ASSEMBLY COMMITTEE ON PUBLIC SAFETY

# 2016 Legislative Summary


**Reginald Byron Jones-Sawyer, Sr.**
*Chair*

**Melissa A. Melendez**
*Vice Chair*

*Members*
**Tom Lackey**
**Patty Lopez**
**Evan Low**
**Bill Quirk**
**Miguel Santiago**

# ASSEMBLY COMMITTEE ON PUBLIC SAFETY

# LEGISLATIVE SUMMARY 2016

## MEMBERS

Reginald Byron Jones-Sawyer, Sr., Chair
Bill Quirk, Chair
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Tom Lackey, Member
Patty Lopez, Member
Evan Low, Member
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# TABLE OF CONTENTS

# TABLE OF CONTENTS (Continued)

# TABLE OF CONTENTS (Continued)

## TABLE OF CONTENTS (Continued)

# TABLE OF CONTENTS (Continued)

# TABLE OF CONTENTS (Continued)

# TABLE OF CONTENTS (Continued)

# TABLE OF CONTENTS (Continued)

# ANIMAL ABUSE

## Animals: Euthanasia

Existing law prohibits a person from killing an animal by using carbon monoxide gas or intracardiac injection of a euthanasia agent on a conscious animal, except as specified. Current law does not prohibit euthanasia by means of carbon dioxide.

Carbon dioxide euthanasia occurs by administration of the gas in a sealed container. The gas produces unconsciousness and then death. A pressurized cylinder of CO2 is now viewed by a number of international animal research oversight authorities as the only acceptable method. CO2 may be administered in a home cage or in a specialized compartment and may be used to kill individuals or small groups of animals. There is concern using carbon dioxide for purposes of euthanasia causes the animals pain and can cause risks to people administering the carbon dioxide.

> **AB 2505 (Quirk), Chapter 105**, prohibits the use of carbon dioxide to euthanize an animal.

## Animal Cruelty: Criminal Statistics

Increasingly scientists and law enforcement are recognizing the link between animal abuse and domestic abuse. Many violent criminals have a history of animal cruelty. Many communities in the United States now cross train social service and animal control agencies in how to recognize signs of animal abuse as possible indicators of other abusive behaviors. Currently, the Department of Justice (DOJ) annual report on crime in California does not provide data relating to the crime of animal abuse.

> **SB 1200 (Jackson), Chapter 237,** requires the annual crime report published by the DOJ to include information concerning arrests for animal abuse.

# BAIL

## Bail: Attorneys Fees

Existing law sets forth procedures under which the court is authorized to declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for certain proceedings. The defendant's surety or bail bond agency in turn often files a motion to vacate the forfeiture—challenging the court's forfeiture and countering with a claim explaining why the bail should not be forfeited. There are significant costs for district attorney, county counsel, and prosecuting offices in opposing these motions.

Existing law states that county counsel, district attorneys or other applicable prosecuting agency shall recover costs incurred when the attorneys successfully oppose a motion to vacate bail forfeiture. (Pen. Code, § 1305.3.) This statute was used by prosecutorial agencies to successfully recover attorneys' fees in a number of bail forfeiture cases. However, in November of 2012, the Court of Appeal in *People v. U.S. Fire Ins. Co.* (2012) 210 Cal.App4th 1423, 1426, found that the provision in section 1305.3 allowing the recovery of "costs" did not include attorney fees. They reached this conclusion by holding that the ordinary and usual meaning of "costs" in California has only encompassed reporter's transcripts and filing costs, but not attorney fees.

> **AB 1854 (Bloom), Chapter 378,** inserts the term "attorney fees" into the statute so that prosecutorial agencies can once again recover these fees from forfeited bail money.

## Bail: Jurisdiction

When bail has been posted on behalf of an individual, a delay in the filing of criminal charges can result in the bail being released (exonerated) by the court. Current law requires the court to exonerate bail if no complaint has been filed within 15 days of the arraignment. If the district attorney's office files charges after the bail has been exonerated, the individual can be required to post bail a second time. This is particularly problematic when an individual has posted bail through a bail bondsman. In those situations, even though bail has been exonerated, the individual does not get back the premium he or she paid to the bail bondsman. If the individual is required to post a second bail, it results in substantial expense. If the individual does not have the money to pay a second premium to a bail bondsman, the defendant will be taken into custody, even though they had already posted bail once before.

> **AB 2655 (Weber), Chapter 79**, authorizes an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for up to 90 days from the original arraignment date if the prosecutor or defendant requests in writing or in open court that the arraignment be continued to allow the prosecutor time to file the complaint.

# CHILD ABUSE

## Interagency Child Death Review

Existing law authorizes counties to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Actions by child death review teams may include identification of emerging trends and safety concerns in other types of child deaths in order to inform and address needs for prevention efforts.

Existing law protects from disclosure a person's mental health or medical information. Disclosures of this information would help improve the child death review team's investigation and detection of child abuse and neglect as well as help identify trends to reduce the incidents of child death.

**AB 2083 (Chu), Chapter 297,** allows agencies, at the request of an interagency child death review team, to disclose otherwise confidential information to members of the team for the purpose of investigating child death. Specifically, this new law:

- Provides that the disclosed information may include the following:
    - Medical information;
    - Mental health information;
    - Information from child abuse reports and investigations, except the identity of the person making the report which shall not be disclosed;
    - State summary criminal history information;
    - Criminal offender record information;
    - Local summary criminal history information;
    - Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and
    - Records of in-home supportive services, unless disclosure is prohibited by federal law.
- States that written or oral information disclosed to a child death review team pursuant to these provisions would remain confidential, and would not be subject to disclosure or discovery by a 3rd party unless otherwise required by law.

**Court Appointed Special Advocate Programs: Background Checks**

Court Appointed Special Advocate (CASA) Program volunteers are deemed as officers of the court for the purpose of representing juveniles and wards of the court without other representation. This allows CASA advocates to represent children in proceedings that affect them. CASA programs recruit volunteers to serve as advocates for these children, and train them in accordance with minimum guidelines set by the Judicial Council. These guidelines require that CASA advocates and employees be fingerprinted and run through a Child Abuse Central Index background check to ensure the advocates and employees does not have a history of child abuse or neglect.

Existing law requires the Department of Justice (DOJ) to charge a fee sufficient to cover the cost of processing the requests for background checks. However, the DOJ is prohibited from charging fees to qualifying nonprofit organizations, childcare facilities and foster youth mentors. CASA programs are excluded from this benefit which can limit the pool of potential volunteers and affect services provided to children in the foster care system. This mandatory expense is burdensome, given that these programs are non-profits relying heavily on volunteers.

> **AB 2417 (Cooley), Chapter 860,** prohibits the DOJ from charging fees to CASA Programs for background checks.

# CONTROLLED SUBSTANCES

## Controlled Substances: Synthetic Cannabinoids

Communities across California have seen an increasing use of synthetic cannabinoids. The negative health effects related to the use of synthetic cannabinoids are linked to both the nature of the substances and to the way the products are produced. There have been numerous reports of non-fatal intoxications and a small number of deaths associated with their use.

Existing law currently prohibits synthetic cannabinoids and synthetic cannabinoid derivatives. Existing law lists five chemical compounds as synthetic cannabinoids. Underground chemists can skirt the law by slightly altering the chemical compounds of these drugs, to come up with new versions, which technically are legal.

**SB 139 (Galgiani), Chapter 624**, raises penalties for possession of synthetic cannabinoids and synthetic stimulants. Expands list of substances prohibited as synthetic cannabinoids. Specifically, this new law:

- Expands the definition of a synthetic cannabinoid compound by listing additional chemical categories as synthetic cannabinoids.
- States that an analog of specified synthetic cannabinoids and synthetic stimulants are prohibited in the same fashion as the specified synthetic cannabinoids and synthetic stimulants.
- Provides that specified synthetic cannabinoids and their analogs may be lawfully obtained and used for research, instruction, or analysis as long as that possession is consistent with federal law.
- Specifies that "synthetic cannabinoid compound" does not include:
    - Any substance that has been approved for a new drug application, as specified, or which is generally recognized as safe and effective for use as specified by federal law.
    - Any substance that is allowed for investigational use, as specified, under federal law.
- Provides that a first offense of using or possessing a synthetic stimulant compound or synthetic cannabinoid is punishable as an infraction, a second offense is punishable as an infraction or a misdemeanor, and a third or subsequent offense is punishable as a misdemeanor.

- Authorizes a person charged with specified crimes related to use and possession of synthetic stimulant compounds or synthetic cannabinoid compounds to be eligible to participate in a preguilty plea drug court program.

**Controlled Substances: Analogs**

California law treats a substance that is the chemical or functional equivalent of a drug listed in Schedule I or II of the controlled substance schedules the same as the scheduled drug. Such a substance is defined as a controlled substance analog. California law allows prosecution of a person for possession of, or commerce in, a substance that is an analog of a Schedule I or II drug. The purpose of the analog law is to prevent street chemists from circumventing drug laws by synthesizing drugs which have slight chemical or functional differences from the prohibited drug.

California's drug analog law provides two ways to establish that a substance is an analog of a drug. The first method relies on demonstrating that the substance has a chemical structure which is "substantially similar" to the chemical structure of the drug. The second method requires a showing that the substance has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is "substantially similar" to the effect of the drug.

Newly developed synthetic cannabinoids are not covered by the California analog statute as synthetic cannabinoids are not included in Schedule I or II of the controlled substances schedules. Illegal synthetic cannabinoids are separately defined and prohibited.

> **SB 1036 (Hernández), Chapter 627**, makes it a crime to possess, sell, transport, or manufacture an analog of a synthetic cannabinoid compound, aka "Spice" and expands the definition of a controlled substance analog to include a substance the chemical structure of which is substantially similar to the chemical structure of a synthetic cannabinoid compound.

**Controlled Substances: Rohypnol, GHB, and Ketamine**

On November 4, 2014, California voters approved Proposition 47, also known as the Safe Neighborhoods and Schools Act, which reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. Proposition 47 also allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced.

The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid*.)

Opponents of Proposition 47 claimed that the measure reduced penalties for a person who possesses "date rape drugs," specifically, gamma hydroxybutyric acid (GHB), flunitrazepam (Rohypnol) or Ketamine, with the intent to sexually assault someone. Proponents of the measure claimed that Proposition 47 only affected simple possession of controlled substances, not when these drugs are used for predatory purposes.

**SB 1182 (Galgiani), Chapter 893,** clarifies that the possession of GHB, Rohypnol or Ketamine with the intent to commit a sex crime, as defined, is a felony, punishable by imprisonment of sixteen months, two years or three years. Specifically, this new law:

- Defines "sexual assault" for the purposes of this bill to include, but not be limited to, violations of specified provisions related to sexual assault committed against a victim who is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance.

- States the finding of the Legislature that in order to deter the possession of ketamine, GHB, and Rohypnol by sexual predators and to take steps to prevent the use of these drugs to incapacitate victims for purposes of sexual exploitation, it is necessary and appropriate that an individual who possesses one of these substances for predatory purposes be subject to felony penalties.

# CORRECTIONS

## Parole Suitability: Notice

The Board of Parole Hearings (BPH) must send notice of a parole-suitability hearing to the trial judge, the prosecutor, defense counsel, the investigating law enforcement agency, and in the case of the murder of a peace officer, the officer's employer. (Pen. Code, § 3042, subd. (a).) These individuals are entitled to submit a statement expressing their views on whether the inmate should be paroled. Additionally, the victim of the crime may request that the BPH notify him or her of any scheduled parole-suitability hearing. The victim is entitled to personally appear to express his or her views on the granting of parole, or may submit a written or recorded statement instead. (Pen. Code, § 3043.) Finally, any person interested in the grant or denial of parole may submit a statement supporting or opposing parole. (Pen. Code, § 3043.5.) The BPH must consider all statements submitted in making its decision.

While under existing law the employer of a murdered firefighter may already submit a statement expressing its views on the grant of parole, the law currently does not require the employer be notified of the hearing.

**AB 898 (Gonzalez), Chapter 161,** provides that when an inmate who was convicted of the murder of a firefighter becomes eligible for a parole-suitability hearing, the Board of Parole Hearings (BPH) or the California Department of Corrections and Rehabilitation (CDCR) must give written notice of the hearing to the department that had employed the deceased firefighter. Specifically, this new law:

- Adds a murdered firefighter's former fire department employer to the list of persons that the BPH must notify of a parole-suitability hearing.
- Requires the fire department to register with the BPH and to provide the appropriate contact information in order to receive that notification.
- Provides that the required notice can be sent either by the BPH or CDCR.

## Inmate Welfare Fund: Reentry Services

The purpose of an inmate welfare fund is to fund programs that help inmates transition back into the community. Programs include education, drug and alcohol treatment, library service, and counseling. In accordance with the goal of transitioning inmates, money from an IWF may also be used to cover essential clothing and transportation expenses for an indigent inmate prior to release, at the discretion of the Sheriff. (Pen. Code, § 4025(i).)

While existing law currently allows the sheriff or county officer operating jails to spend money from the inmate welfare fund to provide released inmates with clothes and transportation expenses, it does not help them with work placement, counseling, obtaining proper forms of identification, education or housing. There was previously a pilot program in several counties

allowing for use of the inmate welfare fund for these services, but the program sunset on January 1, 2015.

**AB 920 (Gipson), Chapter 178,** creates a program in specified counties to allow the sheriff to expend money from the inmate welfare fund to provide reentry services. Specifically, this new law:

- Creates a program in Alameda, Kern, Los Angeles, Marin, Napa, Orange, Sacramento, San Bernardino, San Francisco, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, and Ventura counties which allows the sheriff or officer responsible for operating the jail to expend money from the inmate welfare fund to provide indigent inmates with reentry assistance, including work placement, counseling, obtaining identification, education, and housing.

- Prohibits using money from the inmate welfare fund to provide any services that are required to be provided by the sheriff or the county.

- Requires money in the fund be used to supplement existing services, and prohibit its use to supplant any existing funding for services provided by the sheriff or county.

- Requires submission of a report to the board of supervisors which includes the following:

    - How much money was spent under this program;

    - The number of inmates served by the program;

    - The types of assistance for which the funds were used; and,

    - The average length of time an inmate used the program.

**County Jails: Performance Credits**

Under existing law sentenced inmates in a county jail are awarded credits for good behavior. Additionally, a sheriff may also award a prisoner program credit reduction from his or her term of confinement. A sheriff who elects to participate in this program shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone.

Credit earning programs relieve prison overpopulation by modestly reducing the sentences of eligible prisoners who have participated in and completed certain approved education and life skills programs that help prepare for life after release. Research suggests that people who participate in this type of rehabilitative programming are significantly less likely to recidivate.

**AB 1597 (Stone), Chapter 55**, allows an inmate in the county jail who has not yet been sentenced to earn program credit reductions for successfully completing specific program performance objectives, otherwise known as "milestones". Specifically, this new law:

- Provides that an inmate in a county jail who has not been sentenced shall not be prevented from participating in approved rehabilitation programs that result in credit reductions for completing specific program performance objectives.

- States that if a person is awarded credits prior to sentencing, the credits shall be applied to a sentence for the offense for which the person was awaiting sentence when the credits were awarded under the same terms and conditions as all other credits awarded.

- Provides that evidence that an inmate has participated in or attempted to participate in any approved rehabilitation program eligible for credit is not admissible in any proceeding as an admission of guilt.

**Inmates: Medical Treatment**

Under current law, a court can order the removal of an inmate to a hospital when an inmate requires medical or surgical treatment necessitating hospitalization that cannot be furnished at the jail. Existing law authorizes a sheriff or jailer who determines that a prisoner in jail under his or her charge is in need of immediate medical or hospital care, and that the health and welfare of the prisoner will be injuriously affected unless the prisoner is forthwith removed to a hospital, to authorize the immediate removal of the prisoner under guard to a hospital, without first obtaining a court order.

**AB 1703 (Santiago), Chapter 65,** expands the definition of "immediate medical or hospital care" to include critical specialty medical procedures or treatment, such as dialysis, which cannot be performed at a city or county jail.

**Jails: Searches**

Current law establishes a statewide policy strictly limiting the use of strip and cavity searches for pre-arraignment detainees arrested for infraction and misdemeanor offenses, due to their intrusive nature. (Pen. Code, § 4030.) The statute specifies that a person who is arrested and taken into custody may be subjected to pat down searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband.
The constant flow of contraband is of great concern for correctional facilities and can present a safety hazard for the individual, staff, and other inmates. State sheriffs argue that the use of body scanners is a more efficient, effective, and less invasive means of assessing if an individual is harboring weapons or contraband substances than many other methods currently authorized under state law.

**AB 1705 (Rodriguez), Chapter 162,** authorizes law enforcement to use a body scanner to search a person arrested for the commission of any misdemeanor or infraction and

taken into custody. Specifically, this new law:

- Provides that if a person is arrested and taken into custody for a misdemeanor or infraction, that person may be subjected to a body scanner search in order to discover and retrieve concealed weapons and contraband substances before being placed in a booking cell.

- Requires an agency utilizing a body scanner to try to avoid knowingly using a body scanner on a woman who is pregnant.

- Requires a person within sight of the image depicting the body of the detainee to be of the same sex as the detainee, except for physicians or licensed medical personnel.

**Law Enforcement: ICE Access**

In 2013, Governor Brown signed AB 4, the TRUST Act, which protected community members from being detained by local law enforcement under immigration holds requested by ICE. The TRUST Act, prohibits a law enforcement official from detaining an individual on the basis of a United States Immigration and Customs Enforcement (ICE) hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

In 2014, the Obama administration put in place the Priority Enforcement Program (PEP). PEP begins at the state and local level when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the FBI for criminal history and warrant checks. This same biometric data is also sent to ICE so that ICE can determine whether the individual is a priority for removal, consistent with the Department of Homeland Security (DHS) enforcement priorities. Under PEP, ICE will seek the transfer of a removable individual when that individual has been convicted of an offense listed under the DHS civil immigration enforcement priorities, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security. In many cases, rather than issue a detainer, ICE will instead request notification (at least 48 hours, if possible) of when an individual is to be released.

**AB 2792 (Bonta), Chapter 768**, requires local law enforcement agencies, prior to an interview between ICE and an individual in custody, to provide the individual a written consent form, as specified, that would include information describing the purpose of the interview, that it is voluntary, and that the individual may decline to be interviewed. Requires local law enforcement agencies to provide copies of specified documentation received from ICE to the individual and to notify the individual regarding the intent of the agency to comply with ICE requests. Specifically, this new law:

- Specifies that in advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that

explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present.

- Requires the written consent form to be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, and additional languages as specified.

- States that upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request.

- Specifies that if a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.

- States that all records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act, as specified.

- States that records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

- Requires after January 1, 2018, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year to hold at least one community forum the following year that is open to the public with at least 30 days notice to provide information to the public about ICE's access to individuals and to receive and consider public comment.

- Requires as part of the report, the local law enforcement agency may provide the governing body with any and all data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

- Specifies that "ICE access" includes all of the following:

    - Responding to an ICE hold, notification, or transfer request;

    - Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or

otherwise;

- Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs, or otherwise.

- Allowing ICE to interview an individual; and

- Providing ICE information regarding dates and times of probation or parole check-ins.

**Medical Parole: Compassionate Release: Murder of a Peace Officer**

There are two ways that a prisoner may be released in California for medical reasons, compassionate release or medical parole.

With compassionate release, a recommendation for the recall of a terminally prisoner may be initiated by notification to the warden by any department physician who determines that a prisoner has 6 months or less to live. Also, a prisoner or family member or designee may independently request consideration for recall by contacting the prison's chief medical officer or the secretary. If the secretary determines that the prisoner satisfies the criteria for recall, the secretary or the Board of Parole Hearings (BPH) may recommend to the court that the sentence be recalled. A recommendation for recall by the secretary or the board must include one or more medical evaluations, a postrelease plan, and the required findings. Within 10 days of receipt of a positive recommendation, the court must hold a hearing to consider whether recall is appropriate. If possible, the matter must be heard by the judge who sentenced the prisoner.

If the court grants the recall, the department must release the prisoner within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period.

SB 1399 (Leno, Chapter 405, Statutes of 2010) enacted medical parole, which became operative in January of 2011. The law provides that medical parole shall be granted where (1) an inmate has been found by the head physician in the institute where they are housed to be permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care and (2) BPH also makes a determination that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

Neither compassionate release nor medical parole applies to a person who is sentenced to death or life without parole. California law specifies that a person who has been found to have committed first-degree murder of a peace officer may be sentenced to death or life without the possibility of parole. However, between 1972 and 1977, the death penalty was not an available sentence because it was declared to be unconstitutional. Life without the possibility of parole was also unavailable until 1977. Thus there are some inmates who have been convicted of first-degree murder of a peace officer but received a life sentence with the possibility of parole.

**SB 6 (Galgiani), Chapter 886,** makes an individual who committed first-degree murder of a peace officer ineligible for compassionate release or medical parole.

**Corrections: Segregated Housing**

Under existing law, inmates placed in a Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or an Administrative Segregation Unit for misconduct or upon validation as a prison gang member or associate are ineligible to earn credits.

Credit earning is universally recognized by corrections experts as a tool for promoting good behavior and prison safety. Prisons are largely punitive, but positive incentives are a necessary component for promoting rehabilitation.

**SB 759 (Anderson), Chapter 191,** repeals the existing provision regarding ineligibility to earn credits and instead requires the Department of Corrections and Rehabilitation, no later than July 1, 2017, to establish regulations to allow specified inmates placed in segregation housing to earn credits during the time he or she is in segregation housing. Specifically, this new law:

- States that the regulations may establish separate classifications of serious disciplinary infractions to determine the rate of restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for those time periods, not to exceed those percentages authorized for general population inmates.

- Requires that the regulations provide for credit earning for inmates who successfully complete specific program performance objectives.

**Juveniles: Room Confinement**

Long-term isolation has not been shown to have any rehabilitative or treatment value, and the United Nations has called upon all member countries to ban its use completely on minors. It is a practice that endangers mental health and increases risk of suicide, and is often used as a method to control a correctional environment, and not for any rehabilitative purpose. It does not properly address disciplinary issues and often increases these behaviors in youth, especially those with mental health conditions. In 1999, the Office of Juvenile Justice and Delinquency Prevention released a study of juvenile facilities across the country which found that 50% of youth who committed suicide were in isolation at the time of their suicide. Further, 62% of the suicide victims had a history of isolation. In a report released by the California Department of Corrections and Rehabilitation in 2012, prisoners who had spent time in isolation in the Security Housing Units had a higher rate of recidivism than those who had not.

The California Code of Regulations Title 15, Minimum Standards for Juvenile Facilities, provides some guidance on the use of room confinement on juveniles, however there is no specified limit on how long a juvenile may be placed in isolation.

**SB 1143 (Leno), Chapter 726,** establishes statutory guidelines and restrictions, to take into effect January 1, 2018, on the use of room confinement of minors or wards who are confined in a juvenile facility, as defined. Specifically, this new law:

- Provides that room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff.

- States that room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff.

- States that room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward.

- Provides that a minor or ward may be held up to four hours in room confinement, and after the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following:

    - Return the minor or ward to general population;

    - Consult with mental health or medical staff; or,

    - Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.

- States that if room confinement must be extended beyond four hours, staff shall do the following:

    - Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement;

    - Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population; and,

    - Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter.

- Exempts the following situations:

    - During an extraordinary, emergency circumstance that requires a significant departure from normal institutions, as provided; or,

    - When a minor or ward is placed in a locked cell or sleep room for medical purposes, as provided.

**Inmates: Biomedical Research**

Over the last several years, the prison system has been the site of extremely newsworthy medical developments, and has been on the cutting edge of providing treatment to prison inmates that would be beneficial to share with the medical community at large. Between 2012 and 2014, the prison system experienced hunger strikes that lasted for a significant period of time. As a result, prison doctors developed an effective monitoring system that provided appropriate treatment as needed during the strikes. Additionally, for the past several years, the prison system has undertaken a massive program for identifying and treating Valley Fever in central valley prisons: California was the first health care system in the nation to use a newly developed skin test that identifies exposure/non-exposure to Valley Fever which is now used in making wise housing choices for inmates statewide. And recently the prison system had an outbreak of Legionnaires Disease at San Quentin State Prison where, due to quick identification and effective treatment, doctors were able to successfully treat inmates at San Quentin without the loss of life.

California Correctional Health Care Services, which oversees prison medical care, would like to publish their findings in medical journals that would be of benefit to other correctional and community entities. However, under current law (added in the 1970s) there currently is a prohibition in the California Penal Code for performing or undertaking biomedical research on prisoners. Unfortunately, the broad nature of the current statute would even prohibit CCHCS from publishing an accumulation of statistical data that provided an assessment of the effectiveness of any non-experimental public health or treatment program such as those described above.

**SB 1238 (Pan), Chapter 197,** permits records-based, statistical research using existing information to be conducted on prisoners, notwithstanding a prohibition on biomedical research on prisoners. Specifically, this new law:

- Permits records-based biomedical research using existing information, without prospective interaction with human subjects, to be conducted on prisoners, notwithstanding a prohibition on biomedical research on prisoners.

- Restricts the use or disclosure of individually identifiable records pursuant to the above provision permitting records-based biomedical research to only occurring after both of the following requirements have been met:

    - The research advisory committee, established pursuant to specified provisions of existing California regulations on research involving prisoners (currently limited to behavioral research), approves of the use or disclosure; and,

    - The prisoner provides written authorization for the use or disclosure, or the use or disclosure is permitted by specified provisions of federal HIPAA regulations.

- Excludes from the definition of "biomedical research," for purposes of provisions of law governing biomedical and behavioral research of prisoners, the accumulation of statistical data in the assessment of the effectiveness of nonexperimental public health programs or treatment programs in which inmates routinely participate.

**Incarcerated Women: Contraceptive Services**

Penal Code section 3409 provides that incarcerated females should be allowed to continue to use birth control, among other provisions. Although existing law allows female inmates to have access to continued use of birth control, it does not specify that women who are not using birth control may have access to it upon request or can switch to a different contraceptive method that suits their needs. Because the California Department of Corrections and Rehabilitation authorizes conjugal visits for eligible inmates, it is important that the law be made clear that incarcerated females have access to birth control and family planning services upon request.

**SB 1433 (Mitchell), Chapter 311,** provides that any incarcerated person in the state prison who menstruates shall, upon request, have improved access to personal hygiene materials, and contraceptive services, as specified. Specifically, this new law:

- Provides that any incarcerated person in state prison who menstruates shall, upon request, have access and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system. Any incarcerated person who is capable of becoming pregnant shall, upon request, have access and be allowed to obtain contraceptive counseling and their choice of birth control methods, as specified, unless medically contraindicated.

- States that, except as provided, all birth control methods and emergency contraception approved by the United States Food and Drug Administration (FDA) shall be made available to incarcerated persons who are capable of becoming pregnant, with the exception of sterilizing procedures prohibited by law.

- Requires the California Correctional Health Care Services to establish a formulary consisting of all FDA-approved birth control methods that shall be available to persons in this legislation. If a birth control method has more than one FDA-approved therapeutic equivalent, only one version of that method shall be required to be made available, unless another version is specifically indicated by a prescribing provider and approved by the chief medical physician at the institution. Persons shall have access to nonprescription birth control methods without the requirement to see a licensed health care provider.

- Requires any contraceptive service that requires a prescription, or any contraceptive counseling, provided to incarcerated persons who are capable of becoming pregnant provided, to be furnished by a licensed health care provider

who has been provided training in reproductive health care and shall be nondirective, unbiased, and non-coercive. These services shall be furnished by the facility or by any other agency which contracts with the facility. Except as provided, health care providers furnishing contraceptive services shall receive training in the following areas:

  - The requirements of this section; and,

  - Providing nondirective, unbiased, and non-coercive contraceptive counseling and services.

- States that providers who attend an orientation program for the Family Planning, Access, Care, and Treatment Program shall be deemed to have met the training requirements described.

- Provides that any incarcerated person who is capable of becoming pregnant shall be furnished by the facility with information and education regarding the availability of family planning services and their right to receive nondirective, unbiased, and non-coercive contraceptive counseling and services. Each facility shall post this information in conspicuous places to which all incarcerated persons who are capable of becoming pregnant have access.

- Requires contraceptive counseling and family planning services to be offered and made available to all incarcerated persons who are capable of becoming pregnant at least 60 days, but not longer than 180 days, prior to a scheduled release date.

- States that its provisions are not to be construed to limit an incarcerated person's access to any method of contraception that is prescribed or recommended for any medically indicated.

# COURT HEARINGS

**Motion to Vacate Plea: Immigration Consequences**

In *Padilla v. Kentucky* (2010) 559 U.S. 356, the United States Supreme court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. (*Id*. at p. 360.)

An appeal or a writ of habeas corpus are the two most common methods for most defendants to challenge a judgment of conviction based on misunderstanding of immigration consequences. Previously, defendants who were no longer in custody used the writ of coram nobis to make such a claim. However, in *People v. Kim* (2009) 45 Cal.4th 1078, the court rejected the use of coram nobis for this purpose.

At this time, under California law, there is no vehicle to for a person who is no longer in actual or constructive custody to challenge his or her conviction based on a mistake of law regarding immigration consequences or ineffective assistance of counsel in properly advising of these consequences when the person learns of the error post-custody. The *Padilla* case requiring that a defense counsel properly advise a person on immigration consequences was subsequent to the California decision in *Kim* prohibiting the use of corum nobis, and so a mechanism for post-conviction relief where there is not one currently is needed.

**AB 813 (Gonzalez), Chapter 739,** creates a mechanism of post-conviction relief for a person to vacate a conviction following a guilty plea based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. Specifically, this new law:

- Permits a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence for either of the following reasons:
    - The conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or,
    - Newly discovered evidence of actual innocence exists which requires vacation of the conviction or sentence as a matter of law or in the interests of justice.
- Provides that a motion to vacate be filed with reasonable diligence after the later of the following:
    - The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal; or,

- The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.

- Provides that the motion shall be filed without undue delay from the date of the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this bill.

- Entitles the moving party to a hearing; however, at the request of the moving party, the court may hold the hearing without his or her personal presence if counsel for the moving party is present and the court finds good cause as to why the moving party cannot be present.
- Requires the court to grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the specified grounds for relief.

- Requires the court when ruling on the motion to specify the basis for its conclusions.

- Provides that if the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

- Permits an appeal from an order granting or denying a motion to vacate the conviction or sentence.

**Trials: Schedule Conflicts**

Current law directs judges to take reasonable efforts to avoid double setting a prosecutor for trial where one of the cases involves a charge of murder, sexual assault, child abuse or a career criminal prosecution. (Pen. Code, § 1048.1.) This allows district attorneys to assign specialized prosecutors to these cases.

As with those types of cases, prosecution of a case in which the victim has a developmental disability can be complex and difficult for several reasons. In cases where the victim has an intellectual disability, the prosecutor may need to use specialized interviewing techniques, and the prosecutor may need to spend more with the victim to gain the victim's trust. In cases involving either intellectual or physical disabilities, in which the victim has speech challenges, an inexperienced prosecutor may have difficulty. In addition, a prosecutor who is not trained or experienced in conveying to a jury that a witness with a developmental disability can be a credible witness may be at a disadvantage in a trial.

**AB 1272 (Grove), Chapter 91,** requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set. Specifically, this new law:

- Provides that the court shall make reasonable efforts to avoid double setting a prosecutor for trial when one of the cases involves an offense alleged to have

occurred against a person with a developmental disability.

- Defines developmental disability as the meaning found in Welfare and Institutions Code Section 4512.

**Child Witnesses: Human Trafficking**

Existing law allows a child witness, under the age of 14, to testify outside the presence of the judge, jurors and defendant by closed circuit television in a case where the child is a victim or witness of a sex or violent offense. Because a defendant has the right to confront all witnesses against him or her, which is guaranteed by the Sixth Amendment to the United States Constitution, contemporaneous testimony is only constitutionally permissible under specified conditions. Existing law authorizes its use in cases involving a violent felony or a sex offense or in cases of child abuse. The court must find that the child witness would suffer serious emotional distress if required to testify in the defendant's presence and that the impact would be such that the child witness would be deemed unavailable pursuant to the Rules of Evidence.

**AB 1276 (Santiago), Chapter 635,** authorizes, under specified conditions, a minor 15 years of age or younger to testify by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys if the testimony will involve the recitation of the facts of an alleged offense of human trafficking.

**Competence to Stand Trial**

Current law provides that a person cannot be tried to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. Existing law also provides that if counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing.

Current law allows courts to appoint a "psychiatrist, licensed psychologist, or other expert the court may deem appropriate" to examine a defendant regarding his mental competence. However, current law does not provide further guidance concerning the education and training required before a psychiatrist or licensed psychologist can be appointed to conduct an evaluation of a defendant's mental competence.

**AB 1962 (Dodd)**, requires the establishment of guidelines on education and training for psychologists and psychiatrists to be appointed by the court to determine a defendant's mental competence. Specifically, this new law:

- Requires the Department of State Hospitals to adopt guidelines establishing minimum education and training standards for a psychiatrist of licensed psychologist to be considered for appointment by the court to conduct examinations of defendants regarding mental incompetence.

- Requires the Department of State Hospitals to consult with the Judicial Council of California and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accredit bodies for psychologists and psychiatrists, and other interested stakeholders in the development of guidelines.

- Gives the court the discretion to appoint an expert who does not meet the guidelines, if there is no reasonably available expert who meets the guidelines or who has equivalent experience and skills.

**Criminal Procedure: Arraignment Pilot Program**

Existing law requires the judge, on motion of counsel for the defendant or the defendant, when the defendant is in custody at the time he or she appears before the judge for arraignment and the offense is a misdemeanor to which the defendant has pleaded not guilty, to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. Existing law does not provide a similar mechanism for out of custody defendants facing misdemeanor charges.

