ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2015
Legislative Summary

Bill Quirk
Chair

Melissa A. Melendez
Vice Chair

Members
Reginald B. Jones-Sawyer, Sr.
Tom Lackey
Patty Lopez
Evan Low
Miguel Santiago

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LEGISLATIVE SUMMARY 2015

MEMBERS

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Melissa A. Melendez, Vice Chair
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TABLE OF CONTENTS

		Page
Animal Abuse		1
AB 794 (Linder)	Criminal Acts against Law Enforcement Animals	1
Child Abuse		2
AB 1207 (Lopez)	Child Abuse and Neglect Reporting: Mandated Training	2
Controlled Substances		5
AB 730 (Quirk)	Controlled Substances: Transportation	5
AB 1104 (Rodriguez)	Search Warrants: Controlled Substances	5
SB 165 (Monning)	Production or Cultivation of a Controlled Substance: Civil Penalties	6
SB 212 (Mendoza)	Controlled Substances: Factors in Aggravation	8
SB 303 (Hueso)	Controlled Substances: Destruction of Seized Marijuana	8
Corrections		10
AB 231 (Eggman)	Post Release Community Supervision: Placement	10
AB 293 (Levine)	Prisons: Inmate Threats	10
AB 303 (Gonzalez)	Searches: County Jails	11
AB 672 (Jones-Sawyer)	Wrongful Convictions: Assistance Upon Release	11
AB 1156 (Brown)	Criminal Procedure: Felony County Jail Commitments	12
AB 1168 (Salas)	Custodial Officers: Training Requirements	13
AB 1423 (Stone)	Prisoners: Medical Treatment	14
SB 219 (Liu)	Corrections: Alternative Custody Program	18
SB 230 (Hancock)	Parole Hearings	19
SB 261 (Hancock)	Youthful Offenders: Parole Hearings	20
SB 343 (Hancock)	Corrections: Librarians	21
SB 517 (Monning)	Supervised Release	21
SB 519 (Hancock)	Youthful Offenders Parole Hearings	22
SB 601 (Hancock)	Corrections: Reports	22
SB 635 (Nielsen)	Indemnification: Erroneously Convicted Persons	24

TABLE OF CONTENTS (Continued)

		Page
Court Hearings		25
AB 160 (Dababneh)	Criminal Profiteering: Counterfeit Goods	25
AB 1156 (Brown)	Criminal Procedure: Felony County Jail Commitments	25
AB 1328 (Weber)	Withholding Exculpatory Evidence	26
AB 1343 (Thurmond)	Criminal Dispositions: Consideration of Immigration Consequences	28
AB 1352 (Eggman)	Deferred Entry of Judgment: Withdrawal of Plea	28
SB 212 (Mendoza)	Controlled Substances: Factors in Aggravation	29
SB 382 (Lara)	Juveniles: Jurisdiction	30
SB 405 (Hertzberg)	Failure to Appear in Court: Fines	31
SB 453 (Pan)	State Hospitals: Involuntary Medication	32
SB 504 (Lara)	Courts: Record Sealing	32
SB 517 (Monning)	Supervised Release	34
SB 676 (Canella)	Disorderly Conduct: Forfeiture	34
Crime Prevention		36
AB 8 (Gatto)	Hit-and-Run: Yellow Alert	36
AB 293 (Levine)	Prison Inmate Threats	37
AB 636 (Medina)	Student Safety: Reporting	38
AB 913 (Santiago)	Student Safety: Sexual Assaults	38
AB 1093 (E. Garcia)	Grant Program: Supervised Population Workforce Training	39
SB 343 (Hancock)	Corrections: Librarians	40
Criminal Justice Programs		42
AB 672 (Jones-Sawyer)	Wrongful Convictions: Assistance Upon Release	42
AB 1093 (E. Garcia)	Grant Program: Supervised Population Workforce Training	43
AB 1475 (Cooper)	Sexual Assault Response Teams	43
SB 219 (Liu)	Corrections: Alternative Custody Program	45
SB 621 (Hertzberg)	Mentally Ill Offenders: Crime Reduction Grants	46

TABLE OF CONTENTS (Continued)

		Page
Criminal Offenses		47
AB 195 (Chau)	Unauthorized Access to Computer Systems	47
AB 256 (Jones-Sawyer)	Destruction of Evidence: Digital and Video Recordings	47
AB 545 (Melendez)	Domestic Violence: Penalties	48
AB 730 (Quirk)	Controlled Substances: Transportation	48
AB 794 (Linder)	Criminal Acts against Law Enforcement Animals	49
AB 835 (Gipson)	Vehicular Manslaughter: Statute of Limitations	49
SB 411 (Lara)	Crimes: Videotaping of Peace Officers in Public	50
SB 629 (Mitchell)	Crimes: Taking a Person from Lawful Custody	51
Criminal Procedure		52
AB 160 (Dababneh)	Criminal Profiteering: Counterfeit Goods	52
AB 249 (Obernolte)	Appellate Procedure: Fines and Fees	52
AB 666 (Stone)	Juveniles: Sealing of Records	53
AB 673 (Santiago)	Probation and Mandatory Supervision: Fines and Fees	55
AB 835 (Gipson)	Vehicular Manslaughter: Statute of Limitations	56
AB 989 (Cooper)	Juveniles: Sealing of Records	57
AB 1310 (Gatto)	Cyber Exploitation: Venue for "Revenge Porn"	58
AB 1343 (Thurmond)	Criminal Dispositions: Consideration of Immigration Consequences	59
AB 1352 (Eggman)	Deferred Entry of Judgment: Withdrawal of Plea	60
SB 176 (Mitchell)	Child Witnesses: Testimony via Closed-Circuit Television	61
SB 227 (Mitchell)	Grand Juries: Powers and Duties	61
DNA		62
AB 1492 (Gatto)	DNA Samples: Contingency Legislation	62
Domestic Violence		63
AB 545 (Melendez)	Domestic Violence: Penalties	63
SB 307 (Pavley)	Restraining Ordres: Domestic Violence and Sex Crimes	63

TABLE OF CONTENTS (Continued)

		Page
Driving Under the Influence		65
AB 539 (Levine)	Search Warrants: Boating Under the Influence	65
Elder Abuse		66
SB 352 (Block)	Elder Abuse: Restraining Orders	66
Evidence		67
AB 256 (Jones-Sawyer)	Destruction of Evidence: Digital and Video Recordings	67
AB 1328 (Weber)	Withholding Exculpatory Evidence	67
SB 176 (Mitchell)	Child Witnesses: Testimony via Closed-Circuit Television	68
SB 303 (Hueso)	Controlled Substances: Destruction of Seized Marijuana	69
SB 424 (Pan)	University or College Police: Eavesdropping	69
Fines and Fees		71
AB 32 (Waldron)	Computer Crimes: Fines	71
AB 249 (Obernolte)	Appellate Procedure: Fines and Fees	71
AB 673 (Santiago)	Probation and Mandatory Supervision: Fines and Fees	72
AB 1375 (Thurmond)	Fines and Fees: Collection Methods	73
SB 165 (Monning)	Production or Cultivation of a Controlled Substance: Civil Penalties	74
SB 405 (Hertzberg)	Failure to Appear in Court: Fines	76
Firearms		77
AB 892 (Achadjian)	Unsafe Handguns: Peace Officer Transfer to Spouse	77
AB 950 (Melendez)	Firearms: Gun Violence Restraining Orders	77
AB 1134 (Stone)	Firearms: Carry Concealed Weapons Permits	78
SB 707 (Wolk)	Firearms: Gun-Free School Zone	78

