.
- Prohibits, without the defendant's consent, using a record pertaining to an arrest resulting in successful completion of diversion in any way that could result in the denial of any employment, benefit, license, or certificate.
- Requires the defendant be advised that, regardless of their successful completion of diversion, the arrest on which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that,

notwithstanding the foregoing provisions, the defendant is not relieved of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined.

- Lowers the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age instead of 60 years of age and who have served a minimum of 20 years of continuous incarceration instead of a minimum of 25 years of continuous incarceration.

- Provides that by December 31, 2022, the board shall complete all elderly parole hearings for individuals who were sentenced to determinate or indeterminate terms and who, on the effective date of the bill that added this subdivision, are or will be entitled to have their parole suitability considered at an elderly parole hearing before January 1, 2023.

SB 903 (Grove) – Grand Theft: Agricultural Equipment

Previous legislation (SB 224 (Grove), Chapter 119, Statutes of 2019) provided that in counties participating in a rural crime prevention program, the proceeds of any fine imposed for conviction of the crime of grand theft of agricultural equipment shall be allocated to the Central Valley Rural Crime Prevention Program or the Central Coast Rural Crime Prevention Program.

The State Controller recently indicated these funds cannot be distributed without correcting a cross reference to the existing Central Valley and Central Coast Rural Crime Prevention Program fund distribution formula.

SB 903 (Grove), Chapter 232, requires the proceeds of a fine imposed for grand theft involving agricultural equipment be allocated according to the Rural Crime Prevention Program schedule, which will give the state Controller the ability to properly distribute the funds.

SB 1276 (Rubio, S.) – The Comprehensive Statewide Domestic Violence Program

The Legislature made findings that the problem of domestic violence is of serious and increasing magnitude; and that existing domestic violence services are underfunded and that some areas of the state are unserved or underserved. These structural issues have been compounded since March 2020, when impacts to fundraising and volunteering began due to COVID-19. At the same time, reports of incidents of domestic violence began to rise.

Under existing law, a "domestic violence shelter service provider" is "a victim services provider that operates an established system of services providing safe and confidential emergency housing on a 24-hour basis for victims of domestic violence and their children, including, but not limited to, hotel or motel arrangements, haven, and safe houses" To receive state funding, existing law requires that for these centers to receive state dollars, they must show a cash or an

in-kind match of at least 10 percent of the funds received under the law.

As a result of the stay at home orders, and limitations on public gatherings which began in March 2020, DVSSPs have been unable to host traditional fundraising events. Additionally, the current economic recession has negatively impacted giving by donors. During the COVID-19 crises response, the Governor temporarily suspended the matching requirement in emergency regulations.

> **SB 1276 (Rubio), Chapter 249**, eliminates the requirement that state funding be matched by 10 percent to qualify a local domestic violence shelter service provider with funding pursuant to this section.

CRIMINAL OFFENSES

AB 901 (Gipson) – Juveniles

The school-to-prison pipeline refers to policies and practices that push students out of school and into the juvenile and criminal justice systems. The policies and practices including zero-tolerance discipline policies, policing in schools, and court involvement for minor offenses in school.

One strategy to mitigate the school-to-prison pipeline is for schools, districts, and states to evaluate their disciplinary policies and make punitive consequences, such as ticketing, fines imposed on students and/or their parents and guardians, or any punishment that removes students from the classroom, a last resort. Punitive police can be replaced with systems that support students in an effort to reduce students encountering the legal system.

AB 901 (Gipson), Chapter 323, repeals the jurisdiction of the juvenile criminal court over minors who habitually refuse to obey the reasonable and proper orders or directions of school authorities and provides direction as to when probation departments can engage with minors that are not on probation. Specifically, this new law:

- Repeals the jurisdiction of the juvenile criminal court over minors who habitually refuse to obey the reasonable and proper orders or directions of school authorities.

- Requires a peace officer to refer a minor who persistently or habitually refuses to obey the reasonable and proper orders or directions of the minor's parents or has four or more truancies within one school year to a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services.

- States that services offered to minors or minor's parents or guardians who are not on probation are voluntary and shall not include probation conditions or consequences as a result of not engaging in or completing those programs or services.

- Directs probation to refer minors to services provided by a health agency, community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services, as specified.

- Specifies that a county board of education may enroll pupils in a county community school when the pupil is between 12 and 17 years of age, inclusive, and has been reported as a truant four or more times per school year or is a chronic absentee, as specified.

AB 1775 (Jones-Sawyer) – False reports and harassment

Existing law prohibits the use of a telephone for the purpose of annoying or harassing an individual through the 911 line. It also provides that it is unlawful to knowingly use the 911 telephone system for any reason other than an emergency.

Current law on false police reporting does not address the growing number of cases in which peace officers are summoned to violate the rights of individuals for engaging in everyday activities, such as those individuals essentially living their lives. Recently, media reports people calling 911 and making a false claim to harass a person, and a number of these incidents it appears by the language used that the harassment was in part because the person was a member of a protected class. In considering this issue, the Legislature declared their intent to end instances of 911 emergency system calls that are aimed at violating the rights of individuals based upon race, religion, sex, gender expression, or any other protected class.

The Legislature declared that all Californians, including people of color, should have the liberty to live their lives, and to go about their business, without living under the threat or fear of being confronted by police. Prejudicial 911 emergency system calls cause mistrust between communities of color and institutions, and those calls further deteriorate community-police relations.

AB 1775 (Jones-Sawyer) Chapter 327, makes it a crime to knowingly allow the use of or to use the 911 emergency system for the purpose of harassing another. Specifically, this new law:

- Punishes the use of the 911 emergency system for the purpose of harassing another is a crime that is punishable as follows:
    - For a first violation, as an infraction punishable by a two-hundred-fifty dollar ($250) fine or as a misdemeanor punishable by up to six months in a county jail, a fine of up to one thousand dollars ($1,000), or by both that imprisonment and fine.
    - For a second or subsequent violation, as a misdemeanor punishable by up to six months in a county jail, a fine of up to one thousand dollars ($1,000), or by both that imprisonment and fine.
- Punishes the use of the 911 emergency system for the purpose of harassing another person and that act is an unlawful hate crime, providing that the person who commits the act is guilty of a misdemeanor punishable by up to one year in a county jail, a fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000), or by both that imprisonment and fine.
- Provides that this section does not apply to uses of the 911 emergency system by a person with an intellectual disability or other mental disability that makes it difficult or

impossible for the person to understand the potential consequences of their actions.

- Provides that, for purposes of this new law, "intimidation by threat of violence" includes, but is not limited to, "making or threatening to make a claim or report to a peace officer or law enforcement agency that falsely alleges that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention, knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report."

AB 2655 (Gipson) – Invasion of privacy: first responders

Existing laws severely limit a government entity's right and ability to share photos of deceased persons. For example, coroner's photos are not disclosable except in limited cases. When a government entity takes possession of these sensitive records, it has a duty to take care not to disseminate them in a way that violates the expectation of privacy a family has in ensuring their loved ones' gruesome death photos are not shared, lacking a legitimate public interest in the disclosure of those photos.

However, recent events in California have shown that some government employees have acted with impunity in capturing and sharing tragic photos in a salacious manner. A few days after the helicopter crash that killed Kobe Bryant and eight others, the Los Angeles Times reported that a Los Angeles County sheriff's deputy was showing gruesome photos taken at the scene of the accident to people in a bar. The Sheriff's Department later determined that eight officers were ultimately involved in taking or obtaining photos from the scene without having a law enforcement purpose for doing so. These photos were only obtained by individuals by virtue of their employment as first responders to an accident scene.

First responders like police and coroners have special access to the scenes of accidents and other deadly incidents by virtue of their public employment. While these employees have many legitimate reasons to capture images of a scene, the act of obtaining these photos for purely personal purposes is improper.

AB 2655 (Gipson), Chapter 219, makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest. Specifically, this new law:

- Requires an agency that employs first responders on January 1, 2021 to notify its employees who are first responders of the prohibition imposed by this new law.

- Makes it a crime for a first responder, operating under color of authority, who responds to the scene of an accident or crime to capture the photographic image of a deceased person by any means, including, but not limited to, by use of a personal electronic device or a device belonging to their employing agency, for any purpose other than an official law enforcement purpose or a genuine public interest is guilty of a misdemeanor punishable

by a fine not exceeding one thousand dollars ($1,000) per violation.

- Creates the right to obtain a warrant when the property or things to be seized consists of evidence that tends to show that a violation of this new law has occurred or is occurring. Provides that evidence to be seized pursuant to this new law shall be limited to evidence of a violation of the prohibitions imposed by this new law and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

- Defines, for purposes of this new law, "first responder" to mean a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, emergency manager, firefighter, coroner, or employee of a coroner.

SB 1123 (Chang) – Elder and dependent adult abuse

Consistency in the application of the law is a desirable quality. It promotes fairness and equitable treatment. Currently, elder and dependent adult abuse is defined in the Penal Code as "physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm, pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Each of those terms has a specific definition in the Welfare and Institutions Code, but the penal code does not cross-reference those definitions.

SB 1123 (Chang) Chapter 247, Clarifies the definition of elder and dependent adult abuse and requires law enforcement agencies to update their policy manuals with the new definition. Specifically, this new law:

- Clarifies, in the context of elder and dependent adult abuse, definitions of the terms "abandonment," "abduction," "financial abuse," "goods and services necessary to avoid physical harm or mental suffering," "isolation," "mental suffering," "neglect," and "physical abuse" by cross-referencing the Welfare and Institutions Code.

- Requires every local law enforcement agency, when the agency next undertakes the policy revision process, to revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, the updated, cross-referenced definition of elder and dependent adult abuse.

SB 1196 (Umberg) – Price gouging

Current law makes it unlawful for retailers and service providers to price gouge during a 30 day period (180 days for reconstruction services) after a declared state of emergency. "Price gouging" is increasing the price of specified goods and services by more than 10% above the price of those goods and services were offered for prior to the declaration of emergency. The provisions of the price gouging statute are triggered when a state of emergency has been declared

by the President of the United States, the Governor, or officials at a county or municipal level, as specified.

During the COVID-19 pandemic, sellers have been buying vitally needed consumer goods and personal protective equipment, thus depleting store shelves, and then selling those essential goods for extortionately high prices, online as well as in traditional retail stores. Many of these sellers were not offering these goods for sale prior to the pandemic and therefore are not covered by the existing price gouging law.

SB 1196 (Umberg), Chapter 339, includes a person or entity that was not selling specified goods and services prior to the declaration of an emergency within the scope of the crime of price gouging. Specifically, this new bill:

- Includes pandemic or epidemic disease outbreak in the lists of events that can trigger a declaration of emergency.

- Specifies that a person, business, or other entity may not sell specified goods and services for a price of more than 10% greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, or prior to a date set in the proclamation or declaration.

- State that if a person, contractor, business, or other entity did not charge a price for the goods or services immediately prior to the proclamation or declaration of emergency, it may not charge a price that is more than 50% greater than the seller's existing costs, as specified.

- Allows the Governor or the Legislature to extend the time frame for price gouging beyond 30 days without limit, while continuing to specify that each extension of the price gouging provisions by a local legislative body or local official shall not exceed 30 days.

CRIMINAL PROCEDURE

AB 1506 (McCarty) – Police use of force

In California alone, there have been almost 800 fatal shootings by police since 2015, but only a small number of independent investigations have been conducted. While the vast majority of law enforcement officers, from county prosecutors to police officers, act in accordance with appropriate professional and ethical standards, the current process of local district attorneys investigating local police has the possibility for bias and conflicts of interest.

In March 2015, the Obama Administration released the "President's Task Force on 21st Century Policing," with recommendations and action items to strengthen community policing and trust among law enforcement and the communities they serve. The task force encouraged policies that mandate the use of external and independent prosecutors in cases of police use-of-force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.

AB 1506 (McCarty), Chapter 326, provides that a state prosecutor shall conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, as specified. It directs the Attorney General, beginning July 1, 2023, to operate a Police Practices Division within the Department of Justice (DOJ), to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency. Specifically, this new law:

- Specifies that a state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.
- States that the Attorney General is the state prosecutor unless otherwise specified or named.
- Specifies that a state prosecutor is authorized to do all of the following:
    - Investigate and gather facts in incidents involving a shooting by a peace officer that results in the death of an unarmed civilian;
    - For all investigations conducted, prepare and submit a written report; and,
    - And, if criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.
- State that beginning on July 1, 2023, the Attorney General shall operate a Police Practices Division within DOJ to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

- Specify that the Police Practices Division shall make specific and customized recommendations to any law enforcement agency that requests a review, based on those policies identified as recommended best practices.

- Specify that DOJ's implementation of this bill is subject to an appropriation by the Legislature.

AB 1950 (Kamlager) – Probation: length of term

California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

A paper called *Paradox of Probation: Community Supervision in the Age of Mass Incarceration* discussed concerns that more and higher levels of probation supervision can lead increased involvement in the criminal justice system for the individuals being supervised on probation. Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers' everyday lives. In addition, the enhanced monitoring by probation officers (and in some cases, law enforcement as well) makes the detection of minor violations and offenses more likely.