Identifying meritless cases at an early stage before complex and expensive proceedings, including a jury trial, provides an opportunity to prevent unnecessary consumption of court time and resources.

**AB 2013 (Jones-Sawyer), Chapter 689**, establishes a three-year pilot program in three counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant. Specifically, this new law:

- Provide that the pilot counties shall be selected by a three member committee consisting of a member selected by the California Public Defenders Association, a member selected by the California District Attorneys Association, and a member selected by the Judicial Council.

- States that the committee shall select one small county, one medium county, and one large county to participate in the pilot project.

- Requires the committee to consult with the relevant local officials in the eligible counties in making its selections.

- Requires a county selected for the pilot project to have a county public defender's office.

- Defines a "small county" as a county with a population of not less than two hundred fifty thousand (250,000) residents and not more than seven hundred fifty thousand

(750,000) residents.

- Defines a "medium county" as a county with a population of not less than seven hundred fifty thousand one (750,001) and not more than two million six hundred thousand (2,600,000) residents.

- Defines a "large county" as a county with a population of not less than two million six hundred thousand one (2,600,001) residents.

- Specifies that the following arraignment procedures will apply in the pilot project counties:

    - When the defendant is out of custody at the time he or she appears before the magistrate for arraignment and the defendant has plead not guilty to a misdemeanor charge, the magistrate, on motion of counsel for the defendant or the defendant's own motion, shall determine whether there is probable cause to believe that the defendant committed a criminal offense;

    - The determination of probable cause shall be made immediately, unless the court grants a continuance for a good cause not to exceed three court days;

    - In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference, or any other documents of similar reliability; and

    - If the court determines that no probable cause exists, it shall dismiss the complaint and discharge the defendant.

- Specifies that if the charge is dismissed, the prosecution may refile the complaint within 15 days of the dismissal.

- States that a second dismissal based on lack of probable will bar any further prosecution for the same offense.

- Requires the Department of Justice to provide information by July 1, 2020, to specified legislative committees regarding implementation of the pilot program, including the number of instances that a prompt probable cause determination made to an out of custody defendant facing a misdemeanor charge resulted in the defendant's early dismissal.

- Specifies that the provisions of this bill shall become inoperative on July 1, 2020, and, as of January 1, 2021, are repealed, unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

**Court Hearings: Restorative Justice**

In the wake of prison overcrowding and Criminal Justice Realignment, there has been a focus at every level of the criminal justice system on alternatives to custody and evidence based practices to reduce recidivism. Criminal courts are incorporating more sentencing options that do not involve custody. Frequently, such sentencing approaches attempt to address the underlying issues connected to the defendant's criminal behavior.

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment and that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as specified.

**AB 2590 (Weber), Chapter 696**, finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice and directs the Department of Corrections and Rehabilitation (CDCR) to develop a mission statement consistent with this bill's findings and declarations. Encourages CDCR to develop programs and policies to educate and rehabilitate eligible inmates. Extends until January 1, 2022, the authority of the court to, in its discretion, impose the appropriate term that best serves the interests of justice. Specifically, this new law:

- Finds and declares that the purpose of sentencing is public safety achieved through punishment, as well as rehabilitation and restorative justice.

- Encourages the development of policies and programs designed to educate and rehabilitate eligible offenders, rather than all offenders.

- Finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community.

- Directs CDCR to establish a mission statement consistent with the findings and declarations of this bill.

- Extends until January 1, 2022, the authority of the court to, in its discretion, impose the appropriate term that best serves the interests of justice. The bill would, on and after January 1, 2022, require the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.

- Eliminates language which found and declared that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

**Proposition 47: Sentence Reduction**

Under Proposition 47, persons eligible for resentencing or record changes that would reduce eligible convictions from felonies to misdemeanors have only three years from the date the ballot measure passed to be resentenced or receive a record change. Many people with eligible Prop 47 offenses are unaware of their right to have their record changed. Additionally, courts and district attorney offices are overwhelmed with petitions from individuals trying to have their record changed before the deadline. By extending the three-year sunset date, courts and district attorney offices will no longer have the pressure to process thousands of petitions before the current deadline and people with eligible records will not lose the opportunity to get the criminal records relief that voters intended when they passed the measure.

> **AB 2765 (Weber), Chapter 767**, extends until November 4, 2022 the period in which a person currently convicted of an eligible felony may petition the court to have the felony conviction reduced to a misdemeanor.

**State Hospitals: Compassionate Release**

Existing law authorizes the release of a prisoner from state prison if the court finds that the prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the Department of Corrections and Rehabilitation, and that conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

When a defendant is determined to be incompetent to stand trial or found not guilty by reason of insanity, he or she may be committed to a state hospital under the Department of State Hospitals (DSH). Some of these patients are terminally ill or in a coma and do not pose a threat to public safety, but there is no mechanism for release of these patients. Having to keep these patients in state hospitals also prevents the commitment of new patients who are in immediate need of services. Since Fiscal Year 2010-11, the state hospital population has increased with a growth rate of about 14%. Although 250 additional beds were added to accommodate this growth, as of January 2015, there was still a patient waitlist of nearly 550 individuals.

> **SB 955 (Beall), Chapter 715,** establishes a compassionate release process for a person committed to a state hospital but is now terminally ill, or permanently medically incapacitated. Specifically, this new law:
>
> - Requires a physician employed by DSH to notify the medical director and the patient advocate when a prognosis is made of a patient being eligible for compassionate release, and if the medical director concurs with the diagnosis, the Director of DSH shall be notified.
>
> - Provides that within 72 hours of receiving notification, the medical director or the medical director's designee shall notify the patient of the discharge procedures

pursuant to the provisions in this bill and obtain the patient's consent for discharge.

- Prohibits the release of a patient unless the discharge plan verifies placement for the patient upon release.

- Allows the patient or his or her family member or designee to contact the medical director or the executive director at the state hospital where the patient is located or the Director of DSH to request consideration for a recommendation to the court that the patient's commitment be conditionally dismissed for compassionate release and the patient released from the department facility.

- Provides upon notification or request as specified, the Director of DSH may recommend to the court that the patient's commitment be conditionally dismissed for compassionate release and the patient released from the department facility.

- Gives the court discretion to conditionally dismiss the commitment for compassionate release and release the patient if the court finds either of the following and that the conditions under which the patient would be released or receive treatment do not pose a threat to public safety:

    - The patient is terminally ill with an incurable condition caused by an illness or disease that would likely produce death within six months, as determined by a physician employed by DSH; or,

    - The patient is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the patient requiring 24 hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original commitment and the medical director responsible for the patient's care and the Director of DSH both certify that the patient is incapable of receiving mental health treatment.

- Requires the court, within 10 days of receiving the recommendation for release, to hold a noticed hearing to consider whether the patient's commitment should be conditionally dismissed and the patient released.

- Requires the patient to be released within 72 hours of receipt of the court's order for the patient's commitment to be conditionally dismissed, unless a longer time period is requested by the Director of DSH and approved by the court.

- Provides that the commitment order by the court is conditionally dismissed but may be reinstated per regulations adopted by the Director of DSH.

**Juvenile Hall: Deferred Entry of Judgement Pilot Program**

Young adult offenders convicted of non-violent, non-serious offenses serve their sentence locally in county jails. While legally they are adults, young offenders age 18-21 are still undergoing significant brain development and it is becoming clear that this age group may be better served by the juvenile justice system with corresponding age appropriate intensive services.

Research shows that people do not develop adult-quality decision-making skills until their early 20's. This can be referred to as the "maturity gap." Because of this, young adults are more likely to engage in risk-seeking behavior which may be cultivated in adult county jails where the young adults are surrounded by older, more hardened criminals.

As such, in order to address the criminogenic and behavioral needs of young adults, it is important that age appropriate services are provided, services they may not get in adult county jails. Juvenile detention facilities have such services available for young adults including, but not limited to, cognitive behavioral therapy, mental health treatment, vocational training, and education, among others.

**SB 1004 (Hill), Chapter 865,** authorizes the Counties of Alameda, Butte, Napa, Nevada and Santa Clara, until January 1, 2020, to operate a deferred entry of judgment pilot program whereby certain convicted young adult offenders would serve time in juvenile hall rather than county jail. Specifically, this new law:

- Provides that a defendant may participate in the program within the county's juvenile hall if that person is charged with committing a felony offense, other than the offenses listed, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:
    - Is 18 years of age or older, but under 21 years of age on the date the offense was committed;
    - Is suitable for the program after evaluation using a risk assessment tool, as described;
    - Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;
    - Meets the rules of the juvenile hall;
    - Does not have a current or prior conviction a violent or serious felony or other specified serious offenses; and,
    - Is not required to register as a sex offender.

- States that the court shall grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.

- Provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case.

- Limits the time a defendant may serve in juvenile hall to one year.

- Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.

- States that the probation department shall submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.

- Prohibits defendants participating in the program from coming into contact with minors within the juvenile hall for any purpose.

- Requires a county to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program prior to establishing the program, as specified.

- Requires that a county that establishes this program to work with the BSCC to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act relating to "sight and sound" separation between juveniles and adult inmates.

- Specifies that the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision.

- Requires each county to establish a multidisciplinary team that meets periodically to review and discuss the implementation, practices, and impact of the program, and specifies groups that shall be represented on the team.

- Requires a county that establishes a pilot program pursuant to the provisions in this bill to submit data to BSCC and requires BSCC to conduct an evaluation of the pilot program's impact and effectiveness.

- Specifies that BSCC's evaluation shall include, but not be limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.

- Requires each evaluation to be combined into an inclusive report and submitted to the Assembly and Senate Public Safety Committees.

**Felony Sentencing: Judicial Discretion**

In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial because the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. (*Cunningham v. California* (2007) 549 U.S. 270.) The Supreme Court suggested that this problem could be corrected by either providing for a jury trial on the sentencing issue or by giving the judge discretion to impose the higher term without additional findings of fact.

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

The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. (SB 1701 (Romero), Chapter 416, Statutes of 2008.) SB 150 also included a sunset provision that corresponded to the date upon which the provisions of SB 40 would expire. Since then, the Legislature has extended the sunset provisions several times. The current sunset date is January 1, 2017.

> **SB 1016 (Monning), Chapter 887,** extends the sunset date from January 1, 2017 to January 1, 2022 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

**Juveniles: Sentencing**

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to LWOP. (See *Graham v. Florida* (2010) 560 U.S. 48.) The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its findings from the Roper case, supra, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham*, *supra*, 560 U.S. at 70.) However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require

the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." (*Id*. at 75.)

*Graham* established that children are constitutionally different from adults for sentencing purposes and emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

In 2012, SB 9 (Yee), Chapter 828, Statutes of 2012, was signed into law to address cases where a juvenile was sentenced to LWOP by providing a mechanism for recall and resentencing. Pursuant to SB 9, a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to LWOP could, after serving at least 15 years in prison, petition the court for re-sentencing. If a re-sentencing hearing is granted, the court would have the discretion whether to re-sentence the petitioner to a lower sentence or let the life without parole sentence remain. If granted a lower sentence, the petitioner must still serve the minimum sentence and obtain approval of the parole board and the Governor prior to parole.

After implementation of SB 9, it became apparent that there are areas where the law is unclear as written and leading to different interpretations in different courtrooms. Clarifying the language of the law will ensure consistency in practice across the state.

**SB 1084 (Hancock), Chapter 867,** makes technical clarifying changes to existing provisions of law that authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to LWOP to submit a petition for recall and resentencing. Specifically, this new law:

- Clarifies that the person convicted for a crime committed while under the age of 18 and sentenced to LWOP can submit a petition after he or she has been incarcerated at least 15 years.

- Provides that if the court finds by a preponderance of the evidence that one or more of the statements specified is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant.

- Clarifies that the defendant may submit another petition if it the sentence is not recalled or the defendant is resentenced to LWOP.

- Clarifies that nothing in the provisions dealing with the ability of a person to seek a resentencing is intended to diminish or abrogate any rights or remedies otherwise available.

## Habeas Corpus: New Evidence

Under existing California law, an inmate who has been convicted of committing a crime for which he or she claims that new evidence exists pointing to innocence may file a petition for writ of habeas corpus. The burden for proving that newly discovered evidence entitles an individual to a new trial is not currently defined by statute, but has evolved from appellate court opinions. In order to prevail on a new evidence claim, a petitioner must undermine the prosecution's entire case and 'point unerringly to innocence with evidence no reasonable jury could reject' (*In re Lawley* (2008) 42 Cal.4th 1231, 1239). The California Supreme Court has stated that this standard is very high, much higher than the preponderance of the evidence standard that governs other habeas claims. (*Ibid*.)

This standard is nearly impossible to meet absent DNA evidence, which exists only in a tiny portion of prosecutions and exonerations. For example, if a petitioner has newly discovered evidence that completely undermines all evidence of guilt and shows that the original jury would likely not have convicted, but the new evidence does not 'point unerringly to innocence' the petitioner will not have met the standard and will have no chance at a new trial. Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under the status quo in California.

**SB 1134 (Leno), Chapter 785,** codifies a standard for habeas corpus petitions filed on the basis of new evidence. Specifically, this new law:

- Specifies that a writ of habeas corpus may be prosecuted on the ground that new evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

- Defines "new evidence" to mean "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching."

- Requires the California Victim Compensation Board to recommend an appropriation to the Legislature for payment for incarceration of a person if the court finds that the person is factually innocent.

## Sentencing: Misdemeanors

Two years ago SB 1310 (Lara), Chapter 174, Statutes of 2014 reduced the maximum misdemeanor sentence to 364 days to prevent misdemeanor offenses from being classed as aggravated felonies for purposes of immigration law. A defendant who was sentenced before the effective date of the new law, but whose appeal was pending was entitled to the benefit of the new law. However, as drafted, all cases which were final on appeal were not entitled to a modification in sentence. As a result, thousands of legal residents are still currently living in California with the threat of deportation looming for minor crimes.

**SB 1242 (Lara), Chapter 789,** retroactively applies the provision of law defining one year as 364 days for the purposes of sentencing. Specifically, this new law:

- States that the reduced sentence applies to all convictions entered before January 1, 2015, even final judgments.

- Provides that a person previously sentenced to one year in county jail may submit an application in the trial court requesting to be resentenced to a period not to exceed 364 days.

# CRIMINAL JUSTICE PROGRAMS

## County Jails: Performance Credits

Under existing law sentenced inmates in a county jail are awarded credits for good behavior. Additionally, a sheriff may also award a prisoner program credit reduction from his or her term of confinement. A sheriff who elects to participate in this program shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone.

Credit earning programs relieve prison overpopulation by modestly reducing the sentences of eligible prisoners who have participated in and completed certain approved education and life skills programs that help prepare for life after release. Research suggests that people who participate in this type of rehabilitative programming are significantly less likely to recidivate.

**AB 1597 (Stone), Chapter 55**, allows an inmate in the county jail who has not yet been sentenced to earn program credit reductions for successfully completing specific program performance objectives, otherwise known as "milestones". Specifically, this new law:

- Provides that an inmate in a county jail who has not been sentenced shall not be prevented from participating in approved rehabilitation programs that result in credit reductions for completing specific program performance objectives.

- States that if a person is awarded credits prior to sentencing, the credits shall be applied to a sentence for the offense for which the person was awaiting sentence when the credits were awarded under the same terms and conditions as all other credits awarded.

- Provides that evidence that an inmate has participated in or attempted to participate in any approved rehabilitation program eligible for credit is not admissible in any proceeding as an admission of guilt.

## Jail Industry Authority

Existing law authorizes certain counties to establish, by ordinance, a Jail Industry Commission for that county, with the concurrence of the Sheriff of that county. The Jail Industry Commission, if established, shall have the same purposes, powers and duties with respect to county jails as the Prison Industry Authority has for institutions under the jurisdiction of the Department of Corrections. The statute provides that no Jail Industry Commission may remain in existence for more than four years from the date of its establishment.

Counties that operate jail industries agree that the programs offer one of the few win-win opportunities in corrections. Everyone benefits from a successful industry program—the jail, taxpayers, communities, families, and inmates. The public benefits both financially (the program

provides services or products at low or no cost, and there is less vandalism and property damage in the jail) and socially (the program increases the likelihood of inmate success upon release and reduces overcrowding).

Jail administrators and staff benefit from an improved jail environment (less tension, damage, and crowding) and are provided with a management tool both to encourage positive inmate behavior and to form a more visible and positive public image. Inmates also benefit from increased work activities, experience, and, sometimes, earnings.

**AB 2012 (Bigelow), Chapter 452,** replaces the authorization of the Jail Industry Commission with an authorization for a Jail Industry Program, which will have similar purposes, powers and duties as the Prison Industry Authority. Specifically, this new law:

- Authorizes the board of supervisors of the Counties of Lake, Los Angeles, Madera, Sacramento, San Diego, San Joaquin, San Luis Obispo, Sonoma, Stanislaus, Tulare, Tuolumne, and Ventura to authorize the county sheriff or county director of corrections to create a Jail Industry Authority within their county jail systems.

- Provides that the purpose of the Jail Industry Authority includes all of the following:

    - To develop and operate industrial, agricultural, or service enterprises or programs employing prisoners in county correctional facilities under the jurisdiction of the sheriff or county director of corrections;

    - To create and maintain working conditions within the enterprises or programs as similar as possible to those that prevail in private industry;

    - To ensure prisoners have the opportunity to work productively and earn funds, if approved by the board of supervisors pursuant to Section 4019.3, and to acquire or improve effective work habits and occupational skills;

    - To allow inmates who participate in the enterprise or program the opportunity to earn additional time credits allowed under Section 4019.1 or 4019.4, if authorized by the sheriff or county director of corrections; and;

    - To operate a work program for inmates in county correctional facilities that will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program and that will provide goods and services that are or will be used by the county correctional facilities, thereby reducing the cost of its operation.

- Repeals the provision of law that limits the existence of a Jail Industry Commission to four years.

- States that it is the intent of the Legislature in enacting this act to encourage counties that establish and operate jail industries to provide a program that will increase the

likelihood of inmate success upon release and to decrease recidivism by obtaining long-term high-paying jobs.

- States that it is also the intent of the Legislature, upon the implementation of the jail industry program, that small businesses and disabled veteran businesses be provided every opportunity to have equal and competitive opportunities to provide goods and services to facilitate the operations of the county-run jail facilities.

**Victims of Crime: T- Visa**

The federal T-Visa provides trafficking victims from foreign countries temporary legal status, with an opportunity to apply for permanent residency and access to federal benefits if they cooperate with law enforcement in the investigations of their traffickers. To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form or trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. Although a declaration from law enforcement regarding the victim's cooperation is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-Visa application.

Existing state law regarding U-Visas creates a rebuttable presumption of victim cooperation and requires a certifying official to confirm victim helpfulness for purposes of obtaining a U-Visa. However, there is no complementary requirement for a T-Visa. This frustrates the purpose of the T-Visa.

**AB 2027 (Quirk), Chapter 749,** requires, upon the request of an immigrant victim of human trafficking, a certifying agency to confirm victim cooperation on the applicable form so that the victim may apply for a T-Visa to temporarily live and work in the United States. Specifically, this new law:

- Provides that upon a victim or victim's family member's request, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative with the investigation or prosecution of that crime.

- Creates a rebuttable presumption of cooperation if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

- Requires the certifying official to fully complete and sign the Form I-914 Supplemental B declaration, and regarding cooperation, include specific details about the nature of the crime investigated or prosecuted, and a detailed description of such cooperation, or likely cooperation.

- Requires the certifying agency to process the declaration within 90 days, unless the person is in removal proceedings, in which case it must be processed within 14 days of request.

- States that a current investigation, filed charges, or a prosecution, or conviction are not required for the victim to request and obtain the Form I-914 Supplemental B declaration.

- Limits the ability of a certifying official to withdraw the certification to instances where the victim refuses to provide information and assistance when reasonably requested.

- Prohibits a certifying entity from disclosing the immigrant status of a victim or person requesting the Form I-914 Supplemental B declaration, except to comply with federal law or legal process, or upon authorization of the person requesting the declaration.

- Mandates a certifying agency that receives a request for a Form I-914 Supplemental B declaration to report to the Legislature beginning January 1, 2018, and annually thereafter, the following information:

    - The number of victims that requested the declarations;

    - The number of declarations that were signed; and,

    - The number of denials.

- Defines a "certifying entity" as any of the following:

    - A state or local law enforcement agency;

    - A prosecutor;

    - A judge;

    - The State Department of Labor; or

    - State or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

- Defines a "certifying official" as any of the following:

    - The head of the certifying entity;

    - A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on

behalf of that agency;

- A judge; or

- Any other certifying official defined under specified federal regulations.

- Defines "human trafficking" as "severe forms of trafficking in persons" pursuant to specified federal law and which includes either of the following:

  - Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; and,

  - The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

  - States that "human trafficking" also includes criminal offenses for which the nature and elements of the crime are substantially similar to the criminal activity described above, as well as an attempt, conspiracy, or solicitation to commit those offenses.

**Supervised Population Workforce Training Grant Program**

The Supervised Population Workforce Training Grant Program was created by AB 2060 (V. Manuel Pérez), Chapter 384, Statutes of 2012, administered by the California Workforce Investment Board, to provide grant funding for vocational training and apprenticeship opportunities for offenders under county jurisdiction who are on probation, mandatory community supervision, or post-release community supervision. California Workforce Investment Board is required to administer the Supervised Population Workforce Training Grant Program through a public process. SB 852 (Leno, Chapter 25), the 2014-2015 Budget Bill, contained an appropriation of $1 million for support of Employment Development Department, for a recidivism reduction workforce training and development grant program, payable from the Recidivism Reduction Fund.

Returning to responsible working life after incarceration or substance abuse intervention is a critical and often a difficult process. Finding employment for rehabilitated persons is a major contribution to reducing recidivism rates.

**AB 2061 (Waldron), Chapter 100,** requires the California Workforce Investment Board to give preference to a grant application that proposes participation by one or more employers who have demonstrated interest in employing individuals in the supervised population. Specifically, this new law:

- Requires the California Workforce Investment Board to include in its report to the Legislature whether the program provided training opportunities in areas related to work skills learned while incarcerated.

- Updates references to the California Workforce Investment Board to reflect its new name, the California Workforce Development Board.

**Court Hearings: Restorative Justice**

In the wake of prison overcrowding and Criminal Justice Realignment, there has been a focus at every level of the criminal justice system on alternatives to custody and evidence based practices to reduce recidivism. Criminal courts are incorporating more sentencing options that do not involve custody. Frequently, such sentencing approaches attempt to address the underlying issues connected to the defendant's criminal behavior.

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment and that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as specified.

**AB 2590 (Weber), Chapter 696**, finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice and directs the Department of Corrections and Rehabilitation (CDCR) to develop a mission statement consistent with this bill's findings and declarations. Encourages CDCR to develop programs and policies to educate and rehabilitate eligible inmates. Extends until January 1, 2022, the authority of the court to, in its discretion, impose the appropriate term that best serves the interests of justice. Specifically, this new law:

- Finds and declares that the purpose of sentencing is public safety achieved through punishment, as well as rehabilitation and restorative justice.

- Encourages the development of policies and programs designed to educate and rehabilitate eligible offenders, rather than all offenders.

- Finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community.

- Directs CDCR to establish a mission statement consistent with the findings and declarations of this bill.

- Extends until January 1, 2022, the authority of the court to, in its discretion, impose the appropriate term that best serves the interests of justice. The bill would, on and after January 1, 2022, require the court to impose the middle term, unless there are

circumstances in aggravation or mitigation of the crime.

- Eliminates language which found and declared that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

**Juvenile Hall: Deferred Entry of Judgement Pilot Program**

Young adult offenders convicted of non-violent, non-serious offenses serve their sentence locally in county jails. While legally they are adults, young offenders age 18-21 are still undergoing significant brain development and it is becoming clear that this age group may be better served by the juvenile justice system with corresponding age appropriate intensive services.

Research shows that people do not develop adult-quality decision-making skills until their early 20's. This can be referred to as the "maturity gap." Because of this, young adults are more likely to engage in risk-seeking behavior which may be cultivated in adult county jails where the young adults are surrounded by older, more hardened criminals.

As such, in order to address the criminogenic and behavioral needs of young adults, it is important that age appropriate services are provided, services they may not get in adult county jails. Juvenile detention facilities have such services available for young adults including, but not limited to, cognitive behavioral therapy, mental health treatment, vocational training, and education, among others.

**SB 1004 (Hill), Chapter 865,** authorizes the Counties of Alameda, Butte, Napa, Nevada and Santa Clara, until January 1, 2020, to operate a deferred entry of judgment pilot program whereby certain convicted young adult offenders would serve time in juvenile hall rather than county jail. Specifically, this new law:

- Provides that a defendant may participate in the program within the county's juvenile hall if that person is charged with committing a felony offense, other than the offenses listed, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:
    - Is 18 years of age or older, but under 21 years of age on the date the offense was committed;
    - Is suitable for the program after evaluation using a risk assessment tool, as described;
    - Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;

    - Meets the rules of the juvenile hall;
    - Does not have a current or prior conviction a violent or serious felony or other specified serious offenses; and,
    - Is not required to register as a sex offender.

- States that the court shall grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.

- Provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case.

- Limits the time a defendant may serve in juvenile hall to one year.

- Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.

- States that the probation department shall submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.

- Prohibits defendants participating in the program from coming into contact with minors within the juvenile hall for any purpose.

- Requires a county to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program prior to establishing the program, as specified.

- Requires that a county that establishes this program to work with the BSCC to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act relating to "sight and sound" separation between juveniles and adult inmates.

- Specifies that the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision.

- Requires each county to establish a multidisciplinary team that meets periodically to review and discuss the implementation, practices, and impact of the program, and specifies groups that shall be represented on the team.

- Requires a county that establishes a pilot program pursuant to the provisions in this bill to submit data to BSCC and requires BSCC to conduct an evaluation of the pilot program's impact and effectiveness.

- Specifies that BSCC's evaluation shall include, but not be limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.

- Requires each evaluation to be combined into an inclusive report and submitted to the Assembly and Senate Public Safety Committees.

**Sexually Exploited Minors: Alameda County Program**

Existing law authorizes the Alameda County District Attorney to create a pilot project, contingent on local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors. This law has a sunset date of January 1, 2017.

**SB 1064 (Hancock), Chapter 653,** deletes the January 1, 2017 sunset date, and makes permanent the Sexually Exploited Minors Project in the County of Alameda. Specifically, this new law:

- Extends indefinitely the Sexually Exploited Minors Project in the County of Alameda.

- Requires that the protocol for assessing minors upon arrest or detention to determine if they may be a victim of sexual exploitation be developed by the District Attorney of the County of Alameda in collaboration with the county child welfare agency, county probation, and sheriff.

- Requires that the protocol for assessing minors upon arrest or detention to determine if they may be a victim of sexual exploitation include how to make a report to the county child welfare agency if there is reason to believe the minor comes within the definition of a dependent child of the court, and a process for the child welfare agency to investigate the report.

- Expands the definition of "commercially sexually exploited minor" to include the following:

- A minor who has been adjudged a dependent of the juvenile court as a result of having been commercially sexually exploited;

- A minor who has been kidnapped for the purposes of prostitution;

- A minor who meets the federal definition of a "victim of trafficking"; and,

- A minor who has been arrested or detained for soliciting an act of prostitution, or loitering with the intent to commit an act of prostitution, or is the subject of a petition to adjudge him or her as a dependent of the juvenile court as a result of having been commercially sexually exploited.

**Firearms: Gun Violence Research**

In 1993, the *New England Journal of Medicine* (NEJM) published an article by Arthur Kellerman and colleagues, "Gun ownership as a risk factor for homicide in the home," which presented the results of research funded by the Centers for Disease Control and Prevention (CDC). The study found that keeping a gun in the home was strongly and independently associated with an increased risk of homicide. The article concluded that rather than confer protection, guns kept in the home are associated with an increase in the risk of homicide by a family member or intimate acquaintance. Kellerman was affiliated at the time with the department of internal medicine at the University of Tennessee. He went on to positions at Emory University, and he currently holds the Paul O'Neill Alcoa Chair in Policy Analysis at the RAND Corporation.

The 1993 NEJM article received considerable media attention, and the National Rifle Association (NRA) responded by campaigning for the elimination of the center that had funded the study, the CDC's National Center for Injury Prevention. The center itself survived, but Congress included language in the 1996 Omnibus Consolidated Appropriations Bill (PDF, 2.4MB) for Fiscal Year 1997 that "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Referred to as the Dickey amendment after its author, former U.S. House Representative Jay Dickey (R-AR), this language did not explicitly ban research on gun violence. However, Congress also took $2.6 million from the CDC's budget — the amount the CDC had invested in firearm injury research the previous year — and earmarked the funds for prevention of traumatic brain injury. Dr. Kellerman stated in a December 2012 article in the *Journal of the American Medical Association*, "Precisely what was or was not permitted under the clause was unclear. But no federal employee was willing to risk his or her career or the agency's funding to find out. Extramural support for firearm injury prevention research quickly dried up."

In 2015, former Congressman Dickey came forward in an interview with the Huffington Post and stated that he regretted his Amendment. "I wish we had started the proper research and kept it going all this time," Dickey, an Arkansas Republican, told the Huffington Post in an interview. "I have regrets."

**SJR 20 (Hall), Chapter 82,** urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research. Specifically, this new law:

- States the following:
    - Every day, gun violence destroys lives, families, and communities;
    - From 2002 to 2013, inclusive, California lost 38,576 individuals to gun violence, of which 2,258 were children;
    - In 2013 alone, guns were used to kill 2,900 Californians, including 251 children and teenagers, and hospitalized another 6,035 Californians for nonfatal gunshot wounds, including 1,275 children and teenagers;
    - There were over 350 recorded mass shootings in the United States in 2015;
    - Since 1996, Congress has adopted annual policy riders, known as the "Dickey Amendment" and "Rehberg Amendment," that effectively prohibit the federal Centers for Disease Control and Prevention (CDC) and other agencies under the federal Department of Health and Human Services from conducting publicly funded scientific research on the causes of gun violence or its effects on public health;
    - The author of the original Dickey Amendment, former Representative Jay Dickey (R-AR), has stated repeatedly that he regrets offering the amendment and thinks it should be repealed;
    - Despite Representative Dickey's comments and President Obama's executive action in 2013 directing the CDC to resume gun violence research, Congress has provided no funding, and the restrictive language remains in place;
    - Since 1996, the federal government has spent $240 million per year on traffic safety research, which has saved 360,000 lives since 1970;
    - During the same period there has been almost no publicly funded research on gun violence, which kills the same number of people every year;
    - Recently, 110 Members of the Congress of the United States signed a letter urging the leadership of the House of Representatives to end the longstanding ban on federal funding for gun violence research, and over 2,000 doctors in all 50 states plus the District of Columbia did the same;

- Although Members of Congress may disagree about how best to respond to the problem of gun violence, we should be able to agree that a response should be informed by sound scientific evidence; and,

- Whether it is horrific headline-generating massacres or unseen violence that occurs every day — the innocent child gunned down in crossfire, the mother murdered during a domestic dispute, or the young life cut tragically short during the heat of a petty argument — the call to action is now clear.

- Resolves by the Senate and Assembly of the State of California jointly:

  - That a comprehensive evidence-based federal approach to reducing and preventing gun violence is needed to ensure that our communities are safe from gun violence;

  - That federal research is crucial to saving lives, having driven policy to save lives from motor vehicle accidents, sudden infant death syndrome, lead poisoning, and countless other public health crises;

  - That the Legislature urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research; and,

  - That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

# CRIMINAL OFFENSES

## Audio or Video Piracy: Punishment

Existing law provides that a person is guilty of piracy if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. (Pen. Code, § 653w, subd. (a)(1).)

If the offense involves at least 100 articles of audio recordings or audiovisual works, or the commercial equivalent thereof, then the punishment is imprisonment in a county jail not to exceed one year, by imprisonment pursuant to criminal justice realignment for two, three, or five years, by a fine not to exceed $500,000, or by both that fine and imprisonment. Any other first-time violation is punished by imprisonment in a county jail not to exceed one year, by a fine of not more than $50,000, or by both that fine and imprisonment. A second or subsequent conviction is punished by imprisonment in a county jail not to exceed one year, or by imprisonment pursuant to criminal justice realignment, by a fine not more than $200,000, or by both that fine and imprisonment. (See Pen. Code, § 653w.)

According to the author, "AB 1241 continues the practice of fine-tuning state laws to address the impact of piracy upon very important industry sections to California."

**AB 1241 (Calderon), Chapter 657,** imposes a mandatory minimum fine of not less than $1,000 for a second or subsequent conviction for the crime of music or video piracy.

## Unauthorized Recordings: Disclosure of Confidential Communications

This bill grew out of our unfortunate experience last summer when the Center for Medical Progress published on the Internet a series of video recordings it had made surreptitiously at confidential conferences or in private conversations with Planned Parenthood medical providers. These recordings were manipulated heavily to create a narrative entirely different than the full tapes revealed and suggesting Planned Parenthood had broken the law. Planned Parenthood has been targeted unjustly as a result of these illegal, heavily edited videotapes, which served as a catalyst for a malicious smear campaign.

Because California's invasion of privacy law only prohibits the taping, but not the distribution or disclosure, the Center for Medical Progress was able to publish manipulated snippets of the tapes on the Internet and widely disseminate them to legislatures and the press. As a result, medical providers received death threats, health centers experienced nine times the number of security threats than the previous year, and the resulting vitriol culminated in a shooting in Colorado that left three dead.

AB 1671 updates the law to account for the harm created by broad dissemination over the Internet. It aligns the law on unauthorized recording of confidential communications with the law on misappropriation of trade secrets.