TABLE OF CONTENTS (Continued)

		Page
Juveniles		80
AB 666 (Stone)	Juveniles: Sealing of Records	80
AB 989 (Cooper)	Juveniles: Sealing of Records	82
SB 382 (Lara)	Juveniles: Jurisdiction	83
SB 504 (Lara)	Courts: Record Sealing	84
Mental Health		86
SB 11 (Beall)	Peace Officer Training: Mental Health	86
SB 29 (Beall)	Peace Officer Training: Mental Health	87
SB 453 (Pan)	State Hospitals: Involuntary Medication	88
SB 621 (Hertzberg)	Mentally Ill Offenders: Crime Reduction Grants	89
Peace Officers		90
AB 69 (Rodriguez)	Peace Officers: Body-Worn Cameras	90
AB 71 (Rodriguez)	Peace Officer Use of Force: Reporting	91
AB 489 (Gonzalez)	Public Safety Officer Medal of Valor	92
AB 546 (Gonzalez)	Peace Officers: Basic Training Requirements	93
AB 892 (Achadjian)	Unsafe Handguns: Peace Officer Transfer to Spouse	93
AB 953 (Weber)	Law Enforcement: Racial Profiling	94
AB 1168 (Salas)	Custodial Officers: Training Requirements	96
SB 11 (Beall)	Peace Officer Training: Mental Health	97
SB 29 (Beall)	Peace Officer Training: Mental Health	98
SB 411 (Lara)	Crimes: Videotaping of Peace Officers in Public	99
SB 424 (Pan)	University or College Police: Eavesdropping	100
Restitution		102
AB 1140 (Bonta)	Victim Compensation Program	102
SB 651 (Leyva)	Victim Restitution: Crimes Committed by Juveniles	104

TABLE OF CONTENTS (Continued)

		Page
Search Warrants		106
AB 39 (Medina)	Search Warrants: Electronic Submission	106
AB 539 (Levine)	Search Warrants: Boating Under the Influence	106
AB 844 (Bloom)	Service of Process: Foreign Corporations and Foreign Limited Liability Companies	107
AB 929 (Chau)	Pen Registers: Authorized Use	107
AB 1104 (Rodriguez)	Search Warrants: Controlled Substances	112
SB 178 (Leno)	Search Warrants: Electronic Communications	113
Sex Offenses		118
AB 1475 (Cooper)	Sexual Assault Response Teams	118
SB 307 (Pavley)	Restraining Ordres: Domestic Violence and Sex Crimes	119
Sexually Violent Predators		121
SB 507 (Pavley)	Sexually Violent Predators: Disclosure of Treatment Records	121
Technology Crimes		123
AB 32 (Waldron)	Computer Crimes: Fines	123
AB 195 (Chau)	Unauthorized Access to Computer Systems	123
AB 1310 (Gatto)	Cyber Exploitation: Venue for "Revenge Porn"	124
SB 676 (Canella)	Disorderly Conduct: Forfeiture	125
Victims		127
AB 231 (Eggman)	Post Release Community Supervision: Placement	127
AB 1140 (Bonta)	Victim Compensation Program	127
SB 352 (Block)	Elder Abuse: Restraining Orders	130
SB 651 (Leyva)	Victim Restitution: Crimes Committed by Juveniles	130
SB 674 (De León)	Victims of Crime: U-Visa	131

TABLE OF CONTENTS (Continued)

		Page
Miscellaneous		134
AB 8 (Gatto)	Hit-and-Run: Yellow Alert	134
AB 303 (Gonzalez)	Searches: County Jails	135
AB 489 (Gonzalez)	Public Safety Officer Medal of Valor	136
AB 636 (Medina)	Student Safety: Reporting	136
AB 913 (Santiago)	Student Safety: Sexual Assaults	136
AB 1207 (Lopez)	Child Abuse and Neglect Reporting: Mandated Training	137
AB 1492 (Gatto)	DNA Samples: Contingency Legislation	139
SB 227 (Mitchell)	Grand Juries: Powers and Duties	140
SB 413 (Wieckowski)	Public Transit: Prohibited Conduct	141
SB 541 (Hill)	Public Utilities Commission: Enforcement of Passenger Carrier Laws	141
SB 601 (Hancock)	Corrections: Reports	142
SB 635 (Nielsen)	Indemnification: Erroneously Convicted Persons	144
SB 674 (De León)	Victims of Crime: U-Visa	144
SB 795 (Public Safety)	Public Safety Omnibus Bill	145
Appendices		147
Appendix A – Index by Author		147
Appendix B – Index by Bill Number		151

ANIMAL ABUSE

Criminal Acts Against Law Enforcement Animals

Penal Code section 600 currently protects animals that are being used by peace officers. However, there are many public safety agencies in California that use volunteer peace officers. Some of those volunteer peace officers use their personal animals while on duty. Under current law, their personal animals that are being used while protecting the public are not protected from harm at the same level as an animal being used by an employed peace officer.

AB 794 (Linder), Chapter 201, expands criminal acts against law enforcement animals to include offenses against animals used by volunteers acting under the direct supervision of a peace officer. Specifically, this new law:

- Expands crimes against law enforcement animals to include acts carried out against a horse or dog being used by, or under the supervision of, a volunteer who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of his or her assigned volunteer duties.

- Expands the restitution requirements for defendants convicted of those acts to include a volunteer who is acting under the direct supervision of a peace officer using their own horse or dog. In such a case, the defendant would be required to make restitution to the volunteer, or the agency or individual or individual that provides veterinary care for the horse or dog.

CHILD ABUSE

Child Abuse and Neglect Reporting Act: Mandated Training

Although licensees, administrators, and employees of licensed child day care facilities and employees of child care institutions are mandated reporters under California's Child Abuse and Neglect Reporting Act, the law does not require them to complete any training on recognizing the signs of child abuse or neglect or how to comply with mandated reporter requirements.

California Community Care Licensing Division requires child care licensee applicants to sign a statement entitled "Statement Acknowledging Requirement to Report Child Abuse." However, without instruction or guidance on how to recognize the signs of child abuse and neglect, how to support a child and work with a family during or after a report, and how to make a report, many child care providers are unaware of what being a mandated reporter entails.

AB 1207 (Lopez), Chapter 414, requires a child day care licensee applicant to take training in the duties of mandated reporters under the Child Abuse and Neglect Reporting Act (CANRA) as a precondition of licensure, and requires child day care administrators and employees to take mandated reporter training on or before March 30, 2018, and requires renewal mandated reporter training every two years after completion of the initial training. Specifically, this new law:

- Requires the Office of Child Abuse Prevention (OCAP) within the Department of Social Services (DSS) in consultation with Community Care Licensing Division within DSS to do all of the following:
    - Develop and disseminate information to all licensees, administrators, and employees of licensed child day care facilities regarding detecting and reporting child abuse.
    - Provide statewide guidance on the responsibilities of a mandated reporter who is a licensee, administrator, or employee of a licensed child day care facility in accordance with CANRA. These guidelines shall include, but is not necessarily limited to, both of the following:
        - Information on the identification of child abuse and neglect; and,
        - Reporting requirements for child abuse and neglect.
    - Develop appropriate means of instruction child care licensees, administrators, and employees of licensed child day care facilities in detecting child abuse and neglect and the proper action that a child care licensee, administrator, or employees of a licensed child day care facility is required to take, including, but not limited to, using the free online Mandated Reporter "General Training Module" and "Child Care Professionals Training Module" provided by the

OCAP.