Research by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate.

AB 1950 (Kamlager), Chapter 328, specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified. Specifically, this new law.

- Limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.

- Limits the probation term to two years for a felony offenses.

- Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions.

- Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds $25,000.

AB 2014 (Maienschein) – Medical misconduct: misuse of sperm, ova, or embryos

The statute of limitations requires a prosecution to be initiated 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. The amount of time in 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. There are, however, some statutes of limitations not necessarily based on the seriousness of the offense. The Legislature has acknowledged that some crimes by their design are difficult to detect and may be immediately undiscoverable upon their completion.

In the 1990's, two doctors were charged with stealing embryos and eggs belonging to women who sought fertility treatment at the University of California Irvine Center for Reproductive Health and implanting them in other women without the consent of the donors. That case, which involved dozens of victims, caused this Legislature to introduce legislation which criminalized the misuse of sperm, embryo and ova. Although the crimes are rare, the offense of using or implanting reproductive material in a manner that is inconsistent with the will of the donor is one that, by its very nature, is difficult to detect at the time the offense occurs. The typical offense is not likely to be discovered until a person discovers a previously-unknown familial relationship through genetic testing. Such testing may not occur for years or even decades after the moment when a doctor or medical professional fraudulently implanted sperm or an embryo without the consent of the donor.

> **AB 2014 (Maienschein) Chapter 244,** extends the statute of limitations for criminal offenses involving the misuse of sperm, ova, or embryos in assisted reproduction technology. Specifically, this new law:
>
> - Extends the statute of limitations for a criminal offense relating to the misuse of sperm, ova, or embryos in assisted reproduction technology from three years from the time that the offense occurred, to one year from the discovery of the offense.
>
> - Specifies that the statute of limitations proposed by this bill would only apply to offenses committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, has not expired as of January 1, 2021.

AB 2321 (Jones-Sawyer) – Juvenile court records: access

In 2000, Congress created the U-Visa and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon cooperation with law enforcement in an investigation of an underlying crime. The creation of the U- and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws.

As a part of obtaining a U- or T-visa, a person must get certification by a prosecutor of helpfulness. Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness.

AB 2321 (Jones-Sawyer), Chapter 137, permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. Specifically, this new law:

- States that a record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined may be accessed by a judge or prosecutor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. Further states that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

- Provides that when a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Further states that access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. States that the information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Also provides that access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

AB 2425 (Stone, M.) – Juvenile police records

Previous legislation (SB 1038 (Leno), Chapter 249, Statutes of 2014) provided a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst.

Code, § 786.) The sealing of delinquency records is an important factor in reducing recidivism and opening doors to jobs and education for many of California's youth.

Current law does not distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The law also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney. Additionally, current law allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

AB 2425 (Stone, M.), Chapter 330, prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program. Specifically, this new law:

- Provides that a probation department shall seal the arrest and other records in its custody relating to a juvenile's arrest and referral and participation in a diversion or supervision program under both of the following circumstances:
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
- States that the probation department shall notify the arresting law enforcement agency to seal the arrest records and the arresting law enforcement agency shall seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department. Upon sealing, the arresting law enforcement agency shall notify the probation department that the records have been sealed. Within 30 days from receipt of notification by the arresting law enforcement agency that the records have been sealed pursuant to this section, the probation department shall notify the minor in writing that their record has been sealed pursuant to this section. If records have not been sealed pursuant this section, the written notice from the probation department shall inform the minor of their ability to petition the court directly to seal their arrest and other related records.
- Provides that upon sealing of the records pursuant to this section, the arrest or offense giving rise to any of the circumstances, as specified, shall be deemed not to have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

- States that for the records relating to the circumstances, as specified, the probation department shall issue notice as follows:

    - The probation department shall notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall seal the records in its custody relating to the juvenile's arrest or referral and participation in the program no later than 60 days from the date of notification by the probation department. Upon sealing, the public or private agency operating a diversion program shall notify the probation department that the records have been sealed.

    - An individual who receives notice from the probation department that the individual has not satisfactorily completed the diversion program and that the record has not been sealed pursuant to this section may petition the juvenile court for review of the decision in a hearing in which the program participant may seek to demonstrate, and the court may determine, that the individual has met the satisfactory completion requirement and is eligible for the sealing of the record by the probation department, the arresting law enforcement agency, and the program operator under the provisions of this section.

- Provides that any record, that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

- States that a prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those permitted by this law.

- States that once the case at issue has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this subparagraph.

AB 2512 (Stone, M.) – Death Penalty: person with an intellectual disability

In 2002, the United States Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability. (*Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*).) The Court left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id*. at p. 317, quoting *Ford v. Wainwright* (1986) 477 U.S. 399, 416-417.) The following year, the Legislature added Penal Code section 1376 to implement this decision. The intellectual disability standard set forth in the statute was derived from the two clinical definitions referenced by the Court in *Atkins*. (*In re Hawthorne* (2005) 35

Cal.4th 40, 44, 47-48.) Unfortunately, despite the fact that clinical standards have changed over the years, the statute has not been updated.

Regarding post-conviction relief, California Supreme Court guidance provides that a claim of intellectual disability should be raised by a petition for writ of habeas corpus. By its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings. However, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra*, 35 Cal.4th at p. 47.)

AB 2512 (Stone), Chapter 331, authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability. Specifically, this new law:

- States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

- Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

- Authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard.

- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

- Provides that the state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence.

- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

AB 2542 (Kalra) – Criminal procedure: discrimination

In 1987, the United States Supreme Court issued a landmark ruling on the issue of racial bias and prejudice in the American Court System – *McCleskey v. Kemp* (1987) 481 U.S. 279 (*McCleskey*). The *McCleskey* opinion has had far-reaching effects on a wide array of equal protection claims. "The precedent impairs constitutional challenges based on widespread racial disparities not just in capital sentencing, but in the criminal-justice system more widely; it requires defendants to prove discrimination on a specific basis, providing clear evidence that they were explicitly targeted because of their race. If police officers, prosecutors, judges, or others don't openly acknowledge their own prejudices, defendants face a prohibitively high bar fighting for their Fourteenth Amendment rights in court." (Neklason, The "Death Penalty's *Dred Scott*" Lives on, The Atlantic (June 14, 2019).)

AB 2542 (Kalra), Chapter 317, prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin. Specifically, this new law:

- Prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.

- Applies prospectively in cases in which a judgment has not been entered prior to January 1, 2021.

- States that a violation of this prohibition is established if the defendant proves, by a preponderance of the evidence, any of the following:

    - The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;

- During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, except as specified, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful;
- The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;
- A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,
- A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed.

- States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the prohibition.
- States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation, the court shall hold a hearing.
- Provides that at the hearing, evidence may be presented by either party, including but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert.
- States that the defendant shall have the burden of proving the violation by a preponderance of the evidence and at the conclusion of the hearing, the court shall make findings on the record.
- Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the prohibition that is in the possession or control of the state. Upon a showing of good cause, and if the records are not privileged, the

court shall order the records to be released. Upon a showing of good cause, the court may permit the prosecution to redact information prior to disclosure.

- States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the prohibition, the court shall impose a remedy specific to the violation found from the following list of remedies:
    - Before a judgment has been entered, the court may reseat a juror removed by use of a peremptory challenge, declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges;
    - When judgment has been entered:
        - If the court finds that the conviction was sought or obtained in violation of the prohibition, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings;
        - If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the judgment and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,
        - If the court finds that only the sentence was sought, obtained, or imposed in violation of the prohibition, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed.
- Prohibits imposition of the death penalty where the court finds a violation of the prohibition.
- Provides that the remedies available under this provision do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.
- Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system.
- Provides that these provisions do not prevent the prosecution of hate crimes.
- Defines "more frequently sought or obtained" or "more frequently imposed" as meaning that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing

individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity.

- Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the prohibition occurred. “Substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

- Defines "racially discriminatory language" as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

- Defines “state” as including the Attorney General, a district attorney, or a city prosecutor.

- Provides that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition.

- Specifies that a writ of habeas corpus may be prosecuted after a judgment has been entered based on evidence of a violation of the prohibition if the judgment was entered on or after January 1, 2021.

- States that a petition raising such a claim for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.

- Provides that if a petitioner already has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim of a violation of the prohibition.

- Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the prohibition or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

- Requires the court to review the petition and if the court determines the petitioner has made a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause.

- Provides that the defendant shall appear at the hearing by video unless counsel indicates that their presence is needed.

- States that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

- Makes conforming changes to allow a person who is no longer in custody to vacate a conviction or sentence based on a violation of the prohibition.

- Contains a severability clause.

- Makes a number of Legislative findings and declarations including that it is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California.

SB 203 (Bradford) – Juveniles: custodial interrogation

"Miranda warnings" are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime. The purpose of Miranda warnings is to advise people who have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona*. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case. Put simply, "Miranda warnings" are meant to inform people who are arrested of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the right not to answer any questions, that anything the person does say can be used against them as evidence in a court of law, that the person has the right to an attorney, that if the person cannot afford an attorney one will be appointed at no cost, and that the person has the right to invoke these rights at any point in time during questioning.

A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and also that they are more prone to falsely confessing to a crime they did not commit. In brief, research suggests that adolescents are more impulsive, are more easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions than their adult counterparts. The context of custodial interrogation is believed to exacerbate these risks and there have been numerous studies showing that false confessions are disproportionately obtained from youthful suspects. For that reason, this Legislature has previously enacted into law additional procedural protections for minors who

are under the age of 16.

SB 203 (Bradford), Chapter 335, provides for expanded protections for minors ages 16 and 17 prior to custodial interrogation by law enforcement. Specifically, this new law:

- Requires that prior to any custodial interrogation and before the waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.

- Prohibits the waiver of such consultation with legal counsel.

- Requires the court to consider a lack of consultation with legal counsel for the purposes of determining the admissibility of any statements made to law enforcement, as well as in determining the credibility of any officer who willfully failed to comply with the consult requirement.

- Eliminates the sunset date of January 1, 2025 for similar protections that applied only to minors under the age of 16, making them permanent.

- Eliminates the requirement that the Governor convene a panel of experts to examine the effects and outcomes of requiring minors under the age of 16 to consult with counsel prior to any interrogation or Miranda waiver.

DOMESTIC VIOLENCE

SB 1276 (Rubio, S.) – The Comprehensive Statewide Domestic Violence Program

The Legislature made findings that the problem of domestic violence is of serious and increasing magnitude; and that existing domestic violence services are underfunded and that some areas of the state are unserved or underserved. These structural issues have been compounded since March 2020, when impacts to fundraising and volunteering began due to COVID-19. At the same time, reports of incidents of domestic violence began to rise.

Under existing law, a "domestic violence shelter service provider" is "a victim services provider that operates an established system of services providing safe and confidential emergency housing on a 24-hour basis for victims of domestic violence and their children, including, but not limited to, hotel or motel arrangements, haven, and safe houses" To receive state funding, existing law requires that for these centers to receive state dollars, they must show a cash or an in-kind match of at least 10 percent of the funds received under the law.

As a result of the stay at home orders, and limitations on public gatherings which began in March 2020, DVSSPs have been unable to host traditional fundraising events. Additionally, the current economic recession has negatively impacted giving by donors. During the COVID-19 crises response, the Governor temporarily suspended the matching requirement in emergency regulations.

> **SB 1276 (Rubio), Chapter 249**, eliminates the requirement that state funding be matched by 10 percent to qualify a local domestic violence shelter service provider with funding pursuant to this section.

ELDER ABUSE

SB 1123 (Chang) – Elder and dependent adult abuse

Consistency in the application of the law is a desirable quality. It promotes fairness and equitable treatment. Currently, elder and dependent adult abuse is defined in the Penal Code as "physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm, pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Each of those terms has a specific definition in the Welfare and Institutions Code, but the penal code does not cross-reference those definitions.

SB 1123 (Chang) Chapter 247, Clarifies the definition of elder and dependent adult abuse and requires law enforcement agencies to update their policy manuals with the new definition. Specifically, this new law:

- Clarifies, in the context of elder and dependent adult abuse, definitions of the terms "abandonment," "abduction," "financial abuse," "goods and services necessary to avoid physical harm or mental suffering," "isolation," "mental suffering," "neglect," and "physical abuse" by cross-referencing the Welfare and Institutions Code.

- Requires every local law enforcement agency, when the agency next undertakes the policy revision process, to revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, the updated, cross-referenced definition of elder and dependent adult abuse.

EVIDENCE

AB 1927 (Boerner-Horvath) – Witness testimony in sexual assault cases: inadmissibility in a separate prosecution

Existing law provides for the granting of immunity upon the petition of the prosecution and a finding by the court that such immunity is in the public interest. A victim or witness may be granted immunity for their testimony in a felony prosecution through a process known as "compelled testimony." In that procedure, the victim or witness must first formally refuse to testify or provide evidence, invoking the rationale that doing so may incriminate them. The court can then "compel" the person to testify, granting immunity from prosecution for their statements and evidence in the process. A grant of immunity means that the prosecution cannot use the witness' testimony again them in any future prosecution.