**AB 1671 (Gomez), Chapter 855,** makes it a crime to intentionally distribute a confidential communication with a health care provider that was obtained unlawfully. Specifically, this new law:

- Clarifies that the prohibition on recording a confidential communication applies to each violation.

- Provides that a person who violates Penal Code Section 632 shall be punished by a wobbler pursuant to this section if the person intentionally discloses, or distributes in any manner, in any forum, including but not limited to, Internet Web Sites and social media, for any purpose, the contents of a confidential communication with a health care provider that is obtained by that person in violation of Penal Code Section 632, subdivision (a).

- Provides that for purposes of this crime, "social media" means an electronic service or account or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

- Punishes a violation of this crime by a fine not exceeding $2,500 per violation or imprisonment in the county jail for one year, or as a felony punishable in county jail for 16 months, two and three years. If the person has a previous conviction then the fine is increased to $10,000.

- Provides that for purposes of this section "health care provider" means any of the following:

    - A person licensed or certified under the Business and Professions Code.

    - A person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Act.

    - A clinic, health dispensary or health facility licensed or exempt from licensure under the Health and Safety Code.

    - A person certified under the Health and Safety Code.

    - An employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Health and Safety Code.

- An employee, volunteer, independent contractor or professional student of a clinic, health dispensary, or health care facility or health care provider.

- A professional organization that represents any of the other health care providers covered in this section.

- Provides that this section does not apply to the disclosure of distribution of a confidential communication pursuant to other Penal Code sections that specifically allow the recording of confidential communications.

- Provides that this section does not affect the admissibility of any evidence that would otherwise be admissible.

- Adds human trafficking to the offenses exempted in Penal Code Section 633.5.

- Expands the civil action section to provide that any person may bring an action to enjoin and restrain any violation of the chapter on eavesdropping and may in the same action seek damages.

- Provides that the civil action shall not be construed to affect the uniform single publication act.

**Crimes: Emergency Personnel**

Recently in California a pilot flying a helicopter with seven firefighters on board who were battling a blaze threatening nearby homes, saw a four-rotor drone only 10 feet from his windshield. This forced the pilot to make a hard left to avoid a collision about 500 feet above ground. In another incident, the sighting of five drones in the area of a wildfire that closed Interstate 15 in Southern California and destroyed numerous vehicles, grounded air tanker crews for 20 minutes as flames spread.

Drones are an emerging technology that is rapidly gaining in popularity. The sheer numbers of drones is creating problems and concerns about how and where they should be used and it is only now that they are being regulated by the FAA.

The existing Penal Code section dealing with interfering with police, fire and EMTs does not specifically state that the crime can be committed by using a drone.

**AB 1680 (Rodriguez), Chapter 817**, makes it a misdemeanor to use a drone to impede specified emergency personnel in the performance of their duties while coping with an emergency. Specifically, this new law:

- Amends existing statute which makes it a misdemeanor for a person to go to, or stop at, the scene of an emergency and impedes police officers, firefighters, emergency medical, or other emergency personnel, or military personnel in the performance of

their emergency duties.

- Provides that the term "person" shall include a person, regardless of his or her location, who operates or uses an unmanned aerial vehicle, remote piloted aircraft, or drone that is at the scene of an emergency.

**911 Emergency System: Nuisance Communications**

California is currently in the process of adopting what is referred to as Next Generation 911 or NextGen911. This is an effort aimed at updating the 911 service infrastructure to improve public emergency communications services in an increasingly wireless mobile society by enabling the public to transmit text, images, video and other electronic data to a 911 center. NextGen911 is a digital system that will give intelligent routing so all calls will be taken to the closest dispatch center.

Existing law contained in Section 635x of the Penal Code was enacted to criminalize the behavior of those who fraudulently or repeatedly and unnecessarily phone the 911 system. Tying up the 911 system with repeated requests for aid or fraudulently asking for police, fire, ambulances and emergency medical resources to be sent to places where they are not needed is not only an abuse of the system but endangers lives.

As the technology of the 911 system changes to include texts, emails, videos and other forms of electronic communication, California law must also change to protect the integrity and safety of the 911 system.

**AB 1769 (Rodriguez), Chapter 96,** expands existing provisions making it unlawful to telephone the 911 emergency system with the intent to annoy or harass another person to include making a communication from an electronic communication device to commit the offense.

**Falsifying Evidence**

Existing law makes it a felony for a peace officer to knowingly, willfully, and intentionally alter, modify, plant, place, manufacture, conceal, or move any physical matter, with specific intent that the action will result in a person being charged with a crime, or with the specific intent that the physical matter be will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry.

**AB 1909 (Lopez), Chapter 879**, provides that a prosecuting attorney who knowingly, willfully, and intentionally wrongfully alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information that is required to be disclosed, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry is guilty of a felony punishable by 16 months, two, or three years in a county jail.

## Vehicle Equipment: Counterfeit Airbags

Airbags are an essential component of modern vehicle safety systems, helping ensure that the occupants' heads and upper bodies do not strike the vehicle interior in a crash. Beginning in 2008, airbags made by Takata were recalled because of concerns that airbag deployment could injure the car occupants. Originally limited to Honda, the recall was expanded to 14 car manufacturers and as many as 68.8 million airbags in what the National Highway Traffic Safety Administration (NHTSA) called the largest and most complex safety recall in history. As these airbags are replaced, problems have arisen with the use of counterfeit airbags which don't provide adequate protection.

In October 2012, the NHTSA issued an advisory warning about the dangers of counterfeit airbags. As of yet, there have been no injuries or deaths reported from counterfeit air bags, but testing by the NHTSA has demonstrated that counterfeit air bags frequently malfunction or fail altogether.

Existing law makes it a misdemeanor for a person to (a) install, reinstall, rewire, tamper with, alter, or modify for compensation, a vehicle's computer system or supplemental restraint system, otherwise referred to as an airbag, so that it falsely indicates the supplemental restraint system is in proper working order; or (b) knowingly distribute or sell a previously deployed airbag or component that will no longer meet the original equipment manufacturing form or function for proper operation. (AB 1854 (Brownley), Chapter 97, Statutes of 2012.) This statute does not address counterfeit airbags, although existing law generally prohibits selling counterfeit goods bearing a registered mark. (Pen. Code, § 350.) Goods that do not bear a registered mark, which are falsely represented as genuine manufacturer or dealer goods, are also prohibited. (Pen. Code, § 351a.)

**AB 2387 (Mullin), Chapter 694,** specifies that it is a crime to sell or install a counterfeit airbag or sell or install any device which causes the vehicle's diagnostic system to fail to warn when the vehicle is equipped with a counterfeit airbag. Specifically, this new law:

- Prohibits against knowingly and intentionally manufacturing, importing, installing, distributing, and selling any device intended to replace a supplemental restraint system component (e.g., airbag) if the device is counterfeit or a nonfunctional airbag or does not meet applicable federal safety requirements.

- Prohibits against knowingly and intentionally selling or installing any device that causes the vehicle's diagnostic systems to fail to warn when the vehicle is equipped with a counterfeit supplemental restraint system component or nonfunctional airbag.

- Provides that violation of these prohibitions is a misdemeanor punishable by a fine of up to $5,000 or by imprisonment in a county jail for up to one year, or both, as well as under any other existing provisions of law

## Criminal Offenses: State of Emergency

Under existing law, upon the declaration of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster, and for a period of 30 days following that declaration, it is a misdemeanor for a person or business to sell or offer to sell certain goods and services for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation of emergency, except as specified. Current law includes housing rented on a month to month basis.

In October of 2015, a large leak was discovered at the Aliso Canyon natural gas storage facility. The methane leak forced more than 4,600 households into temporary housing and took 112 days to plug. Los Angeles Board of Supervisors declared a state of emergency in December, 2015. Governor Brown declared a state of emergency in January of 2016.

Housing rental prices increased dramatically after the leak was discovered. There was concern that existing law was not providing sufficient protection to individuals and families displaced by the Aliso Canyon disaster. Current law does not cover rental contracts entered during a declared emergency, if the rental contracts are for any period longer than month to month.

**AB 2820 (Chiu), Chapter 671**, revises the definition of state of emergency and local emergency for purposes of criminal price gouging. Specifies that criminal price gouging includes rental of any housing with an initial lease of up to one year for purposes of criminal price gouging. Includes towing services in the criminal price gouging during a declared emergency. Specifically, this new law:

- Revises the definitions of a state of emergency and a local emergency to mean a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor of California or for which a local emergency has been declared by an official, board, or other governing body vested with authority to make such a declaration in any city, county, or city and county in California, respectively.

- Applies the definitions above, throughout the criminal price gouging statute.

- Includes towing services in the crime of price gouging during a declared emergency.

- Specifies that criminal price gouging during a declared emergency includes any rental housing with an initial lease term of up to one year.

## Controlled Substances: Synthetic Cannabinoids

Communities across California have seen an increasing use of synthetic cannabinoids. The negative health effects related to the use of synthetic cannabinoids are linked to both the nature of the substances and to the way the products are produced. There have been numerous reports

of non-fatal intoxications and a small number of deaths associated with their use.

Existing law currently prohibits synthetic cannabinoids and synthetic cannabinoid derivatives. Existing law lists five chemical compounds as synthetic cannabinoids. Underground chemists can skirt the law by slightly altering the chemical compounds of these drugs, to come up with new versions, which technically are legal.

**SB 139 (Galgiani), Chapter 624**, raises penalties for possession of synthetic cannabinoids and synthetic stimulants. Expands list of substances prohibited as synthetic cannabinoids. Specifically, this new law:

- Expands the definition of a synthetic cannabinoid compound by listing additional chemical categories as synthetic cannabinoids.

- States that an analog of specified synthetic cannabinoids and synthetic stimulants are prohibited in the same fashion as the specified synthetic cannabinoids and synthetic stimulants.

- Provides that specified synthetic cannabinoids and their analogs may be lawfully obtained and used for research, instruction, or analysis as long as that possession is consistent with federal law.

- Specifies that "synthetic cannabinoid compound" does not include:

    - Any substance that has been approved for a new drug application, as specified, or which is generally recognized as safe and effective for use as specified by federal law.

    - Any substance that is allowed for investigational use, as specified, under federal law.

- Provides that a first offense of using or possessing a synthetic stimulant compound or synthetic cannabinoid is punishable as an infraction, a second offense is punishable as an infraction or a misdemeanor, and a third or subsequent offense is punishable as a misdemeanor.

- Authorizes a person charged with specified crimes related to use and possession of synthetic stimulant compounds or synthetic cannabinoid compounds to be eligible to participate in a preguilty plea drug court program.

**Prostitution: Categorization**

The crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of

either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

> **SB 420 (Huff), Chapter 734,** defines and divides the crime of prostitution. Specifically, this new law divides prostitution into three separate categories of offenses:
>
> - The defendant agreed to receive compensation, received compensation, or solicited compensation in exchange for a lewd act.
>
> - The defendant provided compensation, agreed to provide compensation, or solicited an adult to accept compensation in exchange for a lewd act.
>
> - The defendant provided compensation, or agreed to provide compensation, to a minor in exchange for a lewd act, regardless of which party made the initial solicitation.

**Fare Evasion: Minors**

Although fare evasion is a criminal infraction, state law allows for handling a violation under an alternative civil infraction process. As of last year, current law allows transit operators to levy administrative penalties against minors for specified transit violations. Despite this authority, most transit agencies in the state have not adopted an administrative process for addressing fare evasion.

Failure to pay transit fare is the number one citation for youth in several counties. Once a child appears in court, the likelihood that they will drop out of school and receive another court appearance greatly increases. It is too easy for a child who enters the criminal justice system, to never come out.

> **SB 882 (Hertzberg), Chapter 167,** provides that minors shall not be subject to criminal penalties for evading a transit fare.

## Controlled Substances: Analogs

California law treats a substance that is the chemical or functional equivalent of a drug listed in Schedule I or II of the controlled substance schedules the same as the scheduled drug. Such a substance is defined as a controlled substance analog. California law allows prosecution of a person for possession of, or commerce in, a substance that is an analog of a Schedule I or II drug. The purpose of the analog law is to prevent street chemists from circumventing drug laws by synthesizing drugs which have slight chemical or functional differences from the prohibited drug.

California's drug analog law provides two ways to establish that a substance is an analog of a drug. The first method relies on demonstrating that the substance has a chemical structure which is "substantially similar" to the chemical structure of the drug. The second method requires a showing that the substance has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is "substantially similar" to the effect of the drug.

Newly developed synthetic cannabinoids are not covered by the California analog statute as synthetic cannabinoids are not included in Schedule I or II of the controlled substances schedules. Illegal synthetic cannabinoids are separately defined and prohibited.

> **SB 1036 (Hernández), Chapter 627**, makes it a crime to possess, sell, transport, or manufacture an analog of a synthetic cannabinoid compound, aka "Spice." Expands the definition of controlled substance analog to include a substance the chemical structure of which is substantially similar to the chemical structure of a synthetic cannabinoid compound.

## Prostitution: Sentencing

Current law mandates that upon a conviction of subsequent acts of prostitution, an offender must spend 45 days in county jail for a second offense, and 90 days in county jail for a third offense. Additionally, as applied to both mandatory minimum sentences, a person convicted may have no part of which suspended or reduced by the court regardless of whether or not the court grants probation.

From a policy standpoint, there are no mandatory minimum jail sentences for a variety of offenses that are far more serious than misdemeanor prostitution. For instance, there is no mandatory jail sentence for first time domestic violence offenses, or a wide range of violent felony offenses. This law takes the discretion from a judge to craft an appropriate remedy in a misdemeanor case. Judges are in the best position to make decisions based on the particular facts and circumstances of a case. Imposing mandatory jail time on a person convicted of prostitution can result in the loss of employment and create problems for the offender that may lead to further criminal acts. Courts have found success in fashioning other remedies that have kept offenders employed, outside of county jails at the public expense, and freed up jail space for more dangerous offenders.

**SB 1129 (Monning), Chapter 724,** repeals mandatory minimum sentences for specified prostitution offenses. Specifically, this new law repeals the mandatory minimum terms for repeated prostitution offenses, leaving discretion with the court to impose an appropriate sentence as follows:

- Eliminates the requirement that a person convicted for a second prostitution offense must serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court, regardless of whether or not the court grants probation.

- Eliminates the requirement that a person convicted for a third prostitution offense shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation.

**Ransomware**

Ransomware is a type of malware that restricts access to the infected computer system in some way, accompanied by a demand that the user pay a ransom to the malware operators to remove the restriction. Some forms of ransomware systematically encrypt files on the system's hard drive, which become difficult or impossible to decrypt without paying the ransom for the encryption key.

Payment is virtually always the goal, and the victim is coerced into paying for the ransomware to be removed—which may or may not actually occur—either by supplying a program that can decrypt the files, or by sending an unlock code that undoes the payload's changes.

**SB 1137 (Hertzberg), Chapter 725**, clarifies that introducing "ransomware" into a computer or computer network with the intent of extorting money or property is punishable as extortion whether or not the money or property is actually obtained by means of the "ransomware." Specifically, this new law:

- Clarifies that introducing "ransomware" into a computer or computer network with the intent of extorting money or property is punishable as extortion whether or not the money or property is actually obtained by means of the "ransomware." Such conduct would punishable by imprisonment in a county jail for two, three, or four years and a fine not exceeding $10,000.

- Defines "Ransomware" to mean a "computer contaminant, as specified, or lock placed or introduced without authorization into a computer, computer system, or computer network that restricts access by an authorized person to the computer, computer system, computer network, or any data therein, under circumstances in which the person responsible for the placement or introduction of the ransomware demands payment of money or other consideration to remove the computer contaminant, restore access to the computer, computer system, computer network, or data, or otherwise remediate the impact of the computer contaminant or lock."

- Specifies that a person is responsible for placing or introducing ransomware into a computer, computer system, or computer network if the person directly places or introduces the ransomware, or directs or induces another person do so, with the intent of demanding payment or other consideration to remove the ransomware, restore access, or otherwise remediate the impact of the ransomware.

- States that prosecution under the provisions of this bill do not prohibit or limit prosecution under any other law.

**Controlled Substances: Rohypnol, GHB, and Ketamine**

On November 4, 2014, California voters approved Proposition 47, also known as the Safe Neighborhoods and Schools Act, which reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. Proposition 47 also allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced.

The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid*.)

Opponents of Proposition 47 claimed that the measure reduced penalties for a person who possesses "date rape drugs," specifically, gamma hydroxybutyric acid (GHB), flunitrazepam (Rohypnol) or Ketamine, with the intent to sexually assault someone. Proponents of the measure claimed that Proposition 47 only affected simple possession of controlled substances, not when these drugs are used for predatory purposes.

**SB 1182 (Galgiani), Chapter 893,** clarifies that the possession of GHB, Rohypnol or Ketamine with the intent to commit a sex crime, as defined, is a felony, punishable by imprisonment of sixteen months, two years or three years. Specifically, this new law:

- Defines "sexual assault" for the purposes of this bill to include, but not be limited to, violations of specified provisions related to sexual assault committed against a victim who is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance.

- States the finding of the Legislature that in order to deter the possession of ketamine, GHB, and Rohypnol by sexual predators and to take steps to prevent the use of these drugs to incapacitate victims for purposes of sexual exploitation, it is necessary and appropriate that an individual who possesses one of these substances for predatory purposes be subject to felony penalties.

# CRIMINAL PROCEDURE

**Motion to Vacate Plea: Immigration Consequences**

In *Padilla v. Kentucky* (2010) 559 U.S. 356, the United States Supreme court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. (*Id*. at p. 360.)

An appeal or a writ of habeas corpus are the two most common methods for most defendants to challenge a judgment of conviction based on misunderstanding of immigration consequences. Previously, defendants who were no longer in custody used the writ of coram nobis to make such a claim. However, in *People v. Kim* (2009) 45 Cal.4th 1078, the court rejected the use of coram nobis for this purpose.

At this time, under California law, there is no vehicle to for a person who is no longer in actual or constructive custody to challenge his or her conviction based on a mistake of law regarding immigration consequences or ineffective assistance of counsel in properly advising of these consequences when the person learns of the error post-custody. The *Padilla* case requiring that a defense counsel properly advise a person on immigration consequences was subsequent to the California decision in *Kim* prohibiting the use of corum nobis, and so a mechanism for post-conviction relief where there is not one currently is needed.

**AB 813 (Gonzalez), Chapter 739,** creates a mechanism of post-conviction relief for a person to vacate a conviction following a guilty plea based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. Specifically, this new law:

- Permits a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence for either of the following reasons:
    - The conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or,
    - Newly discovered evidence of actual innocence exists which requires vacation of the conviction or sentence as a matter of law or in the interests of justice.
- Provides that a motion to vacate be filed with reasonable diligence after the later of the following:
    - The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal; or,

- The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.

- Provides that the motion shall be filed without undue delay from the date of the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this bill.

- Entitles the moving party to a hearing; however, at the request of the moving party, the court may hold the hearing without his or her personal presence if counsel for the moving party is present and the court finds good cause as to why the moving party cannot be present.
- Requires the court to grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the specified grounds for relief.

- Requires the court when ruling on the motion to specify the basis for its conclusions.

- Provides that if the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

- Permits an appeal from an order granting or denying a motion to vacate the conviction or sentence.

**Juveniles: Sealing of Records**

In 2014, the legislature enacted 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 serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (Welf. & Inst. Code, § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction.

In 2015, there were two follow up measures which permit the probation department and district attorney to view the sealed records for several other limited purposes, such as to determine whether a minor is ineligible for informal supervision, to comply with the requirements of federal Title IV-E, and for purposes of determining a minor's prior program referrals and risk-needs assessments.

County child welfare agencies responsible for the supervision and placement of a minor or non-minor dependent of the court have said that they need to access sealed juvenile records for

purposes of determining appropriate placement and services.

**AB 1945 (Stone), Chapter 858,** authorizes a child welfare agency to access sealed juvenile records for limited purposes. Specifically, this new law:

- Authorized a county child welfare agency responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for the limited purpose of determining an appropriate placement or service that has been ordered by the court for that dependent.

- Prohibits a child welfare agency from sharing the information with any person or agency except the court.

- Clarifies that existing sealing laws pertaining to informal supervision or probation apply even if the person with the juvenile records no longer is a minor.

- Clarifies that a juvenile case file that is covered by, or included in, a record sealing may not be inspected except as specified.

**Citations: Notice to Appear**

Law enforcement officers issue a citation whenever they give someone a traffic ticket. An officer also issues a citation to a person if they arrest the individual on a misdemeanor charge, but release that person without taking them into custody. A citation serves as the notice to appear in court for the person that has received the citation. A signed copy of the citation is sent to court by the law enforcement agency issuing the citation.

With new technologies, many agencies are using electronic handheld devices to be more efficient when issuing citations. This device resembles the machines a person signs when receiving a package from FedEx or UPS. With this device, once the officer completes the citation and obtains a signature, it is wirelessly sent to a printer in the patrol vehicle, where, under current law, the officer must retrieve it and bring the exact signed copy of the citation back to the violator.

**AB 1927 (Lackey), Chapter 19**, specifies that if the notice to appear in court (citation) is being transmitted in electronic form, the copy of the notice to appear issued to the arrested person need not include the signature of the arrested person, unless specifically requested by the arrested person.

**Law Enforcement Contacts: Service Providers**

Existing law authorizes a court to issue a warrant for seizure of property, inclusive of electronic information, where probable cause exists. Existing law also provides that a government entity that obtains electronic information pursuant to an emergency shall, within three days after obtaining the information, file for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures that shall set forth the

facts giving rise to the emergency. Existing law also establishes procedures for certain California corporations when served with a warrant issued by a court in another state.

With the passage of SB 178 (Leno), also known as California Electronic Communication Privacy Act (CalECPA), privacy rights were extended to electronic data in a way that federal law does not: it bars any state law enforcement or investigative entity from compelling a business to turn over any data or digital communication—including emails, texts, documents stored in the cloud—without a warrant. It also requires a warrant to search or track the location of a business' electronic devices like mobile phones. Also, no business (or its officers, employees and agents) may be subject to any cause of action for providing information or assistance pursuant to a warrant or court order. CalECPA also permits a service provider to voluntarily disclose electronic communication information when disclosure is not otherwise prohibited by law, such as in emergency situations.

**AB 1993 (Irwin), Chapter 514,** mandates that technology companies specify law enforcement contacts to coordinate with law enforcement agency investigations.

**Arraignment Pilot Program**

Existing law requires the judge, on motion of counsel for the defendant or the defendant, when the defendant is in custody at the time he or she appears before the judge for arraignment and the offense is a misdemeanor to which the defendant has pleaded not guilty, to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. Existing law does not provide a similar mechanism for out of custody defendants facing misdemeanor charges.

Identifying meritless cases at an early stage before complex and expensive proceedings, including a jury trial, provides an opportunity to prevent unnecessary consumption of court time and resources.

**AB 2013 (Jones-Sawyer), Chapter 689**, establishes a three-year pilot program in three counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant. Specifically, this new law:

- Provide that the pilot counties shall be selected by a three member committee consisting of a member selected by the California Public Defenders Association, a member selected by the California District Attorneys Association, and a member selected by the Judicial Council.

- States that the committee shall select one small county, one medium county, and one large county to participate in the pilot project.

- Requires the committee to consult with the relevant local officials in the eligible counties in making its selections.

- Requires a county selected for the pilot project to have a county public defender's office.

- Defines a "small county" as a county with a population of not less than two hundred fifty thousand (250,000) residents and not more than seven hundred fifty thousand (750,000) residents.

- Defines a "medium county" as a county with a population of not less than seven hundred fifty thousand one (750,001) and not more than two million six hundred thousand (2,600,000) residents.

- Defines a "large county" as a county with a population of not less than two million six hundred thousand one (2,600,001) residents.

- Specifies that the following arraignment procedures will apply in the pilot project counties:

    - When the defendant is out of custody at the time he or she appears before the magistrate for arraignment and the defendant has plead not guilty to a misdemeanor charge, the magistrate, on motion of counsel for the defendant or the defendant's own motion, shall determine whether there is probable cause to believe that the defendant committed a criminal offense;

    - The determination of probable cause shall be made immediately, unless the court grants a continuance for a good cause not to exceed three court days;

    - In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference, or any other documents of similar reliability; and

    - If the court determines that no probable cause exists, it shall dismiss the complaint and discharge the defendant.

- Specifies that if the charge is dismissed, the prosecution may refile the complaint within 15 days of the dismissal.

- States that a second dismissal based on lack of probable will bar any further prosecution for the same offense.

- Requires the Department of Justice (DOJ) to provide information by July 1, 2020, to the Assembly Committee on Budget, The Senate Committee on Budget and Fiscal Review, and the appropriate policy committees of the Legislature regarding implementation of the pilot program, including the number of instances that a prompt probable cause determination made to an out of custody defendant facing a

misdemeanor charge resulted in the defendant's early dismissal.

- Specifies that the provisions of this bill shall become inoperative on July 1, 2020, and, as of January 1, 2021, are repealed, unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

**Proposition 47: Sentence Reduction**

Under Proposition 47, persons eligible for resentencing or record changes that would reduce eligible convictions from felonies to misdemeanors have only three years from the date the ballot measure passed to be resentenced or receive a record change. Many people with eligible Prop 47 offenses are unaware of their right to have their record changed. Additionally, courts and district attorney offices are overwhelmed with petitions from individuals trying to have their record changed before the deadline. By extending the three-year sunset date, courts and district attorney offices will no longer have the pressure to process thousands of petitions before the current deadline and people with eligible records will not lose the opportunity to get the criminal records relief that voters intended when they passed the measure.

**AB 2765 (Weber), Chapter 767**, extends until November 4, 2022 the period in which a person currently convicted of an eligible felony may petition the court to have the felony conviction reduced to a misdemeanor.

**Asset Forfeiture**

Under current law many California drug asset forfeiture are transferred to federal courts. Compared to California law, Federal law gives law enforcement more power and puts fewer burdens on the government before property is forfeited.

Some ways in which California and federal provisions differ are:

- Administrative forfeiture: While state law limits cases involving personal property worth $25,000 or less, under federal law administrative forfeiture is available for any amount of currency and personal property valued at $500,000 or less, including cars, guns, and boats.

- Burden of proof: Under federal civil forfeiture law, the government's burden of proof is "preponderance of the evidence." This is a lower standard than the "beyond a reasonable doubt" standard generally used in California.

- Conviction: In contrast to California law, federal civil forfeiture law does not require a conviction in any cases.

Under federal law, a seizing agency can use the seized asset or transfer it to a state or local agency that participated in the proceedings. Direct use of the forfeited asset is disallowed under

current state law.

Under current law, there are fiscal incentives offered by the federal government to California law enforcement agencies if their cases are involved in the federal forfeiture process.

**SB 443 (Mitchell), Chapter 831**, requires additional due process protection in cases where the State of California seeks to forfeit assets in connection with specified drug offenses and requires a criminal conviction when property/money forfeited under federal law is distributed to state or local law enforcement, unless the value of the assets is greater than forty thousand dollars ($40,000.00). Specifically, this new law:

- States that it shall be necessary to obtain a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors in order to recover law enforcement expenses related to the seizing or destroying of illegal drugs, unless the value of the assets is greater than forty thousand dollars ($40,000.00).

- Specifies that state and local law enforcement authorities shall not refer, or otherwise transfer, property seized under state law to a federal agency seeking the adoption of the seized property.

- Clarifies that this law does not prohibit the federal government from seeking forfeiture under federal law, or sharing proceeds from federal forfeiture proceedings with state and local law enforcement in those situations where there are joint investigations.

- Clarifies that this law does not prohibit state or local law enforcement from participating in joint law enforcement operation with federal agencies.

- Specifies that a state or local law enforcement agency may not receive forfeited property or proceeds from property forfeited pursuant to federal law unless a defendant is convicted in an underlying or related criminal action of a specified offense, or any offense under federal law that includes all of the elements of one of the specified California offenses. Specifies an exception to the conviction requirement if the value of the assets is greater than forty thousand dollars ($40,000.00).

- States that if a defendant, charged with a specified criminal offense arising from a state or local joint law enforcement operation with federal agency, willfully fails to appear in court, or is deceased, there shall be no requirement of a criminal conviction in order for state or local law enforcement to receive an equitable share of any federal forfeiture proceeding.

- Requires a conviction on the related, specified criminal charge to forfeit property in every case in which a claim is filed to contest the forfeiture of property, unless the defendant in the related criminal case willfully fails to appear for court, or if the value

of the assets is in excess of forty thousand dollars ($40,000.00), as specified.

- Requires proof beyond a reasonable doubt in all forfeiture cases which are contested.
- Allows forfeiture of property less than $25,000 if notice of the forfeiture has been provided, as specified, and no claims have been made.
- Allows more time to make a claim contesting forfeiture.
- Allows property of $25,000 or more to be forfeited through a judicial process when no claim to the forfeited property has been made within the specified time.
- Requires the Attorney General to publish a yearly report which sets forth the following information for the state, each county, each city, and each city and county:
    - The number of forfeiture actions initiated and administered by state or local agencies under California law, the number of cases adopted by the federal government, and the number of cases initiated by a joint federal-state action that were prosecuted under federal law;
    - The number of cases and the administrative number or court docket number of each case for which forfeiture was ordered or declared;
    - The number of suspects charged with a controlled substance violation;
    - The number of alleged criminal offenses that were under federal or state law;
    - The disposition of cases, including no charge, dropped charges, acquittal, plea agreement, jury conviction, or other;
    - The value of the assets forfeited; and
    - The recipients of the forfeited assets, the amounts received, and the date of the disbursement.
- Requires the Legislative Analyst's Office to provide a report to the Legislature by December 31, 2020, about the economic impact on state and local law enforcement budgets because of changes to the forfeiture process proposed by this bill.

**Sex Crimes: Statute of Limitations**

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. Existing law generally provides that the prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) There are several tailored exceptions which extend the general statute of limitations or toll it, such as when crimes

are committed against victims who are under 18 years of age, or when the identity of the suspect is conclusively established by DNA testing.

Some argue that these statutes of limitations allow perpetrators to escape justice because of the passage of an arbitrary measure of time and are grossly unfair to survivors of sexual offenses.

**SB 813 (Leyva), Chapter 777,** eliminates any statute of limitations for specified sex crimes. Specifically, this new law:

- Provides that prosecution for the following offenses may commence at any time:
    - Rape, as specified;
    - Spousal rape, as specified;
    - Rape in concert, as specified;
    - Sodomy, as specified;
    - Lewd acts upon a child involving "substantial sexual conduct," as specified;
    - Continuous sexual abuse of a child;
    - Oral copulation, as specified; and,
    - Sexual penetration, as specified.
- Specifies that the elimination of the statute of limitations shall only apply to crimes that were committed on or after January 1, 2017, or for which the statute of limitations that was in effect before January 1, 2017, has not run as of that date.

**Felony Sentencing: Judicial Discretion**

In 2007, the United States Supreme Court held that California's determinate sentencing law violated a defendant's right to a jury trial because the judge was required to make factual findings in order to justify imposing the maximum term of a sentencing triad. (*Cunningham v. California* (2007) 549 U.S. 270.) The Supreme Court suggested that this problem could be corrected by either providing for a jury trial on the sentencing issue or by giving the judge discretion to impose the higher term without additional findings of fact.

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

The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. (SB 1701 (Romero), Chapter 416, Statutes of 2008.) SB 150 also included a sunset provision that corresponded to the date upon which the provisions of SB 40 would expire. Since then, the Legislature has extended the sunset provisions several times. The current sunset date is January 1, 2017.

**SB 1016 (Monning), Chapter 887,** extends the sunset date from January 1, 2017 to January 1, 2022 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

## Search Warrants: Electronic Communications

SB 178 (Leno), Chapter 651, Statutes of 2015, enacted the California Electronic Communications Privacy Act (CalECPA) which revised the laws controlling how government entities may access electronic communications information and devices. CalECPA prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

It has become apparent that additions and clarifications to CalECPA are needed in order to address certain unintended consequences and outstanding stakeholder concerns.

**SB 1121 (Leno), Chapter 541,** revises the CalECPA to authorize a government entity to access, without a warrant, the location or phone number of an electronic device used to call 911; allows a government entity to retain voluntarily received electronic communication information beyond 90 days if the service provider or subscriber is or discloses information to, a correctional or detention facility; and excludes driver's licenses and other identification cards from its provisions. Specifically, this new law:

- Clarifies that the definition of an "electronic device" does not include the magnetic strip on a driver's license or an identification card issued by this state or a driver's license or equivalent identification card issued by another state.

- Clarifies that a government entity may access electronic device information by means of physical interaction or electronic communication with the device, except where prohibited by state or federal law, if the device is found in an area of any correctional facility or a secure area of a local detention facility where inmates have access, not just areas under the jurisdiction of the Department of Corrections and Rehabilitation.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is serving a term of parole or postrelease community supervision, as specified.

- Generally includes tracking device search warrants within its provisions for notification of the target.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is subject to an electronic device search as a clear and unambiguous condition of probation, mandatory supervision, or pretrial release, as specified.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the government entity accesses information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that, in granting a warrant for electronic information, a court may determine that the warrant need not specify time periods because of the specific circumstances of the investigation, including, but not limited to, the nature of the device to be searched.

- Clarifies that, in granting a warrant for electronic information, information obtained through the execution of the warrant must be sealed and may not be subject to further review, use or disclosure, except pursuant to a court order or to comply with discovery requirements, as specified.

- Requires a government entity, if it receives electronic communication information that was voluntarily provided, to destroy that information within 90 days unless the service provider or subscriber is, or discloses the information to, a federal, state, or local prison, jail, or juvenile detention facility, and all participants to the electronic communication were informed, prior to the communication, that the service provider may disclose the information to the government entity.

- Clarifies that if a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person that requires access to the electronic information without delay, the government entity must file an application for a warrant or order, or a motion of approval of the disclosures, within three court days, as specified.