- Provides that a child care licensee shall do both of the following:

    - Complete training, as specified, using the online training model provided by the OCAP and provide the training to their administrators, employees, and persons working on their behalf, who are mandated reporters of suspected child abuse and neglect, of the mandated reporting requirements. Completing mandated reporter training is a condition of licensure, and child care administrators and employees of licensed child day care facilities shall complete mandated reporter training during the first six weeks of employment. This training shall include information that failure to failure to report an incident of known or reasonably suspected child abuse or neglect, is a misdemeanor punishable by up to six months confinement in a county jail, or by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

    - States that a child care licensee, administrator, or employee of licensed child day care facility shall take required the training as frequently as prescribed by regulations adopted by DSS.

- Requires the OCAP to develop a process for all persons required to receive CANRA training to obtain proof of completing the training as a condition of licensure, or within the first six weeks of that person's employment. The process may include, but is not necessarily limited to, a child care licensee applicant obtaining a certificate of completion and submitting the certificate to the DSS prior to acquiring a child care license. A child care administrator, or employee of a licensed child day care facility shall submit a current certificate of completion to the child care director or the licensee within six weeks of employment. A current certificate of completion for each child day care licensee, administrator, or employee of a licensed child day care facility, shall be submitted to the DSS upon inspection of the facility, when proof of other required training is submitted to DSS, or upon request of the DSS.

- Requires the DSS to issue a notice of deficiency at the time of a site visit to a licensee who is not in compliance with proof of training requirements. The licensee shall, at the time the notice is issued develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The DSS may revoke the facility's license if the facility fails to correct the deficiency within the 90-day period.

- States that a child care licensee, administrator, or employee of a licensed child day care facility who does not use the online training module provided by the DSS shall report to, and obtain approval from, the DSS regarding the training that person shall use in lieu of the online training module.

- Requires the DSS to adopt regulations to implement the required CANRA training, and proof of completion of training requirements, including, but not limited to,

defining "current certificate of completion" and prescribing how frequently a licensee is required to take the training.

CONTROLLED SUBSTANCES

Controlled Substances: Transportation

Prior to January 1, 2014, a person could be convicted of transportation of a controlled substance if such a substance was minimally moved, regardless of the amount of the controlled substance or intent of the possessor. Courts had interpreted the word "transports" to include transport of controlled substances for personal use.

Effective January 1, 2014, some statutes prohibiting transportation of a controlled substance were amended to add an intent-to-sell element. The new crime of transportation for sale applies to numerous drugs, including heroin, cocaine, methamphetamine. However, other transportation-of-controlled-substance statutes were not affected. This has resulted in a situation where transportation of some drugs for personal use can be charged only as a possession offense, while transportation of other drugs for personal use can be charged as both possession and transportation. Such disparate treatment raises equal protection concerns.

AB 730 (Quirk), Chapter 77, provides that a conviction for transportation of marijuana, psilocybin mushrooms or phencyclidine (PCP) requires proof of intent to sell. Specifically, this new law:

- Provides that transportation of psilocybin mushrooms, PCP, or marijuana shall be defined to mean to "transport for sale."

- Provides that these provisions of law do not preclude or limit prosecution under an aiding and abetting, or conspiracy offenses.

Search Warrants: Controlled Substances

In California, Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued when property or things were used as the means to commit a felony. Other enumerated circumstances authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as when the property subject to search was stolen or embezzled or when the property or things are in the possession of any person with the intent to use them as a means of committing a public offense. A "public offense" is defined as crimes which include felonies, misdemeanors, and infractions.

Health and Safety Code section 11472 provides that controlled substances or paraphernalia may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law. However, because Penal Code section 1524 is relied upon as the statute that provides direction on when warrants may be issued, some agencies are unaware that they may seek a warrant for controlled substances.

AB 1104 (Rodriguez), Chapter 124, clarifies in the Penal Code that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or

administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.

Production or Cultivation of a Controlled Substance: Civil Penalties

In the almost two decades since California voters passed Proposition 215, the Compassion Use Act of 1996, the cultivation of illegal marijuana on California's public and private lands has exploded. In 2014 alone, the Department of Fish and Wildlife (DFW) participated in close to 250 marijuana-related operations in which 609,480 marijuana plants were eradicated and 15,839 pounds of processed marijuana was seized.

Many of these marijuana grow-sites operate on a commercial scale, leaving behind devastating impacts on the terrestrial and aquatic habitats they occupy. Some growers routinely divert streams and tributaries to get enough water. Also, some of these unregulated grow-sites are responsible for the release of rodenticides, highly toxic insecticides, chemical fertilizers, fuels, and hundreds of pounds of waste dumped into the surrounding habitats and watershed systems.

Current law allows civil fines to be levied against those who commit environmental crimes while engaging in the cultivation of a controlled substance. The DFW has the ability to assess these civil fines administratively. The civil fines collected under this fine structure can be divided up primarily between enforcement agencies, to cover the cost of their investigations, and the Timber Regulation and Forest Restoration Fund, for the purposes of improving forest health by remediating former marijuana growing operations.

SB 165 (Monning), Chapter 139, adds additional crimes or violations to an existing Fish and Game Code statute which authorizes civil fines for certain natural resource-related violations in connection with the production or cultivation of a controlled substance. Specifically, this new law:

- Expands provisions of law which impose civil penalties for Fish and Game Code violations committed while trespassing on public or private lands to include violations of the following laws while trespassing on other public or private land in connection with the production or cultivation of a controlled substance:
    - Unlawful dumping of waste matter or other specified materials on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, authorizing a civil penalty of up to $40,000.
    - Knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified, authorizing a civil penalty of up to $40,000.
    - Willfully or negligently cutting, destroying, mutilating, or removing specified vegetation growing upon state or county highway rights-of-way, or upon public

land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, authorizing a civil penalty of up to $10,000.

- Engaging in timber operations without a license, as specified, authorizing a civil penalty up to $10,000.

- Unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, authorizing a civil penalty of not more than $10,000.

- Unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, authorizing a civil penalty of up to $10,000.

- Expands the scope of civil penalties where violations in connection with the production or cultivation of a controlled substance occur on land that the person owns, leases, or occupies with the consent of the landowner to include the following additional offenses:

  - Unlawful dumping of waste matter on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Unlawful dumping of waste matter in commercial quantities on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Willfully or negligently cutting, destroying, mutilating, or removing specified growing upon state or county highway rights-of-way, or upon public land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, is subject to a civil penalty of up to $10,000 for each violation.

  - A violation of engaging in timber operations without a license, as specified, is subject to a civil penalty of up to $8,000 for each violation.

  - A violation of unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, is subject to a civil penalty of up to $8,000 for each violation.

- A violation of unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, is subject to a civil penalty of up to $8,000 for each violation.

- Provides that each day that a violation of any of these sections occurs or continues to occur shall constitute a separate violation, as specified.

- Specifies that any civil penalty imposed shall be offset by the amount of any restitution ordered by a criminal court, as specified.

Controlled Substances: Factors in Aggravation

The manufacture of methamphetamine and butane honey oil poses significant risks to residents and school aged children in the areas surrounding the locations where these crimes take place. Mixing chemicals in clandestine labs is an inherently dangerous activity that creates substantial risk of explosions, fires, chemical burns, and toxic fume inhalation from the off-gassing of chemical compounds. These risks extend well beyond the walls of the lab itself, placing nearby residents, students, and property in danger.

SB 212 (Mendoza), Chapter 141, provides that where a defendant is convicted of manufacturing methamphetamine or concentrated cannabis by chemical extraction within a specified distance of an occupied residence or a structure where another person was present at the time the offense was committed, the sentencing court may consider that fact as a factor in aggravation. Specifically, this new law:

- Provides that if methamphetamine is manufactured, compounded, converted, produced, derived, processed, or prepared within 200 feet of an occupied residence or any structure where another person was present at the time the offense was committed, a sentencing court may consider that fact as a factor in aggravation.