The compelled testimony procedure can be traumatic and complicated for victims and witnesses, who have often already been traumatized by virtue of being the witness to, or victim of, a sexual assault. Reports have shown that sexual assaults often go unreported and some believe that the procedure of compelled testimony may be a factor in deterring people from coming forward. This may be particularly true when drugs or alcohol are being consumed at or around the time of a sexual assault, such as one that takes place at a house party or on or around a college campus.

AB 1927 (Boerner Horvath), Chapter 241, provides that the testimony of a victim or witness in a felony prosecution for specified sex crimes that the victim or witness, at or around the time of crime, unlawfully possessed or used a controlled substance or alcohol inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol. Specifically, this new law:

- States that the testimony of a victim or witness in a felony prosecution for assault or burglary with the intent to commit specified sex crimes, sexual battery, rape, statutory rape, sodomy, oral copulation, lewd or lascivious acts, sexual penetration, that the victim or witness, at or around the time of the sex crime unlawfully possessed or used a control substance or alcohol is inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol.

- Specifies that evidence that the testifying witness unlawfully possessed or used a controlled substance or alcohol is not excluded from use in the felony prosecution for a violation or attempted violation of specified sex crimes.

- Specifies that evidence that a witness received use immunity for testimony is not excluded in the felony prosecution of a violation or attempted violation of specified sex crimes.

AB 2425 (Stone, M.) – Juvenile police records

Previous legislation (SB 1038 (Leno), Chapter 249, Statutes of 2014) provided a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst. Code, § 786.) The sealing of delinquency records is an important factor in reducing recidivism and opening doors to jobs and education for many of California's youth.

Current law does not distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The law also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney. Additionally, current law allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

AB 2425 (Stone, M.), Chapter 330, prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program. Specifically, this new law:

- Provides that a probation department shall seal the arrest and other records in its custody relating to a juvenile's arrest and referral and participation in a diversion or supervision program under both of the following circumstances:
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
- States that the probation department shall notify the arresting law enforcement agency to seal the arrest records and the arresting law enforcement agency shall seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department. Upon sealing, the arresting law enforcement agency shall notify the probation department that the records have been sealed. Within 30 days from receipt of notification by the arresting law enforcement agency that the records have been sealed pursuant to this section, the probation department shall notify the minor in writing that their record has been sealed pursuant to this section. If records have not been sealed pursuant this section, the written notice from the probation department shall inform the minor of their ability to petition the court directly to seal their arrest and other related

records.

- Provides that upon sealing of the records pursuant to this section, the arrest or offense giving rise to any of the circumstances, as specified, shall be deemed not to have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

- States that for the records relating to the circumstances, as specified, the probation department shall issue notice as follows:

    - The probation department shall notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall seal the records in its custody relating to the juvenile's arrest or referral and participation in the program no later than 60 days from the date of notification by the probation department. Upon sealing, the public or private agency operating a diversion program shall notify the probation department that the records have been sealed.

    - An individual who receives notice from the probation department that the individual has not satisfactorily completed the diversion program and that the record has not been sealed pursuant to this section may petition the juvenile court for review of the decision in a hearing in which the program participant may seek to demonstrate, and the court may determine, that the individual has met the satisfactory completion requirement and is eligible for the sealing of the record by the probation department, the arresting law enforcement agency, and the program operator under the provisions of this section.

- Provides that any record, that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

- States that a prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those permitted by this law.

- States that once the case at issue has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this subparagraph.

AB 2512 (Stone, M.) – Death Penalty: person with an intellectual disability

In 2002, the United States Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability. (*Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*).) The Court left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id*. at p. 317, quoting *Ford v. Wainwright* (1986) 477 U.S. 399, 416-417.) The following year, the Legislature added Penal Code section 1376 to implement this decision. The intellectual disability standard set forth in the statute was derived from the two clinical definitions referenced by the Court in *Atkins*. (*In re Hawthorne* (2005) 35 Cal.4th 40, 44, 47-48.) Unfortunately, despite the fact that clinical standards have changed over the years, the statute has not been updated.

Regarding post-conviction relief, California Supreme Court guidance provides that a claim of intellectual disability should be raised by a petition for writ of habeas corpus. By its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings. However, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra*, 35 Cal.4th at p. 47.)

AB 2512 (Stone), Chapter 331, authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability. Specifically, this new law:

- States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

- Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

- Authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard.

- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

- Provides that the state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence.

- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

FINES AND FEES

SB 1290 (Durazo) – Juveniles: costs

Effective January 1, 2018, SB 190 (Mitchell), Chapter 678, Statutes of 2017, repealed county authority to charge a number of administrative fees to parents and guardians with a youth in the juvenile justice system and to persons ages 18 to 21 in the adult criminal adult justice system. "Before [SB 190] was passed, families of minors could be involuntarily charged for home detention fees, drug testing fees, representation fees, and electronic monitoring fees. A study by students of the University of California Berkeley School of Law demonstrated the harm of the previous law. While the fees were originally designed to recuperate high costs, the costs collected barely covered the costs of administering such fees. Further, families of color were disparately disadvantaged by the fees. The new policies set forth in S.B. 190 aimed to eliminate a source of financial harm to vulnerable families, support the reentry of youth leaving the juvenile justice system, and reduce the likelihood that youth will recidivate."
(Recent Court Decisions and Legislation Affecting Juveniles: Recent Court Decisions and Legislation Affecting Juveniles (2018) 22 U.C. Davis J. Juv. L. & Pol'y 179, 197-198 [footnotes omitted].)

Although, since January 1, 2018, SB 190 prohibits counties from assessing new fees, it does not require counties to stop collecting previously assessed fees or to vacate existing fee judgments. Continuing to collect fees from system-involved youth and their families is a regressive, racially discriminatory, and financially unsound way for government to fund public services.

SB 1290 (Durzao), Chapter 340, vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system. Specifically, this new law:

- Provides that the unpaid outstanding balance of any of the following county-assessed or court-ordered costs imposed before January 1, 2018, against the parent, guardian, or other person liable for the support of a minor is vacated and is unenforceable and uncollectable if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision, as specified:
    - Reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody;
    - Costs of support for a minor detained in a juvenile facility;
    - Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court;

- Registration fee up to $50 for appointed legal counsel;
- Costs of minor's probation supervision, home supervision, or electronic monitoring;
- Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release;
- Costs of support of a minor placed in out-of-home placement pursuant to a juvenile court order; and,
- Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid.

- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, to cover the costs of drug testing a minor on probation for a drug case is vacated and shall be unenforceable and uncollectable.

- Specifies that the foregoing provisions apply to dual status children for purposes of delinquency jurisdiction.

- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, for home detention administrative fees and probation drug testing fees against persons age 18 to 21 and under the jurisdiction of the criminal court is vacated and shall be unenforceable and uncollectable.

FIREARMS

AB 2061 (Limón) – Firearms: inspections

Existing law prescribes specific rule and regulations relating to gun shows and events, and the organizers, vendor and participants, including the rules governing the transfer of firearms at these events. However, the Department of Justice (DOJ) lacks inspection authority over vendors who hold a federal firearms license, but are not required to obtain a California license. All firearms dealers and ammunition vendors conducting business in California should be operating under the same rules.

> **AB 2061 (Limon), Chapter 273,** authorizes the DOJ, effective July 1, 2022, to inspect all firearms dealers, ammunition vendors, or manufacturers in order to ensure compliance with state and federal firearms laws.

AB 2362 (Muratsuchi) – Firearms dealers: conduct of business

In order to operate in California, firearms dealers and license holders must have (1) a Federal Firearms License, (2) a license issued by a county or other local agency, and (3) a Certificate of Eligibility issued by the Department of Justice (DOJ). If they have all of these items, they are included on the DOJ-maintained centralized list that allows them to operate their business. The DOJ conducts spontaneous on-site inspections of dealers and license holders to ensure they are complying with transfer requirements, dealer record and record retention requirements, facility maintenance and security requirements, and waiting period requirements.

If a dealer or license holder is out of compliance, the DOJ sends written notification requesting corrective action. Follow up inspections may be performed to ensure corrective action has been taken. Not every instance of non-compliance warrants revocation of a certificate or removal from the centralized list; however, DOJ lacks authority to impose progressive disciplinary actions.

> **AB 2362 (Muratsuchi), Chapter 284**, authorizes, commencing July 1, 2021, the DOJ to impose civil fines on firearms dealers for breaches of regulations or prohibitions related to their firearms dealers license. Specifically, this new law:

- Permits the DOJ to impose a civil fine of up to $1,000 against firearms dealers for a breach of specified prohibitions relating to firearms dealer licensing.

- Provides for a civil fine of up to $3,000 for breaches that subject a licensee to forfeiture of their firearms dealer license for either of the following:

    - The licensee previously received written notification from the DOJ regarding the breach and subsequently failed to take timely corrective action; or

- The licensee is otherwise determined by the DOJ to have knowingly or with gross negligence violated a regulation or prohibition related to licensing.

- Allows DOJ to adopt regulations setting fine amounts and setting up an appeals process.

- Requires that any fines collected by the DOJ be deposited in the Dealers Record of Sale Special Account (DROSS), for expenditure by the department to offset the cost of firearms related regulatory or enforcement activity.

AB 2617 (Gabriel) – Firearms: gun violence restraining orders

California's Gun Violence Restrain Order (GVRO) laws went into effect on January 1, 2016. The statutory scheme establishes three types of GVRO's: (1) a temporary emergency GVRO, (2) an ex-parte GVRO, and (3) a GVRO issued after notice and hearing. All three GVROs prohibit the subject of the order from having in his or her custody or control, owning, or purchasing, a firearm or ammunition for a specified time period.

A number of other states have GVRO laws which are similar to California. California currently enforces a number of firearm restrictions based on conduct occurring in other states. However, California currently has no mechanism to enforce GVROs issued in by other states.

AB 2617 (Gabriel), Chapter 286, requires California to honor similar or equivalent GVROs, as specified, that are issued by states other than California. Specifically, this new law:

- States that any person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so because of a by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO, as specified, is guilty of a misdemeanor.

- Prohibits a person convicted of the misdemeanor, described above, from owning or possessing a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

- Specifies that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

- States that a law enforcement officer who requests a temporary emergency GVRO must file a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance.

AB 2699 (Santiago) – Firearms: unsafe handguns

Under existing law any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. The above prohibition does not apply to the sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

AB 2699 (Santiago), Chapter 289, exempts the following entities, and sworn officers of these entities that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST) from the prohibition against the sale or purchase of an "unsafe" handgun:

- The California Horse Racing Board;
- The State Department of Health Care services;
- The State Department of Public Health;
- The State Department of Social Services;
- The Department of Toxic Substances Control;
- The Office of Statewide Health Planning and Development;
- The Public Employees Retirement System;
- The Department of Housing and Community Development;
- Investigators of the Department of Business Oversight;
- The Law Enforcement Branch of the Office of Emergency Services;
- The California State Lottery; and,
- The Franchise Tax Board.

    - Provides that that the sale of "unsafe" handguns to specified law enforcement entities and the peace officers employed by those entities are only authorized

if the handgun is to be used as a service weapon.

- Requires the Department of Justice (DOJ) to maintain a database of "unsafe handguns" that have been sold to peace officers that are exempt from the prohibition against the purchase of these handguns. The Department may satisfy this requirement by maintaining the information in any existing firearm database that reasonably facilitates compliance with this mandate

- Requires the DOJ by March 1, 2021 provide a notification to the persons and entities that have purchased "unsafe handguns" regarding the prohibition against the sale or transfer of such a handgun. Thereafter the DOJ shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred

- Makes the unlawful sale or transfer of an "unsafe handgun", or failure to report to the DOJ the sale or transfer of an "unsafe handgun" subject to a civil penalty not to exceed ten thousand dollars ($10,000).

AB 2847 (Chiu) – Firearms: unsafe handguns

The firearm industry has acknowledged that microstamping is entirely feasible, but has maintained that it is not possible to microstamp in two separate places on the interior of a firearm which is the current mandate under the Unsafe Handgun Act (UHA). Although it is entirely practicable to have two engravings, it is not necessary. One engraving on the firing pin of a firearm reliably provides law enforcement the available and necessary information concerning the firearm. Firearm manufacturers should be able to easily and affordably comply with this mandate as well as the other important UHA quality and safety standards.

AB 2847 (Chiu), Chapter 292, requires commencing July 1, 2022 all semiautomatic pistols not already listed on the Department of Justice (DOJ) roster of not unsafe handguns be equipped with chamber load indicators, magazine disconnect mechanisms, and microstamping technology. Specifically, this new law:

- Requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in one or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

- Requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns be equipped with a chamber load indicator and a magazine disconnect mechanism if it has a detachable magazine.