- Clarifies that a government entity that obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, the government entity need not file an application for a warrant or order, or a motion of approval of the disclosures, if the government entity obtains information concerning the location of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that any government entity that obtains electronic information in an emergency situation must serve notice on the identified target, as specified, within three court days after obtaining the electronic information.

- Clarifies that the provisions of CalECPA may not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession.

- Clarifies that the provisions of CalECPA do not limit the authority of the Public Utilities Commission or the State Energy Resources Conservation and Development Commission to obtain energy or water supply and consumption information pursuant to the powers granted to them under the Public Utilities Code or the Public Resources Code and other applicable state laws.

**Sentencing: Misdemeanors**

Two years ago SB 1310 (Lara), Chapter 174, Statutes of 2014 reduced the maximum misdemeanor sentence to 364 days to prevent misdemeanor offenses from being classed as aggravated felonies for purposes of immigration law. A defendant who was sentenced before the effective date of the new law, but whose appeal was pending was entitled to the benefit of the new law. However, as drafted, all cases which were final on appeal were not entitled to a modification in sentence. As a result, thousands of legal residents are still currently living in California with the threat of deportation looming for minor crimes.

**SB 1242 (Lara), Chapter 789,** retroactively applies the provision of law defining one year as 364 days for the purposes of sentencing. Specifically, this new law:

- States that the reduced sentence applies to all convictions entered before January 1, 2015, even final judgments.

- Provides that a person previously sentenced to one year in county jail may submit an application in the trial court requesting to be resentenced to a period not to exceed 364 days.

**Interrogations: Electronic Recordation**

Every year many people are wrongly convicted because of false confessions. Defendants also often make motions to exclude statements made during an interrogation arguing that they were coerced, there was abuse or the statement was not made. Studies have shown that recording of interrogations puts an end to disputes regarding statements and also has additional benefits. As of January 2014, the law requires the electronic recording of the interrogation of a juvenile suspected of murder. In addition, there are a number of jurisdictions in California that voluntarily, at least some of the time, electronically record other interrogations. This bill would extend the provision requiring the electronic recording of the interrogation of juvenile murder

suspects to apply to any person suspected of murder.

There are a number of benefits in recording interrogations: it allows the interviewer to question the suspect without any distractions (notebooks, statement forms, or typewriters), observe the suspect's demeanor and body language, and use the recordings as training for other personnel. Recording interrogations also reduces allegations of coerced or false confessions. A National Institute for Justice study found that law enforcement agencies experienced 43.5% fewer allegations of improper police tactics as a result of recording interrogation sessions. This practice also enhances the reliability of any statements as judges and juries are able to view the tape themselves.

**SB 1389 (Glazer), Chapter 791,** requires the electronic recording of the interrogation of any person suspected of murder. Specifically, this new law:

- Applies the requirements that an interrogation be electronically recorded to any person suspected of committing murder, not just a juvenile.

- Provides that for the purposes of the custodial interrogation of an adult, "electronic recording" means a video or audio recording that accurately records a custodial interrogation.

# DNA

## Sexual Assault Evidence Kits

Existing law, the Sexual Assault Victims' DNA Bill of Rights, expresses findings and declarations of the Legislature stating, among other things, that timely DNA analysis of rape kit evidence is a core public safety in this state. A law enforcement agency is authorized, upon the request of a sexual assault victim, to inform the victim of the status of the testing of the DNA rape kit evidence or other crime scene evidence from the victim's case. If the agency does not analyze that evidence within 6 months of the statute of limitations for filing a criminal complaint in a sexual assault case, or if the agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations, the victim of sexual assault must be informed of that fact or that intention.

The Sexual Assault Forensic Evidence Tracking program (SAFE-T) was created by the Department of Justice in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants. SAFE-T is accessible only by law enforcement agencies and the Department of Justice, due to the sensitive investigatory and privacy concerns of the information contained in the database. The database includes the disposition of rape kits both at the local law enforcement agency investigating the sexual assault allegation and the disposition of rape kits that have been sent to a crime laboratory for testing.

Rape kits can have many dispositions. A law enforcement agency may not refer a rape kit for testing if they do not believe a crime has occurred, if the agency has already identified the suspect, or if the agency believes they do not need further evidence to prosecute. If the law enforcement agency does refer a rape kit for testing, the investigator may request that a crime lab analyze a rape kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to CODIS, a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. With access to SAFE-T, victims could see if their rape kit has been referred for testing or if testing has been completed.

> **AB 2499 (Maienschein), Chapter 884,** requires the Department of Justice, on or before July 1, 2018, and in consultation with law enforcement agencies and crime victims groups, to establish a process by which victims of sexual assault may inquire regarding the location and information regarding their sexual assault evidence kits.

# DOMESTIC VIOLENCE

**Restraining Orders: Punishment**

There are certain violations of protective orders that are punished with an enhanced misdemeanor sentence when a violation of that order is proven. These include: (1) protective orders based on the court's finding of good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur; (2) a protective order issued as a condition of probation in a domestic violence case; (3) an order issued after conviction in an elder or dependent adult abuse case; (4) a restraining order after conviction of a sex offense involving a minor; and (5) other family court protective orders.

In 2007, legislation was enacted authorizing a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury. Subsequently, in 2011, the Legislature expanded this authority to cover all cases involving domestic violence, regardless of the sentence imposed. However, a conforming cross reference was inadvertently omitted from the contempt of court statute, which among other things describes the punishment for violating restraining orders. (Pen. Code, § 166.)

In contrast, when the legislature amended the elder abuse statute, Penal Code section 368, to allow for post-conviction restraining orders in all elder abuse cases regardless of whether probation was granted, the bill was amended to include a conforming cross reference to the statute that provides how a violation of the restraining order is punished, Penal Code section 166. Now there is an inconsistency with the punishment for a violation of a post-conviction domestic violence restraining orders and that for other post-conviction restraining orders against defendants convicted of abuse.

**SB 883 (Roth), Chapter 342,** conforms the punishment for a violation of a protection order issued after conviction of an offense involving domestic violence to the punishment for other similar protective orders. Specifically, this new law:

- Punishes the first violation of a post-conviction domestic violence restraining order with imprisonment in the county jail for up to one year, by a fine of up to $1,000, or both.

- Requires a first violation to include imprisonment in the county jail for at least 48 hours if the violation resulted in physical injury.

- Punishes a second or subsequent violation occurring within seven years and involving an act of violence, or a credible threat of violence, with imprisonment in the county jail not to exceed one year, or by 16 months, or two, or three years in state prison.

# DRIVING UNDER THE INFLUENCE

## Vessels: Boating Under the Influence

Given recent changes to case law and state statute, the Harbors and Navigation Code contains obsolete language regarding the arrest of a person suspected of operating a boat or vessel under the influence of alcohol and/or drugs. Specifically, existing law requires an officer to inform a person arrested for boating under the influence that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law and that the court may impose increased penalties for that refusal or failure, upon conviction, despite the fact that neither of those statements is accurate.

Vehicle Code Section 23612 provides that a person arrested for driving under the influence shall submit to chemical testing or face sanctions for the refusal to submit. The fact that the person refused testing can also be used as an aggravating factor when he or she is being sentenced for a conviction of driving under the influence. Conversely, despite the fact that similar language exists in the Harbors and Navigation Code, there is no analogous sanction for a person suspected of boating under the influence, largely because there is no comprehensive licensing scheme or implied consent standard.

**AB 1829 (Levine), Chapter 68,** conforms advisement provisions of the Penal Code related to boating under the influence, to existing provisions in the Penal Code and Harbors and Navigation Code. Specifically, this new law:

- Requires that persons arrested for boating under the influence be advised that a criminal complaint may be filed against him or her for operating a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both.

- Provides that persons arrested for boating under the influence be notified that they have a right to refuse chemical testing.

- Specifies that persons arrested for boating under the influence be informed that the officer has the authority to seek a search warrant compelling him or her to submit a blood sample

- States that persons arrested for boating under the influence be advised they do not have a right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical test or tests to take, or during the administration of the chemical test or tests chosen.

## Driving Under the Influence: Passenger for Hire Drivers

Under current law individuals driving commercial vehicles are prohibited from driving such a vehicle with .04 or more Blood Alcohol Content (BAC), at the time of driving. Neither taxis,

nor private vehicles (Uber, Lyft) engaged in the commercial transport of passengers, are considered commercial vehicles, and operators are not required to have a commercial driver's license. Thus, despite engaging in the business of transporting passengers, these drivers are not held to the same standard of behavior as drivers of commercial vehicles.

**AB 2687 (Achadjian), Chapter 765**, conforms prohibitions and punishments for drivers that have passengers for hire when they commit specified offenses related to Driving Under the Influence (DUI) consistent with commercial driver DUI standards, effective July 1, 2018. Specifically, this new law:

- Makes it unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire, is a passenger in the vehicle at the time of the offense, effective July 1, 2018.

- Specifies that it is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle, as specified, and concurrently do any act or neglect any duty that proximately causes bodily injury to another person other than the driver, effective July 1, 2018.

- Defines "passenger for hire" as "a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle."

# ELDER ABUSE

## Elder and Dependent Adult Fraud: Informational Notice

Each year, thousands of California senior citizens find that they have become victims of various types of fraud. In some of these cases the crime is reported but most are not because many seniors are simply too humiliated to report the fraud or may not know where to turn to for help.

Financial abuse is often committed by serial abusers who will come back again for money. The vast majority of perpetrators have a close relationship to victim, such as a caregiver, family member or friend where approximately two-thirds are family members of the victim, but these crimes also come from random individuals posing as sweepstakes, lottery or IRS representatives alongside romantic, healthcare, or magazine claims, among other scams. The Federal Trade Commission reports that fraud complaints to its offices by individuals 60 and older have risen at least 47 percent between 2012 and 2014.

The California Department of Justice (DOJ) regularly issues consumer alerts warning consumers against scams. These alerts are generally public service announcements that are made in the media and on the DOJ website.

**AB 2721 (Rodriguez), Chapter 80,** requires the California Department of Justice to develop and distribute an informational notice that warns the public about elder and dependent adult fraud. Specifically, this new law:

- Requires the notice to include information directing the public to information and resources necessary to determine whether they are victims of fraud and provide information regarding how and where to file complaints.

- States that the notice shall also be made available on the Web site of the Attorney General.

# EVIDENCE

**Human Trafficking: Affirmative Defense**

Human trafficking victims are often treated as criminals with respect to the crimes their traffickers force them to commit. Human trafficking is a unique crime in that traffickers often benefit from having their victims commit illegal acts and may force both children and adults to commit a diverse range of crimes.

Many states have enacted laws making a person's status as a victim of human trafficking an affirmative defense to certain criminal charges. While under existing California law a victim of trafficking who is charged with a crime may be able to raise the defense of duress, some believe the duress defense is inadequate for trafficking victims because a victim may not be able to show his or her life was in immediate danger.

**AB 1761 (Weber), Chapter 636,** creates a human trafficking affirmative defense applicable to non-violent, non-serious, and non-trafficking. Specifically, this new law:

- States that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and of reasonable fear of harm.
- States that this affirmative defense does not apply to a serious felony, a violent felony, or the offense of human trafficking, as specified.
- Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard.
- States that certifying records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, may be presented to establish the affirmative defense.
- Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing.
- Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:
    - Sealing of all court records in the case;
    - Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and

- Permission to attest in all circumstances that he or she has never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications.

- Provides that records sealed after prevailing on the human trafficking affirmative defense may still be accessed by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

- States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records.

- States that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief.

- States that in a juvenile delinquency proceeding, if the court finds that the offense charged in the proceedings was committed as a direct result of the minor being a victim of human trafficking, and the affirmative defense was established by a preponderance of the evidence, then the court shall dismiss the proceedings and order automatic record sealing.

- Provides that in a criminal action expert testimony is admissible by either the prosecution or defense regarding the effects of human trafficking on its victims, including, but not limited to the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.

- States that the requisite foundation for the introduction of this expert testimony will be established if the proponent of the evidence shows its relevance and the proper qualifications of the expert witness.

**Falsifying Evidence**

Existing law makes it a felony for a peace officer to knowingly, willfully, and intentionally alter, modify, plant, place, manufacture, conceal, or move any physical matter, with specific intent that the action will result in a person being charged with a crime, or with the specific intent that the physical matter be will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry.

**AB 1909 (Lopez), Chapter 879**, provides that a prosecuting attorney who knowingly, willfully, and intentionally wrongfully alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information that is required to be disclosed, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry is guilty of a felony punishable by 16 months, two, or three years in a county

jail.

**Mentally Disordered Offenders Hearings: Documentary Evidence**

The Mentally Disorder Offender Act is designed to confine an inmate who is about to be released on parole when it is deemed that he or she has a mental illness which contributed to the commission of a violent crime. A Mentally Disordered Offender (MDO) commitment is a post-prison civil commitment. Rather than release the inmate to the community, California Department of Corrections and Rehabilitation paroles the inmate to the supervision of the Department of State Hospitals (DSH), and the individual remains under hospital supervision throughout the parole period.

Under a 1994 court ruling, proof of an offender's force, violence, or threat could be admitted into a MDO hearing through the testimony of an expert evaluator (generally psychologists or psychiatrists) relying on probation reports, DSH evaluations and trial transcripts.

A 2015 California Supreme Court decision overturned the allowance of expert testimony. Since then, expert testimony based on documentary evidence could not be used to prove the force, violence, or threat of an MDO's prior crime during a commitment hearing.

**SB 1295 (Nielsen), Chapter 430**, authorizes the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals as a mentally disordered offender (MDO). Specifically, this new law:

- Specifies that in order to demonstrate that a prisoner is an MDO, the existence or nature of the crime, for which the prisoner has been convicted may be shown with documentary evidence.

- States that the details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.

# FINES AND FEES

**Criminal Penalties: Nonpayment of Fines**

Existing law gives the court power to enforce payment of fine in a criminal case by imprisonment, but limits such imprisonment to the maximum term permitted for the particular offense of conviction. (Pen. Code, § 1205.) Imprisonment pending payment of a fine is unconstitutional as applied to a convicted indigent defendant if the failure to pay is due to indigence and not to willfulness. (*In re Antazo* (1970) 3 Cal.3d 100, 103-104.) This statute is also used by defendants as a vehicle to request that the trial court exercise its discretion to convert fines to jail time. However, the statute cannot be used to pay off restitution fines or victim restitution orders. (Pen. Code, § 1205, subd. (f).) Existing law also provides the minimum per-day rate to be credited toward a defendant's fines. (Pen. Code, § 2900.5.)

AB 1375 (Thurmond), Chapter 209, Statutes of 2015, amended Penal Code §§1205 and §2900.5 to increase the minimum credit for incarceration towards paying off a criminal fine from $30.00 per day to $125.00 per day. The intent of the bill was to make it easier for poor defendants to satisfy the burden of paying off ever-increasing fines by converting those fines to jail time at a more reasonable rate, and to ease jail overcrowding by enabling these poor defendants to satisfy their debt and get our more quickly. The bill also was intended to reduce costs, since counties end up paying the costs of incarceration for these poor defendants.

For years, California courts have calculated jail time against the base fine, with penalties and assessments reduced proportionately. Unfortunately, in response to the change made by AB 1375, some courts have changed their method of calculating the fines against which the jail time is applied, applying the credit only after penalties and assessments have been added. In these courts, indigent defendants now face more jail time for the same minor fine than they did before AB 1375, despite the legislation's clear intent. This also increases jail overcrowding for minor offenses, and costs counties more money in incarceration costs.

**AB 2839 (Thurmond), Chapter 769,** clarifies that when a criminal defendant is ordered imprisoned for non-payment of a non-restitution criminal fine, that only the base fine is used when determining the term of imprisonment. Specifically, this new law:

- Prohibits the term of imprisonment for nonpayment of a fine from exceeding one day for each $125 of the base fine or the term for which the defendant may be sentenced.

- Specifies that all days that a defendant is in custody shall be credited upon the defendant's term of imprisonment or credited proportionally to any criminal base fine, excluding restitution or restitution orders, at a rate of not less than $125 per day.

- States that any fees and assessments imposed on the base fine shall be reduced proportionally to the reduction of the base fine awarded as a result of custody credits.

**Attorney Fees: Ability to Pay**

Upon the conclusion of criminal proceedings, the court may make a determination of the defendant's present ability to pay all or a portion of the costs of legal representation by appointed counsel. Existing law defines "ability to pay" as "the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her." "Ability to pay" includes: the defendant's present financial position; the defendant's reasonably discernable future financial position in the next six months; the likelihood that the defendant will be able to obtain employment within a six-month period; and, any other factor or factors which may bear on the defendant's financial capability to reimburse the county for the costs of legal representation. Existing law establishes a presumption that a defendant sentenced to state prison does not have a reasonably discernable financial ability to reimburse defense costs. However, there is no similar presumption for defendants sentenced to county jail under criminal justice realignment.

**SB 614 (Hertzberg), Chapter 534,** applies the presumption of inability to pay attorney fees when a defendant is sentenced to state prison to those defendants sentenced to one year or more in county jail. Specifically, this new law:

- Establishes a presumption that a person sentenced to more than 364 days in county jail does not have a reasonably discernable future financial ability to reimburse the costs of his or her legal representation.

**Emergency Medical Services: Maddy Fund**

In 1987, the Legislature approved the establishment of the Maddy EMS Fund, and although counties are not required to establish EMS Funds, almost all counties have done so. The Legislature intended the EMS Funds to reimburse physicians, hospitals, and other providers of emergency services, specifically for patients who do not have health insurance coverage for emergency services and care, cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government, as specified.

Counties have several sources of revenue for their EMS Funds: Maddy revenues, derived from county penalty assessments on various criminal offenses and motor vehicle violations; traffic violator school fees; and, revenues from taxes on tobacco products deposited in the State's Cigarette and Tobacco Products Surtax Fund, including the EMS Appropriation.

Existing law, until January 1, 2017, authorizes county boards of supervisors to elect to levy an additional penalty, for deposit into the EMS Fund, in the amount of $2 for every $10 upon fines, penalties, and forfeitures collected for criminal offenses. Existing law, until January 1, 2017, requires 15% of the funds collected pursuant to that provision to be used to provide funding for pediatric trauma centers.

**SB 867 (Roth), Chapter 147**, extends until January 1, 2027, the Maddy Emergency Medical Services (EMS) Fund, which authorizes each county to levy an additional $2 for every $10 of criminal fines to establish an emergency medical services fund for reimbursement of costs related to emergency medical services based on fees on criminal convictions.

## Vehicles: Traffic Amnesty Program

Existing law requires a county to establish an amnesty program for unpaid fines and bail initially due on or before January 1, 2013, for Vehicle Code infractions to be conducted in accordance with guidelines adopted by the Judicial Council. The amnesty program is required to accept payments from October 1, 2015, to March 31, 2017. The program must accept a reduced payment in full satisfaction of the fine or bail if the program participant certifies under penalty of perjury that he or she receives specified public benefits or his or her income is 125% or less of the current poverty guidelines. If the driving privilege of an amnesty program participant or a person who is in good standing in a comprehensive collection program has been suspended due to a Vehicle Code violation that is subject to the amnesty program, current law requires the court to issue and file a certificate with the Department of Motor Vehicles demonstrating that the participant has appeared in court, paid the fine, or has otherwise satisfied the court.

**SB 881 (Hertzberg), Chapter 779**, modifies the traffic amnesty program established for individuals who have had their driver's license suspended due to failure to pay (FTP) traffic fines. Specifically, this new law:

- Requires the court, where applicable, to file the appropriate documents certifying that a person with a suspended license has fulfilled the amnesty program requirements within 90 days.

- Requires the court to issue and file the required certificates to reinstate suspended driver's license for amnesty program participants no later than March 31, 2017, for applications submitted before January 1, 2017.

- Clarifies that amnesty program eligibility requirements, among other things, that applications be received by the court on or before the program expiration date of March 31, 2017.

- Clarifies that the court must process all applications received on or before the program's expiration date of March 31, 2017, and that all program terms and procedures related to a participant's payment plan shall remain in effect after the March 31, 2017, program expiration date.

**Restitution & Fines: Collection**

In 2012, the Legislature authorized the collection of restitution from county jail inmate accounts from prisoners sentenced under Criminal Justice Realignment. Since that time, there has been confusion regarding the collection of administrative fees by county sheriffs.

The pertinent statute, Penal Code section 2085.5, subdivision (f) states, in part, "Upon release from custody … the agency is authorized to charge a fee to cover the actual administrative cost…" As a result, several counties have interpreted this to mean that the administrative fee cannot be collected until the inmate's release. In fact, this language was intended to give the county agency continuing authority to collect the administrative fee after the inmate's release. The California Department of Corrections and Rehabilitation (CDCR) has always interpreted the language to allow for immediate collection of the administrative fee, but not all counties agree. Clarification is needed to resolve the ambiguity.

**SB 1054 (Pavley), Chapter 718,** clarifies the collection process for fines and restitution by county collection agencies, and mitigates issues of duplicate collection. Specifically, this new law:

- Authorizes the agency designated to collect restitution fines and orders from sentenced felony jail inmates to retain an administrative fee to cover the actual costs of collection up to 10% of monies collected, rather than an automatic 10% of the monies collected.

- Authorizes CDCR to retain an administrative fee to cover the actual costs of collection up to 10% of monies collected, rather than an automatic 10% of the monies collected.

- Clarifies that the agency designated by the county to collect restitution fines and orders from sentenced felony jail inmates may retain the administrative fee at the time the restitution order or fine is collected.

- Provides that if a county agency has been designated to collect restitution orders from sentenced felony jail inmates, persons on post-release community supervision (PRCS) or mandatory supervision, and the county agency objects to referral of the order to Franchise Tax Board (FTB) for collection, neither CDCR nor the county shall refer the order to FTB.

- Provides that the victim entitled to the restitution may designate the agency that will collect the restitution.

# FIREARMS

## Firearms: Serial Numbers

Manufacturing and selling illegal guns, including so-called "ghost guns," is the most common type of investigation the Sacramento Bureau of Alcohol Tobacco and Firearms deals with.

"Ghost guns" are missing a serial number and have been manufactured with parts likely bought online.

> **AB 857 (Cooper), Chapter 60,** requires a person, commencing July 1, 2018, to apply to and obtain from the Department of Justice a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, as specified; and requires by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number assigned to it to obtain a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, as specified.

## Firearms: Assault Weapons

On December 2, 2015, 14 people were killed and 21 were seriously injured in a mass shooting at the Inland Regional Center in San Bernardino, California. The perpetrators of this mass shooting used firearms that were legally purchased in California.

A carve-out in a California gun law reportedly allowed for the legal purchase of two assault-style rifles that were used in the San Bernardino shooting Wednesday, which killed 14 people and injured 21 others, though the weapons were later altered illegally.

Guns are equipped with a "bullet button," as the Wall Street *Journal* reports the San Bernardino shooters' were, they're perfectly legal to sell. Instead of removing a magazine by hand, the shooter must press a recessed button that is only accessible using the tip of a bullet or another small tool. Technically, this does not classify as a "detachable magazine," so the guns are allowed. In practice, the method still allows users to swap out magazines within seconds. Gunmakers began making bullet buttons after California passed its harsher gun laws, according to the Associated Press.

But in this case, the weapons were additionally altered in a way that violated the California law, the *Journal* reports, allowing one to use higher-capacity magazines than permitted.

> **AB 1135 (Levine), Chapter 40,** redefines what constitutes an assault weapon in order to close the bullet button loophole. Also requires registration of weapons (which were previously not prohibited) which now fall under the new definition. Specifically, this new law:
>
> - Amends the definition of assault weapon to refer to a firearm that has one of several specified military-style features and does not have a "fixed magazine" rather than a

firearm that has one of those features and "has the capacity to accept a detachable magazine;

- Defines "fixed magazine" as "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action";

- Provides that any person who was eligible to register an assault weapon and lawfully possessed such a weapon prior to January 1, 2017, would be exempt from penalties, if the person registers the weapon by January 1, 2018;

- Requires that any person who from January 1, 2001, to December 31, 2016, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, register the firearm before January 1, 2018, with the Department of Justice (DOJ), as specified;

- Provides that this registration be submitted online, as specified;

- Authorizes DOJ to charge a fee of up to $15 per person but not to exceed the reasonable processing costs of the department for this registration; and

- Requires DOJ to establish procedures for the purpose of carrying out this registration requirement and to specify that these procedures shall be exempt from the Administrative Procedure Act.

**Firearms: Interfamilial Lending**

Existing law generally requires the loan of a firearm to be conducted through a licensed firearms dealer. Failure to do so is a crime. Existing law exempts from this requirement a loan of a firearm between persons who are personally known to each other, if the loan is infrequent and does not exceed 30 days in duration. Thus, under current law anyone can borrow a gun from an acquaintance for up to 30 days without a background check.

**AB 1511 (Santiago), Chapter 41**, specifies that the infrequent loan of a firearm may only be made to family members. Specifically, this new law:

- Specifies that the infrequent loan of a firearm may only be made to family members.

- Defines "family members" as "spouses and registered domestic partners, or parents, children, siblings, grandparents, grandchildren, whether related by blood, adoption, or a step-relation."

- Requires any handgun being loaned be registered to the person making the loan.

**Firearms: False Reporting**

The number of gun sales in California is relatively high. From 2007-2016 the numbers have been increasing. In 2007 there were 370,628 Dealer's Records of Sale reported in the state of California. In 2011 there were 601,243 Dealer's Records of Sale reported to the Department of Justice. It has been widely reported in the media that following the tragedy at Sandy Hook Elementary School on December 14, 2012 that gun sales have increased significantly following proposed legislative efforts throughout the United States to impose stricter regulations on gun sales. In the month following the San Bernardino showing in California gun dealers sold about 134,000 guns. History has shown that following recent mass shootings there have been severe spikes in gun sales. California has seen between 800,000 and 960,000 gun sales during each of the prior four years, state and federal data show. By comparison, a decade ago, between 2002 and 2005, the state never saw more than 345,000 gun sales in a single year.

Current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. (18 U.S.C. § 922(g); Pen. Code § 29800.) California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses that involve either violence or the threat of violence. (Pen. Code § 29805.) Additionally, anyone who has been found to be a danger to themselves or others due to mental illness is subject to a five-year prohibition (Welf. & Inst. Code §§ 8100, 8103(f)), and people under domestic violence restraining orders are subject to a prohibition for the duration of that court order. (Pen. Code § 29825.)

**AB 1695 (Bonta), Chapter 47,** expands the existing misdemeanor of making a false report to law enforcement to include that a firearm has been lost or stolen, and institutes a 10-year ban on owning a firearm for those convicted of making a false report. This new law:

- Specifies that existing laws relating to filing a false report apply to a person who reports that a firearm has been lost or stolen, knowing the report to be false, as specified.

- Adds falsely reporting that a firearm has been stolen to offenses for which a conviction results in a 10-year prohibition on possession of a firearm, as specified.

**Firearms: Imitation Cell Phone Cases**

Currently available for purchase on-line are cellular/smartphone cases that are similar in color, shape, and even operation to a real handgun. These cellular/smartphone cases have a handgun grip and trigger system protruding from the phone cover. Some of the cases have an operational trigger that when pulled creates a gun like clicking sound. On the backside of the case is a two dimensional replica of a semi-automatic handgun barrel and slide mechanism. The gun shaped cellular/smartphone case has no markings that depict it as an imitation.

**AB 1798 (Cooper), Chapter 198,** specifies that an imitation firearm includes a cell phone case that is substantially similar in coloration and overall appearance to a firearm as to lead a reasonable person to perceive that the case is a firearm.

**Prohibited Armed Persons File: Initial Review**

In 2013, the State Auditor (State Audit Report 2013-103) uncovered that the Department of Justice (DOJ) had a backlog of more than 1,200 matches in their daily queue which contains the daily events from courts and mental health facilities that may trigger a prohibition for an individual to own a firearm.

As part of their findings, the State Auditor's office recommended that the DOJ establish a goal of no more than 400 to 600 cases in the daily queue. However, since the initial audit, the DOJ daily queue has grown to over 3,600 cases. The DOJ Justice has cited new reporting laws and the need to redirect staff to another Bureau of Firearms priority, which has a statutory deadline, as the reason for this backlog.

The State Auditor has recommended a statutory deadline of seven days on the initial processing of matches in the Armed Prohibited Person System (APPS) database to encourage the DOJ to avoid redirecting APPS unit staff. The longer it takes to review an individual's records, the longer a potentially armed prohibited person keeps their firearms, which increases the risk to public safety.

**AB 1999 (Achadjian), Chapter 638,** requires the DOJ to both complete an initial review of a match in the APPS within seven days of the match being placed in the queue Specifically, this new law:

- Requires the DOJ to periodically reassess whether the department can complete reviews of APPS matches within the daily queue more efficiently.

- Defines "match" as "an entry into the Automated Criminal History System, or into any department automated information system, of the name and other information of an individual who may be prohibited from acquiring, owning, or possessing a firearm, matched with a corresponding record of ownership or possession of a firearm by that individual, as specified."

**Peace Officers: 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 2165 (Bonta), Chapter 640**, provides that specified peace officers, who have satisfactorily completed the Commission on Peace Officer Standards and Training (POST) prescribed firearms training course, shall be exempt from the state prohibition relating to the sale or purchase of an unsafe handgun. Specifically, this new law:

- Authorizes sworn members of the following entities, who have satisfactorily completed a firearms training course prescribed by POST, to purchase or sell unsafe firearms, except as specified:
    - The Department of Parks and Recreation;
    - The Department of Alcoholic and Beverage Control;
    - The Division of Investigation of the Department of Consumer Affairs;
    - The Department of Motor Vehicles;
    - The Fraud Division of the Department of Insurance;
    - The State Department of State Hospitals;
    - The Department of Fish and Wildlife;
    - The State Department of Developmental Services;
    - The Department of Forestry and Fire Protection;
    - A county probation department;
    - The Los Angeles World Airports;
    - A K-12 public school district for use by a school police officer;
    - A municipal water district for use by a park ranger;
    - A county for use by welfare fraud investigator or inspector;
    - A county for use by the coroner or deputy coroner;
    - The Supreme Court and the courts of appeal for use by Marshalls of the Supreme Court and bailiffs of the court of appeal coordinators of security for the judicial

branch;

- A fire department or fire protection agency of a county, city, city and county; district, or the state for use by either of the following:
  - A member of an arson investigating unit regularly paid and employed in that capacity; and,
  - A member other that a member of an arson investigating unit, regularly paid and employed as an arson investigator.
- The University of California Police Department, or the California State University Police Department, as specified; and,
- A California Community College Police Department, as specified.

- Prohibits a licensed firearms dealer from processing the sale or transfer of an unsafe handgun from a person that has obtained an unsafe handgun pursuant to the sworn peace officer exemption and a person who is not exempt.

- States that a sworn peace officer of an entity exempt from the prohibition related to the sale or purchase of an unsafe handgun, who obtains an unsafe handgun, shall when leaving an unattended vehicle, to lock the handgun in the vehicle's trunk or lock the handgun in a locked container and place the container out of plain view, or lock the handgun in locked container that is permanently affixed to the vehicle's interior and not in plain view, and a violation of this requirement is an infraction punishable by a fine not to exceed $1,000.

- States that the requirement that an unsafe handgun be safely stored when left in an unattended vehicle by a peace officer does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course and scope of his or her official duties.

- States that this safe storage law does not supersede any local ordinance that was in effect prior to the enactment of this new law.

**Firearms: Concealed Weapons Permits**

The current concealed carry license (CCW) is not produced in a format that is easy to carry on one's person. In response, some sheriff offices currently provide a county identification card, which provides additional security features, and often includes a photograph of the licensee. This county-issued card cannot take the place of the standard Department of Justice CCW license, however, and licensees end up carrying both documents.

**AB 2510 (Linder), Chapter 645,** requires the Attorney General to develop a CCW license with uniform information and criteria, that may be used as indicia of proof of licensure throughout the state.

## Firearms: Securing Handguns in Vehicles

To prevent handgun thefts from vehicles, current law requires civilian handgun owners to store the weapon in a locked box or in the trunk when leaving it unattended in the car. This requirement however, does not apply to law enforcement officers and concealed carry license holders.

In recent years there has been an increase in incidents of handguns stolen from cars. This includes handguns stolen from law enforcement vehicles. Tragically, many stolen guns end up being used in violent crimes. In the latter half of 2015, four people were killed with guns stolen from cars; two of the weapons were taken from law enforcement officers' vehicles. For example, in July 2015, a gun stolen from the car of a federal Bureau of Land Management ranger was used to kill a 32-year-old woman at San Francisco's Pier 14. In September 2015, a gun stolen from the car of a federal Immigration and Customs Enforcement officer was used in the killing of a muralist in Oakland. And a weapon stolen from a civilian's vehicle was used to kill a backpacker in Golden Gate Park and a hiker in Marin County.

**SB 869 (Hill), Chapter 651,** requires every person who is leaving a handgun in a vehicle to secure the handgun by locking it either in the trunk or in a locked container which is out of plain view. Specifically, this new law:

- Requires a person, when leaving a handgun in an unattended vehicle, to lock the handgun in the vehicle's trunk or to lock it in a locked container and place the container out of plain view.

- Makes a violation of the vehicle-securement requirement an infraction punishable by a fine not exceeding $1,000.

- Defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks."

- Defines "locked container" as "a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device." A locked container "does not include the utility or glove compartment of a motor vehicle."

- Provides that a vehicle is unattended when a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.

- Exempts a peace officer from this requirement during circumstances requiring immediate aid or action that are within the course of his or her official duties.

- States that the vehicle-securement requirement does not apply to, or affect, the transportation of unloaded firearms by a person operating a licensed common carrier or an unauthorized agent or employee thereof when the firearms are transported in conformance with applicable federal law.