- States that if concentrated cannabis is chemically extracted by means of a volatile solvent within 300 feet of an occupied residence or any structure where another person was present at the time the offense was committed, a sentencing court may consider that fact as a factor in aggravation.

Controlled Substances: Destruction of Seized Marijuana

Law enforcement agencies are required by law to store 10 pounds of marijuana and 5 additional representative samples for evidence. According to a June report by the California Attorney General's Office, nine counties in California: Shasta, Glenn, Mendocino, Sacramento, Merced, Madera, Fresno, Ventura, and Los Angeles currently possess over 1,000 pounds of marijuana. This can be very burdensome on these agencies because most facilities were not intended to store such large quantities, forcing these agencies to create additional storage facilities onsite resulting in significant costs to law enforcement.

In addition to the lack of adequate storage facilities to store the marijuana held for evidence, it is also a serious threat to the health of law enforcement personnel. Because marijuana is a plant, it begins to develop spores and mold within a short period of time. This leads to difficulty breathing and other harmful side effects as a result of frequent handling of the storage items inside these evidence rooms.

The laws and practices in various counties concerning return of marijuana to a qualified patient and compensation to a patient for destruction of marijuana do not appear to be consistent or clear.

SB 303 (Hueso), Chapter 713, permits the destruction of excess seized marijuana by law enforcement agencies, subject to specified evidentiary and preservation requirements. Specifically, this new law:

- Authorizes law enforcement agencies to destroy seized marijuana in excess of two pounds, or the amount of marijuana a medical marijuana patient or designated caregiver is authorized to possess by ordinance in the city or county where the marijuana was seized, whichever is greater, subject to specified requirements.

- Requires a law enforcement agency to retain at least one two-pound sample and five random and representative samples consisting of leaves or buds, for evidentiary purposes, from the total amount to be destroyed.

- Specifies that law enforcement should take video of the marijuana seized prior to destruction of the evidence and further specifies that they should accurately demonstrate the total amount to be destroyed.

CORRECTIONS

Post Release Community Supervision: Placement

Current law states that a victim of a stalking offense may request that a parolee, who is released under state supervision, not be returned to a location within 35 miles of the victim's actual residence or place of employment if the California Department of Corrections and Rehabilitation determines there is a need to protect the life, safety, or well-being of the victim. The need for this bill arose because current statute was not updated to include offenders released under local jurisdiction on Post Release Community Supervision (PRCS) when this category of supervised persons was created pursuant to the Public Safety Realignment Act of 2011.

AB 231 Eggman, Chapter 498, provides that an inmate who is released on PRCS for conviction of a stalking offense shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim has requested additional distance in the placement of the inmate.

Prisons: Inmate Threats

In December 2014, the Division of Adult Institutions within the California Department of Corrections and Rehabilitation (CDCR) conducted a survey of its 35 adult institutions in an effort to determine which institutions have notification procedures for threats against staff. The survey inquired whether the institutions had established policies and procedures in place for inmate threats against an employee, either verbally or non-verbally. Out of the 35 institutions surveyed, 28 institutions had established local policies and procedures and the remaining seven institutions did not have localized procedures. The survey found that some institutions have notification procedures that are kept in the confidential section of their operations manual, while others do not. Of the institutions that do have notification procedures, some do not provide training to staff on these procedures.

AB 293 (Levine), Chapter 195, requires CDCR to establish a statewide policy on operational procedures for the handling of threats made by inmates, wards, or by the family members of inmates and wards, against CDCR staff. Specifically, this new law:

- Requires the policy to include methods to ensure that CDCR staff members are advised of threats made against them by inmates, wards, or the family members of inmates and wards.

- Requires that all threats against CDCR staff made by inmates, wards, or the family members of inmates and wards be thoroughly investigated.

- Requires that a copy of the statewide policy be made accessible to members of the public, upon request.

- Does not prohibit an individual institution within CDCR from developing a more detailed notification procedure for advising staff members of threats made against

them. If an individual institution has a more detailed policy, the policy is required to be accessible to every member of the staff of the institution.

- Requires CDCR to provide training on the policy developed pursuant to this law.
- States that the policy developed pursuant to this new law shall be fully implemented by July 1, 2016.

Searches: County Jails

On April 2, 2012, the Supreme Court upheld the validity of strip searches by jail officials for even minor offenses when a person is being placed in the general population. The Court, however, did not directly address the issue of strip searches before a person's detention is reviewed by a judicial officer.

California law regulates when and how strip searches occur in local detention facilities. The provision, which was passed in 1984, has the codified legislative intent to strictly limit strip and body cavity searches. The provisions of the law apply only to adult and juvenile pre-arraignment detainees arrested for infractions or misdemeanors.

AB 303 (Gonzalez), Chapter 464, requires that all persons within sight of specified detainees and incarcerated juveniles during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians or licensed medical personnel.

Wrongful Convictions: Assistance Upon Release

When an exoneree is released from state prison, the individual is frequently released without access to reentry services. A 2008 report by the California Commission on the Fair Administration of Justice addressed some of the obstacles faced by persons who have established their innocence after the conviction of a crime in gaining access to post-conviction relief, achieving reintegration into society, and gaining compensation for their wrongful convictions. As to reintegration in particular, the report states:

"Ironically, even the limited resources made available to convicted felons who have served their sentences and are released from prison are not available to those whose convictions have been set aside. Parolees are released to the community in which they were arrested or convicted; services such as counseling and assistance in locating housing or jobs are limited to those who remain under parole supervision. But those who are being released because their conviction is set aside, including those who have been found innocent, receive none of these services. Those who have been released back into the community after successfully challenging their convictions, whether innocent or not, face the same obstacles encountered by parolees, and more."

AB 672 (Jones-Sawyer), Chapter 403, requires the California Department of Corrections and Rehabilitation (CDCR) to provide transitional services to exonerated

persons upon their release. Specifically, this new law:

- Requires CDCR to assist an individual who was exonerated and has been released with transitional services, including housing assistance, job training, and mental health services, for a minimum of six months and a maximum of one year after the date of release.

- Defines "exonerated" as a person has been convicted and subsequently either of the following has occurred:

    - A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person's conviction was reversed on appeal on the basis of insufficient evidence; or

    - The person was given an absolute pardon by the governor on the basis that the person was innocent.

- Requires CDCR to provide a form for a driver's license or identification card fee exemption to any person who was exonerated and released from state prison within the prior six months.

- Requires the exonerated person to take the form, along with a copy of a court order, if provided by the court, to the Department of Motor Vehicles in order to qualify for the driver's license or identification card fee exemption.

Criminal Procedure: Felony County Jail Commitments

The 2011 Realignment Act allowed certain low level non-violent offenders convicted of a felony to be sentenced to the county jail. However, the Realignment Act contained several discrepancies and inconsistencies in the treatment of persons convicted of a felony and sentenced to state prison and those sentenced to the county jail.

AB 1156 (Brown), Chapter 378, conforms various provisions of law relating to persons convicted of a felony and sentenced to the state prison, and applies them to persons convicted of a felony and sentenced to a county jail under the 2011 Realignment Act. Specifically, this new law:

- Clarifies that in any case where the pre-imprisonment credit of a person sentenced to the county jail under the 2011 Realignment Act exceeds any sentence imposed, the entire sentence shall be deemed to have been served, except for the remaining portion of mandatory supervision, and the defendant shall not be delivered to the custody of the county correctional administrator.