- Provides that the DOJ shall, for each newly added semiautomatic pistol added to the roster of not unsafe handguns, remove from the roster exactly three semiautomatic pistols lacking a chamber load indicator, magazine disconnect mechanism, or microstamping technology. Each semiautomatic pistol removed from the roster shall be considered an unsafe handgun. The Attorney General (AG) shall remove semiautomatic pistols from the roster in reverse order of their date of addition to the roster.

SB 723 (Jones) – Firearms: prohibited persons

Under current law, if a person has an outstanding arrest warrant for any felony, or for specified misdemeanors, the person is prohibited from owning or possessing a firearm. Current law requires that the person be aware of the arrest warrant in order to be found criminally liable for possession of a firearm. A person violating the prohibition on the possession of a firearm because of an outstanding arrest warrant for a felony crime is guilty of a felony. A person violating the prohibition on the possession of a firearm because of an outstanding arrest warrant for a specified misdemeanor is guilty of an alternate felony/misdemeanor.

The provisions of law requiring persons with active warrants for felonies and specified misdemeanors be prohibited from firearm possession were implemented in a budget trailer bill, AB 103 (Committee on Budget), Chapter 17, Statutes of 2017. Initially, there was no requirement that the person who was the subject of the active warrant have any knowledge that they had an arrest warrant. Later in the year, SB 112 (Committee Budget and Fiscal Review), Chapter 363, Statutes of 2017, was signed into law. SB 112 specified that a violation for possession of a firearm when prohibited because of an outstanding warrant, requires a person to have knowledge of the outstanding warrant before the person could be found guilty of a crime.

SB 723 (Jones), Chapter 306, clarifies that a person with an active arrest warrant for a prohibited offense must have knowledge of the warrant in order to be criminally liable as a person prohibited from possessing a firearm.

GUN VIOLENCE RESTRAINING ORDERS

AB 2617 (Gabriel) – Firearms: gun violence restraining orders

California's Gun Violence Restrain Order (GVRO) laws went into effect on January 1, 2016. The statutory scheme establishes three types of GVRO's: (1) a temporary emergency GVRO, (2) an ex-parte GVRO, and (3) a GVRO issued after notice and hearing. All three GVROs prohibit the subject of the order from having in his or her custody or control, owning, or purchasing, a firearm or ammunition for a specified time period.

A number of other states have GVRO laws which are similar to California. California currently enforces a number of firearm restrictions based on conduct occurring in other states. However, California currently has no mechanism to enforce GVROs issued in by other states.

AB 2617 (Gabriel), Chapter 286, requires California to honor similar or equivalent GVROs, as specified, that are issued by states other than California. Specifically, this new law:

- States that any person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so because of a by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO, as specified, is guilty of a misdemeanor.

- Prohibits a person convicted of the misdemeanor, described above, from owning or possessing a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

- Specifies that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

- States that a law enforcement officer who requests a temporary emergency GVRO must file a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance.

IMMIGRATION

AB 2321 (Jones-Sawyer) – Juvenile court records: access

In 2000, Congress created the U-Visa and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon cooperation with law enforcement in an investigation of an underlying crime. The creation of the U- and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws.

As a part of obtaining a U- or T-visa, a person must get certification by a prosecutor of helpfulness. Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness.

AB 2321 (Jones-Sawyer), Chapter 137, permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. Specifically, this new law:

- States that a record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined may be accessed by a judge or prosecutor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. Further states that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

- Provides that when a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Further states that access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. States that the information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Also provides that access to the sealed record

under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

AB 2426 (Reyes) – Victims of crime

In 2000, Congress created the U and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon cooperation with law enforcement in an investigation of an underlying crime. The creation of the U and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws. However, in many jurisdictions, immigrants experience difficulty and or delays in obtaining the proper documentation from law enforcement to certify their participation in the investigation. These delays can result directly in the denial of a U-Visa or T-Visa application, leaving an eligible immigrant unable to adjust their status and vulnerable to deportation.

AB 2426 (Reyes), Chapter 187, specifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. Specifically, this new law:

- Specifies that a "certifying entity" includes without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code.

- Provides that a certifying official shall not refuse to complete the Form I-918 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

- Provides that a certifying official shall not refuse to complete the Form I-914 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

AB 3228 (Bonta) – Private detention facilities

The federal government contracts with private detention facilities (and county jails) throughout the country to house immigration detainees and federal criminal pretrial detainees. There are a variety of concerns about the how private detention centers are run. It can be difficult to investigate those concerns because of a lack of transparency. Private, for-profit detention facilities are accountable to their shareholders and not the people of the State of California. For example, these facilities claim exemptions to the public disclosure requirements under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) because they are private corporations, which makes the potentially unlawful conduct occurring within the facility hidden from discovery. These facilities similarly claim an exemption to California's State counterpart, the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq).

Private detention centers have been particularly problematic during the Covid-19 pandemic. Private detention centers have been epicenters for Covid-19 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.

AB 3228 (Bonta), Chapter190, establishes a civil cause of action against private detention facilities which violate the requirement to comply with the detention standards of care and confinement, as specified. Specifically, this new law:

- Requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations.

- Provides that if a private detention facility operator, or agent, or person acting on behalf of a detention facility operator, commits a tortious action that violates the requirement to comply with detention standards of care and confinement, an individual who has been injured by that tortious action may bring a civil action for relief.

- Provides that the court, in its discretion, may award the prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees, in these civil actions.

JUVENILES

AB 901 (Gipson) – Juveniles

The school-to-prison pipeline refers to policies and practices that push students out of school and into the juvenile and criminal justice systems. The policies and practices including zero-tolerance discipline policies, policing in schools, and court involvement for minor offenses in school.

One strategy to mitigate the school-to-prison pipeline is for schools, districts, and states to evaluate their disciplinary policies and make punitive consequences, such as ticketing, fines imposed on students and/or their parents and guardians, or any punishment that removes students from the classroom, a last resort. Punitive police can be replaced with systems that support students in an effort to reduce students encountering the legal system.

AB 901 (Gipson), Chapter 323, repeals the jurisdiction of the juvenile criminal court over minors who habitually refuse to obey the reasonable and proper orders or directions of school authorities and provides direction as to when probation departments can engage with minors that are not on probation. Specifically, this new law:

- Repeals the jurisdiction of the juvenile criminal court over minors who habitually refuse to obey the reasonable and proper orders or directions of school authorities.
- Requires a peace officer to refer a minor who persistently or habitually refuses to obey the reasonable and proper orders or directions of the minor's parents or has four or more truancies within one school year to a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services.
- States that services offered to minors or minor's parents or guardians who are not on probation are voluntary and shall not include probation conditions or consequences as a result of not engaging in or completing those programs or services.
- Directs probation to refer minors to services provided by a health agency, community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services, as specified.
- Specifies that a county board of education may enroll pupils in a county community school when the pupil is between 12 and 17 years of age, inclusive, and has been reported as a truant four or more times per school year or is a chronic absentee, as specified.

AB 2321 (Jones-Sawyer) – Juvenile court records: access

In 2000, Congress created the U-Visa and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are

victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon cooperation with law enforcement in an investigation of an underlying crime. The creation of the U- and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws.

As a part of obtaining a U- or T-visa, a person must get certification by a prosecutor of helpfulness. Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness.

AB 2321 (Jones-Sawyer), Chapter 137, permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. Specifically, this new law:

- States that a record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined may be accessed by a judge or prosecutor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. Further states that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

- Provides that when a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Further states that access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. States that the information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Also provides that access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

AB 2425 (Stone, M.) – Juvenile police records

Previous legislation (SB 1038 (Leno), Chapter 249, Statutes of 2014) provided a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving

satisfactorily-completed informal supervision or probation, except in cases involving specified serious or violent offenses where the juvenile was 14 years or older at the time of the offense and the offense was not dismissed or reduced to a non-serious or non-violent offense. (Welf. & Inst. Code, § 786.) The sealing of delinquency records is an important factor in reducing recidivism and opening doors to jobs and education for many of California's youth.

Current law does not distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The law also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney. Additionally, current law allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

AB 2425 (Stone, M.), Chapter 330, prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program. Specifically, this new law:

- Provides that a probation department shall seal the arrest and other records in its custody relating to a juvenile's arrest and referral and participation in a diversion or supervision program under both of the following circumstances:
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
    - Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Welf. & Inst. Code Section 654.
- States that the probation department shall notify the arresting law enforcement agency to seal the arrest records and the arresting law enforcement agency shall seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department. Upon sealing, the arresting law enforcement agency shall notify the probation department that the records have been sealed. Within 30 days from receipt of notification by the arresting law enforcement agency that the records have been sealed pursuant to this section, the probation department shall notify the minor in writing that their record has been sealed pursuant to this section. If records have not been sealed pursuant this section, the written notice from the probation department shall inform the minor of their ability to petition the court directly to seal their arrest and other related records.
- Provides that upon sealing of the records pursuant to this section, the arrest or offense giving rise to any of the circumstances, as specified, shall be deemed not to have

occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

- States that for the records relating to the circumstances, as specified, the probation department shall issue notice as follows:

    - The probation department shall notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall seal the records in its custody relating to the juvenile's arrest or referral and participation in the program no later than 60 days from the date of notification by the probation department. Upon sealing, the public or private agency operating a diversion program shall notify the probation department that the records have been sealed.

    - An individual who receives notice from the probation department that the individual has not satisfactorily completed the diversion program and that the record has not been sealed pursuant to this section may petition the juvenile court for review of the decision in a hearing in which the program participant may seek to demonstrate, and the court may determine, that the individual has met the satisfactory completion requirement and is eligible for the sealing of the record by the probation department, the arresting law enforcement agency, and the program operator under the provisions of this section.

- Provides that any record, that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

- States that a prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those permitted by this law.

- States that once the case at issue has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this subparagraph.

SB 203 (Bradford) – Juveniles: custodial interrogation

"Miranda warnings" are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime. The purpose of Miranda warnings is to advise people who have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona*. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior

to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case. Put simply, "Miranda warnings" are meant to inform people who are arrested of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the right not to answer any questions, that anything the person does say can be used against them as evidence in a court of law, that the person has the right to an attorney, that if the person cannot afford an attorney one will be appointed at no cost, and that the person has the right to invoke these rights at any point in time during questioning.

A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and also that they are more prone to falsely confessing to a crime they did not commit. In brief, research suggests that adolescents are more impulsive, are more easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions than their adult counterparts. The context of custodial interrogation is believed to exacerbate these risks and there have been numerous studies showing that false confessions are disproportionately obtained from youthful suspects. For that reason, this Legislature has previously enacted into law additional procedural protections for minors who are under the age of 16.

SB 203 (Bradford), Chapter 335, provides for expanded protections for minors ages 16 and 17 prior to custodial interrogation by law enforcement. Specifically, this new law:

- Requires that prior to any custodial interrogation and before the waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.

- Prohibits the waiver of such consultation with legal counsel.

- Requires the court to consider a lack of consultation with legal counsel for the purposes of determining the admissibility of any statements made to law enforcement, as well as in determining the credibility of any officer who willfully failed to comply with the consult requirement.

- Eliminates the sunset date of January 1, 2025 for similar protections that applied only to minors under the age of 16, making them permanent.

- Eliminates the requirement that the Governor convene a panel of experts to examine the effects and outcomes of requiring minors under the age of 16 to consult with counsel prior to any interrogation or Miranda waiver.

SB 1126 (Jones) – Juvenile court records

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Pursuant to Welfare & Institutions Code

§ 709, when a youth is found to be not competent to stand trial, proceedings are suspended, and the petition must be dismissed if the youth is not remediated within a maximum of one year.

Most juvenile records of arrests and adjudications are eligible to be sealed and treated as though they never occurred. For less serious offenses, the juvenile court will often seal the record automatically. Welfare & Institutions Code §786 provides certain exceptions to access sealed records under limited circumstances; however, if the same youth mentioned above, has a new petition filed against them and a doubt as to their competency is raised, there is no allowance for the court to access the sealed record.

Not only is access to the old competency records necessary and relevant to the new competency determination, but in most cases where competency is an issue, the youth is high-risk and has special needs. Serious mental health issues or developmental disabilities are prevalent in this population. This population of youth in juvenile court are at greater risk of homelessness, underemployment/unemployment, and dropping out of school.

> **SB 1126 (Jones), Chapter 338,** allows sealed juvenile records to be accessed, inspected, or used by the probation department, the district attorney, counsel for the minor, and the court for the purpose of assessing the minor's mental competency in a subsequent juvenile proceeding if the issue of competency has been raised.