**Firearms: Assault Weapons**

California law bans semiautomatic rifles with the capacity to accept a detachable ammunition magazine and any one of six enumerated additional assault weapon characteristics (e.g., folding stock, flash suppressor, pistol grip, or other military-style features).

High-capacity detachable ammunition magazines allow shooters to expel large amounts of ammunition quickly and have no sporting purpose. However, in California an ammunition magazine is not viewed as detachable if a "tool" is required to remove it from the weapon. The "bullet button" is a release button for the ammunition magazine that can be activated with the tip of a bullet. With the tip of the bullet replacing the use of a finger in activating the release, the button can be pushed and the detachable ammunition magazine removed and replaced in seconds. Compared to the release process for a standard detachable ammunition magazine it is a distinction without a difference. (*Bullet Buttons, The Gun Industry's Attack on California's Assault Weapons Ban*, Violence Policy Center, Washington D.C., May 2012. )

**SB 880 (Hall), Chapter 48,** redefines what constitutes an assault weapon in order to close the bullet button loophole. Also requires registration of weapons previously not prohibited, under the new definition. Specifically, this new law:

- Revises the definition of "assault weapon" to mean "a semiautomatic centerfire rifle, or a semiautomatic pistol that does not have a fixed magazine but has any one of those specified attributes."

- Defines "fixed magazine" to mean "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action."

- Exempts a person who possessed an assault weapon prior to January 1, 2017, if specified requirements are met.

- Requires that any person who, from January 1, 2001, to December 31, 2016, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, register the firearm with the Department of Justice (DOJ) before January 1, 2018.

- Permits the DOJ to increase the $20 registration fee as long as it does not exceed the reasonable processing costs of the department.

- Requires registrations to be submitted electronically via the Internet utilizing a public-facing application made available by the DOJ.

- Requires the registration to contain specified information, including, but not limited to, a description of the firearm that identifies it uniquely and specified information about the registrant.

- Permits the DOJ to charge a fee of up to $15 per person for registration through the internet, not to exceed the reasonable processing costs of the department to be paid and deposited, as specified, for purposes of the registration program.

- Requires the DOJ to adopt regulations for the purpose of implementing those provisions and would exempt those regulations from the Administrative Procedure Act.

**Ammunition Sales: Background Checks**

AB 962 (De León), Chapter 628, Statutes of 2009, required, commencing February 1, 2011, that handgun ammunition vendors obtain a thumb print and other specified information from an ammunition purchaser, and required that the above information be subject to inspection by law enforcement. The National Rifle Association and others challenged this new law in court. The resulting case has prevented the implementation of the law.

**SB 1235 (De León), Chapter 55**, creates a new regulatory framework for the purchase and sale of ammunition in California. Specifically, this new law:

- Requires the Department of Justice (DOJ) to maintain ammunition vendor license information, ammunition transaction information, and authorizes specified agencies, officials, and officers to disseminate the name of a person and specified ammunition purchase information by that person if the subject of the record has been arraigned, is being prosecuted, or is serving a sentence for conviction of domestic violence or is the subject of a protective order, as specified.

- Defines "ammunition" to mean one or more loaded cartridges consisting of primer case, propellant, and with one or more projectiles. Ammunition does not include blanks.

- States that effective January 1, 2018, "ammunition vendor" means any person, firm, corporation, dealer, or any other business that has a current ammunition vendor license, as specified.

- Requires commencing January 1, 2019, that information contained in the Armed Prohibited Persons File (APPS) be used to cross-reference persons who attempt to

acquire ammunition to determine if those persons fall within a class of persons who are prohibited from owning or possessing ammunition.

- Provides that any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who the person, corporation, firm, or other business enterprise knows or has cause to believe is not the actual purchaser or transferee or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding $1,000, or by both that fine and imprisonment.

- States that commencing January 1, 2018, only an ammunition vendor that is licensed by the DOJ shall be authorized to sell ammunition in this state, except for the following entities:

    - A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

    - A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

    - A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

    - A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the shooting or hunting event conducted by that nonprofit or public benefit corporation;

    - A target facility that holds a business or regulatory license provided that the ammunition is at all times kept within the facility's premises and used on the premises; and,

    - A person who sells no more than 50 rounds of ammunition to one vendor in one month or cumulatively sells no more than 250 rounds per year to vendors in this state.

- Authorizes the DOJ to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, accept applications for ammunition vendor licenses. The department shall issue a license or deny the application for a license within 60 days of receipt of the application in the first two years of

implementation, and within 30 days thereafter. If the application is denied, the department shall inform the applicant of the reason for denial in writing. The ammunition vendor license shall be issued in a form prescribed by the Attorney General and shall be valid for a period of one year. The license shall allow the licensee to sell ammunition from a fixed location, except as specified.

- Requires the DOJ to issue ammunition vendor licenses to ammunition vendors who are not prohibited by law from possessing, receiving, owning, or purchasing a firearm and possess a certificate of eligibility (COE), and requires any agent or employee of a vendor who handles, sells, or delivers ammunition to possess a COE.

- Requires the DOJ, upon request, to issue ammunition vendor licenses to the following:

    - Firearms dealers;

    - Federal firearms licensees;

    - A gunsmith;

    - A wholesaler, and,

    - A licensed manufacturer or importer of firearms or ammunition.

- States that commencing July 1, 2019, the department shall electronically approve the purchase or transfer of ammunition through a vendor, except as otherwise specified. This approval shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition.

- Provides that to determine if the purchaser or transferee is eligible to purchase or possess ammunition, the department shall cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number with the information maintained in the Automated Firearms System (AFS). If the purchaser's or transferee's information does not match an AFS entry, the transaction shall be denied. If the purchaser's or transferee's information matches an AFS entry, the department shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing the APP File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.

- Prohibits a vendor from providing a purchaser or transferee ammunition without department approval. If a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an Internet connection, the DOJ shall provide a phone line to verify eligibility. This option is available to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in

submitting the information electronically, and who are approved by the DOJ to use the phone line verification.

- Allows the DOJ shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per-transaction fee not to exceed $1, provided, however, that the fees may be increased at a rate not to exceed any increases in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations, not to exceed the reasonable regulatory and enforcement costs. The fees shall be deposited in the Ammunition Special Account, to be available upon appropriation by the Legislature, for use by the DOJ for the purpose of implementing and enforcing this Act.

- Provides that the following are exempt from the ammunition purchase requirements:

    - Firearms dealers;

    - A person on the centralized list of federal firearms licensees;

    - A gunsmith;

    - A wholesaler;

    - A licensed manufacturer or importer of firearms or ammunition;

    - A person whose licensed premises are outside the state, and the person is federally licensed as a dealer or collector of firearms;

    - A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;

    - An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;

    - A properly identified sworn federal, state, or local peace officer;

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

- A person who purchases or receives ammunition at a target facility holding a business license or other regulatory license, provided that the ammunition is at all times kept within the facility's premises and used on the premises.

- A commercial hunting club, as defined;

- A domesticated game bird hunting club, as defined;

- A domesticated migratory game bird hunting club, as defined;

- A domesticated migratory game bird shooting club, as defined;

- A participant at a shooting or hunting event conducted by any of the following:

    - A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

    - A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

    - A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

- A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity;

- A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the shooting or hunting event conducted by that nonprofit or public benefit corporation;

- A peace officer, retired peace officer, or holder of a concealed weapons permit who is authorized to carry a loaded weapon;

- A holder of a special weapons permit issued by the DOJ;

- A holder of a valid entertainment firearms permit issued by the DOJ; and,

- A person who is not prohibited from purchasing or possessing a firearm who has been approved for a single ammunition transaction or purchase.

- States that a vendor shall not permit an employee who the vendors knows or reasonably should know is a person that is prohibited from purchasing or owning a

firearm to handle, sell or deliver ammunition in the course and scope of employment.

- Provides that a vendor shall not sell or otherwise transfer ownership of, offer for sale, or otherwise offer to transfer ownership of, display for sale, or display for transfer any ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

- Requires the sale, delivery, or transfer of ammunition to occur only in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that ammunition may be purchased over the Internet or through other means of remote ordering if an ammunition vendor in this state initially receives the ammunition and processes the transfer as required by law. An ammunition vendor is required to promptly and properly process those transactions. An ammunition vendor may charge a fee to process the transfer not to exceed $10 per transaction. An ammunition vendor is not required to house ammunition orders longer than 30 days.

- Provides that the following persons are exempt from the ammunition sales requirements:

    - Firearms dealers;

    - A person on the centralized list of federal firearms licensees;

    - A gunsmith;

    - A wholesaler;

    - A licensed manufacturer or importer of firearms or ammunition;

    - A person whose licensed premises are outside the state, and the person is federally licensed as a dealer or collector of firearms;

    - A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;

    - An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that

individual is employed;

- A properly identified sworn federal, state, or local peace officer;
- A target facility that holds a business or regulatory license;
- A commercial hunting club, as defined;
- A domesticated game bird hunting club, as defined;
- A domesticated migratory game bird hunting club, as defined;
- A domesticated migratory game bird shooting club, as defined;
- A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity;
- A consultant-evaluator; and,
- A contract or common carrier or an authorized agent or employee thereof.

- Requires that ammunition sales be conducted at the location specified in the license, but a vendor may sell ammunition at a gun show or event, as specified.

- Provides that when neither party to an ammunition sales is a licensed vendor, the following shall apply:
  - The seller shall deliver the ammunition to a vendor to process the transaction;
  - The vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise;
  - If the vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. This return is not subject to section 30356;
  - The vendor may charge the purchaser an administrative fee to process the transaction, not to exceed $10 per transaction processed; and,
  - A person selling ammunition pursuant to this section is exempt from the requirement to be licensed as an ammunition vendor.

- States that notwithstanding the purchase and sale requirements of this act, the sale of ammunition between the following is authorized so long as it does not exceed 50

rounds per month:

  - The sale of ammunition between licensed hunters while engaged in lawful hunting activity.

  - The sale of ammunition between immediate family members, spouses, or registered domestic partners.

- Provides that commencing July1, 2019, a resident of this state shall not bring into this state any ammunition that he or she purchased from outside this state unless he or she first has that ammunition delivered to an ammunition vendor in this state for delivery to the resident, as specified.

- Provides that the following persons are exempt from the requirements related to bringing
into this state any ammunition:

  - Firearms dealers;

  - A person on the centralized list of federal firearms licensees;

  - A gunsmith;

  - A wholesaler;

  - A licensed manufacturer or importer of firearms or ammunition;

  - An ammunition vendor;

  - A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;

  - An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;

  - A properly identified sworn federal, state, or local peace officer;

- A contract or common carrier or an authorized agent or employee thereof, when acting in conformance of federal law;

- A person who purchases the ammunition from an immediate family member, spouse, or registered domestic partner if the person brings or transports into this state no more than 50 rounds.

- The executor or administrator of an estate that includes ammunition.

- A person that at the time he or she acquired the ammunition was not a resident of this state;

- Ammunition that is imported into this country, as specified;

- A licensed hunter who purchased the ammunition outside of this state for use in a lawful hunting activity that occurred outside of this state if the person brings or imports no more than 50 rounds into this state and the ammunition is designed and intended for use in the firearm the hunter used in that hunting activity; and,

- A person who attended and participated in an organized competitive match or league competition that involves the use of firearms in a match or competition; sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms, and the person brings or imports into this state no more than 50 rounds of ammunition designed and intended to be used in the firearm the person used in the match or competition.

- Provides that commencing January 1, 2019, a vendor shall not sell or otherwise transfer ownership of any ammunition without, at the time of delivery, legibly recording the following information:

  - The purchaser's full name;

  - The purchaser's or transferee's driver's license or other identification number and the state in which it was issued;

  - The date of the sale or other transaction;

  - The brand, type, and amount of ammunition sold or otherwise transferred;

  - The name of the salesperson who processed the sale or other transaction;

  - The purchaser's or transferee's full residential address and telephone number; and,

  - The purchaser's or transferee's date of birth.

- States that commencing July 1, 2019, the vendor shall electronically submit to the DOJ ammunition purchase information in a format and a manner prescribed by the department for all sales or other transfers of ammunition. The department shall retain this information for two years in a database to be known as the Ammunition Purchase Records File for the sole purpose of aiding and assisting local and state law enforcement agencies in an active investigation. The vendor shall not share any of the ammunition purchase information for any reason other than for authorized law enforcement purposes. The information in the Ammunition Purchase Records File may be accessed by a state or local law enforcement agency only if the department is provided a case number or other sufficient information as determined by the department that indicates an active investigation, and the information sought is for the investigation or prosecution of that case.

- Provides that in the case a vendor cannot electronically transmit the required ammunition purchase information via an Internet connection, the DOJ shall provide a telephone line to submit the information the vendor can demonstrate legitimate geographic and telecommunications limitations to submitting the information electronically, and the DOJ approves the vendor's use of the telephone line.

- Provides that the following persons are exempt from the electronic submission of ammunition purchase information:

    - Firearms dealers;

    - A person on the centralized list of federal firearms licensees;

    - A gunsmith;

    - A wholesaler;

    - A licensed manufacturer or importer of firearms or ammunition;

    - An ammunition vendor;

    - An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;

- A properly identified sworn federal, state, or local peace officer;
- A target facility that holds a business or regulatory license;
- A commercial hunting club, as defined;
- A domesticated game bird hunting club, as defined;
- A domesticated migratory game bird hunting club, as defined;
- A domesticated migratory game bird shooting club, as defined;
- A participant at a shooting or hunting event conducted by any of the following:
  - A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
  - A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
  - A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
- A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity; and,
- A participant at a shooting or hunting event conducted by a nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the event.

- Prohibits a vendor from knowingly making a false entry, or failing to make a required entry of ammunition purchase information.
- Provides that any person that violates any requirement related to the sale or purchase of ammunition is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and a fine.
- Amends and repeals the ammunition purchase and sale requirements proposed to be added by the Safety for All Act of 2016 at the November 8, 2016, statewide general election.

**Firearms: Magazine Capacity**

In 1999, the Legislature passed SB 23 (Perata) banning the importation, manufacture and sale of large-capacity magazines, which are magazines that can hold more than 10 rounds of ammunition. (Pen. Code, §§ 32310 and 32390.) Possession was not banned but because all other means of obtaining large-capacity magazines was prohibited when the law went into effect on January 1, 2000, large-capacity magazines should have phased out naturally over time. However, there continues to be a proliferation of these magazines 16 years after the law went into effect. Once a large-capacity magazine is in a person's possession, it is difficult to ascertain whether the magazine was imported, manufactured or sold illegally.

**SB 1446 (Hancock), Chapter 58,** prohibits the possession of large-capacity magazines, with specified exceptions. Specifically, this new law:

- Makes it an infraction, commencing July 1, 2017, for any person who possesses a large-capacity magazine punishable as follows:
    - A fine not to exceed $100 for the first offense;
    - A fine not to exceed $250 for the second offense; and,
    - A fine not to exceed $500 for the third or subsequent offense.
- Requires a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to dispose of that magazine.
- Specifies the following exceptions:
    - An individual who honorably retired from being a sworn peace officer, or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties;
    - A federal, state, or local historical society, museum or institutional society, or museum or institutional collection, that is open to the public, provided that the large-capacity magazine is unloaded, properly housed within secured premises, and secured from unauthorized handling;
    - A person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition, and possessed it no longer than necessary to deliver or transport it to the nearest law enforcement agency;
    - A forensic laboratory, or an authorized agent or employee thereof in the course and scope of his or her authorized activities;

- The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine; or,

- A person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm.

**Firearms: Gun Violence Research**

In 1993, the *New England Journal of Medicine* (NEJM) published an article by Arthur Kellerman and colleagues, "Gun ownership as a risk factor for homicide in the home," which presented the results of research funded by the Centers for Disease Control and Prevention (CDC). The study found that keeping a gun in the home was strongly and independently associated with an increased risk of homicide. The article concluded that rather than confer protection, guns kept in the home are associated with an increase in the risk of homicide by a family member or intimate acquaintance. Kellerman was affiliated at the time with the department of internal medicine at the University of Tennessee. He went on to positions at Emory University, and he currently holds the Paul O'Neill Alcoa Chair in Policy Analysis at the RAND Corporation.

The 1993 NEJM article received considerable media attention, and the National Rifle Association (NRA) responded by campaigning for the elimination of the center that had funded the study, the CDC's National Center for Injury Prevention. The center itself survived, but Congress included language in the 1996 Omnibus Consolidated Appropriations Bill (PDF, 2.4MB) for Fiscal Year 1997 that "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Referred to as the Dickey amendment after its author, former U.S. House Representative Jay Dickey (R-AR), this language did not explicitly ban research on gun violence. However, Congress also took $2.6 million from the CDC's budget — the amount the CDC had invested in firearm injury research the previous year — and earmarked the funds for prevention of traumatic brain injury. Dr. Kellerman stated in a December 2012 article in the *Journal of the American Medical Association*, "Precisely what was or was not permitted under the clause was unclear. But no federal employee was willing to risk his or her career or the agency's funding to find out. Extramural support for firearm injury prevention research quickly dried up."

In 2015, former Congressman Dickey came forward in an interview with the Huffington Post and stated that he regretted his Amendment. "I wish we had started the proper research and kept it going all this time," Dickey, an Arkansas Republican, told the Huffington Post in an interview. "I have regrets."

> **SJR 20 (Hall), Chapter 82,** urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control

and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research. Specifically, this new law:

- States the following:
    - Every day, gun violence destroys lives, families, and communities;
    - From 2002 to 2013, inclusive, California lost 38,576 individuals to gun violence, of which 2,258 were children;
    - In 2013 alone, guns were used to kill 2,900 Californians, including 251 children and teenagers, and hospitalized another 6,035 Californians for nonfatal gunshot wounds, including 1,275 children and teenagers;
    - There were over 350 recorded mass shootings in the United States in 2015;
    - Since 1996, Congress has adopted annual policy riders, known as the "Dickey Amendment" and "Rehberg Amendment," that effectively prohibit the federal Centers for Disease Control and Prevention (CDC) and other agencies under the federal Department of Health and Human Services from conducting publicly funded scientific research on the causes of gun violence or its effects on public health;
    - The author of the original Dickey Amendment, former Representative Jay Dickey (R-AR), has stated repeatedly that he regrets offering the amendment and thinks it should be repealed;
    - Despite Representative Dickey's comments and President Obama's executive action in 2013 directing the CDC to resume gun violence research, Congress has provided no funding, and the restrictive language remains in place;
    - Since 1996, the federal government has spent $240 million per year on traffic safety research, which has saved 360,000 lives since 1970;
    - During the same period there has been almost no publicly funded research on gun violence, which kills the same number of people every year;
    - Recently, 110 Members of the Congress of the United States signed a letter urging the leadership of the House of Representatives to end the longstanding ban on federal funding for gun violence research, and over 2,000 doctors in all 50 states plus the District of Columbia did the same;
    - Although Members of Congress may disagree about how best to respond to the problem of gun violence, we should be able to agree that a response should be informed by sound scientific evidence; and,

- Whether it is horrific headline-generating massacres or unseen violence that occurs every day — the innocent child gunned down in crossfire, the mother murdered during a domestic dispute, or the young life cut tragically short during the heat of a petty argument — the call to action is now clear.

- Resolves by the Senate and Assembly of the State of California jointly:

  - That a comprehensive evidence-based federal approach to reducing and preventing gun violence is needed to ensure that our communities are safe from gun violence;

  - That federal research is crucial to saving lives, having driven policy to save lives from motor vehicle accidents, sudden infant death syndrome, lead poisoning, and countless other public health crises;

  - That the Legislature urges the Congress of the United States to promptly lift the prohibition against publicly funded scientific research on the causes of gun violence and its effects on public health, and to appropriate funds to the Centers for Disease Control and Prevention and other relevant agencies under the Department of Health and Human Services to conduct that research; and,

  - That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

# GANGS

## Database: Criminal Gangs

In 1987, the Los Angeles County Sheriff's Department developed the Gang Reporting, Evaluation and Tracking System (GREAT), the nation's first gang database. Using GREAT, local law enforcement could collect, store, centralize, analyze, and disperse information about alleged gang members. In 1988, the Legislature passed the Street Terrorism Enforcement and Prevention (STEP) Act, asserting California to be "in a state of crisis… caused by violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods." (Pen. Code, § 186.21 (1988).) The STEP Act established the nation's first definitions of "criminal street gang," "pattern of criminal gang activity," and codified penalties for participation in a criminal street gang. In 1997, less than a decade after the regional GREAT database was first created, the regional GREAT databases were integrated into a new unified statewide database, CalGang, with the goals of making the database easier to use and less expensive to access. CalGang operates pursuant to the 1968 Omnibus Crime Control and Safe Streets Act, which requires that "all criminal intelligence systems … are utilized in conformance with the privacy and constitutional rights of individuals."

Prior to 2013, if a minor is convicted when tried as an adult, or had a petition sustained in a juvenile court, his or her parent or guardian was required to be notified of a requirement to register with a local sheriff's office upon release from custody or moving to a new city or county. (Pen. Code, § 186.32, subd. (a)(1)(B).) Parents were notified when a minor was designated in the CalGang database as a suspected gang member, associate, or affiliate. Although a conviction or declaration of wardship was not required for a minor to be placed in the CalGang database, serious consequences to the minor could flow from that action.

AB 458 (Wright), Chapter 797, Statutes of 2013 required a local law enforcement agency to notify any person under 18 years of age and his or her parent or guardian of the minor's designation in a shared gang database and the basis for the designation before the minor was designated as a suspected gang member, associate or affiliate in a shared gang database, regardless of conviction status.

**AB 2298 (Weber), Chapter 752,** imposes specified due process rights on California Shared Gang Databases. Specifically, this new law:

- Extends to adults the right to be notified of inclusion in a shared gang database and to seek removal of a person's name and identifying information from the database;

- Requires that database operators comply with federal privacy and data accuracy rules, as specified;

- Requires that any person who has not been convicted of a gang-related crime within three years be removed from the data;

- Establish an administrative procedure, with an available superior court appeal, for seeking removal from a gang database;

- Requires any agency that utilizes a shared gang database to annually report to the Department of Justice (DOJ) on the number of persons in the database, the number of people in each of the following categories in the previous year - added to the database, sought removal, were granted removal and automatically removed; and

- Requires DOJ to annually publish the information on its website, as specified.

# HUMAN TRAFFICKING

## Child Witnesses: Human Trafficking

Existing law allows a child witness, under the age of 14, to testify outside the presence of the judge, jurors and defendant by closed circuit television in a case where the child is a victim or witness of a sex or violent offense. Because a defendant has the right to confront all witnesses against him or her, which is guaranteed by the Sixth Amendment to the United States Constitution, contemporaneous testimony is only constitutionally permissible under specified conditions. Existing law authorizes its use in cases involving a violent felony or a sex offense or in cases of child abuse. The court must find that the child witness would suffer serious emotional distress if required to testify in the defendant's presence and that the impact would be such that the child witness would be deemed unavailable pursuant to the Rules of Evidence.

**AB 1276 (Santiago), Chapter 635,** authorizes, under specified conditions, a minor 15 years of age or younger to testify by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys if the testimony will involve the recitation of the facts of an alleged offense of human trafficking.

## Human Trafficking: Affirmative Defense

Human trafficking victims are often treated as criminals with respect to the crimes their traffickers force them to commit. Human trafficking is a unique crime in that traffickers often benefit from having their victims commit illegal acts and may force both children and adults to commit a diverse range of crimes.

Many states have enacted laws making a person's status as a victim of human trafficking an affirmative defense to certain criminal charges. While under existing California law a victim of trafficking who is charged with a crime may be able to raise the defense of duress, some believe the duress defense is inadequate for trafficking victims because a victim may not be able to show his or her life was in immediate danger.

**AB 1761 (Weber), Chapter 636,** creates a human trafficking affirmative defense applicable to non-violent, non-serious, and non-trafficking. Specifically, this new law:

- States that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and of reasonable fear of harm.

- States that this affirmative defense does not apply to a serious felony, a violent felony, or the offense of human trafficking, as specified.

- Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard.

- States that certifying records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, may be presented to establish the affirmative defense.

- Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing.

- Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:

    - Sealing of all court records in the case;

    - Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and

    - Permission to attest in all circumstances that he or she has never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications.

- Provides that records sealed after prevailing on the human trafficking affirmative defense may still be accessed by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

- States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records.

- States that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief.

- States that in a juvenile delinquency proceeding, if the court finds that the offense charged in the proceedings was committed as a direct result of the minor being a victim of human trafficking, and the affirmative defense was established by a preponderance of the evidence, then the court shall dismiss the proceedings and order automatic record sealing.

- Provides that in a criminal action expert testimony is admissible by either the prosecution or defense regarding the effects of human trafficking on its victims, including, but not limited to the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.

- States that the requisite foundation for the introduction of this expert testimony will be established if the proponent of the evidence shows its relevance and the proper qualifications of the expert witness.

**Human Trafficking: Witnesses**

Under current law, a prosecuting witness in a case involving a violation or attempted violation of specified offenses, including human trafficking, is entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

Victims of crime may suffer physical, emotional, or financial harm. Victims and witnesses to a crime may face retaliation or intimidation in connection with their potential participation in the criminal justice system. Victims and witnesses can also be confused by a criminal justice system that is not familiar to them. Victim Witness Assistance Programs can provide assistance with these issues. These programs are frequently connected to the county district attorney's office. Victim Witness Assistance Programs generally have trained and experienced advocates provide services for victims and witnesses interacting with the criminal justice system. Services can include crisis counseling, orientation to the criminal justice system, community referrals, assistance with applying for victim compensation, a support group for family members of homicide victims, and many other services.

> **AB 2221 (Garcia), Chapter 641**, provides that in a case involving a charge of human trafficking, as specified, a minor who is a victim of the human trafficking shall be provided with assistance from the local county Victim Witness Assistance Center, if the minor so desires.

**Sex Offenders: Internet Identifiers**

In November of 2012, California voters enacted Proposition 35, also known as the Californians Against Sexual Exploitation (CASE) Act, which modified many provisions of California's human trafficking laws. Specifically, Proposition 35 expanded the definition of human trafficking and increased criminal penalties and fines for human trafficking offenses. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition also lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also required all registered sex offenders to provide the names of their Internet providers and identifiers to local law enforcement agencies. Such identifiers include e-mail addresses, user names, screen names, or other personal identifiers for Internet communication and activity. The proposition required a registrant who changes his or her Internet service account or changes or adds an Internet identifier to notify law enforcement within 24 hours of such changes. (See Proposition 35 voter guide available at the Secretary of State's website, <http://www.voterguide.sos.ca.gov/past/2012/general/propositions/35/analysis.htm> (as of Apr. 22, 2015.)

Immediately following the passage of Proposition 35, a District Court granted an order enjoining the implementation of the parts of the proposition that requires registered sex offenders to provide identifying information about their online accounts to local law enforcement agencies. On November 18, 2014, the Ninth Circuit Court affirmed the District Court's order granting the preliminary injunction. (See *Doe v. Harris*, 2014 U.S. App. LEXIS 21808 (9th Cir. Nov. 18, 2014).)

The Court concluded that the statute violated the First Amendment by unnecessarily chilling speech in at least three ways: (1) the Act does not make clear what sex offenders are required to report, (2) there are insufficient safeguards preventing the public release of the information sex offenders do report, and (3) the 24-hour reporting requirement is onerous and overbroad. (*Ibid*.)

**SB 448 (Hueso), Chapter 772,** replaces sections enacted by Proposition 35 that have been enjoined by litigation. Specifically, this new law:

- Requires a person who is convicted of a felony on or after January 1, 2017, whose offense requires registration pursuant to the Sex Offender Registration Act, to register his or her internet identifiers if a court determines at the time of sentencing that any of the following apply:
    - The person used the Internet to collect any private information to identify a victim of the crime to further the commission of the crime;
    - The person was convicted of specified sections prohibiting human trafficking and used the internet to traffic a victim of the crime; or,
    - The person was convicted of specified sections prohibiting child pornography and used the internet to prepare, publish, distribute, send, exchange, or download the obscene matter or matter depicting a minor engaging in sexual conduct, as defined.
- Defines "Internet identifier" to mean "any electronic mail address or user name used for instant messaging or social networking that is actually used for direct communication between users on the Internet in a manner that makes the communication not accessible to the general public." "Internet identifier" does not include Internet passwords, date of birth, social security number, or PIN number.
- Defines "private information" to mean "any information that identifies or describes an individual, including, but not limited to, his or her name; electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; social security number; account numbers; passwords; personal identification numbers; physical description; physical location; home address; home telephone number; education; financial matters; medical or employment history; and statements made by, or attributed to, the individual.

- Requires persons to send written notice to the law enforcement agency or agencies with which he or she is currently registered when he or she establishes or changes an Internet identifier within 30 working days of the addition or change and requires the law enforcement agency to make this information available to the Department of Justice.

- Specifies that a person who fails to provide his or her Internet identifiers is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months.

- Excludes Internet identifiers from the information that law enforcement may disclose to the public regarding a person required to register as a sex offender when necessary to ensure the public safety concerning that specific person.

- Provides, notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

- Authorizes a designated law enforcement entity to disclose or authorize persons or entities to disclose an Internet identifier if required by court order.

**Human Trafficking: Victims**

Victims of human trafficking face stigmatization from being criminalized for crimes they were forced to commit during their exploitation, which limits access to good employment and create barriers to a variety of services such as housing and education.

Current law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Existing law authorizes a court to issue an order that dismisses the accusation or information against the defendant, or orders other relief, and notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

**SB 823 (Block), Chapter 650**, allows a person arrested or convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest. Specifically, this new law:

- Allows a person who has been arrested for, or convicted of, or adjudicated a ward of the juvenile court for, any nonviolent offense, as defined, while he or she was a victim of human trafficking, to petition the court for relief from the arrest and conviction, or adjudication.

- Requires the petitioner to establish by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking to be eligible for relief.

- Requires the petition for relief to be submitted under penalty of perjury, and to describe all of the available grounds and evidence that the Petitioner was a victim of human trafficking and the arrest or conviction of a non-violent offense was the direct result of being a victim of human trafficking.

- Requires the petition for relief and supporting documentation to be served on the state or local prosecutorial agency that obtained the conviction for which relief is sought. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the application for relief.

- States that if opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and may grant the application.

- Specifies that the court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

- Allows the court to schedule a hearing on the petition.

- States that a hearing on the petition may consist of:

    - Testimony by the petitioner in support of the petition;

    - Evidence and supporting documentation in support of the petition; and

    - Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

- Provides that after considering the totality of the evidence presented, the court may vacate the conviction(s) and arrests and issue an order if it finds the following:

    - That the Petitioner was a victim of human trafficking at the time the non-violent crime was committed;

    - The commission of the crime was a direct result of being a victim of human trafficking;

    - The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme, and

- It is in the best interest of the petitioner and in the interest of justice.

- Authorizes the court to vacate the conviction or adjudication and issue an order.

- States that order shall do all of the following:

  - Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the non-violent offense.

  - Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.

  - Notifies the Department of Justice (DOJ) that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

- States that the court shall also order the law enforcement agency having jurisdiction over the offense, the DOJ, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records.

- Requires that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later.

- States that official documentation, as defined, of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking.

- Provides that a petitioner or his or her attorney may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner, and may appear via alternate specified methods.

- Prohibits the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public.

- Allows a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief.

- States that notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

- Specifies that notwithstanding an order of relief, the petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid.

- Provides that if the court denies the petition for relief because the evidence is insufficient to establish that the arrest, conviction, or adjudication was the direct result of a human trafficking scheme of which the petitioner was a victim, the denial may be without prejudice.

- States that the court may state the reasons for its denial of a petition, and if those reasons are based on deficiencies in the application that can be fixed, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

- Specifies that for purposes of the language in this bill, "vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to the language of this bill.

**Sexually Exploited Minors: Alameda County Program**

Existing law authorizes the Alameda County District Attorney to create a pilot project, contingent on local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors. This law has a sunset date of January 1, 2017.

**SB 1064 (Hancock), Chapter 653,** deletes the January 1, 2017 sunset date, and makes permanent the Sexually Exploited Minors Project in the County of Alameda. Specifically, this new law:

- Extends indefinitely the Sexually Exploited Minors Project in the County of Alameda.

- Requires that the protocol for assessing minors upon arrest or detention to determine if they may be a victim of sexual exploitation be developed by the District Attorney of the County of Alameda in collaboration with the county child welfare agency, county probation, and sheriff.

- Requires that the protocol for assessing minors upon arrest or detention to determine if they may be a victim of sexual exploitation include how to make a report to the county child welfare agency if there is reason to believe the minor comes within the definition of a dependent child of the court, and a process for the child welfare agency to investigate the report.

- Expands the definition of "commercially sexually exploited minor" to include the following:
    - A minor who has been adjudged a dependent of the juvenile court as a result of having been commercially sexually exploited;
    - A minor who has been kidnapped for the purposes of prostitution;
    - A minor who meets the federal definition of a "victim of trafficking"; and,
    - A minor who has been arrested or detained for soliciting an act of prostitution, or loitering with the intent to commit an act of prostitution, or is the subject of a petition to adjudge him or her as a dependent of the juvenile court as a result of having been commercially sexually exploited.

# JUVENILES

## Juveniles: Sealing of Records

In 2014, the legislature enacted 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 serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (Welf. & Inst. Code, § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction.

In 2015, there were two follow up measures which permit the probation department and district attorney to view the sealed records for several other limited purposes, such as to determine whether a minor is ineligible for informal supervision, to comply with the requirements of federal Title IV-E, and for purposes of determining a minor's prior program referrals and risk-needs assessments.

County child welfare agencies responsible for the supervision and placement of a minor or non-minor dependent of the court have said that they need to access sealed juvenile records for purposes of determining appropriate placement and services.