- Provides that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator,

recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

- Extends provisions related to the compassionate release of a state prison inmate, who is terminally ill, to an inmate sentenced to a county jail under the 2011 Realignment Act.

- Clarifies that a person released from the state prison on post release community supervision shall be supervised by the probation department of the county to which the person is released, and requires that the inmate be informed of his or her duty to report to the county probation department upon release.

- Extends the right to petition for a certificate of rehabilitation and pardon to persons convicted of a felony and sentenced to a county jail under the 2011 Realignment Act. Makes additional non-substantive changes, conforming changes, and deletes obsolete provisions.

- Provides that a person shall not be subject to prosecution for a non-felony offense arising out of a violation in the California Vehicle Code, with the exception of driving under the influence that is pending against him or her at the time of his or commitment to a county jail under the 2011 Realignment Act.

Custodial Officers: Training Requirements

All peace officers in California are required to complete a mandated basic training course which is certified by the Commission on Peace Officers Standards and Training (POST). Additionally, the peace officer must pass an examination. Once the officer completes the course and satisfactorily passes the examination, the officer must become a peace officer within three years of passing the examination, and may not have a break in service of three years of longer. If the officer does not become employed as a peace officer, or has the proscribed break in service they must repeat the training and retake the examination.

Some officers who complete the full basic training course for peace officers and pass the examination are assigned to custodial officer positions. These positions may also be filled by officers who complete a significantly less strenuous training course, and thus they do not have the full powers of peace officers. Since these positions are not "patrol" positions, the officers who have completed full training experience a lapse in their full peace officer status and must re-train and pass the examination after three years in a custodial position. However, many counties only hire fully trained peace officers for the same custodial positions so their officers are considered peace officers will the full powers permitted under Penal Code § 832 and they do not experience a lapse in status. Therefore, a fully trained peace officer who is hired in Marin County and employed as a custodial officer will not have to re-train if he or she later decides to transfer to a patrol position. While at the same time, a fully trained peace officer who is hired in Kings County as a custodial officer will have to re-train after three years because their peace officer status as lapsed.

AB 1168 (Salas), Chapter 207, exempts a custodial peace officer, who has completed the regular basic course and has maintained his or her perishable skills training, from requalification requirements if he or she has been continuously employed as a custodial peace officer for a period not exceeding five years by the agency appointing that officer to a non-custodial position.

Prisoners: Medical Treatment

The California Department of Corrections and Rehabilitation (CDCR) has a growing population of elderly inmates, a population with varied and complex needs, and which has the largest share of complicated and acute medical conditions. Because this population is growing, it is becoming more common for inmates to develop conditions that render them temporarily or permanently incapacitated. This has created legal dilemmas for inmates, family members, and prison administrators. Under current law, when an inmate suffers a stroke or develops dementia during a prison term, existing legal avenues under the Probate Code for obtaining consent to release information to relatives or to obtain consent for a proposed course of treatment do not anticipate the needs of an incapacitated person in a correctional setting. A readily available process is needed to ensure that an appropriate, qualified person is designated to act on behalf of a medically or mentally compromised inmate.

AB 1423 (Stone), Chapter 381, creates a process for an administrative hearing to determine a healthcare decision maker for incarcerated persons who lack the capacity to make their own healthcare decisions. Specifically, this new law:

- Provides, subject to enumerated exceptions, that an adult housed in state prison is presumed to have the capacity to give informed consent and make a healthcare decision, to give or revoke an advance healthcare directive, and to designate or disqualify a surrogate. This presumption is a presumption affecting the burden of proof.

- States that, subject to specified existing exceptions related to administration of psychiatric medications, a licensed physician or dentist may file a petition with the Office of Administrative Hearings to request that an administrative law judge make a determination as to a patient's capacity to give informed consent or make a healthcare decision, and request appointment of a surrogate decision maker, if all of the following conditions are satisfied:

    - The licensed physician or dentist is treating a patient who is an adult housed in state prison;

    - The licensed physician or dentist is unable to obtain informed consent from the inmate patient because the physician or dentist determines that the inmate patient appears to lack capacity to give informed consent or make a healthcare decision; and,

- There is no person with legal authority to provide informed consent for, or make decisions concerning the healthcare of, the inmate patient.

- Provides that in appointing a surrogate decision maker, preference shall be given to the next of kin or a family member as a surrogate decision maker over other potential surrogate decision makers unless those individuals are unsuitable or unable to serve.

- Provides that the petition shall allege all of the following:

  - The inmate patient's current physical condition, describing the healthcare conditions currently afflicting the inmate patient;

  - The inmate patient's current mental health condition resulting in the inmate patient's inability to understand the nature and consequences of his or her need for care such that there is a lack of capacity to give informed consent or make a healthcare decision;

  - The deficit or deficits in the inmate patient's mental functions as listed as specified in the Probate Code;

  - An identification of a link, if any, between the deficits identified and an explanation of how the deficits identified that result in the inmate patient's inability to participate in a decision about his or her healthcare either knowingly and intelligently or by means of a rational thought process;

  - A discussion of whether the deficits identified are transient, fixed, or likely to change during the proposed year-long duration of the court order;

  - The efforts made to obtain informed consent or refusal from the inmate patient and the results of those efforts;

  - The efforts made to locate next of kin who could act as a surrogate decision maker for the inmate patient. If those individuals are located, all of the following shall also be included, so far as the information is known:

    - The names and addresses of the individuals;

    - Whether any information exists to suggest that any of those individuals would not act in the inmate patient's best interests; and

    - Whether any of those individuals are otherwise suitable to make healthcare decisions for the inmate patient.

  - The probable impact on the inmate patient with, or without, the appointment of a surrogate decision maker;

- A discussion of the inmate patient's desires, if known, and whether there is an advance healthcare directive, physicians orders for life sustaining treatment (POLST), or other documented indication of the inmate patient's directives or desires and how those indications might influence the decision to issue an order. Additionally, any known POLST or advanced health care directives executed while the inmate patient had capacity shall be disclosed; and,

- The petitioner's recommendation specifying a qualified and willing surrogate decision maker, and the reasons for that recommendation.

- States that the petition shall be served on the inmate patient and his or her counsel, and filed with the Office of Administrative Hearings on the same day as it was served. The Office of Administrative Hearings shall issue a notice appointing counsel.

- Provides at the time the initial petition is filed, the inmate patient shall be provided with counsel and a written notice advising him or her of all of the following:

  - His or her right to be present at the hearing;

  - His or her right to be represented by counsel at all stages of the proceedings;

  - His or her right to present evidence;

  - His or her right to cross-examine witnesses;

  - The right of either party to seek one reconsideration of the administrative law judge's decision per calendar year;

  - His or her right to file a petition for writ of administrative mandamus in superior court; and

  - His or her right to file a petition for writ of habeas corpus in superior court with respect to any decision.

- States that counsel for the inmate patient shall have access to all relevant medical and central file records for the inmate patient, but shall not have access to materials unrelated to medical treatment located in the confidential section of the inmate patient's central file. Counsel shall also have access to all healthcare appeals filed by the inmate patient and responses to those appeals, and, to the extent available, any habeas corpus petitions or healthcare related litigation filed by, or on behalf of, the inmate patient.

- States that the inmate patient shall be provided with a hearing before an administrative law judge within 30 days of the date of filing the petition, unless counsel for the inmate patient agrees to extend the date of the hearing.

- Provides that the inmate patient, or his or her counsel, shall have 14 days from the date of filing of any petition to file a response to the petition, unless a shorter time for the hearing is sought by the licensed physician or dentist and ordered by the administrative law judge, in which case the judge shall set the time for filing a response. The response shall be served to all parties who were served with the initial petition and the attorney for the petitioner.