SB 1290 (Durazo) – Juveniles: costs

Effective January 1, 2018, SB 190 (Mitchell), Chapter 678, Statutes of 2017, repealed county authority to charge a number of administrative fees to parents and guardians with a youth in the juvenile justice system and to persons ages 18 to 21 in the adult criminal adult justice system. "Before [SB 190] was passed, families of minors could be involuntarily charged for home detention fees, drug testing fees, representation fees, and electronic monitoring fees. A study by students of the University of California Berkeley School of Law demonstrated the harm of the previous law. While the fees were originally designed to recuperate high costs, the costs collected barely covered the costs of administering such fees. Further, families of color were disparately disadvantaged by the fees. The new policies set forth in S.B. 190 aimed to eliminate a source of financial harm to vulnerable families, support the reentry of youth leaving the juvenile justice system, and reduce the likelihood that youth will recidivate."
(Recent Court Decisions and Legislation Affecting Juveniles: Recent Court Decisions and Legislation Affecting Juveniles (2018) 22 U.C. Davis J. Juv. L. & Pol'y 179, 197-198 [footnotes omitted].)

Although, since January 1, 2018, SB 190 prohibits counties from assessing new fees, it does not require counties to stop collecting previously assessed fees or to vacate existing fee judgments. Continuing to collect fees from system-involved youth and their families is a regressive, racially discriminatory, and financially unsound way for government to fund public services.

> **SB 1290 (Durzao), Chapter 340,** vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the

juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system. Specifically, this new law:

- Provides that the unpaid outstanding balance of any of the following county-assessed or court-ordered costs imposed before January 1, 2018, against the parent, guardian, or other person liable for the support of a minor is vacated and is unenforceable and uncollectable if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision, as specified:
    - Reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody;
    - Costs of support for a minor detained in a juvenile facility;
    - Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court;
    - Registration fee up to $50 for appointed legal counsel;
    - Costs of minor's probation supervision, home supervision, or electronic monitoring;
    - Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release;
    - Costs of support of a minor placed in out-of-home placement pursuant to a juvenile court order; and,
    - Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid.
- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, to cover the costs of drug testing a minor on probation for a drug case is vacated and shall be unenforceable and uncollectable.
- Specifies that the foregoing provisions apply to dual status children for purposes of delinquency jurisdiction.
- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, for home detention administrative fees and probation drug testing fees against persons age 18 to 21 and under the jurisdiction of the criminal court is vacated and shall be unenforceable and uncollectable.

MENTAL HEALTH

AB 465 (Eggman) – Mental Health Workers: Supervision

There has been general discussion in the Legislature and across the country that law enforcement officials are not the ideal first responders to scenes of a mental health crisis. In Eugene, Oregon, a program called Cahoots (Crisis Assistance Helping Out on the Street) is a nonprofit that responds to non-criminal calls around homelessness, substance use, and mental health. They are tied directly into the 911 system and can respond to calls without police. It's reported that in 2017, Cahoots handled 17-percent of police calls. This additional help has been seen as a benefit to both the community and officers who can focus on other issues.

The City of Oakland is pursuing their own version of this model for a pilot program in the fall of 2020 based on that simple principle of having mental health workers respond to mental health issues. Additionally, nonprofits in other cities, including Sacramento, are looking to act as an alternative to police in dealing with these calls. These programs recognize that police officers are not trained to be mental health professionals. As they expand, and local governments experiment, it is important that those responding are properly supervised by licensed clinicians.

AB 465 (Eggman), Chapter 137, provide that if mental health professionals participate in a program assisting law enforcement in serving the community, or respond to calls for service instead of law enforcement, that those mental health professionals shall be supervised by licensed mental health professionals. Specifically, this new law:

- Provides that in any program or pilot program in which mental health professionals respond in collaboration with law enforcement personnel, or in place of law enforcement, to emergency calls related to a mental health crises shall ensure that mental health professionals participating in the program are supervised by a licensed mental health professional.

- Defines a "licensed mental health professional" as any one of the following:

    - licensed clinical social worker;

    - licensed professional clinical counselor;

    - licensed marriage and family therapist; and,

    - licensed psychologist.

AB 2512 (Stone, M.) – Death Penalty: person with an intellectual disability

In 2002, the United States Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability. (*Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*).) The Court left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id*. at p. 317, quoting *Ford v. Wainwright* (1986) 477 U.S. 399, 416-417.) The following year, the Legislature added Penal Code section 1376 to implement this decision. The intellectual disability standard set forth in the statute was derived from the two clinical definitions referenced by the Court in *Atkins*. (*In re Hawthorne* (2005) 35 Cal.4th 40, 44, 47-48.) Unfortunately, despite the fact that clinical standards have changed over the years, the statute has not been updated.

Regarding post-conviction relief, California Supreme Court guidance provides that a claim of intellectual disability should be raised by a petition for writ of habeas corpus. By its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings. However, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra*, 35 Cal.4th at p. 47.)

AB 2512 (Stone), Chapter 331, authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability. Specifically, this new law:

- States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

- Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

- Authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard.

- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

- Provides that the state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence.

- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

SB 1126 (Jones) – Juvenile court records

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Pursuant to Welfare & Institutions Code § 709, when a youth is found to be not competent to stand trial, proceedings are suspended, and the petition must be dismissed if the youth is not remediated within a maximum of one year.

Most juvenile records of arrests and adjudications are eligible to be sealed and treated as though they never occurred. For less serious offenses, the juvenile court will often seal the record automatically. Welfare & Institutions Code §786 provides certain exceptions to access sealed records under limited circumstances; however, if the same youth mentioned above, has a new petition filed against them and a doubt as to their competency is raised, there is no allowance for the court to access the sealed record.

Not only is access to the old competency records necessary and relevant to the new competency determination, but in most cases where competency is an issue, the youth is high-risk and has special needs. Serious mental health issues or developmental disabilities are prevalent in this population. This population of youth in juvenile court are at greater risk of homelessness, underemployment/unemployment, and dropping out of school.

SB 1126 (Jones), Chapter 338, allows sealed juvenile records to be accessed, inspected, or used by the probation department, the district attorney, counsel for the minor, and the court for the purpose of assessing the minor's mental competency in a subsequent juvenile proceeding if the issue of competency has been raised.

MISCELLANEOUS

AB 465 (Eggman) – Mental Health Workers: Supervision

There has been general discussion in the Legislature and across the country that law enforcement officials are not the ideal first responders to scenes of a mental health crisis. In Eugene, Oregon, a program called Cahoots (Crisis Assistance Helping Out on the Street) is a nonprofit that responds to non-criminal calls around homelessness, substance use, and mental health. They are tied directly into the 911 system and can respond to calls without police. It's reported that in 2017, Cahoots handled 17-percent of police calls. This additional help has been seen as a benefit to both the community and officers who can focus on other issues.

The City of Oakland is pursuing their own version of this model for a pilot program in the fall of 2020 based on that simple principle of having mental health workers respond to mental health issues. Additionally, nonprofits in other cities, including Sacramento, are looking to act as an alternative to police in dealing with these calls. These programs recognize that police officers are not trained to be mental health professionals. As they expand, and local governments experiment, it is important that those responding are properly supervised by licensed clinicians.

AB 465 (Eggman), Chapter 137, provide that if mental health professionals participate in a program assisting law enforcement in serving the community, or respond to calls for service instead of law enforcement, that those mental health professionals shall be supervised by licensed mental health professionals. Specifically, this new law:

- Provides that in any program or pilot program in which mental health professionals respond in collaboration with law enforcement personnel, or in place of law enforcement, to emergency calls related to a mental health crises shall ensure that mental health professionals participating in the program are supervised by a licensed mental health professional.

- Defines a "licensed mental health professional" as any one of the following:

    - licensed clinical social worker;

    - licensed professional clinical counselor;

    - licensed marriage and family therapist; and,

    - licensed psychologist.

AB 732 (Bonta) – County jails: prisons: incarcerated pregnant persons

Existing law requires the Board of State and Community Corrections to establish minimum standards for state and local correctional facilities. The standards include specific ones for pregnant incarcerated persons. (Pen. Code, § 6030.) A 2016 report by the American Civil Liberties Union (ACLU) of California noted that "protections that address obstetric care, housing

accommodations, and the presence of a support person during labor and delivery, among other issues, are confined to a section of the California Code of Regulations that applies to prisons but not jails." (*Reproductive Health Behind Bars in California, supra,* at p. 28.) The report recommended aligning policies to ensure that pregnant incarcerated individuals throughout California are treated equitably. (*Ibid*.) The report also recommended adopting policies with gender-neutral language. (*Ibid*.)

AB 732 (Bonta), Chapter 321, requires jails and prisons to offer incarcerated persons who are possibly pregnant or capable of becoming pregnant a pregnancy test, and requires specified medical treatment and services for incarcerated persons in county jail and state prison who are pregnant. Specifically, this new law:

- Provides that if an incarcerated person is identified as possibly pregnant or capable of becoming pregnant, the incarcerated person shall be offered the opportunity to voluntarily take a pregnancy test.

- Protects access to reproductive services, including abortions, and requires unbiased counseling on options that includes information on prenatal health care, adoption, and abortion.

- States that if an incarcerated person is confirmed to be pregnant, then an examination must be scheduled within seven days of arrival at the jail or prison.

- Provides a schedule for prenatal care visits.

- Mandates that pregnant incarcerated persons have access to prenatal vitamins and newborn care.

- Requires that a pregnant person incarcerated in a multi-tier housing unit be assigned to a lower bunk and lower tier housing.

- States that eligible pregnant incarcerated persons are to be given notice of and access to community-based programs serving pregnant, birthing, or lactating incarcerated persons.

- Prohibits the use of tasers, pepper spray, or any other chemical weapons on pregnant incarcerated persons.

- States that pregnant incarcerated persons who have used opioids prior to incarceration, or who are currently receiving methadone treatment, shall be offered medication assisted treatment with methadone or buprenorphine. They must also be given information on the risks of withdrawal.

- Requires each incarcerated pregnant person be referred to a social worker who must discuss options for placement and care of the child after delivery, assist with phone access to contact relatives for purposes of placement of the newborn, and oversee the

placement.

- States that a pregnant incarcerated person shall be taken to a hospital for purposes of giving birth. They may also have a verified support person present during labor, childbirth, and during postpartum recovery while hospitalized.

- Requires postpartum examinations by a medical provider once the incarcerated person is back in jail or prison.

- Requires that incarcerated persons be provided materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

AB 1145 (Garcia, C.) – Child Abuse: reportable conduct

The Child Abuse Neglect and Reporting Act (CANRA) was established in 1981 for the purpose of protecting children from abuse and neglect. The law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. Under CANRA, "child abuse" includes "sexual abuse," and "sexual abuse" consists of "sexual assault" or "sexual exploitation." The definition of sexual assault includes specific crimes involving sexual contact.

In 2013, the Department of Consumer Affairs (DCA) evaluated the issue of whether CANRA requires practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation. Relying on case law and the legislative intent behind CANRA, DCA concluded that mandated reporters are not required to report consensual sex between minors of like age for any of the conduct listed as sexual assault unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of child abuse. Because sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated the same as all other conduct listed in the section (i.e. Penal Code Section 288), only instances involving acts that are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there are indicators of abuse. (See DCA, Memorandum on the Evaluation of CANRA Reform Proposal Related to Reporting Consensual Sex Between Minors (Apr. 11, 2013).)

AB 1145 (C. Garcia), Chapter 180, eliminates the requirement that mandated reporters under CANRA report specified consensual sexual conduct involving minors by redefining the scope of "sexual assault." Specifically, this new law:

- Specifies that "sexual assault" shall not include specified consensual sexual conduct for purposes of mandated reporting of child abuse under CANRA.

- States that "sexual assault" for the purposes of CANRA does not include voluntary conduct for sodomy, oral copulation, or sexual penetration with a foreign object, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

AB 1185 (McCarty) – County board of supervisors: sheriff oversight

County sheriffs' offices are vested with substantial authority over Californians, including the powers to detain, search, arrest, and use deadly force. They are also responsible for the welfare of the more than 75,000 incarcerated individuals in California's jail system. The misuse of such authority can result in constitutional violations as well as harm to public safety and trust. Meaningful independent oversight and monitoring of sheriffs' departments can increase government accountability and transparency, enhance public safety, and build community trust in law enforcement. Meaningful oversight requires some amount of authority over the sheriffs' offices and the independence to conduct credible and thorough investigations.

One instrument of investigation is known as a subpoena. A subpoena is a writ used to summon witnesses before a court or other deliberative body. A subpoena "duces tecum" is a specific type of subpoena that is used to require a witness to present documents and records to the deliberative body.

AB 1185 (McCarty) Chapter 342, provides that counties may establish sheriff oversight boards to assist the board of supervisors with those duties as they relate to the sheriff. Specifically, this new law:

- Authorizes the counties to establish sheriff oversight boards, either by action of the board of supervisors or through a vote of county residents.

- Authorizes a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board.

- Authorizes the counties to establish an office of the inspector general to assist the board with its supervisorial duties.

AB 1775 (Jones-Sawyer) – False reports and harassment

Existing law prohibits the use of a telephone for the purpose of annoying or harassing an individual through the 911 line. It also provides that it is unlawful to knowingly use the 911 telephone system for any reason other than an emergency.