**AB 1945 (Stone), Chapter 858,** authorizes a child welfare agency to access sealed juvenile records for limited purposes. Specifically, this new law:

- Authorized a county child welfare agency responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for the limited purpose of determining an appropriate placement or service that has been ordered by the court for that dependent.

- Prohibits a child welfare agency from sharing the information with any person or agency except the court.

- Clarifies that existing sealing laws pertaining to informal supervision or probation apply even if the person with the juvenile records no longer is a minor.

- Clarifies that a juvenile case file that is covered by, or included in, a record sealing may not be inspected except as specified.

## Juveniles: Data Collection

Existing law establishes the Board of State and Community Corrections and establishes within the Board of State and Community Corrections the California Juvenile Justice Data Working Group. The purpose of the working group is to recommend options for coordinating and modernizing the juvenile justice data systems and reports that are developed and maintained by state and county agencies," with a report that was due and produced earlier this year. In January 2016, a report produced by Juvenile Justice Data Working Group concluded that California continues to have "critical gaps, fractures and omissions in the total foundation and framework of the state's juvenile justice data system." The working group made several recommendations on how to address these problems.

**AB 1998 (Campos), Chapter 880,** adopts the recommendations in the Juvenile Justice Data Working Group's report. Specifically, this new law:

- Requires the Board of State and Community Corrections, by January 1, 2018, to develop recommendations for best practices and standardizations for counties on how to disaggregate juvenile justice caseload and performance and outcome data by race and ethnicity.

- Revises and recasts the data collection and reporting requirements for counties for multiagency juvenile justice plans under the Supplemental Law Enforcement Services Account and juvenile justice development plans supported by the Youthful Offender Block Grant (YOBG) program, and requires consolidation of the information to be reported annually to the Board of State and Community Corrections.

- Authorizes the BSCC to do the following:

    - Consolidate the annual report to the Legislature and the Governor for the Juvenile Justice Crime Prevention Act of 2000 with the annual report required under the YOBG program;

    - Provide technical assistance to counties for promoting compliance with plan and reporting requirements; and,

    - Monitor and inspect any programs or facilities supported by grant funds and to enforce violations of grant requirements.

- Expands eligibility for grant funding for multiagency juvenile justice plans and youthful offender programs to include strategies and system enhancements.

**Fare Evasion: Minors**

Although fare evasion is a criminal infraction, state law allows for handling a violation under an alternative civil infraction process. As of last year, current law allows transit operators to levy administrative penalties against minors for specified transit violations. Despite this authority, most transit agencies in the state have not adopted an administrative process for addressing fare

evasion.

Failure to pay transit fare is the number one citation for youth in several counties. Once a child appears in court, the likelihood that they will drop out of school and receive another court appearance greatly increases. It is too easy for a child who enters the criminal justice system, to never come out.

> **SB 882 (Hertzberg), Chapter 167,** provides that minors shall not be subject to criminal penalties for evading a transit fare.

**Juveniles: Sentencing**

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to life without the possibility of parole (LWOP). (See *Graham v. Florida* (2010) 560 U.S. 48.) The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its findings from the Roper case, supra, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham*, *supra*, 560 U.S. at 70.) However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society."(*Id*. at 75.)

*Graham* established that children are constitutionally different from adults for sentencing purposes and emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

In 2012, SB 9 (Yee), Chapter 828, Statutes of 2012, was signed into law to address cases where a juvenile was sentenced to LWOP by providing a mechanism for recall and resentencing. Pursuant to SB 9, a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to LWOP could, after serving at least 15 years in prison, petition the court for re-sentencing. If a re-sentencing hearing is granted, the court would have the discretion whether to re-sentence the petitioner to a lower sentence or let the life without parole sentence remain. If granted a lower sentence, the petitioner must still serve the minimum sentence and obtain approval of the parole board and the Governor prior to parole.

After implementation of SB 9, it became apparent that there are areas where the law is unclear as written and leading to different interpretations in different courtrooms. Clarifying the language of the law will ensure consistency in practice across the state.

**SB 1084 (Hancock), Chapter 867,** makes technical clarifying changes to existing provisions of law that authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to LWOP to submit a petition for recall and resentencing. Specifically, this new law:

- Clarifies that the person convicted for a crime committed while under the age of 18 and sentenced to LWOP can submit a petition after he or she has been incarcerated at least 15 years.

- Provides that if the court finds by a preponderance of the evidence that one or more of the statements specified is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant.

- Clarifies that the defendant may submit another petition if it the sentence is not recalled or the defendant is resentenced to LWOP.

- Clarifies that nothing in the provisions dealing with the ability of a person to seek a resentencing is intended to diminish or abrogate any rights or remedies otherwise available.

**Juveniles: Room Confinement**

Long-term isolation has not been shown to have any rehabilitative or treatment value, and the United Nations has called upon all member countries to ban its use completely on minors. It is a practice that endangers mental health and increases risk of suicide, and is often used as a method to control a correctional environment, and not for any rehabilitative purpose. It does not properly address disciplinary issues and often increases these behaviors in youth, especially those with mental health conditions. In 1999, the Office of Juvenile Justice and Delinquency Prevention released a study of juvenile facilities across the country which found that 50% of youth who committed suicide were in isolation at the time of their suicide. Further, 62% of the suicide victims had a history of isolation. In a report released by the California Department of Corrections and Rehabilitation in 2012, prisoners who had spent time in isolation in the Security Housing Units had a higher rate of recidivism than those who had not.

The California Code of Regulations Title 15, Minimum Standards for Juvenile Facilities, provides some guidance on the use of room confinement on juveniles, however there is no specified limit on how long a juvenile may be placed in isolation.

**SB 1143 (Leno), Chapter 726,** establishes statutory guidelines and restrictions, to take into effect January 1, 2018, on the use of room confinement of minors or wards who are confined in a juvenile facility, as defined. Specifically, this new law:

- Provides that room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff.

- States that room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff.

- States that room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward.

- Provides that a minor or ward may be held up to four hours in room confinement, and after the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following:

    - Return the minor or ward to general population;

    - Consult with mental health or medical staff; or,

    - Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.

- States that if room confinement must be extended beyond four hours, staff shall do the following:

    - Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement;

    - Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population; and,

    - Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter.

- Exempts the following situations:

    - During an extraordinary, emergency circumstance that requires a significant departure from normal institutions, as provided; or,

    - When a minor or ward is placed in a locked cell or sleep room for medical purposes, as provided.

**Prostitution: Minors**

Existing law makes it a crime to solicit or engage in any act of prostitution. Under current law a child under 18 can be detained in juvenile hall and prosecuted for engaging in prostitution. To the extent that a minor engaged in prostitution is a victim of crime, arresting them and charging them with a crime are acts which treat them as a criminal, rather than a victim. There are concerns that if a minor is subject to arrest they are less likely to cooperate with law enforcement

and seek help.

In 2014, SB 855, a budget trailer bill, was signed into law by Governor Brown. This bill created a path to the dependency system for Commercially Sexually Exploited Children (CSEC) while allocating $14 million in ongoing funding for counties and child welfare agencies for prevention, intervention and services for these victims.

Even though SB 855 was directly setup to identify a path to the dependency court system for victims, many CSEC victims are still being prosecuted through the delinquency court system when a victim is arrested for prostitution, loitering, or a similar crime as a result of his/her victimization.

**SB 1322 (Mitchell), Chapter 654**, decriminalizes prostitution for those under 18 years of age. Clarifies that a minor may be taken into temporary custody under limited circumstances. Specifically, this new law:

- Specifies that the statutes which makes solicitation of prostitution and loitering with intent to commit prostitution misdemeanors, does not apply to a child under 18 years of age who is alleged to have engaged in such conduct to receive money or other payment.

- States that a CSEC victim may be taken into temporary custody if the fact that the child is left unattended poses an immediate threat to the child's health or safety, or other specified criteria

# MENTAL HEALTH

## Competence to Stand Trial

Current law provides that a person cannot be tried to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. Existing law also provides that if counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing.

Current law allows courts to appoint a "psychiatrist, licensed psychologist, or other expert the court may deem appropriate" to examine a defendant regarding his mental competence. However, current law does not provide further guidance concerning the education and training required before a psychiatrist or licensed psychologist can be appointed to conduct an evaluation of a defendant's mental competence.

**AB 1962 (Dodd)**, requires the establishment of guidelines on education and training for psychologists and psychiatrists to be appointed by the court to determine a defendant's mental competence. Specifically, this new law:

- Requires the Department of State Hospitals to adopt guidelines establishing minimum education and training standards for a psychiatrist of licensed psychologist to be considered for appointment by the court to conduct examinations of defendants regarding mental incompetence.

- Requires the Department of State Hospitals to consult with the Judicial Council of California and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accredit bodies for psychologists and psychiatrists, and other interested stakeholders in the development of guidelines.

- Gives the court the discretion to appoint an expert who does not meet the guidelines, if there is no reasonably available expert who meets the guidelines or who has equivalent experience and skills.

## Interagency Child Death Review

Existing law authorizes counties to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Actions by child death review teams may include identification of emerging trends and safety concerns in other types of child deaths in order to inform and address needs for prevention efforts.

Existing law protects from disclosure a person's mental health or medical information. Disclosures of this information would help improve the child death review team's investigation and detection of child abuse and neglect as well as help identify trends to reduce the incidents of child death.

**AB 2083 (Chu), Chapter 297,** allows agencies, at the request of an interagency child death review team, to disclose otherwise confidential information to members of the team for the purpose of investigating child death. Specifically, this new law:

- Provides that the disclosed information may include the following:
    - Medical information;
    - Mental health information;
    - Information from child abuse reports and investigations, except the identity of the person making the report which shall not be disclosed;
    - State summary criminal history information;
    - Criminal offender record information;
    - Local summary criminal history information;
    - Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and
    - Records of in-home supportive services, unless disclosure is prohibited by federal law.
- States that written or oral information disclosed to a child death review team pursuant to these provisions would remain confidential, and would not be subject to disclosure or discovery by a 3rd party unless otherwise required by law.

**Firefighters: Interaction with the Mentally Disabled**

Existing law requires the Commission on Peace Officer Standards and Training (POST) to establish a continuing education classroom training course related to law enforcement interaction with mentally disabled persons and to make the course available to law enforcement agencies in California.

As first responders, firefighters are dealing with a wide range of situations. Many times firefighters, not law enforcement, are the first responders to an emergency scene and this training will ensure that firefighters can respond to mental health emergencies appropriately. Firefighters are likely to interact with individuals with mental health issues at a similar rate as

law enforcement officers.

> **SB 1221 (Hertzberg), Chapter 367**, directs POST to make the existing continuing education classroom training course related to law enforcement interaction with mentally disabled persons available to the State Fire Marshal, who may revise the course as appropriate for firefighters.

**Mental Health: Mentally Disordered Offenders Hearings**

The Mentally Disorder Offender Act is designed to confine an inmate who is about to be released on parole when it is deemed that he or she has a mental illness which contributed to the commission of a violent crime. A Mentally Disordered Offender (MDO) commitment is a post-prison civil commitment. Rather than release the inmate to the community, California Department of Corrections and Rehabilitation paroles the inmate to the supervision of the Department of State Hospitals (DSH), and the individual remains under hospital supervision throughout the parole period.

Under a 1994 court ruling, proof of an offender's force, violence, or threat could be admitted into a MDO hearing through the testimony of an expert evaluator (generally psychologists or psychiatrists) relying on probation reports, DSH evaluations and trial transcripts.

A 2015 California Supreme Court decision overturned the allowance of expert testimony. Since then, expert testimony based on documentary evidence could not be used to prove the force, violence, or threat of an MDO's prior crime during a commitment hearing.

> **SB 1295 (Nielsen), Chapter 430**, authorizes the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by DSH as an MDO. Specifically, this new law:
>
> - Specifies that in order to demonstrate that a prisoner is an MDO, the existence or nature of the crime, for which the prisoner has been convicted may be shown with documentary evidence.
>
> - States that the details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.

# PEACE OFFICERS

## Criminal Procedure: Notice to Appear

Law enforcement officers issue a citation whenever they give someone a traffic ticket. An officer also issues a citation to a person if they arrest the individual on a misdemeanor charge, but release that person without taking them into custody. A citation serves as the notice to appear in court for the person that has received the citation. A signed copy of the citation is sent to court by the law enforcement agency issuing the citation.

With new technologies, many agencies are using electronic handheld devices to be more efficient when issuing citations. This device resembles the machines a person signs when receiving a package from FedEx or UPS. With this device, once the officer completes the citation and obtains a signature, it is wirelessly sent to a printer in the patrol vehicle, where, under current law, the officer must retrieve it and bring the exact signed copy of the citation back to the violator.

> **AB 1927 (Lackey), Chapter 19**, specifies that if the notice to appear in court (citation) is being transmitted in electronic form, the copy of the notice to appear issued to the arrested person need not include the signature of the arrested person, unless specifically requested by the arrested person.

## Peace Officers: Civilian Complaints

Currently, the term being utilized by law enforcement agencies when conducting duties such as reporting their activities with members of the public is a "civilian" complaint rather than a "citizen" complaint because all civilians are eligible to file complaints regardless of citizenship.

> **AB 1953 (Weber), Chapter 99,** makes technical changes throughout sections of the Penal, Vehicle and Government Codes replacing the term "citizen" with "civilian" to accurately reflect the term currently used by law enforcement agencies to track complaints on a local, state and federal level.

## Peace Officers: 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 2165 (Bonta), Chapter 640**, provides that specified peace officers, who have satisfactorily completed the Commission on Peace Officer Standards and Training (POST) prescribed firearms training course, shall be exempt from the state prohibition relating to the sale or purchase of an unsafe handgun. Specifically, this new law:

- Authorizes sworn members of the following entities, who have satisfactorily completed a firearms training course prescribed by POST, to purchase or sell unsafe firearms, except as specified:
    - The Department of Parks and Recreation;
    - The Department of Alcoholic and Beverage Control;
    - The Division of Investigation of the Department of Consumer Affairs;
    - The Department of Motor Vehicles;
    - The Fraud Division of the Department of Insurance;
    - The State Department of State Hospitals;
    - The Department of Fish and Wildlife;
    - The State Department of Developmental Services;
    - The Department of Forestry and Fire Protection;
    - A county probation department;
    - The Los Angeles World Airports;
    - A K-12 public school district for use by a school police officer;
    - A municipal water district for use by a park ranger;
    - A county for use by welfare fraud investigator or inspector;
    - A county for use by the coroner or deputy coroner;
    - The Supreme Court and the courts of appeal for use by Marshalls of the Supreme Court and bailiffs of the court of appeal coordinators of security for the judicial branch;

- A fire department or fire protection agency of a county, city, city and county; district, or the state for use by either of the following:
    - A member of an arson investigating unit regularly paid and employed in that capacity; and,
    - A member other that a member of an arson investigating unit, regularly paid and employed as an arson investigator.
- The University of California Police Department, or the California State University Police Department, as specified; and,
- A California Community College Police Department, as specified.

- Prohibits a licensed firearms dealer from processing the sale or transfer of an unsafe handgun from a person that has obtained an unsafe handgun pursuant to the sworn peace officer exemption and a person who is not exempt.

- States that a sworn peace officer of an entity exempt from the prohibition related to the sale or purchase of an unsafe handgun, who obtains an unsafe handgun, shall when leaving an unattended vehicle, to lock the handgun in the vehicle's trunk or lock the handgun in a locked container and place the container out of plain view, or lock the handgun in locked container that is permanently affixed to the vehicle's interior and not in plain view, and a violation of this requirement is an infraction punishable by a fine not to exceed $1,000.

- States that the requirement that an unsafe handgun be safely stored when left in an unattended vehicle by a peace officer does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course and scope of his or her official duties.

- States that this safe storage law does not supersede any local ordinance that was in effect prior to the enactment of this new law.

**Security Officers: Institutions of Higher Education**

Campus safety would be greatly increased by affording independent college public safety departments the same status given to public university public safety departments, all while ensuring these departments remain under the control of local law enforcement.

**AB 2361 (Santiago), Chapter 336**, allow a security officer employed by an independent institution of higher education to be deputized or appointed by the sheriff or the chief of police of the jurisdiction in which the institution is located as a reserve deputy or officer. Specifically, this new law:

- Allows a security officer employed by an independent institution of higher education to be deputized or appointed by the sheriff or the chief of police of the jurisdiction in which the institution is located as a reserve deputy or officer, as specified, notwithstanding that he or she is compensated by the institution of higher education or that the assigned specific law enforcement functions and duties may be of a recurring or continuous nature if both of the following requirements are met:

    - The person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training ; and,

    - The institution of higher education and the appropriate local law enforcement agency have entered into a memorandum of understanding.

- Provides that the authority of a person designated as a peace officer pursuant to this provision applies only while he or she is engaged in the performance of his or her official duties**.**

- States that vehicles owned by an independent institution of higher education that are specifically designated for use by persons designated as peace officers shall be deemed emergency vehicles for all purposes of the law within the institution's jurisdiction.

**Law Enforcement: ICE Access**

In 2013, Governor Brown signed AB 4, the TRUST Act, which protected community members from being detained by local law enforcement under immigration holds requested by United States Immigration and Customs Enforcement (ICE). The TRUST Act, prohibits a law enforcement official from detaining an individual on the basis of an ICE hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

In 2014, the Obama administration put in place the Priority Enforcement Program (PEP). PEP begins at the state and local level when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the FBI for criminal history and warrant checks. This same biometric data is also sent to ICE so that ICE can determine whether the individual is a priority for removal, consistent with the Department of Homeland Security (DHS) enforcement priorities. Under PEP, ICE will seek the transfer of a removable individual when that individual has been convicted of an offense listed under the DHS civil immigration enforcement priorities, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security. In many cases, rather than issue a detainer, ICE will instead request notification (at least 48 hours, if possible) of when an individual is to be released.

**AB 2792 (Bonta), Chapter 768**, requires local law enforcement agencies, prior to an interview between ICE and an individual in custody, to provide the individual a written consent form, as specified, that would include information describing the purpose of the interview, that it is voluntary, and that the individual may decline to be interviewed. Requires local law enforcement agencies to provide copies of specified documentation received from ICE to the individual and to notify the individual regarding the intent of the agency to comply with ICE requests. Specifically, this new law:

- Specifies that in advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present.

- Requires the written consent form to be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, and additional languages as specified.

- States that upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request.

- Specifies that if a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.

- States that all records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act, as specified.

- States that records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

- Requires after January 1, 2018, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year to hold at least one community forum the following year that is open to the public with at least 30 days notice to provide information to the public about ICE's access to individuals and to receive and consider public comment.

- Requires as part of the report, the local law enforcement agency may provide the governing body with any and all data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

- Specifies that "ICE access" includes all of the following:

    - Responding to an ICE hold, notification, or transfer request;

    - Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or otherwise;

    - Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs, or otherwise.

    - Allowing ICE to interview an individual; and

    - Providing ICE information regarding dates and times of probation or parole check-ins.

**Medical Parole: Compassionate Release: Murder of a Peace Officer**

There are two ways that a prisoner may be released in California for medical reasons, compassionate release or medical parole.

With compassionate release, a recommendation for the recall of a terminally prisoner may be initiated by notification to the warden by any department physician who determines that a prisoner has 6 months or less to live. Also, a prisoner or family member or designee may independently request consideration for recall by contacting the prison's chief medical officer or the secretary. If the secretary determines that the prisoner satisfies the criteria for recall, the secretary or the Board of Parole Hearings (BPH) may recommend to the court that the sentence be recalled. A recommendation for recall by the secretary or the board must include one or more medical evaluations, a postrelease plan, and the required findings. Within 10 days of receipt of a positive recommendation, the court must hold a hearing to consider whether recall is appropriate. If possible, the matter must be heard by the judge who sentenced the prisoner.

If the court grants the recall, the department must release the prisoner within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period.

SB 1399 (Leno, Chapter 405, Statutes of 2010) enacted medical parole, which became operative in January of 2011. The law provides that medical parole shall be granted where (1) an inmate has been found by the head physician in the institute where they are housed to be permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care and (2)

BPH also makes a determination that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

Neither compassionate release nor medical parole applies to a person who is sentenced to death or life without parole. California law specifies that a person who has been found to have committed first-degree murder of a peace officer may be sentenced to death or life without the possibility of parole. However, between 1972 and 1977, the death penalty was not an available sentence because it was declared to be unconstitutional. Life without the possibility of parole was also unavailable until 1977. Thus there are some inmates who have been convicted of first-degree murder of a peace officer but received a life sentence with the possibility of parole.

> **SB 6 (Galgiani), Chapter 886,** makes an individual who committed first-degree murder of a peace officer ineligible for compassionate release or medical parole.

**Asset Forfeiture**

Under current law many California drug asset forfeiture are transferred to federal courts. Compared to California law, Federal law gives law enforcement more power and puts fewer burdens on the government before property is forfeited.

Some ways in which California and federal provisions differ are:

- Administrative forfeiture: While state law limits cases involving personal property worth $25,000 or less, under federal law administrative forfeiture is available for any amount of currency and personal property valued at $500,000 or less, including cars, guns, and boats.

- Burden of proof: Under federal civil forfeiture law, the government's burden of proof is "preponderance of the evidence." This is a lower standard than the "beyond a reasonable doubt" standard generally used in California.

- Conviction: In contrast to California law, federal civil forfeiture law does not require a conviction in any cases.

Under federal law, a seizing agency can use the seized asset or transfer it to a state or local agency that participated in the proceedings. Direct use of the forfeited asset is disallowed under current state law.

Under current law, there are fiscal incentives offered by the federal government to California law enforcement agencies if their cases are involved in the federal forfeiture process.

> **SB 443 (Mitchell), Chapter 831**, requires additional due process protection in cases where the State of California seeks to forfeit assets in connection with specified drug offenses and requires a criminal conviction when property/money forfeited under federal law is distributed to state or local law enforcement, unless the value of the assets is

greater than $40,000.00. Specifically, this new law:

- States that it shall be necessary to obtain a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors in order to recover law enforcement expenses related to the seizing or destroying of illegal drugs, unless the value of the assets is greater than $40,000.00.

- Specifies that state and local law enforcement authorities shall not refer, or otherwise transfer, property seized under state law to a federal agency seeking the adoption of the seized property.

- Clarifies that this law does not prohibit the federal government from seeking forfeiture under federal law, or sharing proceeds from federal forfeiture proceedings with state and local law enforcement in those situations where there are joint investigations.

- Clarifies that this law does not prohibit state or local law enforcement from participating in joint law enforcement operation with federal agencies.

- Specifies that a state or local law enforcement agency may not receive forfeited property or proceeds from property forfeited pursuant to federal law unless a defendant is convicted in an underlying or related criminal action of a specified offense, or any offense under federal law that includes all of the elements of one of the specified California offenses. Specifies an exception to the conviction requirement if the value of the assets is greater than $40,000.00.

- States that if a defendant, charged with a specified criminal offense arising from a state or local joint law enforcement operation with federal agency, willfully fails to appear in court, or is deceased, there shall be no requirement of a criminal conviction in order for state or local law enforcement to receive an equitable share of any federal forfeiture proceeding.

- Requires a conviction on the related, specified criminal charge to forfeit property in every case in which a claim is filed to contest the forfeiture of property, unless the defendant in the related criminal case willfully fails to appear for court, or if the value of the assets is in excess of $40,000.00, as specified.

- Requires proof beyond a reasonable doubt in all forfeiture cases which are contested.

- Allows forfeiture of property less than $25,000 if notice of the forfeiture has been provided, as specified, and no claims have been made.

- Allows more time to make a claim contesting forfeiture.

- Allows property of $25,000 or more to be forfeited through a judicial process when no claim to the forfeited property has been made within the specified time.

- Each year, the Attorney General shall publish a report which sets forth the following information for the state, each county, each city, and each city and county:

    - The number of forfeiture actions initiated and administered by state or local agencies under California law, the number of cases adopted by the federal government, and the number of cases initiated by a joint federal-state action that were prosecuted under federal law;

    - The number of cases and the administrative number or court docket number of each case for which forfeiture was ordered or declared;

    - The number of suspects charged with a controlled substance violation;

    - The number of alleged criminal offenses that were under federal or state law;

    - The disposition of cases, including no charge, dropped charges, acquittal, plea agreement, jury conviction, or other;

    - The value of the assets forfeited; and

    - The recipients of the forfeited assets, the amounts received, and the date of the disbursement.

- Requires the Legislative Analyst's Office to provide a report to the Legislature by December 31, 2020, about the economic impact on state and local law enforcement budgets because of changes to the forfeiture process proposed by this bill.

**Interrogations: Electronic Recordation**

Every year many people are wrongly convicted because of false confessions. Defendants also often make motions to exclude statements made during an interrogation arguing that they were coerced, there was abuse or the statement was not made. Studies have shown that recording of interrogations puts an end to disputes regarding statements and also has additional benefits. As of January 2014, the law requires the electronic recording of the interrogation of a juvenile suspected of murder. In addition, there are a number of jurisdictions in California that voluntarily, at least some of the time, electronically record other interrogations. This bill would extend the provision requiring the electronic recording of the interrogation of juvenile murder suspects to apply to any person suspected of murder.

There are a number of benefits in recording interrogations: it allows the interviewer to question the suspect without any distractions (notebooks, statement forms, or typewriters), observe the suspect's demeanor and body language, and use the recordings as training for other personnel. Recording interrogations also reduces allegations of coerced or false confessions. A National

Institute for Justice study found that law enforcement agencies experienced 43.5% fewer allegations of improper police tactics as a result of recording interrogation sessions. This practice also enhances the reliability of any statements as judges and juries are able to view the tape themselves.

**SB 1389 (Glazer), Chapter 791,** requires the electronic recording of the interrogation of any person suspected of murder. Specifically, this new law:

- Applies the requirements that an interrogation be electronically recorded to any person suspected of committing murder, not just a juvenile.

- Provides that for the purposes of the custodial interrogation of an adult, "electronic recording" means a video or audio recording that accurately records a custodial interrogation.

# PROBATION/MANDATORY SUPERVISION

**Supervised Population Workforce Training Grant Program**

The Supervised Population Workforce Training Grant Program was created by AB 2060 (V. Manuel Pérez), Chapter 384, Statutes of 2012, administered by the California Workforce Investment Board, to provide grant funding for vocational training and apprenticeship opportunities for offenders under county jurisdiction who are on probation, mandatory community supervision, or post-release community supervision. California Workforce Investment Board is required to administer the Supervised Population Workforce Training Grant Program through a public process. SB 852 (Leno, Chapter 25), the 2014-2015 Budget Bill, contained an appropriation of $1 million for support of Employment Development Department, for a recidivism reduction workforce training and development grant program, payable from the Recidivism Reduction Fund.

Returning to responsible working life after incarceration or substance abuse intervention is a critical and often a difficult process. Finding employment for rehabilitated persons is a major contribution to reducing recidivism rates.

**AB 2061 (Waldron), Chapter 100,** requires the California Workforce Investment Board to give preference to a grant application that proposes participation by one or more employers who have demonstrated interest in employing individuals in the supervised population. Specifically, this new law:

- Requires the California Workforce Investment Board to include in its report to the Legislature whether the program provided training opportunities in areas related to work skills learned while incarcerated.

- Updates references to the California Workforce Investment Board to reflect its new name, the California Workforce Development Board.

# RESTITUTION

**Restitution & Fines: Collection**

In 2012, the Legislature authorized the collection of restitution from county jail inmate accounts from prisoners sentenced under Criminal Justice Realignment. Since that time, there has been confusion regarding the collection of administrative fees by county sheriffs.

The pertinent statute, Penal Code section 2085.5, subdivision (f) states, in part, "Upon release from custody … the agency is authorized to charge a fee to cover the actual administrative cost…" As a result, several counties have interpreted this to mean that the administrative fee cannot be collected until the inmate's release. In fact, this language was intended to give the county agency continuing authority to collect the administrative fee after the inmate's release. The California Department of Corrections and Rehabilitation (CDCR) has always interpreted the language to allow for immediate collection of the administrative fee, but not all counties agree. Clarification is needed to resolve the ambiguity.

**SB 1054 (Pavley), Chapter 718,** clarifies the collection process for fines and restitution by county collection agencies, and mitigates issues of duplicate collection. Specifically, this new law:

- Authorizes the agency designated to collect restitution fines and orders from sentenced felony jail inmates to retain an administrative fee to cover the actual costs of collection up to 10% of monies collected, rather than an automatic 10% of the monies collected.

- Authorizes CDCR to retain an administrative fee to cover the actual costs of collection up to 10% of monies collected, rather than an automatic 10% of the monies collected.

- Clarifies that the agency designated by the county to collect restitution fines and orders from sentenced felony jail inmates may retain the administrative fee at the time the restitution order or fine is collected.

- Provides that if a county agency has been designated to collect restitution orders from sentenced felony jail inmates, persons on post-release community supervision or mandatory supervision, and the county agency objects to referral of the order to Franchise Tax Board (FTB) for collection, neither CDCR nor the county shall refer the order to FTB.

- Provides that the victim entitled to the restitution may designate the agency that will collect the restitution.

# SEARCH WARRANTS

**Search Warrants: Electronic Communications**

SB 178 (Leno), Chapter 651, Statutes of 2015, enacted the Electronic Communications Privacy Act (CalECPA) which revised the laws controlling how government entities may access electronic communications information and devices. CalECPA prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

It has become apparent that additions and clarifications to CalECPA are needed in order to address certain unintended consequences and outstanding stakeholder concerns.

**SB 1121 (Leno), Chapter 541,** revises the CalECPA to authorize a government entity to access, without a warrant, the location or phone number of an electronic device used to call 911; allows a government entity to retain voluntarily received electronic communication information beyond 90 days if the service provider or subscriber is or discloses information to, a correctional or detention facility; and excludes driver's licenses and other identification cards from its provisions. Specifically, this new law:

- Clarifies that the definition of an "electronic device" does not include the magnetic strip on a driver's license or an identification card issued by this state or a driver's license or equivalent identification card issued by another state.

- Clarifies that a government entity may access electronic device information by means of physical interaction or electronic communication with the device, except where prohibited by state or federal law, if the device is found in an area of any correctional facility or a secure area of a local detention facility where inmates have access, not just areas under the jurisdiction of the Department of Corrections and Rehabilitation.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is serving a term of parole or postrelease community supervision, as specified.

- Generally includes tracking device search warrants within its provisions for notification of the target.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is subject to an electronic device search as a clear and unambiguous condition of probation, mandatory supervision, or pretrial release, as specified.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the government entity accesses information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that, in granting a warrant for electronic information, a court may determine that the warrant need not specify time periods because of the specific circumstances of the investigation, including, but not limited to, the nature of the device to be searched.

- Clarifies that, in granting a warrant for electronic information, information obtained through the execution of the warrant must be sealed and may not be subject to further review, use or disclosure, except pursuant to a court order or to comply with discovery requirements, as specified.

- Requires a government entity, if it receives electronic communication information that was voluntarily provided, to destroy that information within 90 days unless the service provider or subscriber is, or discloses the information to, a federal, state, or local prison, jail, or juvenile detention facility, and all participants to the electronic communication were informed, prior to the communication, that the service provider may disclose the information to the government entity.

- Clarifies that if a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person that requires access to the electronic information without delay, the government entity must file an application for a warrant or order, or a motion of approval of the disclosures, within three court days, as specified.

- Clarifies that a government entity that obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, the government entity need not file an application for a warrant or order, or a motion of approval of the disclosures, if the government entity obtains information concerning the location of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that any government entity that obtains electronic information in an emergency situation must serve notice on the identified target, as specified, within three court days after obtaining the electronic information.

- Clarifies that the provisions of CalECPA may not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession.

- Clarifies that the provisions of CalECPA do not limit the authority of the Public Utilities Commission or the State Energy Resources Conservation and Development Commission to obtain energy or water supply and consumption information pursuant to the powers granted to them under the Public Utilities Code or the Public Resources Code and other applicable state laws.

# SEX OFFENSES

## Sex Offenses: Rape

California's sexual assault crimes are set forth in discrete sections that describe the specific nature of the sexual assault. For example, rape, defined as nonconsensual sexual intercourse (Pen. Code § 261), nonconsensual sodomy (Pen. Code § 286), nonconsensual oral copulation (Pen. Code § 288a) and nonconsensual sexual penetration (Pen. Code § 289) all set forth particular sex crimes based upon the nature of the felony conduct. Each of these crimes carries the same sentence triads and life sentences where aggravating circumstances are present. Over the last many years have been amended to reflect a broader, more comprehensive understanding of the fundamental nature of these sex crimes. While the specific conduct is proscribed in discrete sections of the law, those sections contain mirroring language.

Of these statutes, only nonconsensual sexual intercourse is expressly described as "rape." Sodomy is described as "sodomy." Oral copulation is described as "oral copulation." And, nonconsensual sexual penetration is described as "sexual penetration." These descriptions, however, do not limit the scope, application or sentences for these crimes. The law considers these crimes to be equally grave.

> **AB 701 (C. Garcia), Chapter 848,** provides that the Legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.

## Sexual Assault: Forensic Medical Evidence Kit

There are approximately 10-12 different sexual assault evidence "rape kits" used in California. Some forensic medical examination teams are required to be familiar with multiple kits which creates the potential for error. Currently, crime laboratories create their own kits based on the statutory exam elements and the required standard state form. As a result, there are variations among crime laboratories. Some exam teams serve multiple crime laboratories depending upon which law enforcement jurisdiction the crime occurred and must adapt to variations in crime laboratory evidence kits.

> **AB 1744 (Cooper), Chapter 857**, requires the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit, containing minimum basic components, to be used by all California jurisdictions. Specifically, this new law:
>
> - Directs the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence kit to

be used by all California jurisdictions.