- Provides that in case of an emergency, the inmate patient's physician or dentist may administer a medical intervention that requires informed consent prior to the date of the administrative hearing. Counsel for the inmate patient shall be notified by the physician or dentist.

- Provides that in either an initial or renewal proceeding, the inmate patient has the right to contest the finding of an administrative law judge authorizing a surrogate decision maker by filing a petition for writ of administrative mandamus.

- States that in either an initial or renewal proceeding, either party is entitled to file one motion for reconsideration per calendar year following a determination as to an inmate patient's capacity to give informed consent or make a healthcare decision.

- Provides that to renew an existing order appointing a surrogate decision maker, the current physician or dentist, or a previously appointed surrogate decision maker shall file a renewal petition. The renewal shall be for an additional year at a time. The renewal hearing on any order issued under this section shall be conducted prior to the expiration of the current order, but not sooner than 10 days after the petition is filed, at which time the inmate patient shall be brought before an administrative law judge for a review of his or her current medical and mental health condition:

    - Specifies that a renewal petition shall be served on the inmate patient and his or her counsel, and filed with the Office of Administrative Hearings on the same day as it was served. The Office of Administrative Hearings shall issue a written order appointing counsel;

    - Provides that the renewal hearing shall be held as specified;

    - States that at the time the renewal petition is filed, the inmate patient shall be provided with counsel and a written notice advising him or her of all of the following:

        - His or her right to be present at the hearing;

        - His or her right to be represented by counsel at all stages of the proceedings;

        - His or her right to present evidence;

- His or her right to cross-examine witnesses;
- The right of either party to seek one reconsideration of the administrative law judge's decision per calendar year; and
- His or her right to file a petition for writ of administrative mandamus in superior court.
- His or her right to file a petition for writ of habeas corpus in superior court with respect to any decision.

- Specifies that counsel for the inmate patient shall have access to all relevant medical and central file records for the inmate patient, but shall not have access to materials unrelated to medical treatment located in the confidential section of the inmate patient's central file. Counsel shall also have access to all healthcare appeals filed by the inmate patient and responses to those appeals, and, to the extent available, any habeas corpus petitions or healthcare related litigation filed by, or on behalf of, the inmate patient;
- States that the renewal petition shall request the matter be reviewed by an administrative law judge, and allege all of the following:
  - The current status of each of the elements requiring notification of rights of the patient;
  - Whether the inmate patient still requires a surrogate decision maker; and
  - Whether the inmate patient continues to lack capacity to give informed consent or make a healthcare decision.

Corrections: Alternative Custody Program

SB 1266 (Liu), Chapter 664, Statutes of 2011, authorized the California Department of Corrections and Rehabilitation (CDCR) to create an Alternative Custody Program (ACP) for specified inmates, including female inmates, pregnant inmates, or inmates who were the primary caregiver immediately prior to incarceration. Inmates must not have committed a serious or violent felony, been required to register as a sex offender, been determined to pose a high risk to commit a violent offense by a validated risk assessment tool, or have a history of escape within the last 10 years in order to be eligible for this program.

ACP, while effective, has gone under-utilized. Since being implemented in 2011, 7,200 applications have been submitted, with only 460 offenders being approved to participate in the program. Of those 460 women, 90% have successfully completed the program. Offering inmates rehabilitative settings in the community represents a cost savings for California.

SB 219 (Liu), Chapter 762, provides that an inmate's psychiatric or medical condition is not a basis for excluding an inmate from CDCR's voluntary ACP, and establishes timelines for the processing of applications to participate in the program. Specifically, this new law:

- Provides that an inmate's existing psychiatric condition or medical condition that requires ongoing care is not a basis for excluding the inmate from the CDCR's voluntary ACP program.

- Prescribes specific time lines for, among other things, notice to the inmate of the receipt of the application to participate in the alternative custody program, notice of the eligibility criteria of the program, and written notice to the inmate of his or her acceptance or denial into the program. If an applicant is found potentially eligible for the program, an individualized treatment program shall be developed in consultation with the inmate. If the inmate is denied participation in the program, the notice of denial shall specify the reason the inmate was denied.

- Requires CDCR to maintain a record of the application and notice of the denials of participation in the alternative custody program, and allows an inmate, after denial of an application, to reapply for participation in the program, or appeal the decision through normal grievance procedures.

- Require CDCR to assist individuals participating in the alternative custody program in obtaining health care coverage, including, but not limited to Medi-Cal benefits.

Parole Hearings

Under existing law, the Board of Parole Hearings (BPH) holds hearings to determine if an inmate serving a life sentence is suitable for parole. However, because of the confusing, convoluted way parole dates are calculated, an inmate can remain in prison several years after BPH deems him or her suitable.

Currently, BPH holds an initial suitability hearing for an inmate one year before his or her minimum eligibility parole date. If the inmate is found suitable for parole, BPH then calculates the inmate's "base term." The base term is the first step in determining the amount of time before an inmate is paroled. It is determined using a bi-axial matrix that calculates how much time in prison an inmate deserves based on the circumstances of the crime he or she committed. In addition to the time dictated by the base term, BPH can add enhancements for the use of a firearm, or offenses other than the original life sentence. The result is the "adjusted base term."

At a subsequent parole hearing, BPH further adjusts the adjusted base term, which was calculated using these enhancements. It does so by giving an inmate post-conviction credits for the amount of time he or she has already served in prison. The adjusted base term minus post-conviction credits determines the calculated release date. If that date is in the future, the inmate must serve more time before being paroled.

SB 230 (Hancock), Chapter 470, allows inmates serving life sentences who are found suitable for parole, to be paroled as specified. Authorizes the Governor to request a review of a decision by the board to grant or deny parole at any time before the inmate's scheduled release. Specifically, this new law:

- Requires a panel of two or more commissioners or deputy commissioners to meet with each inmate one year before the inmate's minimum eligible parole date in order to grant or deny parole, as specified.

- Provides that an inmate found suitable for parole shall be paroled subject to review by the Governor.

- Specifies that any time before an inmate's release the Governor can request a review of parole suitability.

- Requires an inmate found suitable for parole not be released prior to his or her minimum eligible parole date, unless eligible for an earlier release as a youthful offender.

Youthful Offenders: Parole Hearings

In 2013, the Governor signed SB 260 recognizing that young people are different from adults and deserve special consideration in the parole process. This law was codified in California Penal Code § 3051, providing individuals who were under the age of 18 at the time of their crime and have served between 15 and 25 years in prison, the opportunity to demonstrate accountability and rehabilitation to the parole board. This law was based on the research and evidence that the brain is still developing into early adulthood, particularly in the regions of the brain affecting judgment, emotion regulation, decision-making, and long-term consequences.

Recent neurological research shows that cognitive brain development continues well beyond age 18 and into early adulthood. For boys and young men in particular, this process continues into the mid-20s. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability.

SB 261 (Hancock), Chapter 471, expands the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 18 years of age, to include those who have committed their crimes before attaining the age of 23. Specifically, this new law:

- Provides that those with indeterminate sentences who are eligible for a youth offender parole hearing on the effective date of this bill shall have their hearing by July 1, 2017.

- States that those with determinate sentences who are eligible for a youth offender parole hearing on the effective date of this bill shall have their hearing by July 1, 2021, and shall have their consultation with the Board of Parole before July 1, 2017.