Current law on false police reporting does not address the growing number of cases in which peace officers are summoned to violate the rights of individuals for engaging in everyday activities, such as those individuals essentially living their lives. Recently, media reports people calling 911 and making a false claim to harass a person, and a number of these incidents it appears by the language used that the harassment was in part because the person was a member of a protected class. In considering this issue, the Legislature declared their intent to end instances of 911 emergency system calls that are aimed at violating the rights of individuals based upon race, religion, sex, gender expression, or any other protected class.

The Legislature declared that all Californians, including people of color, should have the liberty to live their lives, and to go about their business, without living under the threat or fear of being confronted by police. Prejudicial 911 emergency system calls cause mistrust between communities of color and institutions, and those calls further deteriorate community-police relations.

AB 1775 (Jones-Sawyer) Chapter 327, makes it a crime to knowingly allow the use of or to use the 911 emergency system for the purpose of harassing another. Specifically, this new law:

- Punishes the use of the 911 emergency system for the purpose of harassing another is a crime that is punishable as follows:
    - For a first violation, as an infraction punishable by a two-hundred-fifty dollar ($250) fine or as a misdemeanor punishable by up to six months in a county jail, a fine of up to one thousand dollars ($1,000), or by both that imprisonment and fine.
    - For a second or subsequent violation, as a misdemeanor punishable by up to six months in a county jail, a fine of up to one thousand dollars ($1,000), or by both that imprisonment and fine.
- Punishes the use of the 911 emergency system for the purpose of harassing another person and that act is an unlawful hate crime, providing that the person who commits the act is guilty of a misdemeanor punishable by up to one year in a county jail, a fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000), or by both that imprisonment and fine.
- Provides that this section does not apply to uses of the 911 emergency system by a person with an intellectual disability or other mental disability that makes it difficult or impossible for the person to understand the potential consequences of their actions.
- Provides that, for purposes of this new law, "intimidation by threat of violence" includes, but is not limited to, "making or threatening to make a claim or report to a peace officer or law enforcement agency that falsely alleges that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention, knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report."

AB 2606 (Cervantes) – Criminal Justice: Supervised Release File

The California Law Enforcement Communications System (CLETS) is set forth in Government Code section 15150 et seq. It is "a statewide telecommunications system of communication for the use of law enforcement agencies." (Gov. Code, § 15152.)

Under current law, the Department of Justice (DOJ) in conjunction with the California Department of Corrections must update supervised release files on CLETS every 10 days to show recent inmates paroled from facilities under its jurisdiction. (Pen. Code, § 14216, subd. (a).) The DOJ has a similar duty in conjunction with the Department of State Hospitals (DSH) to update these records to show patients undergoing community health treatment and supervision through the conditional release program administered by DSH, except as specified. (Pen. Code, § 14216, subd. (b).) There is no similar requirement to update CLETS with information regarding individuals who have been released under county supervision – i.e., persons on probation, mandatory supervision, and postrelease community supervision (PRCS). As a result, this information is often incomplete and not available to law enforcement.

AB 2606 (Cervantes), Chapter 332, requires each county probation department or other supervising county agency to update any supervised release file that is available to them on CLETS every 10 days by entering any person placed onto postconviction supervision within their jurisdiction and under their authority, including persons on probation, mandatory supervision, and PRCS.

AB 3099 (Ramos) – Department of Justice: law enforcement assistance with tribal issues

According to most recent census data, California is home to more people of Native American and Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes and over 70 non-federally recognized tribes in California. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian country."

In passing Public Law 83-280, Congress expressly granted California concurrent criminal jurisdiction with California's tribal governments over specified areas of Indian country within the state for the enforcement of statewide criminal laws. A lack of consistency in the application of Public Law 280 on California Indian country currently exists statewide as advocates argue that this creates jurisdictional uncertainty for local law enforcement and California tribes with Indian land. This uncertainty applies specifically in the context of missing persons.

Existing law establishes a California missing persons registry, in addition to other missing persons networks and databases that are designed to assist law enforcement in their investigations of missing and unidentified persons in California. However, there is public concern that when crimes are committed on these lands, they are not properly documented and investigated

AB 3099 (Ramos) Chapter 170, requires the Department of Justice, upon funding, to provide technical assistance relating to tribal issues to local law enforcement agencies, as specified, and tribal governments with Indian lands. Specifically, this new law:

- Provides that to improve upon the implementation of concurrent criminal jurisdiction on California Indian lands, the Department of Justice shall, subject to an appropriation by the Legislature, in a manner to be prescribed by the department, provide technical assistance to local law enforcement agencies that have Indian lands within or abutting

their jurisdictions, and to tribal governments with Indian lands, including those with and without tribal law enforcement agencies, to include, but not be limited to, all of the following:

  - Providing guidance for law enforcement education and training on policing and criminal investigations on Indian lands that supports consistent implementation of California's responsibilities for enforcing statewide criminal laws on Indian lands that protect the health, safety, and welfare of tribal citizens on Indian lands;

  - Providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools for conducting police investigations of statewide criminal laws on Indian lands;

  - Providing educational materials about the complexities of concurrent criminal jurisdiction with tribal governments and their tribal law enforcement agencies, specifically to tribal citizens on Indian lands, including information on how to report a crime, and information relating to victim's rights and victim services in California; and,

  - Facilitating and supporting improved communication between local law enforcement agencies and tribal governments or tribal law enforcement agencies for purposes of consistent implementation of concurrent criminal jurisdiction on California Indian lands.

- States that to address the issues involving missing and murdered Native Americans in California, particularly missing and murdered Native American women and girls, the department shall, subject to an appropriation by the Legislature, in a manner to be prescribed by the department, conduct a study to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls. The study shall include all of the following:

  - A determination of the scope of the issue of missing and murdered Native Americans in California, particularly women and girls;

  - Identification of barriers in reporting or investigating missing Native Americans in California, particularly women and girls; and,

  - Ways to create partnerships to increase cross-reporting and investigation of missing Native Americans in California, particularly women and girls, between federal, state, local, and tribal governments, including tribal governments without tribal law enforcement agencies.

- States that as part of the study, the department shall conduct outreach to tribal governments in California, Native American communities, local, tribal, state, and federal

law enforcement agencies, and state and tribal courts.

- Requires the department to submit a report to the Legislature upon completion of the study. The report shall include all of the following:
    - Data and analysis of the number of missing Native Americans in California, particularly women and girls;
    - Identification of the barriers to providing state resources to address the issue; and,
    - Recommendations, including any proposed legislation, to improve the reporting and identification of missing Native Americans in California, particularly women and girls.

AB 3228 (Bonta) – Private detention facilities

The federal government contracts with private detention facilities (and county jails) throughout the country to house immigration detainees and federal criminal pretrial detainees. There are a variety of concerns about the how private detention centers are run. It can be difficult to investigate those concerns because of a lack of transparency. Private, for-profit detention facilities are accountable to their shareholders and not the people of the State of California. For example, these facilities claim exemptions to the public disclosure requirements under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) because they are private corporations, which makes the potentially unlawful conduct occurring within the facility hidden from discovery. These facilities similarly claim an exemption to California's State counterpart, the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq).

Private detention centers have been particularly problematic during the Covid-19 pandemic. Private detention centers have been epicenters for Covid-19 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.

AB 3228 (Bonta), Chapter190, establishes a civil cause of action against private detention facilities which violate the requirement to comply with the detention standards of care and confinement, as specified. Specifically, this new law:

- Requires a private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations.
- Provides that if a private detention facility operator, or agent, or person acting on behalf of a detention facility operator, commits a tortious action that violates the requirement to comply with detention standards of care and confinement, an individual who has been injured by that tortious action may bring a civil action for relief.

- Provides that the court, in its discretion, may award the prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees, in these civil actions.

SB 388 (Galgiani) - Missing persons: reports: local agencies

Existing law requires all local police and sheriffs' departments to accept reports of missing persons without delay and to use a specified form in order to obtain the release of dental or skeletal X-ray records, as provided. If the missing person is under 21 years of age, or the person is determined to be at risk, existing law requires the police department or sheriff's department to broadcast a "Be On the Lookout" bulletin and to transmit the report to the Department of Justice, as provided. Also under existing law, local agencies can opt-out of these requirements. Local police and sheriffs' departments may be exempt from complying with these provisions if their governing body, by a majority vote of the members of that body, adopts a resolution expressly making those requirements inoperative.

> **SB 388 (Galgiani), Chapter 228,** deletes the provision that permits a local agency to exempt itself from the provisions of law applying to missing person reports, and instead mandates application of the law. All local agencies must now comply with the procedures for reporting a missing person.

SB 903 (Grove) – Grand Theft: Agricultural Equipment

Previous legislation (SB 224 (Grove), Chapter 119, Statutes of 2019) provided that in counties participating in a rural crime prevention program, the proceeds of any fine imposed for conviction of the crime of grand theft of agricultural equipment shall be allocated to the Central Valley Rural Crime Prevention Program or the Central Coast Rural Crime Prevention Program.

The State Controller recently indicated these funds cannot be distributed without correcting a cross reference to the existing Central Valley and Central Coast Rural Crime Prevention Program fund distribution formula.

> **SB 903 (Grove), Chapter 232,** requires the proceeds of a fine imposed for grand theft involving agricultural equipment be allocated according to the Rural Crime Prevention Program schedule, which will give the state Controller the ability to properly distribute the funds.

SB 1196 (Umberg) – Price Gouging

Current law makes it unlawful for retailers and service providers to price gouge during a 30 day period (180 days for reconstruction services) after a declared state of emergency. "Price gouging" is increasing the price of specified goods and services by more than 10% above the price of those goods and services were offered for prior to the declaration of emergency. The provisions of the price gouging statute are triggered when a state of emergency has been declared

by the President of the United States, the Governor, or officials at a county or municipal level, as specified.

During the COVID-19 pandemic, sellers have been buying vitally needed consumer goods and personal protective equipment, thus depleting store shelves, and then selling those essential goods for extortionately high prices, online as well as in traditional retail stores. Many of these sellers were not offering these goods for sale prior to the pandemic and therefore are not covered by the existing price gouging law.

SB 1196 (Umberg), Chapter 339, includes a person or entity that was not selling specified goods and services prior to the declaration of an emergency within the scope of the crime of price gouging. Specifically, this new bill:

- Includes pandemic or epidemic disease outbreak in the lists of events that can trigger a declaration of emergency.

- Specifies that a person, business, or other entity may not sell specified goods and services for a price of more than 10% greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, or prior to a date set in the proclamation or declaration.

- State that if a person, contractor, business, or other entity did not charge a price for the goods or services immediately prior to the proclamation or declaration of emergency, it may not charge a price that is more than 50% greater than the seller's existing costs, as specified.

- Allows the Governor or the Legislature to extend the time frame for price gouging beyond 30 days without limit, while continuing to specify that each extension of the price gouging provisions by a local legislative body or local official shall not exceed 30 days.

PEACE OFFICERS

AB 846 (Burke) – Public employment: public officers of employees declared by law to be peace officers

The Commission on Peace Officers Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. POST develops and implements various courses to train peace officers, including both basic and continuing professional training. Peace officer basic training includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction. According to POST's website, most POST-certified basic training academies exceed the 664 minimum hours by 200 or more hours.

According to the Penal Code, peace officers must not engage in racial or identity profiling. In addition, peace officers are encouraged to not engage in racial or identity profiling through various POST courses but this has not resulted in less racial profiling. Recent reporting has found that 157 people died during encounters with police in the state in 2016 and that 42 percent of the civilians involved were Latino. Furthermore, although black people make up just 6% of the state's population, according to the most recent Census data, they represented nearly 20% of the use-of-force and shooting cases last year. More than half of the officers involved were white. In the 2019 Racial and Identity Profiling Advisory Board (RIPA) report, in 2017 there were 741 civilians involved in use of force incidents with Latino civilians comprising of 43.9% and Black civilians comprising of 19.3%.

The 2019 RIPA report had also found that in 2018 several of the trainings did not meet all of the curriculum requirements. The Board is currently working with POST to recreate this training to better meet the requirements. RIPA's recommendations strongly emulate AB 243. For example, RIPA also recommends more frequent trainings and inclusion of implicit bias training.

> **AB 846 (Burke), Chapter 322,** provides that evaluations of peace officers include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation; and that every department or agency that employs peace officers review their job descriptions and deemphasize the paramilitary aspects of employment and place more emphasis on community interaction and collaborative problem solving. Specifically, this new law:
>
> - Requires that prospective officers' evaluations for mental fitness include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.
>
> - Requires, by January 1, 2022, for POST to study, review, and update regulations and screening materials to identify explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation related to emotional and mental condition evaluations.

- Requires that local law enforcement agencies shall review their job descriptions used to recruit and hire peace officers and shall make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, and de-emphasize the paramilitary aspects of the job.

- Specifies that the recruitment provisions change is not intended to alter the required duties of any peace officer.

- Provides that the Legislature finds and declares that changes to these job descriptions are necessary to allow peace officers to feel like the public can trust law enforcement and to implement problem-solving policing and intelligence-led policing strategies in contrast with reactive policing strategies.