- Allows the packaging and appearance of the rape kits to vary, but requires the elements of the kit shall be comparable with a minimum number of similar components.

- Requires the development of the rape kit to be completed in conjunction with the California Clinical Forensic Medical Training Center, as specified.

- Indicates that the basic components for a standardized sexual assault forensic medical evidence kit should be completed by January 30, 2018.

- States that on or before May 30, 2019, the collaborative group responsible for developing the sexual assault forensic medical kit shall issue guidelines pertaining to the use of kit components throughout the state.

- Requires that the standardized sexual assault forensic medical evidence kit permit swabs or representative evidence samples to be earmarked for a rapid turnaround DNA program, as specified.

- Clarifies that every local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.

**Sexual Assault Evidence Kits**

Existing law, the Sexual Assault Victims' DNA Bill of Rights, expresses findings and declarations of the Legislature stating, among other things, that timely DNA analysis of rape kit evidence is a core public safety in this state. A law enforcement agency is authorized, upon the request of a sexual assault victim, to inform the victim of the status of the testing of the DNA rape kit evidence or other crime scene evidence from the victim's case. If the agency does not analyze that evidence within 6 months of the statute of limitations for filing a criminal complaint in a sexual assault case, or if the agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations, the victim of sexual assault must be informed of that fact or that intention.

The Sexual Assault Forensic Evidence Tracking program (SAFE-T) was created by the Department of Justice in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants. SAFE-T is accessible only by law enforcement agencies and the Department of Justice (DOJ), due to the sensitive investigatory and privacy concerns of the information contained in the database. The database includes the disposition of rape kits both at the local law enforcement agency investigating the sexual assault allegation and the disposition of rape kits that have been sent to a crime laboratory for testing.

Rape kits can have many dispositions. A law enforcement agency may not refer a rape kit for testing if they do not believe a crime has occurred, if the agency has already identified the suspect, or if the agency believes they do not need further evidence to prosecute. If the law enforcement agency does refer a rape kit for testing, the investigator may request that a crime lab analyze a rape kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to Combined DNA Index System (CODIS), a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. With access to SAFE-T, victims could see if their rape kit has been referred for testing or if testing has been completed.

> **AB 2499 (Maienschein), Chapter 884,** requires the DOJ, on or before July 1, 2018, and in consultation with law enforcement agencies and crime victims groups, to establish a process by which victims of sexual assault may inquire regarding the location and information regarding their sexual assault evidence kits.

**Prostitution: Categorization**

The crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

> **SB 420 (Huff), Chapter 734,** defines and divides the crime of prostitution. Specifically, this new law divides prostitution into three separate categories of offenses:
>
> - The defendant agreed to receive compensation, received compensation, or solicited compensation in exchange for a lewd act.
>
> - The defendant provided compensation, agreed to provide compensation, or solicited an adult to accept compensation in exchange for a lewd act.

- The defendant provided compensation, or agreed to provide compensation, to a minor in exchange for a lewd act, regardless of which party made the initial solicitation.

**Sex Offenders: Internet Identifiers**

In November of 2012, California voters enacted Proposition 35, also known as the Californians Against Sexual Exploitation (CASE) Act, which modified many provisions of California's human trafficking laws. Specifically, Proposition 35 expanded the definition of human trafficking and increased criminal penalties and fines for human trafficking offenses. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition also lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also required all registered sex offenders to provide the names of their Internet providers and identifiers to local law enforcement agencies. Such identifiers include e-mail addresses, user names, screen names, or other personal identifiers for Internet communication and activity. The proposition required a registrant who changes his or her Internet service account or changes or adds an Internet identifier to notify law enforcement within 24 hours of such changes. (See Proposition 35 voter guide available at the Secretary of State's website, <http://www.voterguide.sos.ca.gov/past/2012/general/propositions/35/analysis.htm> (as of Apr. 22, 2015.)

Immediately following the passage of Proposition 35, a District Court granted an order enjoining the implementation of the parts of the proposition that requires registered sex offenders to provide identifying information about their online accounts to local law enforcement agencies. On November 18, 2014, the Ninth Circuit Court affirmed the District Court's order granting the preliminary injunction. (See *Doe v. Harris*, 2014 U.S. App. LEXIS 21808 (9th Cir. Nov. 18, 2014).)

The Court concluded that the statute violated the First Amendment by unnecessarily chilling speech in at least three ways: (1) the Act does not make clear what sex offenders are required to report, (2) there are insufficient safeguards preventing the public release of the information sex offenders do report, and (3) the 24-hour reporting requirement is onerous and overbroad. (*Ibid*.)

**SB 448 (Hueso), Chapter 772,** replaces sections enacted by Proposition 35 that have been enjoined by litigation. Specifically, this new law:

- Requires a person who is convicted of a felony on or after January 1, 2017, whose offense requires registration pursuant to the Sex Offender Registration Act, to register his or her internet identifiers if a court determines at the time of sentencing that any of the following apply:
    - The person used the Internet to collect any private information to identify a victim of the crime to further the commission of the crime;

- The person was convicted of specified sections prohibiting human trafficking and used the internet to traffic a victim of the crime; or,

- The person was convicted of specified sections prohibiting child pornography and used the internet to prepare, publish, distribute, send, exchange, or download the obscene matter or matter depicting a minor engaging in sexual conduct, as defined.

- Defines "Internet identifier" to mean "any electronic mail address or user name used for instant messaging or social networking that is actually used for direct communication between users on the Internet in a manner that makes the communication not accessible to the general public." "Internet identifier" does not include Internet passwords, date of birth, social security number, or PIN number.

- Defines "private information" to mean "any information that identifies or describes an individual, including, but not limited to, his or her name; electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; social security number; account numbers; passwords; personal identification numbers; physical description; physical location; home address; home telephone number; education; financial matters; medical or employment history; and statements made by, or attributed to, the individual.

- Requires persons to send written notice to the law enforcement agency or agencies with which he or she is currently registered when he or she establishes or changes an Internet identifier within 30 working days of the addition or change and requires the law enforcement agency to make this information available to the Department of Justice.

- Specifies that a person who fails to provide his or her Internet identifiers is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months.

- Excludes Internet identifiers from the information that law enforcement may disclose to the public regarding a person required to register as a sex offender when necessary to ensure the public safety concerning that specific person.

- Provides, notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

- Authorizes a designated law enforcement entity to disclose or authorize persons or entities to disclose an Internet identifier if required by court order.

**Sex Crimes: Statute of Limitations**

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. Existing law generally provides that the prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) There are several tailored exceptions which extend the general statute of limitations or toll it, such as when crimes are committed against victims who are under 18 years of age, or when the identity of the suspect is conclusively established by DNA testing.

Some argue that these statutes of limitations allow perpetrators to escape justice because of the passage of an arbitrary measure of time and are grossly unfair to survivors of sexual offenses.

**SB 813 (Leyva), Chapter 777,** eliminates any statute of limitations for specified sex crimes. Specifically, this new law:

- Provides that prosecution for the following offenses may commence at any time:
    - Rape, as specified;
    - Spousal rape, as specified;
    - Rape in concert, as specified;
    - Sodomy, as specified;
    - Lewd acts upon a child involving "substantial sexual conduct," as specified;
    - Continuous sexual abuse of a child;
    - Oral copulation, as specified; and,
    - Sexual penetration, as specified.
- Specifies that the elimination of the statute of limitations shall only apply to crimes that were committed on or after January 1, 2017, or for which the statute of limitations that was in effect before January 1, 2017, has not run as of that date.

**Prostitution: Sentencing**

Current law mandates that upon a conviction of subsequent acts of prostitution, an offender must spend 45 days in county jail for a second offense, and 90 days in county jail for a third offense. Additionally, as applied to both mandatory minimum sentences, a person convicted may have no part of which suspended or reduced by the court regardless of whether or not the court grants probation.

From a policy standpoint, there are no mandatory minimum jail sentences for a variety of offenses that are far more serious than misdemeanor prostitution. For instance, there is no mandatory jail sentence for first time domestic violence offenses, or a wide range of violent felony offenses. This law takes the discretion from a judge to craft an appropriate remedy in a misdemeanor case. Judges are in the best position to make decisions based on the particular facts and circumstances of a case. Imposing mandatory jail time on a person convicted of prostitution can result in the loss of employment and create problems for the offender that may lead to further criminal acts. Courts have found success in fashioning other remedies that have kept offenders employed, outside of county jails at the public expense, and freed up jail space for more dangerous offenders.

**SB 1129 (Monning), Chapter 724,** repeals mandatory minimum sentences for specified prostitution offenses. Specifically, this new law repeals the mandatory minimum terms for repeated prostitution offenses, leaving discretion with the court to impose an appropriate sentence as follows:

- Eliminates the requirement that a person convicted for a second prostitution offense must serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court, regardless of whether or not the court grants probation.

- Eliminates the requirement that a person convicted for a third prostitution offense shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation.

**Prostitution: Minors**

Existing law makes it a crime to solicit or engage in any act of prostitution. Under current law a child under 18 can be detained in juvenile hall and prosecuted for engaging in prostitution. To the extent that a minor engaged in prostitution is a victim of crime, arresting them and charging them with a crime are acts which treat them as a criminal, rather than a victim. There are concerns that if a minor is subject to arrest they are less likely to cooperate with law enforcement and seek help.

In 2014, SB 855, a budget trailer bill, was signed into law by Governor Brown. This bill created a path to the dependency system for Commercially Sexually Exploited Children (CSEC) while allocating $14 million in ongoing funding for counties and child welfare agencies for prevention, intervention and services for these victims.

Even though SB 855 was directly setup to identify a path to the dependency court system for victims, many CSEC victims are still being prosecuted through the delinquency court system when a victim is arrested for prostitution, loitering, or a similar crime as a result of his/her victimization.

**SB 1322 (Mitchell), Chapter 654**, decriminalizes prostitution for those under 18 years of age. Clarifies that a minor may be taken into temporary custody under limited

circumstances. Specifically, this new law:

- Specifies that the statutes which makes solicitation of prostitution and loitering with intent to commit prostitution misdemeanors, does not apply to a child under 18 years of age who is alleged to have engaged in such conduct to receive money or other payment.

- States that a commercially sexually exploited child may be taken into temporary custody if the fact that the child is left unattended poses an immediate threat to the child's health or safety, or other specified criteria

# SEXUALLY VIOLENT PREDATORS

**Sexually Violent Predators: Notice of Release**

When the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) determine that an individual in custody may be a sexually violent predator (SVP), based on their commitment offense and a review of their social, criminal, and institutional history, the individual is referred to the Department of State Hospitals (DSH) for a full SVP evaluation.

Following that evaluation, if DSH determines that the individual is an SVP, the Director of DSH is required to request that the District Attorney (DA) or County Counsel in the county in which the person was convicted file a petition for commitment. The filing of that petition begins a civil commitment process, which can lead to the individual being confined at Coalinga State Hospital to receive treatment until it is determined that they no longer pose a risk of re-offense.

The SVP Act, as currently written, contains a statutory timeline for each step of the evaluation process, as well as time limits for the filing of the petition and certain court proceedings. It does not, however, contain a time frame for the submission of the request for the filing of a petition to the DA or County Counsel. Because of this, DSH often submits filing materials less than 48 hours before the release of an inmate who has already been determined to qualify as an SVP.

The result of these late requests is that the prosecuting agency bears the burden of filing a case and transporting a defendant at the last minute at an enormous cost and use of resources. The long-accepted operating practice is for DSH to submit the filing in time for the DA to be able to meaningfully review the request, file the petition, and arrange for transportation through statewide transportation. In at least one instance in Los Angeles County, the filing request was submitted too late for the filing of a petition. In several instances, the supporting documents that are necessary for the filing of a petition were not certified and there was little to no time to correct this error by DSH.

> **AB 1906 (Melendez), Chapter 878,** requires the Director of the DSH to forward a request to a county that a petition be filed for a person to be committed to the DSH for SVP treatment no later than 20 calendar days prior to the scheduled release date of the person, or 20 calendar days prior to the expiration of a 45-day hold on the person.

# SUPERVISED RELEASE

## Parole Suitability: Notice

The Board of Parole Hearings (BPH) must send notice of a parole-suitability hearing to the trial judge, the prosecutor, defense counsel, the investigating law enforcement agency, and in the case of the murder of a peace officer, the officer's employer. (Pen. Code, § 3042, subd. (a).) These individuals are entitled to submit a statement expressing their views on whether the inmate should be paroled. Additionally, the victim of the crime may request that the BPH notify him or her of any scheduled parole-suitability hearing. The victim is entitled to personally appear to express his or her views on the granting of parole, or may submit a written or recorded statement instead. (Pen. Code, § 3043.) Finally, any person interested in the grant or denial of parole may submit a statement supporting or opposing parole. (Pen. Code, § 3043.5.) The BPH must consider all statements submitted in making its decision.

While under existing law the employer of a murdered firefighter may already submit a statement expressing its views on the grant of parole, the law currently does not require the employer be notified of the hearing.

**AB 898 (Gonzalez), Chapter 161,** provides that when an inmate who was convicted of the murder of a firefighter becomes eligible for a parole-suitability hearing, the Board of Parole Hearings (BPH) or the California Department of Corrections and Rehabilitation (CDCR) must give written notice of the hearing to the department that had employed the deceased firefighter. Specifically, this new law:

- Adds a murdered firefighter's former fire department employer to the list of persons that the BPH must notify of a parole-suitability hearing.
- Requires the fire department to register with the BPH and to provide the appropriate contact information in order to receive that notification.
- Provides that the required notice can be sent either by the BPH or CDCR.

## Sex Crimes: Probation

Current law generally authorizes judges to suspend imposition of a felony sentence and impose terms and conditions of probation. If any of those terms or conditions is violated, probation is revoked and the defendant is committed to prison. There are several crimes, particularly sex crimes, for which probation is prohibited, or for which probation is granted only if the court makes specified findings.

**AB 2888 (Low), Chapter 863,** prohibits judges from granting probation when one of the following felony offenses is committed:

- Rape, sodomy, forced oral copulation, or sexual penetration by a foreign object when the perpetrator uses an intoxicating or anesthetic substance.

- Rape, sodomy, or forced oral copulation when the victim is unconscious.

- Sexual penetration by a foreign object when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused.

**Probation and Mandatory Supervision: Flash Incarceration**

The passage of Realignment in 2011 overhauled how certain convicted felons would serve their sentences with a strong emphasis on rehabilitation and keeping these offenders in their local communities. As a result, probation departments now have the responsibility to supervise Post-Release Community Supervision (PRCS) offenders, along with persons on mandatory supervision.

A tool currently afforded to probation departments to supervise PRCS offenders that has been successful is the use of flash incarceration. This immediate, evidence-based tool, allows departments to address serious violations of a condition of probation while minimally disrupting the offenders' rehabilitation progress.

Currently however, the use of flash incarceration is not authorized on individuals under mandatory supervision or those on probation. The result is that when an individual under mandatory supervision or probation commits a serious violation of a condition of probation, the only existing mechanism to address these violations is to initiate a petition for revocation of probation. The revocation process disrupts offenders' rehabilitation by removing them from their jobs, re-entry programs, school, and/or family for a much longer period of time compared to the use of flash incarceration.

Authorizing flash incarceration on persons on mandatory supervision and on probationers, would provide probation departments an additional tool to address serious violations of a condition of probation while not disrupting an individual's progress to re-entry.

**SB 266 (Block), Chapter 706,** authorizes the use of "flash incarceration" to defendants granted probation or placed on mandatory supervision. Specifically, this new law:

- Provides that in any case where the court grants probation or imposes a sentence that includes mandatory supervision, the county probation department is authorized to use flash incarceration for any violation of the conditions of probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration.

- Prohibits the denial of probation for refusal to sign a waiver agreeing to flash incarceration.

- Requires each county probation department to develop a response matrix that establishes protocols for the imposition of graduated sanctions for violations of the conditions of probation to determine appropriate interventions to include the use of flash incarceration.

- Requires a probation department supervisor to approve a term of flash incarceration before its imposition.

- Requires the probation department to notify the court, public defender, district attorney, and sheriff upon a decision to impose a period of flash incarceration.

- States that if the defendant does not agree to accept a recommended period of flash incarceration, then the probation officer may address the alleged violation by filing a declaration or revocation request with the court.

- Defines "flash incarceration" as "a period of detention in a county jail due to a violation of an offender's conditions of probation or mandatory supervision. The length of the detention period may range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of an offender's conditions of probation or mandatory supervision shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer periods of detention."

- States that in cases where there are multiple violations in a single incident, only one flash incarceration booking is authorized and may range between one and 10 consecutive days.

- Excludes application of flash incarceration to any defendant convicted of a nonviolent drug possession offense who receives probation under Proposition 36 of 2000.

- Provides that if the supervised person's probation or mandatory supervision is revoked, credits earned for a period of flash incarceration count towards the term to be served.

- Sunsets these provisions on January 1, 2021.

# TECHNOLOGY

## Audio or Video Piracy: Punishment

Existing law provides that a person is guilty of piracy if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. (Pen. Code, § 653w, subd. (a)(1).)

If the offense involves at least 100 articles of audio recordings or audiovisual works, or the commercial equivalent thereof, then the punishment is imprisonment in a county jail not to exceed one year, by imprisonment pursuant to criminal justice realignment for two, three, or five years, by a fine not to exceed $500,000, or by both that fine and imprisonment. Any other first-time violation is punished by imprisonment in a county jail not to exceed one year, by a fine of not more than $50,000, or by both that fine and imprisonment. A second or subsequent conviction is punished by imprisonment in a county jail not to exceed one year, or by imprisonment pursuant to criminal justice realignment, by a fine not more than $200,000, or by both that fine and imprisonment. (See Pen. Code, § 653w.)

According to the author, "AB 1241 continues the practice of fine-tuning state laws to address the impact of piracy upon very important industry sections to California."

> **AB 1241 (Calderon), Chapter 657,** imposes a mandatory minimum fine of not less than $1,000 for a second or subsequent conviction for the crime of music or video piracy.

## Unauthorized Recordings: Disclosure of Confidential Communications

This bill grew out of our unfortunate experience last summer when the Center for Medical Progress published on the Internet a series of video recordings it had made surreptitiously at confidential conferences or in private conversations with Planned Parenthood medical providers. These recordings were manipulated heavily to create a narrative entirely different than the full tapes revealed and suggesting Planned Parenthood had broken the law. Planned Parenthood has been targeted unjustly as a result of these illegal, heavily edited videotapes, which served as a catalyst for a malicious smear campaign.

Because California's invasion of privacy law only prohibits the taping, but not the distribution or disclosure, the Center for Medical Progress was able to publish manipulated snippets of the tapes on the Internet and widely disseminate them to legislatures and the press. As a result, medical providers received death threats, health centers experienced nine times the number of security threats than the previous year, and the resulting vitriol culminated in a shooting in Colorado that left three dead.

AB 1671 updates the law to account for the harm created by broad dissemination over the Internet. It aligns the law on unauthorized recording of confidential communications with the law on misappropriation of trade secrets.

**AB 1671 (Gomez), Chapter 855,** makes it a crime to intentionally distribute a confidential communication with a health care provider that was obtained unlawfully. Specifically, this new law:

- Clarifies that the prohibition on recording a confidential communication applies to each violation.

- Provides that a person who violates Penal Code Section 632 shall be punished by a wobbler pursuant to this section if the person intentionally discloses, or distributes in any manner, in any forum, including but not limited to, Internet Web Sites and social media, for any purpose, the contents of a confidential communication with a health care provider that is obtained by that person in violation of Penal Code Section 632, subdivision (a).

- Provides that for purposes of this crime, "social media" means an electronic service or account or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

- Punishes a violation of this crime by a fine not exceeding $2,500 per violation or imprisonment in the county jail for one year, or as a felony punishable in county jail for 16 months, two and three years. If the person has a previous conviction then the fine is increased to $10,000.

- Provides that for purposes of this section "health care provider" means any of the following:

    - A person licensed or certified under the Business and Professions Code.

    - A person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Act.

    - A clinic, health dispensary or health facility licensed or exempt from licensure under the Health and Safety Code.

    - A person certified under the Health and Safety Code.

    - An employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Health and Safety Code.

- An employee, volunteer, independent contractor or professional student of a clinic, health dispensary, or health care facility or health care provider.

- A professional organization that represents any of the other health care providers covered in this section.

- Provides that this section does not apply to the disclosure of distribution of a confidential communication pursuant to other Penal Code sections that specifically allow the recording of confidential communications.

- Provides that this section does not affect the admissibility of any evidence that would otherwise be admissible.

- Adds human trafficking to the offenses exempted in Penal Code Section 633.5.

- Expands the civil action section to provide that any person may bring an action to enjoin and restrain any violation of the chapter on eavesdropping and may in the same action seek damages.

- Provides that the civil action shall not be construed to affect the uniform single publication act.

**Crimes: Emergency Personnel**

Recently in California a pilot flying a helicopter with seven firefighters on board who were battling a blaze threatening nearby homes, saw a four-rotor drone only 10 feet from his windshield. This forced the pilot to make a hard left to avoid a collision about 500 feet above ground. In another incident, the sighting of five drones in the area of a wildfire that closed Interstate 15 in Southern California and destroyed numerous vehicles, grounded air tanker crews for 20 minutes as flames spread.

Drones are an emerging technology that is rapidly gaining in popularity. The sheer numbers of drones is creating problems and concerns about how and where they should be used and it is only now that they are being regulated by the Federal Aviation Administration (FAA).

The existing Penal Code section dealing with interfering with police, fire and EMTs does not specifically state that the crime can be committed by using a drone.

**AB 1680 (Rodriguez), Chapter 817**, makes it a misdemeanor to use a drone to impede specified emergency personnel in the performance of their duties while coping with an emergency. Specifically, this new law:

- Amends existing statute which makes it a misdemeanor for a person to go to, or stop at, the scene of an emergency and impedes police officers, firefighters, emergency medical, or other emergency personnel, or military personnel in the performance of

their emergency duties.

- Provides that the term "person" shall include a person, regardless of his or her location, who operates or uses an unmanned aerial vehicle, remote piloted aircraft, or drone that is at the scene of an emergency.

**Privacy: Pen Registers and Electronic Communications**

Federal law allows law enforcement agencies to use pen register and trap and trace devices, but they must obtain a court order from a judge prior to the installation of the device. However, during an emergency situation, law enforcement agencies may use these devices without a court order if they obtain the court order within 48 hours of the use of the device. Law enforcement agencies must demonstrate that there is reasonable suspicion that the use of the device is relevant to an ongoing criminal investigation and will lead to obtaining evidence of a crime for a judge to authorize the use.

Though federal law authorizes states and local law enforcement officers to use pen register and trap and trace devices by obtaining a court order first, it does not allow them to obtain an emergency order unless there is a state statute authorizing and creating a process for states and local law enforcement officers to do so. To date, California does not have a state statute authorizing the use of pen registers or trap and trace devices.

Pen registers and track and trace devices generally track incoming and outgoing telephone calls. They are often utilized by law enforcement to track which people in an investigation are communicating with one another and at what times. Unlike a wiretap authorization, pen registers and track and trace devices do not provide law enforcement with the content of the messages which are transmitted. Wiretap authorizations are therefore subject to a much higher standard of scrutiny. Under federal law, these authorizations can be granted on a reasonable suspicion standard, while search warrants are subject to a higher standard of probable cause.

**AB 1924 (Bigelow), Chapter 511**, provides an exemption from the Electronic Communications Privacy Act (ECPA) for pen registers and trap and trace devices to permit authorization for the devices to be used for 60 days rather than 10 days provided for in ECPA.

**Law Enforcement Contacts: Service Providers**

Existing law authorizes a court to issue a warrant for seizure of property, inclusive of electronic information, where probable cause exists. Existing law also provides that a government entity that obtains electronic information pursuant to an emergency shall, within three days after obtaining the information, file for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures that shall set forth the facts giving rise to the emergency. Existing law also establishes procedures for certain California corporations when served with a warrant issued by a court in another state.

With the passage of SB 178 (Leno), also known as California Electronic Communication Privacy Act (CalECPA), privacy rights were extended to electronic data in a way that federal law does not: it bars any state law enforcement or investigative entity from compelling a business to turn over any data or digital communication—including emails, texts, documents stored in the cloud—without a warrant. It also requires a warrant to search or track the location of a business' electronic devices like mobile phones. Also, no business (or its officers, employees and agents) may be subject to any cause of action for providing information or assistance pursuant to a warrant or court order. CalECPA also permits a service provider to voluntarily disclose electronic communication information when disclosure is not otherwise prohibited by law, such as in emergency situations.

**AB 1993 (Irwin), Chapter 514,** mandates that technology companies specify law enforcement contacts to coordinate with law enforcement agency investigations.

**Autopsy: Electronic Image Systems**

Existing law requires coroners to perform post mortem dissection in certain cases prescribed by law or in cases where the autopsy on a decedent is requested by specified relatives. Current law also provides a coroner with certain discretionary authority to perform an autopsy during a postmortem examination.

Electronic imaging systems, such as computer tomography (CT), magnetic resonance imaging (MRI) and X-ray computed tomography scanning have been used increasingly in recent years to assist coroners and medical examiners performing autopsies. In certain cases, these systems can help the coroner determine the cause of death without performing a post-mortem dissection of the deceased. This can be especially helpful in cases where the deceased or the deceased's surviving spouse or next of kin have religious objections to the post mortem dissections common in traditional autopsies. Such technology also assists with completion of coroners' caseloads in a more cost-effective and efficient manner.

This is not to say that such technology should replace dissection autopsies in all cases. In cases where the autopsy results must be presented to a court of law, such as in criminal cases, dissection autopsies must be used. This is because, to date, no federal or California court has ruled on the admissibility of autopsies performed using an electronic imaging system. Without such a ruling, it is unclear whether autopsies performed using solely electronic imaging systems will be admissible evidence.

**AB 2457 (Bloom), Chapter 136,** allows coroners to use an electronic imaging system during the conduct of an autopsy, unless there is a reasonable suspicion to believe the death was caused by a criminal act and it is necessary to collect evidence for presentation in a court of law. Specifically, this new law:

- Provides that if the results of an autopsy performed using electronic imaging provides the basis to suspect that the death was caused by or related to the criminal act of another, and it is necessary to collect evidence for presentation in a court of law, then a dissection autopsy shall be performed in order to determine

the cause and manner of death

- Allows an autopsy to be conducted using an X-ray computed tomography scanning system without regard to the existence of a properly-executed certificate of religious belief.

**Search Warrants: Electronic Communications**

SB 178 (Leno), Chapter 651, Statutes of 2015, enacted the California Electronic Communications Privacy Act (CalECPA) which revised the laws controlling how government entities may access electronic communications information and devices. CalECPA prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

It has become apparent that additions and clarifications to CalECPA are needed in order to address certain unintended consequences and outstanding stakeholder concerns.

**SB 1121 (Leno), Chapter 541,** revises the CalECPA to authorize a government entity to access, without a warrant, the location or phone number of an electronic device used to call 911; allows a government entity to retain voluntarily received electronic communication information beyond 90 days if the service provider or subscriber is or discloses information to, a correctional or detention facility; and excludes driver's licenses and other identification cards from its provisions. Specifically, this new law:

- Clarifies that the definition of an "electronic device" does not include the magnetic strip on a driver's license or an identification card issued by this state or a driver's license or equivalent identification card issued by another state.

- Clarifies that a government entity may access electronic device information by means of physical interaction or electronic communication with the device, except where prohibited by state or federal law, if the device is found in an area of any correctional facility or a secure area of a local detention facility where inmates have access, not just areas under the jurisdiction of the Department of Corrections and Rehabilitation.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is serving a term of parole or postrelease community supervision, as specified.

- Generally includes tracking device search warrants within its provisions for notification of the target.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the device is seized from an authorized possessor who is subject to an electronic device search as a

clear and unambiguous condition of probation, mandatory supervision, or pretrial release, as specified.

- Authorizes a government entity to access electronic device information by means of physical interaction or electronic communication with the device if the government entity accesses information concerning the location or the telephone number of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that, in granting a warrant for electronic information, a court may determine that the warrant need not specify time periods because of the specific circumstances of the investigation, including, but not limited to, the nature of the device to be searched.

- Clarifies that, in granting a warrant for electronic information, information obtained through the execution of the warrant must be sealed and may not be subject to further review, use or disclosure, except pursuant to a court order or to comply with discovery requirements, as specified.

- Requires a government entity, if it receives electronic communication information that was voluntarily provided, to destroy that information within 90 days unless the service provider or subscriber is, or discloses the information to, a federal, state, or local prison, jail, or juvenile detention facility, and all participants to the electronic communication were informed, prior to the communication, that the service provider may disclose the information to the government entity.

- Clarifies that if a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person that requires access to the electronic information without delay, the government entity must file an application for a warrant or order, or a motion of approval of the disclosures, within three court days, as specified.

- Clarifies that a government entity that obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, the government entity need not file an application for a warrant or order, or a motion of approval of the disclosures, if the government entity obtains information concerning the location of the electronic device in order to respond to an emergency 911 call from that device.

- Clarifies that any government entity that obtains electronic information in an emergency situation must serve notice on the identified target, as specified, within three court days after obtaining the electronic information.

- Clarifies that the provisions of CalECPA may not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession.

- Clarifies that the provisions of CalECPA do not limit the authority of the Public Utilities Commission or the State Energy Resources Conservation and Development Commission to obtain energy or water supply and consumption information pursuant to the powers granted to them under the Public Utilities Code or the Public Resources Code and other applicable state laws.

**Ransomware**

Ransomware is a type of malware that restricts access to the infected computer system in some way, accompanied by a demand that the user pay a ransom to the malware operators to remove the restriction. Some forms of ransomware systematically encrypt files on the system's hard drive, which become difficult or impossible to decrypt without paying the ransom for the encryption key.

Payment is virtually always the goal, and the victim is coerced into paying for the ransomware to be removed—which may or may not actually occur—either by supplying a program that can decrypt the files, or by sending an unlock code that undoes the payload's changes.

**SB 1137 (Hertzberg), Chapter 725**, clarifies that introducing "ransomware" into a computer or computer network with the intent of extorting money or property is punishable as extortion whether or not the money or property is actually obtained by means of the "ransomware." Specifically, this new law:

- Clarifies that introducing "ransomware" into a computer or computer network with the intent of extorting money or property is punishable as extortion whether or not the money or property is actually obtained by means of the "ransomware." Such conduct would punishable by imprisonment in a county jail for two, three, or four years and a fine not exceeding $10,000.

- Defines "ransomware" to mean a "computer contaminant, as specified, or lock placed or introduced without authorization into a computer, computer system, or computer network that restricts access by an authorized person to the computer, computer system, computer network, or any data therein, under circumstances in which the person responsible for the placement or introduction of the ransomware demands payment of money or other consideration to remove the computer contaminant, restore access to the computer, computer system, computer network, or data, or otherwise remediate the impact of the computer contaminant or lock."

- Specifies that a person is responsible for placing or introducing ransomware into a computer, computer system, or computer network if the person directly places or introduces the ransomware, or directs or induces another person do so, with the intent of demanding payment or other consideration to remove the ransomware, restore access, or otherwise remediate the impact of the ransomware.

- States that prosecution under the provisions of this bill do not prohibit or limit prosecution under any other law.

**Interrogations: Electronic Recordation**

Every year many people are wrongly convicted because of false confessions. Defendants also often make motions to exclude statements made during an interrogation arguing that they were coerced, there was abuse or the statement was not made. Studies have shown that recording of interrogations puts an end to disputes regarding statements and also has additional benefits. As of January 2014, the law requires the electronic recording of the interrogation of a juvenile suspected of murder. In addition, there are a number of jurisdictions in California that voluntarily, at least some of the time, electronically record other interrogations. This bill would extend the provision requiring the electronic recording of the interrogation of juvenile murder suspects to apply to any person suspected of murder.

There are a number of benefits in recording interrogations: it allows the interviewer to question the suspect without any distractions (notebooks, statement forms, or typewriters), observe the suspect's demeanor and body language, and use the recordings as training for other personnel. Recording interrogations also reduces allegations of coerced or false confessions. A National Institute for Justice study found that law enforcement agencies experienced 43.5% fewer allegations of improper police tactics as a result of recording interrogation sessions. This practice also enhances the reliability of any statements as judges and juries are able to view the tape themselves.

**SB 1389 (Glazer), Chapter 791,** requires the electronic recording of the interrogation of any person suspected of murder. Specifically, this new law:

- Applies the requirements that an interrogation be electronically recorded to any person suspected of committing murder, not just a juvenile.

- Provides that for the purposes of the custodial interrogation of an adult, "electronic recording" means a video or audio recording that accurately records a custodial interrogation.

# VICTIMS

## Sex Offenses: Rape

California's sexual assault crimes are set forth in discrete sections that describe the specific nature of the sexual assault. For example, rape, defined as nonconsensual sexual intercourse (Pen. Code § 261), nonconsensual sodomy (Pen. Code § 286), nonconsensual oral copulation (Pen. Code § 288a) and nonconsensual sexual penetration (Pen. Code § 289) all set forth particular sex crimes based upon the nature of the felony conduct. Each of these crimes carries the same sentence triads and life sentences where aggravating circumstances are present. Over the last many years have been amended to reflect a broader, more comprehensive understanding of the fundamental nature of these sex crimes. While the specific conduct is proscribed in discrete sections of the law, those sections contain mirroring language.

Of these statutes, only nonconsensual sexual intercourse is expressly described as "rape." Sodomy is described as "sodomy." Oral copulation is described as "oral copulation." And, nonconsensual sexual penetration is described as "sexual penetration." These descriptions, however, do not limit the scope, application or sentences for these crimes. The law considers these crimes to be equally grave.

> **AB 701 (C. Garcia), Chapter 848,** provides that the Legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.