Corrections: Librarians

The California Rehabilitation Oversight Board (C-ROB) is required to regularly examine and annually report to the Governor and the Legislature regarding rehabilitative programming provided to inmates and parolees by the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 6141.) In its last report issued September 2014, C-ROB noted the following regarding CDCR libraries:

"The current vacancy rate for CDCR librarians is approximately 25 percent. Libraries are a fundamental program support area for literacy, reentry resources, continuing education, tutoring, legal research, and recreational reading. Many librarians from non-reentry institutions have independently created reentry binders for inmates containing information on housing, employments, social services agencies, family services, and other reentry information specific to counties in California. Not all institutions offer this type of service, yet inmates are released from non-reentry institutions on a regular basis. Libraries are a logical nexus to find information specific to the county the inmate will be released, regardless of whether the inmate is released under county supervision or assigned to a parole agent. The C-ROB report noted that there were 87 budgeted librarian positions, but only 68 filled. C-ROB recommended that CDCR "develop a strategy to address the chronic staffing shortages of CDCR librarians across the state."

SB 343 (Hancock), Chapter 798, requires CDCR to strongly consider the use of libraries and librarians in its literacy programs. Specifically, this new law:

- Requires CDCR, in complying with its goals to reduce illiteracy, to give strong consideration to the use of libraries and librarians in its prison literacy programs.

- Repeals provisions of law concerning the fiscal formula supporting the academic education program for inmates.

- Includes the completion of a community college or four-year academic degree by an inmate in the existing requirement that CDCR incentivize inmate participation in educational programming.

Supervised Release

Prior to the implementation of criminal justice realignment under AB 109, the California Department of Corrections and Rehabilitation (CDCR) had the authority to issue arrest warrants for parole violations along with issuing and recalling parole holds. While the courts were given the statutory authority to issue arrest warrants for parole violations under realignment, the legislation failed to give explicit statutory authority for the courts to recall a parole hold. Without this statutory authority, a supervising parole or probation officer has the sole authority over custody decisions of a supervised individual in jail on a parole hold.

Courts need the discretion to determine the custody status of an individual on probation, parole, or post release community supervision (PRCS) who is placed in county jail on a parole hold for violating their terms of supervision. This measure will correct an oversight of realignment and ensure that courts have the same authority CDCR had prior to realignment.

SB 517 (Monning), Chapter 61, authorizes a court to release from custody a person on probation, mandatory supervision, PRCS, or parole, who is alleged to have violated the terms of supervision under any terms and conditions the court deems appropriate, unless the person is serving a period of flash incarceration.

Youthful Offenders: Parole Hearings

SB 519 is a technical cleanup bill for SB 261 by Senator Hancock, which was approved on a bipartisan vote. The Administration had some concerns with the implementation deadlines in that bill.

SB 519 addressed the Administration's concern by adding an additional six months to that bill's deadlines.

SB 519 (Hancock), Chapter 472, requires the board of parole hearings (BPH) to complete all youthful offender parole hearings by specified dates. Specifically, this new law:

- Requires the BPH to complete all youthful offender parole hearings for eligible individuals serving indeterminate life terms by January 1, 2018.

- Requires the BPH to complete all youthful offender parole hearings for eligible individuals serving determinate terms by December 31, 2021, and to conduct requisite consultations by January 1, 2018.

- Makes these provisions operative contingent upon the enactment of SB 261 (Hancock) of the current legislative session, which expands the youth offender parole process.

Corrections: Reports

In March of 2004, then-Governor Schwarzenegger announced the creation of an "Independent Review Panel" ("IRP") led by former Governor George Deukmejian to examine ways to improve adult and youth corrections in California. In June of 2004 the IRP released its report, urging in part the establishment of "a system of accountability that includes performance measures by which to evaluate employees and monitor levels of achievement."

Comstat (short for "computer statistics") is an organizational management tool modeled after the Los Angeles and the New York Police Departments to monitor and reduce crimes and is easily accessible to the public. In 2006, the California Department of Corrections and Rehabilitation

(CDCR) designed and implemented Compstat to monitor and provide operational review of prisons, parole, and CDCR as a whole. As part of Governor Schwarzenegger's government transparency efforts in 2009, the Compstat reports were moved from the CDCR's Web site and made available on the Reporting Transparency on Government's Web site; however, the Compstat reports and audits are hard for the public to find and view, and are among the thicket of reports on that site. In addition, the Compstat audits and reports are non-descriptive and difficult to understand.

SB 601 (Hancock), Chapter 162, requires the Secretary of the CDCR to develop a Corrections Accountability Report on January 10, March 15, and a fiscal year-end report, containing specified information regarding each institution, including, among other information, the total budget, including actual expenditures, staff vacancies and the number of authorized staff positions, overtime, sick leave, and the average length of lockdowns, and to post those reports on CDCR's Web site, as provided. Specifically, this new law:

- Provides that the Secretary of the CDCR shall develop a Corrections Accountability Report for each institution on January 10, March 15, and a fiscal year-end report and post those reports on the department's Web site. CDCR shall post both current fiscal-year reports and reports for the immediately preceding three fiscal years for each institution. CDCR shall also post corrections made to inaccurate or incomplete data to current or previous reports.

- Specifies that each report shall include the three-year statewide recidivism rate, a brief biography of the warden, including whether he or she is an acting or permanent warden, contact information for the warden, and a brief description of the prison, including the total number of inmates.

- Specifies that each report shall be created using, when possible, information collected using the Compstat reports for each prison, or other verifiable information collected by the department, and shall include, but not be limited to, all of the following indicators:

    - Total budget, including actual expenditures, staff vacancies, overtime, sick leave, and number of authorized staff positions;

    - Rehabilitation programs, including capacity, enrollment, and diploma and GED completion rate;

    - Average length of lockdowns;

    - Number of deaths, specifying homicides, suicides, unexpected deaths, and expected deaths;

    - Number of use of force incidents;

- Number of inmate appeals, including the number being processed, overdue, and dismissed;

- Number of inmates in administrative segregation; and,

- Total contraband seized, specifying the number of cellular telephones.

Indemnification: Erroneously Convicted Persons

AB 1799 (Baugh), Chapter 630, Statutes of 2000, increased potential compensation for wrongful incarceration from a maximum of $10,000 to a sum of $100 per day for each day spent incarcerated. That level of compensation has not been adjusted for inflation in nearly two decades.

SB 635 (Nielsen), Chapter 422, increases the compensation for innocent persons who were wrongly convicted from $100 per day of wrongful incarceration to $140 per day, and deletes the existing requirement that a wrongly convicted person sustain a pecuniary loss in order to receive compensation.

COURT HEARINGS

Criminal Profiteering: Counterfeit Goods

Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Often, the same jury who heard the criminal charges also determines whether the defendant's assets were the ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime.

It was the intent of the Legislature, when enacting the criminal asset forfeiture law, to punish and deter criminal activities of organized crime through the forfeiture of profits acquired and accumulated as a result of such criminal activities. Criminal asset forfeiture is allowed upon conviction of more than 30 crimes, including extortion, pimping and pandering, robbery, grand theft, trafficking in controlled substance, money laundering, and offenses related to counterfeiting. Proceeds can be forfeited if the proceeds were gained through a pattern of criminal activity and were gained through involvement in organized crime.

AB 160 (Dababneh), Chapter 427, expands the list of crimes that allow for forfeiture of assets and prosecution of criminal profiteering and broadens the definition of criminal profiteering by broadening the organized crime element to include other specified offenses. Specifically, this new law:

- Adds piracy of musical or audiovisual works, and unemployment insurance fraud to the list of crimes for which criminal asset forfeiture is authorized.