AB 1185 (McCarty) – Officer oversight: sheriff oversight board

County sheriffs' offices are vested with substantial authority over Californians, including the powers to detain, search, arrest, and use deadly force. They are also responsible for the welfare of the more than 75,000 incarcerated individuals in California's jail system. The misuse of such authority can result in constitutional violations as well as harm to public safety and trust. Meaningful independent oversight and monitoring of sheriffs' departments can increase government accountability and transparency, enhance public safety, and build community trust in law enforcement. Meaningful oversight requires some amount of authority over the sheriffs' offices and the independence to conduct credible and thorough investigations.

One instrument of investigation is known as a subpoena. A subpoena is a writ used to summon witnesses before a court or other deliberative body. A subpoena "duces tecum" is a specific type of subpoena that is used to require a witness to present documents and records to the deliberative body.

AB 1185 (McCarty) Chapter 342, provides that counties may establish sheriff oversight boards to assist the board of supervisors with those duties as they relate to the sheriff. Specifically, this new law:

- Authorizes the counties to establish sheriff oversight boards, either by action of the board of supervisors or through a vote of county residents.

- Authorizes a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board.

- Authorizes the counties to establish an office of the inspector general to assist the board with its supervisorial duties.

AB 1196 (Gipson) – Peace Officers: Use of Force

A choke hold is a technique, sometimes employed by law enforcement, that restricts the breathing of an individual by applying pressure directly to the wind pipe. The use of choke holds by law enforcement agencies in California has declined over many years due to serious injury and death caused by the usage of the technique. Both federal courts and California courts have found the practice of using choke holds subjects municipalities, government entities, and law enforcement agencies that permit their use liable for wrongful death and serious injury. As a result of these findings of liability, the usage of choke holds fell out of favor and cities and agencies routinely banned their usage. Additionally, the Commission on Peace Officer Standards and Training (POST) ceased instruction on the technique. However, the practice has never been expressly banned in California.

A carotid restraint is very similar to a choke hold. The practice involves the cutting-off of blood circulation to the head of the person upon which the hold is placed rather than applying pressure directly to the wind pipe. This process can cause the person to lose consciousness. This technique has conventionally been taught to be less deadly than a traditional choke hold which can more easily collapse the wind pipe because it's focused on the front of the neck. However, a slight deviation in the placement of the arm of the person implementing the hold can convert a carotid restraint into a choke hold. Additionally, cutting off blood flow to a person's brain has its own dangers. Several high-profile officer involved deaths have resulted from the use of choke holds or carotid restraints. In the Eric Garner case, NY Commissioner James O'Neill said that the officer's failure to relax his grip while subduing him triggered a fatal asthma attack. George Floyd died in Minneapolis while a peace officer was applying his knee against the back of Mr. Floyd's neck in an effort to subdue and detain him.

AB 1196 (Gipson) Chapter 324, provides that law enforcement agencies are prohibited from authorizing carotid restraint holds and choke holds. Specifically, this new law:

- Prohibits a law enforcement agency from authorizing the use of a carotid restraint hold or a choke hold as those terms are defined.

- Defines "carotid restraint" as a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.

- Define "choke hold" means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe.

AB 1506 (McCarty) – Police use of force

In California alone, there have been almost 800 fatal shootings by police since 2015, but only a small number of independent investigations have been conducted. While the vast majority of law enforcement officers, from county prosecutors to police officers, act in

accordance with appropriate professional and ethical standards, the current process of local district attorneys investigating local police has the possibility for bias and conflicts of interest.

In March 2015, the Obama Administration released the "President's Task Force on 21st Century Policing," with recommendations and action items to strengthen community policing and trust among law enforcement and the communities they serve. The task force encouraged policies that mandate the use of external and independent prosecutors in cases of police use-of-force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.

AB 1506 (McCarty), Chapter 326, provides that a state prosecutor shall conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, as specified. It directs the Attorney General, beginning July 1, 2023, to operate a Police Practices Division within the Department of Justice (DOJ), to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency. Specifically, this new law:

- Specifies that a state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

- States that the Attorney General is the state prosecutor unless otherwise specified or named.

- Specifies that a state prosecutor is authorized to do all of the following:

    - Investigate and gather facts in incidents involving a shooting by a peace officer that results in the death of an unarmed civilian;

    - For all investigations conducted, prepare and submit a written report; and,

    - And, if criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

- State that beginning on July 1, 2023, the Attorney General shall operate a Police Practices Division within DOJ to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

- Specify that the Police Practices Division shall make specific and customized recommendations to any law enforcement agency that requests a review, based on those policies identified as recommended best practices.

- Specify that DOJ's implementation of this bill is subject to an appropriation by the Legislature.

AB 2655 (Gipson) – Invasion of privacy: first responders

Existing laws severely limit a government entity's right and ability to share photos of deceased persons. For example, coroner's photos are not disclosable except in limited cases. When a government entity takes possession of these sensitive records, it has a duty to take care not to disseminate them in a way that violates the expectation of privacy a family has in ensuring their loved ones' gruesome death photos are not shared, lacking a legitimate public interest in the disclosure of those photos.

However, recent events in California have shown that some government employees have acted with impunity in capturing and sharing tragic photos in a salacious manner. A few days after the helicopter crash that killed Kobe Bryant and eight others, the Los Angeles Times reported that a Los Angeles County sheriff's deputy was showing gruesome photos taken at the scene of the accident to people in a bar. The Sheriff's Department later determined that eight officers were ultimately involved in taking or obtaining photos from the scene without having a law enforcement purpose for doing so. These photos were only obtained by individuals by virtue of their employment as first responders to an accident scene.

First responders like police and coroners have special access to the scenes of accidents and other deadly incidents by virtue of their public employment. While these employees have many legitimate reasons to capture images of a scene, the act of obtaining these photos for purely personal purposes is improper.

AB 2655 (Gipson), Chapter 219, makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest. Specifically, this new law:

- Requires an agency that employs first responders on January 1, 2021 to notify its employees who are first responders of the prohibition imposed by this new law.

- Makes it a crime for a first responder, operating under color of authority, who responds to the scene of an accident or crime to capture the photographic image of a deceased person by any means, including, but not limited to, by use of a personal electronic device or a device belonging to their employing agency, for any purpose other than an official law enforcement purpose or a genuine public interest is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000) per violation.

- Creates the right to obtain a warrant when the property or things to be seized consists of evidence that tends to show that a violation of this new law has occurred or is occurring. Provides that evidence to be seized pursuant to this new law shall be limited to evidence of a violation of the prohibitions imposed by this new law and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

- Defines, for purposes of this new law, "first responder" to mean a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, emergency manager, firefighter, coroner, or employee of a coroner.

AB 2699 (Santiago) – Firearms: unsafe handguns

Under existing law any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. The above prohibition does not apply to the sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

AB 2699 (Santiago), Chapter 289, exempts the following entities, and sworn officers of these entities that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST) from the prohibition against the sale or purchase of an "unsafe" handgun:

- The California Horse Racing Board;
- The State Department of Health Care services;
- The State Department of Public Health;
- The State Department of Social Services;
- The Department of Toxic Substances Control;
- The Office of Statewide Health Planning and Development;
- The Public Employees Retirement System;
- The Department of Housing and Community Development;
- Investigators of the Department of Business Oversight;
- The Law Enforcement Branch of the Office of Emergency Services;
- The California State Lottery; and,
- The Franchise Tax Board.

    - Provides that that the sale of "unsafe" handguns to specified law enforcement entities and the peace officers employed by those entities are only authorized

if the handgun is to be used as a service weapon.

- Requires the Department of Justice (DOJ) to maintain a database of "unsafe handguns" that have been sold to peace officers that are exempt from the prohibition against the purchase of these handguns. The Department may satisfy this requirement by maintaining the information in any existing firearm database that reasonably facilitates compliance with this mandate

- Requires the DOJ by March 1, 2021 provide a notification to the persons and entities that have purchased "unsafe handguns" regarding the prohibition against the sale or transfer of such a handgun. Thereafter the DOJ shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred

- Makes the unlawful sale or transfer of an "unsafe handgun", or failure to report to the DOJ the sale or transfer of an "unsafe handgun" subject to a civil penalty not to exceed ten thousand dollars ($10,000).

SB 480 (Archuleta) – Law enforcement uniforms

Existing law prohibits a law enforcement officer or any other person from wearing a uniform that is substantially similar to the official uniform of members of the California Highway Patrol (CHP) except duly appointed members of the CHP and persons authorized by the commissioner to wear such uniform in connection with a program of entertainment. Current law also provides that a uniform shall be deemed substantially similar to the uniform of the CHP if it so resembles such official uniform as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the CHP.

During active protests across the state in the summer of 2020, state and local law enforcement officers were heavily deployed on the streets, prior to and after the National Guard also responded in many cities. There were reports across the country that state and local law enforcement officials were increasingly wearing military-presenting uniforms, including specific accounts of officers in the Bay area. There are concerns that police wearing military-like fatigues has a negative psychological effect on the public.

SB 480 (Archuleta), Chapter 336, prohibits a department or agency that employs peace officers from authorizing or allowing its employees to wear a uniform that is substantially similar to any uniform of the United States Armed Forces or state active militia. Specifically, this new law:

- Prohibits a department or agency that employs peace officers from authorizing or allowing its employees to wear a uniform that is made from a camouflage printed or patterned material.

- Defines a uniform to be "substantially similar" if it "so resembles an official uniform of the United States Armed Forces or state active militia as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the United States Armed Forces or

state active militia." Provides that a uniform shall not be deemed to be substantially similar to a uniform of the United States Armed Forces or state active militia if it includes at least two of the following three components: a badge or star or facsimile thereof mounted on the chest area, a patch on one or both sleeves displaying the insignia of the employing agency or entity, and the word "Police" or "Sheriff" prominently displayed across the back or chest area of the uniform.

- Provides that these restrictions apply to personnel who are assigned to uniformed patrol, uniformed crime suppression, or uniformed duty at an event or disturbance, including any personnel that respond to assist at a protest, demonstration, or similar disturbance. States that it does not apply to members of a Special Weapons and Tactics (SWAT) team, sniper team, or tactical team engaged in a tactical response or operation.

- Provides that this section does not apply to the Department of Fish and Wildlife.

POST CONVICTION RELIEF

AB 2147 (Reyes) – Convictions: expungement: inmate hand crews

California Department of Corrections and Rehabilitation (CDCR), in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operates 43 conservation camps, commonly known as fire camps, located in 27 counties. All camps are minimum-security facilities and all are staffed with correctional staff.

Overall, there are approximately 3,100 inmates working at fire camps currently. All inmates receive the same entry-level training that CAL FIRE's seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program. An inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have "minimum custody" status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison and participation in rehabilitative programming.

Existing law provides procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her conviction dismissed or "expunged." Under existing law, an expungement does not relieve a person of the duty to disclose such a conviction when seeking licensing by the state. California has a large number of professions which require an individual to be licensed in order to engage in those activities. Inmate firefighters can have difficulty getting an EMT license because of their prior convictions. Without an EMT license, these same individuals can be excluded from jobs with firefighting organizations.

AB 2147 (Reyes), Chapter 60, allows a defendant who successfully participated in Fire Camp, as specified, to petition for a dismissal of their conviction, releasing the defendant from all penalties and disabilities resulting from the offense, except as provided. A defendant granted this dismissal shall not be required to disclose the conviction on an application for licensure by any state or local agency, with certain exceptions. Specifically, this new law:

- Provides that a defendant who has successfully participated in a Fire Camp, as determined by the Secretary of the Department of Corrections and Rehabilitation (CDCR), or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, and has been released from custody, the defendant is eligible for expungement relief, except that incarcerated individuals who have been convicted of specified serious crimes.

- Specifies that to be eligible for relief, the defendant is not required to complete the term of their probation, parole, or supervised release.

- States that expungement relief is available for all convictions for which the defendant is serving a sentence at the time the defendant successfully participates in one of the required programs.

- Provides that if all of the requirements are met, the court, in its discretion and in the interest of justice, may dismiss the accusations or information against the defendant and the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which the defendant has been convicted, except as specified.

- Specifies that a defendant who is granted expungement shall not be required to disclose the conviction on an application for licensure by any state or local agency, except in an application for licensure by the Commission on Teacher Credentialing, a position as a peace officer, public office, or for contracting with the California State Lottery Commission.

AB 2512 (Stone, M.) – Death Penalty: person with an intellectual disability

In 2002, the United States Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability. (*Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*).) The Court left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id*. at p. 317, quoting *Ford v. Wainwright* (1986) 477 U.S. 399, 416-417.) The following year, the Legislature added Penal Code section 1376 to implement this decision. The intellectual disability standard set forth in the statute was derived from the two clinical definitions referenced by the Court in *Atkins*. (*In re Hawthorne* (2005) 35 Cal.4th 40, 44, 47-48.) Unfortunately, despite the fact that clinical standards have changed over the years, the statute has not been updated.

Regarding post-conviction relief, California Supreme Court guidance provides that a claim of intellectual disability should be raised by a petition for writ of habeas corpus. By its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings. However, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra*, 35 Cal.4th at p. 47.)