## Victim Compensation Program: Appeals

The California Victim's Compensation Program reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, home security, and relocation services. Under current law, an applicant has a right to file an appeal if a claim is recommended for denial, or if any part of the claim is recommended for denial. However, existing law does not state a timeframe or deadline to decide an appeal by an applicant.

Victims of crime often suffer long-term after a criminal offense has taken place, and without adequate treatment or services, are likely to become re-victimized. In the past, the Victim's Compensation Program has demonstrated a lack of management of appeals cases, leaving many victims waiting for answers and footing the bill for services that could have been compensated earlier and more efficiently.

> **AB 1563 (Rodriguez), Chapter 121,** establishes a six-month deadline for the Victim Compensation Board to respond to an appeal by a crime victim who has had an application for compensation denied. Specifically, this new law:
>
> - Requires the board to evaluate an application for reconsideration of compensation within six months of the date the board receives the application, unless it determines

that there was insufficient information to make a decision.

- Provides that if the board determines that there was insufficient information to make a decision, it shall notify the applicant in writing within six months of the date the application was received.

**Student Safety: Crime Reporting**

The Clery Act requires colleges who participate in the federal student aid program to publish annual campus security reports, maintain crime logs, provide timely warnings of crimes that present a public safety risk, and maintain ongoing crime statistics; and establish certain rights for victims of sexual assault, including notification to victims of legal rights, availability of counselling, safety options for victims, and offering prevention and awareness programs. The Violence Against Women Reauthorization Act of 2013 (VAWA) amended the Clery Act to add crimes required to be reported and requiring security policies relating to those crimes be made widely available.

The State Auditor recently reviewed six California postsecondary institutions, finding that none were in full compliance with federal laws that require disclosure of campus crime statistics and campus security policies. The Auditor also surveyed 79 campuses, determining most provide security policies and crime statistics online but some lack notification of availability.

Failure to comply with the complex Clery Act and VAWA requirements risks penalties including but not limited to losing some federal financing. In addition, inaccurate and/or incomplete reporting of crime statistics by postsecondary institutions can provide an inadequate representation of campus safety to students, parents, and employees. Furthermore, various complex provisions have been recently added to the state Education Code in regards to campus safety and sexual assault, and it is unknown how well postsecondary institutions are complying with these new laws.

**AB 1654 (Santiago), Chapter 222,** requires the State Auditor to include in its audit an evaluation of the institutions' compliance with state law governing crime reporting and the development and implementation of student safety policies and procedures.

**Sexual Assault: Forensic Medical Evidence Kit**

There are approximately 10-12 different sexual assault evidence "rape kits" used in California. Some forensic medical examination teams are required to be familiar with multiple kits which creates the potential for error. Currently, crime laboratories create their own kits based on the statutory exam elements and the required standard state form. As a result, there are variations among crime laboratories. Some exam teams serve multiple crime laboratories depending upon which law enforcement jurisdiction the crime occurred and must adapt to variations in crime laboratory evidence kits.

**AB 1744 (Cooper), Chapter 857**, requires the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the

California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit, containing minimum basic components, to be used by all California jurisdictions. Specifically, this new law:

- Directs the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence kit to be used by all California jurisdictions.

- Allows the packaging and appearance of the rape kits to vary, but requires the elements of the kit shall be comparable with a minimum number of similar components.

- Requires the development of the rape kit to be completed in conjunction with the California Clinical Forensic Medical Training Center, as specified.

- Indicates that the basic components for a standardized sexual assault forensic medical evidence kit should be completed by January 30, 2018.

- States that on or before May 30, 2019, the collaborative group responsible for developing the sexual assault forensic medical kit shall issue guidelines pertaining to the use of kit components throughout the state.

- Requires that the standardized sexual assault forensic medical evidence kit permit swabs or representative evidence samples to be earmarked for a rapid turnaround DNA program, as specified.

- Clarifies that every local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.

**Victims of Crime: T- Visa**

The federal T-Visa provides trafficking victims from foreign countries temporary legal status, with an opportunity to apply for permanent residency and access to federal benefits if they cooperate with law enforcement in the investigations of their traffickers. To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form or trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. Although a declaration from law enforcement regarding the victim's cooperation is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-Visa application.

Existing state law regarding U-Visas creates a rebuttable presumption of victim cooperation and requires a certifying official to confirm victim helpfulness for purposes of obtaining a U-Visa. However, there is no complementary requirement for a T-Visa. This frustrates the purpose of the T-Visa.

**AB 2027 (Quirk), Chapter 749,** requires, upon the request of an immigrant victim of human trafficking, a certifying agency to confirm victim cooperation on the applicable form so that the victim may apply for a T-Visa to temporarily live and work in the United States. Specifically, this new law:

- Provides that upon a victim or victim's family member's request, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative with the investigation or prosecution of that crime.

- Creates a rebuttable presumption of cooperation if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

- Requires the certifying official to fully complete and sign the Form I-914 Supplemental B declaration, and regarding cooperation, include specific details about the nature of the crime investigated or prosecuted, and a detailed description of such cooperation, or likely cooperation.

- Requires the certifying agency to process the declaration within 90 days, unless the person is in removal proceedings, in which case it must be processed within 14 days of request.

- States that a current investigation, filed charges, or a prosecution, or conviction are not required for the victim to request and obtain the Form I-914 Supplemental B declaration.

- Limits the ability of a certifying official to withdraw the certification to instances where the victim refuses to provide information and assistance when reasonably requested.

- Prohibits a certifying entity from disclosing the immigrant status of a victim or person requesting the Form I-914 Supplemental B declaration, except to comply with federal law or legal process, or upon authorization of the person requesting the declaration.

- Mandates a certifying agency that receives a request for a Form I-914 Supplemental B declaration to report to the Legislature beginning January 1, 2018, and annually thereafter, the following information:

- The number of victims that requested the declarations;
- The number of declarations that were signed; and,
- The number of denials.

- Defines a "certifying entity" as any of the following:
  - A state or local law enforcement agency;
  - A prosecutor;
  - A judge;
  - The State Department of Labor; or
  - State or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

- Defines a "certifying official" as any of the following:
  - The head of the certifying entity;
  - A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency;
  - A judge; or
  - Any other certifying official defined under specified federal regulations.

- Defines "human trafficking" as "severe forms of trafficking in persons" pursuant to specified federal law and which includes either of the following:
  - Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; and,
  - The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - States that "human trafficking" also includes criminal offenses for which the nature and elements of the crime are substantially similar to the criminal

activity described above, as well as an attempt, conspiracy, or solicitation to commit those offenses.

**Human Trafficking: Witnesses**

Under current law, a prosecuting witness in a case involving a violation or attempted violation of specified offenses, including human trafficking, is entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

Victims of crime may suffer physical, emotional, or financial harm. Victims and witnesses to a crime may face retaliation or intimidation in connection with their potential participation in the criminal justice system. Victims and witnesses can also be confused by a criminal justice system that is not familiar to them. Victim Witness Assistance Programs can provide assistance with these issues. These programs are frequently connected to the county district attorney's office. Victim Witness Assistance Programs generally have trained and experienced advocates provide services for victims and witnesses interacting with the criminal justice system. Services can include crisis counseling, orientation to the criminal justice system, community referrals, assistance with applying for victim compensation, a support group for family members of homicide victims, and many other services.

**AB 2221 (Garcia), Chapter 641**, provides that in a case involving a charge of human trafficking, as specified, a minor who is a victim of the human trafficking shall be provided with assistance from the local county Victim Witness Assistance Center, if the minor so desires.

**Victim Restitution: Right to Full Restitution**

The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. The Proposition was not self-executing, but rather directed the Legislature to adopt implementing legislation. The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law.

In *People v. Pierce* (2015) 234 Cal.App.4th 1334, the Court of Appeal noted there is an ambiguity in the Constitution and the Penal Code about a victim's right to full restitution. The court observed that the language of Penal Code section 1202.4, subdivision (f) allows less than full restitution where the trial court finds "compelling and extraordinary reasons." But the court questioned whether this language remained valid after the passage of Proposition 9. The court noted that before the passage of Proposition 9, the constitutional provision regarding the right to restitution said, "restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." Proposition 9 amended that provision to delete the language "unless compelling and extraordinary reasons exist to the contrary." On this basis,

the appellate court encouraged the Legislature to conform the language of Penal Code section 1202.4.

**AB 2295 (Baker), Chapter 37,** conforms several restitution provisions to the constitutional requirement that a victim is entitled to full restitution. Specifically, this new law:

- Removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the aggravated white collar crime enhancement.

- Removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the "seize and freeze" provisions for aggravated elder or dependent adult financial abuse.

- Removes court authority to order less than full restitution when it finds compelling and extraordinary reasons for doing so, as currently provided by the restitution statute.

- Makes conforming changes to another restitution provision.

**Elder and Dependent Adult Fraud: Informational Notice**

Each year, thousands of California senior citizens find that they have become victims of various types of fraud. In some of these cases the crime is reported but most are not because many seniors are simply too humiliated to report the fraud or may not know where to turn to for help.

Financial abuse is often committed by serial abusers who will come back again for money. The vast majority of perpetrators have a close relationship to victim, such as a caregiver, family member or friend where approximately two-thirds are family members of the victim, but these crimes also come from random individuals posing as sweepstakes, lottery or IRS representatives alongside romantic, healthcare, or magazine claims, among other scams. The Federal Trade Commission reports that fraud complaints to its offices by individuals 60 and older have risen at least 47 percent between 2012 and 2014.

The California Department of Justice (DOJ) regularly issues consumer alerts warning consumers against scams. These alerts are generally public service announcements that are made in the media and on the DOJ website.

**AB 2721 (Rodriguez), Chapter 80,** requires the California Department of Justice to develop and distribute an informational notice that warns the public about elder and dependent adult fraud. Specifically, this new law:

- Requires the notice to include information directing the public to information and resources necessary to determine whether they are victims of fraud and provide

information regarding how and where to file complaints.

- States that the notice shall also be made available on the Web site of the Attorney General.

**Human Trafficking: Victims**

Victims of human trafficking face stigmatization from being criminalized for crimes they were forced to commit during their exploitation, which limits access to good employment and create barriers to a variety of services such as housing and education.

Current law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Existing law authorizes a court to issue an order that dismisses the accusation or information against the defendant, or orders other relief, and notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

**SB 823 (Block), Chapter 650**, allows a person arrested or convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest. Specifically, this new law:

- Allows a person who has been arrested for, or convicted of, or adjudicated a ward of the juvenile court for, any nonviolent offense, as defined, while he or she was a victim of human trafficking, to petition the court for relief from the arrest and conviction, or adjudication.

- Requires the petitioner to establish by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking to be eligible for relief.

- Requires the petition for relief to be submitted under penalty of perjury, and to describe all of the available grounds and evidence that the Petitioner was a victim of human trafficking and the arrest or conviction of a non-violent offense was the direct result of being a victim of human trafficking.

- Requires the petition for relief and supporting documentation to be served on the state or local prosecutorial agency that obtained the conviction for which relief is sought. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the application for relief.

- States that if opposition to the application is not filed by the applicable state or local prosecutorial agency, the court shall deem the application unopposed and may grant the application.

- Specifies that the court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

- Allows the court to schedule a hearing on the petition.

- States that a hearing on the petition may consist of:

    - Testimony by the petitioner in support of the petition;

    - Evidence and supporting documentation in support of the petition; and

    - Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

- Provides that after considering the totality of the evidence presented, the court may vacate the conviction(s) and arrests and issue an order if it finds the following:

    - That the Petitioner was a victim of human trafficking at the time the non-violent crime was committed;

    - The commission of the crime was a direct result of being a victim of human trafficking;

    - The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme, and

    - It is in the best interest of the petitioner and in the interest of justice.

- Authorizes the court to vacate the conviction or adjudication and issue an order.

- States that order shall do all of the following:

    - Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the non-violent offense.

    - Sets aside the verdict of guilty and dismisses the accusation or information against the petitioner.

    - Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

- States that the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records

of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records.

- Requires that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later.

- States that official documentation, as defined, of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking.

- Provides that a petitioner or his or her attorney may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner, and may appear via alternate specified methods.

- Prohibits the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public.

- Allows a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief.

- States that notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

- Specifies that notwithstanding an order of relief, the petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid.

- Provides that if the court denies the petition for relief because the evidence is insufficient to establish that the arrest, conviction, or adjudication was the direct result of a human trafficking scheme of which the petitioner was a victim, the denial may be without prejudice.

- States that the court may state the reasons for its denial of a petition, and if those reasons are based on deficiencies in the application that can be fixed, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

- Specifies that for purposes of the language in this bill, "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to

have occurred and that all records in the case are sealed and destroyed pursuant to the language of this bill.

**Restraining Orders: Punishment**

There are certain violations of protective orders that are punished with an enhanced misdemeanor sentence when a violation of that order is proven. These include: (1) protective orders based on the court's finding of good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur; (2) a protective order issued as a condition of probation in a domestic violence case; (3) an order issued after conviction in an elder or dependent adult abuse case; (4) a restraining order after conviction of a sex offense involving a minor; and (5) other family court protective orders.

In 2007, legislation was enacted authorizing a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury. Subsequently, in 2011, the Legislature expanded this authority to cover all cases involving domestic violence, regardless of the sentence imposed. However, a conforming cross reference was inadvertently omitted from the contempt of court statute, which among other things describes the punishment for violating restraining orders. (Pen. Code, § 166.)

In contrast, when the legislature amended the elder abuse statute, Penal Code section 368, to allow for post-conviction restraining orders in all elder abuse cases regardless of whether probation was granted, the bill was amended to include a conforming cross reference to the statute that provides how a violation of the restraining order is punished, Penal Code section 166. Now there is an inconsistency with the punishment for a violation of a post-conviction domestic violence restraining orders and that for other post-conviction restraining orders against defendants convicted of abuse.

**SB 883 (Roth), Chapter 342,** conforms the punishment for a violation of a protection order issued after conviction of an offense involving domestic violence to the punishment for other similar protective orders. Specifically, this new law:

- Punishes the first violation of a post-conviction domestic violence restraining order with imprisonment in the county jail for up to one year, by a fine of up to $1,000, or both.

- Requires a first violation to include imprisonment in the county jail for at least 48 hours if the violation resulted in physical injury.

- Punishes a second or subsequent violation occurring within seven years and involving an act of violence, or a credible threat of violence, with imprisonment in the county jail not to exceed one year, or by 16 months, or two, or three years in state prison.

**Crime Victims: Compensation**

Existing law generally provides for the reimbursement of victims of certain types of crimes by the California Victim Compensation Board from the Restitution Fund. The Restitution Fund a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law, until January 1, 2017, authorizes the board to grant from the fund for monetary losses, when the board determines it will best aid the person seeking compensation, reimbursement for outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, as specified. Current law sets forth eligibility requirements and limits on the amount of compensation the board may award.

**SB 1324 (Hancock), Chapter 730**, extends the sunset from January 1, 2017 to January 1, 2019 for provisions allowing the Victim Compensation Board to reimburse crime victims for violence-peer-counseling services.

# MISCELLANEOUS

## Student Safety: Crime Reporting

The Clery Act requires colleges who participate in the federal student aid program to publish annual campus security reports, maintain crime logs, provide timely warnings of crimes that present a public safety risk, and maintain ongoing crime statistics; and establish certain rights for victims of sexual assault, including notification to victims of legal rights, availability of counselling, safety options for victims, and offering prevention and awareness programs. The Violence Against Women Reauthorization Act of 2013 (VAWA) amended the Clery Act to add crimes required to be reported and requiring security policies relating to those crimes be made widely available.

The State Auditor recently reviewed six California postsecondary institutions, finding that none were in full compliance with federal laws that require disclosure of campus crime statistics and campus security policies. The Auditor also surveyed 79 campuses, determining most provide security policies and crime statistics online but some lack notification of availability.

Failure to comply with the complex Clery Act and VAWA requirements risks penalties including but not limited to losing some federal financing. In addition, inaccurate and/or incomplete reporting of crime statistics by postsecondary institutions can provide an inadequate representation of campus safety to students, parents, and employees. Furthermore, various complex provisions have been recently added to the state Education Code in regards to campus safety and sexual assault, and it is unknown how well postsecondary institutions are complying with these new laws.

> **AB 1654 (Santiago), Chapter 222**, requires the State Auditor to include in its audit an evaluation of the institutions' compliance with state law governing crime reporting and the development and implementation of student safety policies and procedures.

## Peace Officers: Civilian Complaints

Currently, the term being utilized by law enforcement agencies when conducting duties such as reporting their activities with members of the public is a "civilian" complaint rather than a "citizen" complaint because all civilians are eligible to file complaints regardless of citizenship.

> **AB 1953 (Weber), Chapter 99,** makes technical changes throughout sections of the Penal, Vehicle and Government Codes replacing the term "citizen" with "civilian" to accurately reflect the term currently used by law enforcement agencies to track complaints on a local, state and federal level.

## Code Enforcement Officers: Certification Training

Existing law defines a "code enforcement officer" as any person who is not a peace officer and who is employed by any governmental subdivision; public or quasi-public corporation; public agency; public service corporation; or any town, city, county, or municipal corporation, whether

incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements; whose duties include enforcement of any statute, rules, regulations, or standards; and who is authorized to issue citations, or file formal complaints.

**AB 2228 (Cooley), Chapter 246**, establishes the Code Enforcement Officers Standards Act (CEOSA) which requires the Board of Directors of the California Association of Code Enforcement Officers (CACEO) to develop and maintain standards for the designation of Certified Code Enforcement Officers (CCEO's). Specifically, this new law:

- Provides that for the purposes of the Code the following terms have the following meaning:
    - "Board" means the duly elected Board of Directors of CACEO;
    - "CACEO" means California Association of Code Enforcement Officers a public benefits corporation domiciled in California;
    - "CCEO means a Certified Code Enforcement certified pursuant to the CEOSA;
    - "Code Enforcement Officer" means any person who is not a peace officer and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints.
- Requires the board to develop and maintain standards for the various classes of CCEO's that it designates. The standards for education, training, and certification shall be adopted by the board and meet the minimum requirements of the CEOSA, and CCEO's shall not have the powers of arrest unless authorized by the city, county, or city and county charter, code, or regulations in which they operate. CCEO's shall not have access to summary criminal history information, but persons employed by a city, county or city and county upon a showing of compelling need if the criteria for access under existing law is otherwise met.
- Requires the board to review all applications from cities, counties, city and counties, and accredited educational institutions who seek to develop and provide education designed to qualify participants as CCEO's. All applications that are submitted are subject to the boards review and approval to determine if they demonstrate the equivalency of the standards adopted under the rules of the board in order to qualify as Code Enforcement Officer Education Program Providers (program providers).
- States that all program providers are subject to ongoing program review and evaluation under the board's administrative rules. A program provider shall renew its

program provider application and obtain approval under the board's administrative rules no later than 36 months from the date of the last approval or else it shall lapse.

- Provides that all students, participants, and employees who successfully pass the minimum education and certification requirements of the program provider approved curriculum shall, subject to the same fees as other registered CCEO's under the board's administrative rules, be granted status as CCEO's in an equivalent manner as applicants who attained certification through the CACEO education and certification program and academics.

- States that the development and perpetual advancement of code enforcement officer professional standards and actively providing related educational offerings that lead to increased professional competence and ethical behavior shall be the highest priority for the board in its licensing, certification, and disciplinary functions. Whenever the advancement of code enforcement officer professional standards and the provision of related educational offerings is inconsistent with other interests sought to be promoted, the former shall be paramount.

- Provides that the board's administrative rules shall designate minimum training, qualifications, and experience requirements for applicants to qualify for the CCEO designation, including, but not limited to, training and competency requirements in the areas of land use and zoning laws, health and housing codes, building and fire codes, environmental regulations, sign standards, public nuisance laws, applicable constitutional law, investigation and enforcement techniques, application of remedies, officer safety, and community engagement. The board may, by administrative rule, designate additional classes of certifications to help meet its mission.

- Requires the board to conspicuously and continually publish its list of CCEOs on the CACEO Internet Web site, containing the registrant's full name, summary status as to individual disciplinary concerns, active or inactive status, date of active CCEO expiration, and business address, unless the business address is a residence, which shall be treated as confidential.

- States that a CCEO shall hold a valid certificate designating the person as a CCEO issued by the CACEO, shall at all times remain a member in good standing of the CACEO, and shall be subject to ongoing continuing education and registration requirements as designated by the board's administrative rules.

- Provides that a failure to maintain the continuing education requirements shall cause the certification status to lapse, subject to redemption as specified by the board's administrative rules. Once a certification lapses, the certification status shall automatically convert to inactive CCEO status unless it is redeemed. The rights, privileges, and procedures or limitations on redemption of inactive CCEOs shall be specified in the board's administrative rules.

- Requires the board to annually set fees in amounts that are reasonably related and necessary to cover the cost of administering this chapter. The fees shall be set by the board and published on the CACEO Internet Web site and maintained at the CACEO's headquarters.

- Provides that he board shall maintain a register of each application for a certificate of registration under this chapter. The register shall include all of the following:

    - The name, residence, date of birth, and driver's license number (including state or country of origin) of the applicant;

    - The name and address of the employer or business of the applicant;

    - The date of the application;

    - The education and experience qualifications of the applicant;

    - The action taken by the board regarding the application and the date of the action;

    - The serial number of any certificate of registration issued to an applicant; and

    - Any other information required by board rule.

- States that a person may not hold himself or herself out to be a Certified Code Enforcement Officer in this state or use the title "Certified Code Enforcement Officer" in this state unless the person holds a certificate of registration pursuant to this chapter.

- Requires the board, by administrative rule, create a process to timely consider and review all applicants who hold certification from any other agency, and allow them to seek review and potential approval of the qualifications to potentially be recognized as a CCEO in this state. A denial of full recognition as a CCEO shall be accompanied by written justification and a list of required steps that may be required for the individual applicant to complete the registration and certification process. Recognition fees shall be set as specified.

- Provides that board shall adopt administrative rules to process information, investigate allegations or suspicions of applicants or licensees providing false information, failing to disclose material information on the registration application, or not providing any information that may, either before or during the certification process, disqualify the applicant or certificant as specified. The board shall adopt procedures and guidelines to impose any discipline, revocation of certification, or sanction, for cause, against any applicant, registrant, or certificant.

- States that the administrative rules shall provide the applicant or registrant with adequate and fair notice and hearing opportunities prior to the board taking any

adverse action against the applicant or certificant.

- Provides that any factual finding after a hearing that the board concludes is cause for revocation, suspension, or other disciplinary or administrative action against a registration or certification shall result in an order after hearing that meets the fair notification requirements of this section.

- Provides that all orders after the hearing shall be deemed final under the board's authority and procedures and may be appealed as specified in the Code of Civil Procedure.

- States that the requirements of the CEOSA do not interfere with the regulations or certification requirements for building inspectors as specified.

**Court Appointed Special Advocate Programs: Background Checks**

Court Appointed Special Advocate (CASA) Program volunteers are deemed as officers of the court for the purpose of representing juveniles and wards of the court without other representation. This allows CASA advocates to represent children in proceedings that affect them. CASA programs recruit volunteers to serve as advocates for these children, and train them in accordance with minimum guidelines set by the Judicial Council. These guidelines require that CASA advocates and employees be fingerprinted and run through a Child Abuse Central Index background check to ensure the advocates and employees does not have a history of child abuse or neglect.

Existing law requires the Department of Justice to charge a fee sufficient to cover the cost of processing the requests for background checks. However, the Department of Justice is prohibited from charging fees to qualifying nonprofit organizations, childcare facilities and foster youth mentors. CASA programs are excluded from this benefit which can limit the pool of potential volunteers and affect services provided to children in the foster care system This mandatory expense is burdensome, given that these programs are non-profits relying heavily on volunteers.

**AB 2417 (Cooley), Chapter 860,** prohibits the Department of Justice from charging fees to CASA Programs for background checks.

**Autopsy: Electronic Image Systems**

Existing law requires coroners to perform post mortem dissection in certain cases prescribed by law or in cases where the autopsy on a decedent is requested by specified relatives. Current law also provides a coroner with certain discretionary authority to perform an autopsy during a postmortem examination.

Electronic imaging systems, such as computer tomography (CT), magnetic resonance imaging (MRI) and X-ray computed tomography scanning have been used increasingly in recent years to assist coroners and medical examiners performing autopsies. In certain cases, these systems can

help the coroner determine the cause of death without performing a post-mortem dissection of the deceased. This can be especially helpful in cases where the deceased or the deceased's surviving spouse or next of kin have religious objections to the post mortem dissections common in traditional autopsies. Such technology also assists with completion of coroners' caseloads in a more cost-effective and efficient manner.

This is not to say that such technology should replace dissection autopsies in all cases. In cases where the autopsy results must be presented to a court of law, such as in criminal cases, dissection autopsies must be used. This is because, to date, no federal or California court has ruled on the admissibility of autopsies performed using an electronic imaging system. Without such a ruling, it is unclear whether autopsies performed using solely electronic imaging systems will be admissible evidence.

**AB 2457 (Bloom), Chapter 136,** allows coroners to use an electronic imaging system during the conduct of an autopsy, unless there is a reasonable suspicion to believe the death was caused by a criminal act and it is necessary to collect evidence for presentation in a court of law. Specifically, this new law:

- Provides that if the results of an autopsy performed using electronic imaging provides the basis to suspect that the death was caused by or related to the criminal act of another, and it is necessary to collect evidence for presentation in a court of law, then a dissection autopsy shall be performed in order to determine the cause and manner of death

- Allows an autopsy to be conducted using an X-ray computed tomography scanning system without regard to the existence of a properly-executed certificate of religious belief.

## OpenJustice Data Act of 2016

Various provisions of the Government and Penal Codes require the Department of Justice (DOJ) to collect, analyze, and report on criminal justice statistics. Each individual law enforcement agency must report criminal justice statistics to the DOJ so that the agency can both aggregate the data to present a statewide overview and to present data on each individual law enforcement agency. Currently, the agency's statistics may be submitted by paper forms and cards. The statistics which agencies are required to report include: officer involved incidents with the demographics of the individuals involved and a description of the incident, case clearance rates, juvenile delinquency, the disposition of civilian complaints, the demographics of victims and individuals charged in homicides, the incidents and demographics targeted by hate crimes, the incidents and demographics of "stop and frisk" detentions, the incidents and demographics of potential profiling incidents, and other data leading to the apprehension, prosecution, and treatment of the criminals and delinquents.

The DOJ is statutorily required to prepare a summary of these criminal justice statistics every year in reports, mainly the Crime in California report, to the Governor and the Legislature, and otherwise make the data and reports available to the public.

In 2015, Attorney General Harris announced the launch of a new initiative called OpenJustice, a first-of-its-kind open data Web portal designed to make previously obscured information available to the public through an interactive, easy-to-use web interface. This tool consists of two components: a Dashboard that spotlights key criminal justice indicators with user-friendly visualization tools, and an Open Data Portal that publishes complete raw datasets.

**AB 2524 (Irwin), Chapter 418,** requires the DOJ to make available to the public its mandatory criminal justice statistics reports through the OpenJustice Web portal, to be updated annually. Specifically, this new law:

- Eliminates the DOJ's requirement to annually present a report on criminal justice statistics to the Governor and the Legislature, but requires that a downloadable summary of this information shall be annually prepared so that the Attorney General may send a copy to the Governor and other entities.

- Requires the DOJ to add prosecutorial administrative actions to its criminal justice statistics collection and summaries.

- States that the intent of the Legislature, following the full implementation of incident-based crime reporting, is for the DOJ to transition to exclusively electronic crime data collection and to evaluate the potential for criminal justice statistical data to be updated on the OpenJustice Web portal more than once per year.

- Requires the DOJ to evaluate and report, on an annual basis, the progress of California's transition from summary crime reporting to incident-based crime reporting, in alignment with the federal National Incident-Based Reporting System, and report its findings to the Legislature annually through 2019.

- Provides that local and state agencies that are unable to meet this implementation deadline and that have committed to transitioning to incident-based crime reporting shall collaborate with the DOJ to develop a transition plan with a timeline for the transition.

- Provides that local and state agencies that are unable to meet this implementation deadline and that have committed to transitioning to incident-based crime reporting shall collaborate with the DOJ to develop a transition plan with a timeline for the transition.

- States that, commencing January 1, 2021, it shall be the duty of the DOJ to accept the collection of crime data from local and state crime reporting agencies only through electronic means.

- Requires, commencing January 1, 2021, local and state crime reporting agencies to submit crime data to the DOJ only through electronic means.

- States that, on or before January 1, 2022, it shall be the duty of the DOJ to ensure that the statistical systems of the DOJ are electronic, allowing for criminal justice statistical data to be updated more frequently than annually on the OpenJustice Web portal.

**Forensic Autopsies: Licensed Physicians and Surgeons**

Autopsy reports are valuable documents that should be accurate and unbiased. Current law presents grey areas which could undermine public confidence in autopsy findings by allowing non-medically trained individuals, who are often elected or appointed, to conduct the autopsies. Current law also allows law enforcement involved with the death of the individual inside the autopsy suite during the procedure which could create the appearance of influence on the findings and create public distrust in our criminal justice system. Not only do families deserve to know what happened to their loved ones, but the public and juries need to trust that they received accurate objective information to make the correct verdict on a criminal case. Best practices need to be implemented in an autopsy room to guarantee an objective and trustworthy autopsy system.

**SB 1189 (Pan), Chapter 787**, requires that a forensic autopsy, as defined, be conducted by a licensed physician and surgeon. Specifically, this new law:

- Provides that a forensic autopsy shall only be conducted by a licensed physician and surgeon, and the results of a forensic autopsy only be determined by a licensed physician and surgeon.

- Defines a "forensic autopsy" to mean an examination of a body of a decedent to generate medical evidence for which the cause and manner of death is determined.

- Defines "postmortem examination" to mean the external examination of the body where no manner of death is determined.

- States that the manner of death shall be determined by the coroner or medical examiner of a county. If a forensic autopsy is conducted by a licensed physician and surgeon, the coroner shall consult with the physician in determining the cause of death.

- Allows trained county personnel who are necessary to the conduct of an autopsy, at the direction and supervision of a coroner or medical examiner, or a licensed physician or surgeon, may take body measurements or retrieve blood, urine, or vitreous samples from the body of a decedent.

- Provides that for health and safety purposes, all persons in the autopsy suite shall be informed of the risks presented by blood borne pathogens and that they should wear personal protective equipment, as specified.

- States that only persons directly involved in the investigation of the death of the decedent shall be allowed into the autopsy suite.

- Provides that if an individual dies due to the involvement of law enforcement activity, law enforcement directly involved with the death of that individual shall not be involved with any portion of the post mortem examination, nor allowed into the autopsy suite during the performance of the autopsy.

- States that at the discretion of the coroner and in consultation with the licensed physician and surgeon conducting the autopsy, individuals may be permitted in the autopsy suite for educational and research purposes.

- Requires that any police reports, crime scene or other information, videos, or laboratory test that are in the possession of law enforcement and are related to a death that is incident to law enforcement activity be made available to the forensic pathologist prior to the completion of the investigation of the death.

- States that the above autopsy protocol shall not be construed to limit the practice of an autopsy for educational or research purposes.

- Makes conforming changes to other provisions of law relating to the conduct of an autopsy.

**Firefighters: Interaction with the Mentally Disabled**

Existing law requires the Commission on Peace Officer Standards and Training (POST) to establish a continuing education classroom training course related to law enforcement interaction with mentally disabled persons and to make the course available to law enforcement agencies in California.

As first responders, firefighters are dealing with a wide range of situations. Many times firefighters, not law enforcement, are the first responders to an emergency scene and this training will ensure that firefighters can respond to mental health emergencies appropriately. Firefighters are likely to interact with individuals with mental health issues at a similar rate as law enforcement officers.

**SB 1221 (Hertzberg), Chapter 367**, directs the POST to make the existing continuing education classroom training course related to law enforcement interaction with mentally disabled persons available to the State Fire Marshal, who may revise the course as appropriate for firefighters.

**Missing Persons: Developmentally Disabled**

Existing law requires the Attorney General to establish and maintain a computer system designed to affect an immediate law enforcement response to reports of "at risk" missing persons. This system must include an active file of information concerning persons reported to it as missing and who have not been reported as found. The computer system is to be made available to law enforcement agencies. However, the Attorney General shall not release the information if the reporting agency requests the Attorney General in writing not to release the information because

it would impair a criminal investigation.

**SB 1330 (Galgiani), Chapter 544**, clarifies that an "at risk" missing person includes a person that is cognitively impaired or developmentally disabled for the purposes of the issuance of a "Be on the Look-Out" bulletin.

**Public Safety Omnibus Bill**

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

**SB 1474 (Committee on Public Safety), Chapter 59,** makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating generally to criminal justice laws. Specifically, this new law:

- Deletes references to the Sex Offender Tracking Program and the High Risk Sex Offender Program within the Department of Justice (DOJ) and instead includes general references to the DOJ.
- Allows the district attorney to send a subpoena to a peace officer by electronic means.
- Provides that probation reports may be shared between probation agencies.
- Deletes the requirement that a police vehicle that is monitoring traffic be painted but continues to require the vehicle be a distinctive color.
- Updates the section related to the collection of evidence in sexual assault cases.
- Makes additional clarifying or technical changes

## • APPENDIX A – INDEX BY AUTHOR

- **APPENDIX A – INDEX BY AUTHOR**

- **APPENDIX A – INDEX BY AUTHOR**

- **APPENDIX A – INDEX BY AUTHOR**

- **APPENDIX B – INDEX BY BILL NUMBER**

- **APPENDIX B – INDEX BY BILL NUMBER**

- **APPENDIX B – INDEX BY BILL NUMBER**

- **APPENDIX B – INDEX BY BILL NUMBER**

- **APPENDIX B – INDEX BY BILL NUMBER**