AB 2512 (Stone), Chapter 331, authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability. Specifically, this new law:

- States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid

protracted and unnecessary litigation.

- Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

- Authorizes a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard.

- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

- Provides that the state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence.

- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

AB 2542 (Kalra) – Criminal procedure: discrimination

In 1987, the United States Supreme Court issued a landmark ruling on the issue of racial bias and prejudice in the American Court System – *McCleskey v. Kemp* (1987) 481 U.S. 279 (*McCleskey*). The *McCleskey* opinion has had far-reaching effects on a wide array of equal protection claims. "The precedent impairs constitutional challenges based on widespread racial disparities not just in capital sentencing, but in the criminal-justice system more widely; it requires defendants to prove discrimination on a specific basis, providing clear evidence that they were explicitly targeted because of their race. If police officers, prosecutors, judges, or others don't openly acknowledge their own prejudices, defendants face a prohibitively high bar fighting for their Fourteenth Amendment rights in court." (Neklason, The "Death Penalty's *Dred Scott*" Lives on, The Atlantic (June 14, 2019).)

AB 2542 (Kalra), Chapter 317, prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin. Specifically, this new law:

- Prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.
- Applies prospectively in cases in which a judgment has not been entered prior to January 1, 2021.
- States that a violation of this prohibition is established if the defendant proves, by a preponderance of the evidence, any of the following:
    - The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;
    - During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, except as specified, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful;
    - The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;
    - A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin

than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,

- A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed.

- States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the prohibition.

- States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation, the court shall hold a hearing.

- Provides that at the hearing, evidence may be presented by either party, including but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert.

- States that the defendant shall have the burden of proving the violation by a preponderance of the evidence and at the conclusion of the hearing, the court shall make findings on the record.

- Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the prohibition that is in the possession or control of the state. Upon a showing of good cause, and if the records are not privileged, the court shall order the records to be released. Upon a showing of good cause, the court may permit the prosecution to redact information prior to disclosure.

- States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the prohibition, the court shall impose a remedy specific to the violation found from the following list of remedies:

    - Before a judgment has been entered, the court may reseat a juror removed by use of a peremptory challenge, declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges;

    - When judgment has been entered:

        - If the court finds that the conviction was sought or obtained in violation of the prohibition, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings;

    - If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the judgment and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,

    - If the court finds that only the sentence was sought, obtained, or imposed in violation of the prohibition, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed.

- Prohibits imposition of the death penalty where the court finds a violation of the prohibition.

- Provides that the remedies available under this provision do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

- Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system.

- Provides that these provisions do not prevent the prosecution of hate crimes.

- Defines "more frequently sought or obtained" or "more frequently imposed" as meaning that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity.

- Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the prohibition occurred. “Substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

- Defines "racially discriminatory language" as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

- Defines “state” as including the Attorney General, a district attorney, or a city prosecutor.

- Provides that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition.

- Specifies that a writ of habeas corpus may be prosecuted after a judgment has been entered based on evidence of a violation of the prohibition if the judgment was entered on or after January 1, 2021.

- States that a petition raising such a claim for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.

- Provides that if a petitioner already has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim of a violation of the prohibition.

- Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the prohibition or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

- Requires the court to review the petition and if the court determines the petitioner has made a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause.

- Provides that the defendant shall appear at the hearing by video unless counsel indicates that their presence is needed.

- States that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

- Makes conforming changes to allow a person who is no longer in custody to vacate a conviction or sentence based on a violation of the prohibition.

- Contains a severability clause.

- Makes a number of Legislative findings and declarations including that it is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of

California.

SEARCH AND SEIZURE

AB 904 (Chau) – Search Warrants: Tracking Device

Existing state law has established that for a law enforcement agency to utilize a physical tracking device to track a person's movements, the agency must obtain a tracking device search warrant first. This statutory law in California stems from Fourth Amendment jurisprudence from the United States Supreme Court which held that a search utilizing a tracking device was unreasonable without a warrant. Since California codified the Supreme Court's actions with respect to tracking devices, technology has advanced to permit the tracking of a person's movement through many different means, including by utilizing a person's cell phone or other device that provides GPS locations to a third party company. Supreme Court jurisprudence has also begun to address these more technologically advanced mechanisms for searching and seizing a person's data. For example, the Court recognizes that the search of a cell phone is such a broad invasion of someone's personal life that a warrant is required to search one.

In 2015, the California legislature passed the California Electronic Communications Privacy Act to again codify Fourth Amendment principles with respect to advanced technology. The law regulates the disclosure of a person's electronic information by a third party, mandating a warrant in most cases for information to be turned over to law enforcement officials.

However, there are ways to access a person's data without the involvement of a third party, namely through "hacking" a device. This may be accomplished by using software that gains access to a person's information secretly. It appears existing California law did not overtly address this issue of tracking a person's movements through means of software. As such, it was unclear whether a law enforcement agency utilizing software to track a person's movements, whether in conjunction with a third party or by interacting directly with a person's electronic device, would be required to obtain a tracking device search warrant first.

> **AB 904 (Chau), Chapter 63,** specifies that a tracking device includes any software that permits the tracking of the movement of a person or object. Specifically, this new law states that nothing in this new law shall be construed to authorize the use of any device or software for the purpose of tracking the movement of a person or object.

AB 2655 (Gipson) – Invasion of privacy: first responders

Existing laws severely limit a government entity's right and ability to share photos of deceased persons. For example, coroner's photos are not disclosable except in limited cases. When a government entity takes possession of these sensitive records, it has a duty to take care not to disseminate them in a way that violates the expectation of privacy a family has in ensuring their loved ones' gruesome death photos are not shared, lacking a legitimate public interest in the disclosure of those photos.

However, recent events in California have shown that some government employees have acted with impunity in capturing and sharing tragic photos in a salacious manner. A few days after the helicopter crash that killed Kobe Bryant and eight others, the Los Angeles Times reported that a Los Angeles County sheriff's deputy was showing gruesome photos taken at the scene of the accident to people in a bar. The Sheriff's Department later determined that eight officers were ultimately involved in taking or obtaining photos from the scene without having a law enforcement purpose for doing so. These photos were only obtained by individuals by virtue of their employment as first responders to an accident scene.

First responders like police and coroners have special access to the scenes of accidents and other deadly incidents by virtue of their public employment. While these employees have many legitimate reasons to capture images of a scene, the act of obtaining these photos for purely personal purposes is improper.

AB 2655 (Gipson), Chapter 219, makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest. Specifically, this new law:

- Requires an agency that employs first responders on January 1, 2021 to notify its employees who are first responders of the prohibition imposed by this new law.

- Makes it a crime for a first responder, operating under color of authority, who responds to the scene of an accident or crime to capture the photographic image of a deceased person by any means, including, but not limited to, by use of a personal electronic device or a device belonging to their employing agency, for any purpose other than an official law enforcement purpose or a genuine public interest is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000) per violation.

- Creates the right to obtain a warrant when the property or things to be seized consists of evidence that tends to show that a violation of this new law has occurred or is occurring. Provides that evidence to be seized pursuant to this new law shall be limited to evidence of a violation of the prohibitions imposed by this new law and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

- Defines, for purposes of this new law, "first responder" to mean a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, emergency manager, firefighter, coroner, or employee of a coroner.

SEX OFFENSES

SB 145 (Weiner) – Sex Offenders: Registration

In 1947, California became the first state in the nation to require sex offender registration for persons convicted of specified offenses. Sex offender registration is a regulatory means of assisting law enforcement in dealing with the problem of recidivist sex offenders. Until recently, California was one of the few states that required lifetime registration for all registerable offenses with no discernment for the type of offense or the characteristics of the offender.

California law criminalizes the act of statutory rape, meaning that if a young person has voluntary sexual intercourse with a minor that person is guilty of a crime. Such an offense does not automatically require sex offender registration if the perpetrator is within 10 years of age of the minor and the minor is 14 years or older. In these so-called "Romeo and Juliet" cases, the court has discretion, based on the facts of the case, to decide whether or not to place the defendant on the sex offender registry. On the other hand, if the sex act performed is oral or anal sex, then the court must always place the defendant on the sex offender registry, regardless of the facts of the case. In other words, if a 19-year-old man is convicted of having sex with his 17-year-old boyfriend, he must register as a sex offender. That may not be the case, however, for a 24-year-old man who has vaginal intercourse with a 15-year-old girl. Such a person can avoid sex offender registration if a judge decides it's unnecessary.

Some believe that this disparate treatment of sexual acts originates from laws that criminalized "gay" sex until the 1970s. Stakeholders have pointed out that the distinction in the law is irrational and discriminatory towards LGBTQ youth as it treats oral and anal sex as a more egregious crime than penile-vaginal sex, with the former mandating sex offender registration, but giving discretion to the courts for the latter. This subject has been hotly contested in the courts and the California Supreme Court has addressed the issue at least twice in recent years.

SB 145 (Wiener), Chapter 79, provides that defendants convicted of the specified, non-forcible sex offenses involving minors (described above) from mandatory registration as a sex offender. Specifically, this new law:

- Exempts a person convicted of non-forcible sodomy with a minor, oral copulation with a minor, or sexual penetration with a minor, as specified, from having to automatically register as a sex offender under the Sex Offender Registry Act if the person was not more than ten years older than the minor at the time of the offense, and the conviction only requires one person to register.

- Specifies that a person convicted of one of those specified offenses may still be ordered to register in the discretion of the court, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

SUPERVISED RELEASE

AB 1950 (Kamlager) – Probation: length of term

California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

A paper called *Paradox of Probation: Community Supervision in the Age of Mass Incarceration* discussed concerns that more and higher levels of probation supervision can lead increased involvement in the criminal justice system for the individuals being supervised on probation. Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers' everyday lives. In addition, the enhanced monitoring by probation officers (and in some cases, law enforcement as well) makes the detection of minor violations and offenses more likely.

Research by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate.

AB 1950 (Kamlager), Chapter 328, specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified. Specifically, this new law.

- Limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.

- Limits the probation term to two years for a felony offenses.

- Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions.

- Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds $25,000.

AB 2321 (Jones-Sawyer) – Juvenile court records: access

In 2000, Congress created the U-Visa and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant

visa upon cooperation with law enforcement in an investigation of an underlying crime. The creation of the U- and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws.

As a part of obtaining a U- or T-visa, a person must get certification by a prosecutor of helpfulness. Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness.

AB 2321 (Jones-Sawyer), Chapter 137, permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. Specifically, this new law:

- States that a record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined may be accessed by a judge or prosecutor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. Further states that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

- Provides that when a new petition has been filed against the minor in juvenile court and the issue of competency is raised, by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in the proceedings on the new petition. Further states that access, inspection, or utilization of the sealed records is limited to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results. States that the information obtained pursuant to this subparagraph shall not be disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Also provides that access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

AB 2426 (Reyes) – Victims of crime

In 2000, Congress created the U and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA). This law affords immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon

cooperation with law enforcement in an investigation of an underlying crime. The creation of the U and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws. However, in many jurisdictions, immigrants experience difficulty and or delays in obtaining the proper documentation from law enforcement to certify their participation in the investigation. These delays can result directly in the denial of a U-Visa or T-Visa application, leaving an eligible immigrant unable to adjust their status and vulnerable to deportation.

AB 2426 (Reyes), Chapter 187, specifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. Specifically, this new law:

- Specifies that a "certifying entity" includes without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code.

- Provides that a certifying official shall not refuse to complete the Form I-918 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

- Provides that a certifying official shall not refuse to complete the Form I-914 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

AB 2606 (Cervantes) – Criminal Justice: Supervised Release File

The California Law Enforcement Communications System (CLETS) is set forth in Government Code section 15150 et seq. It is "a statewide telecommunications system of communication for the use of law enforcement agencies." (Gov. Code, § 15152.)

Under current law, the Department of Justice (DOJ) in conjunction with the California Department of Corrections must update supervised release files on CLETS every 10 days to show recent inmates paroled from facilities under its jurisdiction. (Pen. Code, § 14216, subd. (a).) The DOJ has a similar duty in conjunction with the Department of State Hospitals (DSH) to update these records to show patients undergoing community health treatment and supervision through the conditional release program administered by DSH, except as specified. (Pen. Code, § 14216, subd. (b).) There is no similar requirement to update CLETS with information regarding individuals who have been released under county supervision – i.e., persons on probation, mandatory supervision, and postrelease community supervision (PRCS). As a result, this information is often incomplete and not available to law enforcement.

AB 2606 (Cervantes), Chapter 332, requires each county probation department or other supervising county agency to update any supervised release file that is available to them on CLETS every 10 days by entering any person placed onto postconviction supervision within their jurisdiction and under their authority, including persons on probation, mandatory supervision, and PRCS.

APPENDIX A – INDEX BY AUTHOR

APPENDIX A – INDEX BY AUTHOR

APPENDIX B – INDEX BY AUTHOR

APPENDIX B – INDEX BY AUTHOR

APPENDIX B – INDEX BY AUTHOR