- Expands the definition of "organized crime" for purposes of criminal asset forfeiture to include pimping and pandering, loan-sharking, trademark counterfeiting, the piracy of a recording or audiovisual work, embezzlement, securities fraud, unemployment insurance fraud, grand theft, money laundering, and forgery.

- Defines a "retail sale" or "sale at retail" to include any sale by a convicted seller of tangible personal property with a counterfeit label or an illicit label.

- Provides that "storage" and "use" include a purchase by a convicted purchaser of tangible personal property with a counterfeit label or an illicit label.

- Defines "counterfeit label" and "illicit label" as "a label that appears to be genuine but is not, and a genuine label that a person uses without authorization respectively."

Criminal Procedure: Felony County Jail Commitments

The 2011 Realignment Act allowed certain low level non-violent offenders convicted of a felony to be sentenced to the county jail. However, the Realignment Act contained several discrepancies and inconsistencies in the treatment of persons convicted of a felony and sentenced

to state prison and those sentenced to the county jail.

AB 1156 (Brown), Chapter 378, conforms various provisions of law relating to persons convicted of a felony and sentenced to the state prison, and applies them to persons convicted of a felony and sentenced to a county jail under the 2011 Realignment Act. Specifically, this new law:

- Clarifies that in any case where the pre-imprisonment credit of a person sentenced to the county jail under the 2011 Realignment Act exceeds any sentence imposed, the entire sentence shall be deemed to have been served, except for the remaining portion of mandatory supervision, and the defendant shall not be delivered to the custody of the county correctional administrator.

- Provides that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

- Extends provisions related to the compassionate release of a state prison inmate, who is terminally ill, to an inmate sentenced to a county jail under the 2011 Realignment Act.

- Clarifies that a person released from the state prison on post release community supervision shall be supervised by the probation department of the county to which the person is released, and requires that the inmate be informed of his or her duty to report to the county probation department upon release.

- Extends the right to petition for a certificate of rehabilitation and pardon to persons convicted of a felony and sentenced to a county jail under the 2011 Realignment Act. Makes additional non-substantive changes, conforming changes, and deletes obsolete provisions.

- Provides that a person shall not be subject to prosecution for a non-felony offense arising out of a violation in the California Vehicle Code, with the exception of driving under the influence that is pending against him or her at the time of his or commitment to a county jail under the 2011 Realignment Act.

Withholding Exculpatory Evidence

The United States Supreme Court has made clear that prosecutors are required by the Constitution to provide the defense with all evidence that may be favorable to a defendant. "A prosecutor that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not

comport with standards of justice." (*Brady v. Maryland* (1963) 373 U.S. 83, 88.) In addition, prosecutors are required to ensure that law enforcement officers involved in the case also provide all evidence in their possession that may be favorable to the defense.

There is a growing problem with prosecutorial misconduct throughout the country and in California. As recently as this February, 9th Circuit Judge Alex Kozinski has described rampant Brady violations as a growing "epidemic." Judge Kozinski says that judges must put a stop to such injustice.

AB 1328 (Weber), Chapter 467, requires the court to notify the State Bar if a prosecuting attorney has intentionally or knowingly failed to disclose relevant exculpatory evidence, as specified, and authorizes the court to disqualify the prosecuting attorney from the case, and the prosecuting attorney's office if other employees in the office knowingly participated in, or sanctioned the withholding of the exculpatory evidence. Specifically, this new law:

- Provides that if a court determines that a prosecuting attorney has deliberately and intentionally withheld relevant exculpatory material or information in violation of the law, the court shall notify the State Bar of California if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or if identified prior to the conclusion of trial seriously limited the ability to present a defense.

- Authorizes a court, upon its own motion, to disqualify a prosecuting attorney from a case, if he court determines that prosecutor deliberately and intentionally withheld relevant exculpatory material or information in violation of the law and that the prosecuting attorney acted in bad faith.

- Allows a court to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly participated in, or sanctioned the withholding of the relevant exculpatory material or information and that withholding is part of a pattern or practice of violations.

- States that these provisions do not limit the authority or discretion of the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, remedies, or actions.

Criminal Dispositions: Consideration of Immigration Consequences

In *Padilla v. Kentucky* (2010) 559 U.S. 356, the U.S. 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. California courts have long since held the same, including that defense counsel must investigate, advise, and defend against, potential adverse immigration consequences of a proposed disposition.

In order for the consideration of immigration consequences to result in meaningful change, it is important for both the prosecution and defense to consider immigration consequences in plea negotiations. The U.S. Supreme Court stated that "informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties."

> **AB 1343 (Thurmond), Chapter 705,** requires defense counsel to provide accurate advice of the potential immigration consequences of a proposed disposition and attempt to defend against those consequences. Requires the prosecution and defense counsel contemplate immigration consequences in the plea negotiation process. Specifically, this new law:
>
> - Requires defense counsel to provide accurate and affirmative advice of the potential immigration consequences of a proposed disposition and to defend against those consequences, consistent with the goals of the defendant.
>
> - Requires that prosecution, in the interests of justice, to consider immigration consequences in the plea negotiation process as one factor to reach a just resolution.

Deferred Entry of Judgment: Withdrawal of Plea

Deferred entry of judgment (DEJ) provides an opportunity for non-violent drug offenders to participate in drug treatment programming and probation supervision rather than being imprisoned. Participation in a DEJ program requires a defendant to enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of the program or other conditions. If the defendant successfully completes DEJ, the charges are dismissed and the arrest shall be deemed to never have occurred.

A defendant who completes DEJ and has his or her case dismissed cannot have the offense used against him or her to deny any employment benefit, license or certificate unless the defendant consents to the release of his or her record. (Pen. Code, § 1000.3.) The purpose of dismissal upon successful completion of DEJ is to allow offenders to take advantage of having a clean record so that they can get or retain jobs become, or remain, productive members of society. However, a dismissal after completion of a DEJ program for a drug related offense may subject an immigrant defendant to immigration consequences such as deportation. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.) This is because the guilty plea remains on a person's record and counts as a "conviction" for certain purposes under federal law.

AB 1352 (Eggman), Chapter 646, allows any person who successfully completed a DEJ drug treatment program and obtained dismissal of the underlying drug charges to withdraw his or her guilty or nolo contendere plea and enter a not guilty plea. Specifically, this new law:

- Applies to cases in which a defendant was granted DEJ on or after January 1, 1997.
- States that upon entering a not guilty plea based on prior successful completion of DEJ and subsequent dismissal of the underlying charges, the court shall dismiss the complaint or information against the defendant.
- Provides that if court records showing the case resolution are no longer available, the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements for DEJ, shall be presumed to be true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the DEJ program or that the record is incomplete in that it does not show a final disposition.
- Defines "final disposition" to mean that the state summary criminal history information shows either a dismissal after completion of the program or a sentence after termination of the program.

Controlled Substances: Factors in Aggravation

The manufacture of methamphetamine and butane honey oil poses significant risks to residents and school aged children in the areas surrounding the locations where these crimes take place. Mixing chemicals in clandestine labs is an inherently dangerous activity that creates substantial risk of explosions, fires, chemical burns, and toxic fume inhalation from the off-gassing of chemical compounds. These risks extend well beyond the walls of the lab itself, placing nearby residents, students, and property in danger.

SB 212 (Mendoza), Chapter 141, provides that where a defendant is convicted of manufacturing methamphetamine or concentrated cannabis by chemical extraction within a specified distance of an occupied residence or a structure where another person was present at the time the offense was committed, the sentencing court may consider that fact as a factor in aggravation. Specifically, this new law:

- Provides that if methamphetamine is manufactured, compounded, converted, produced, derived, processed, or prepared within 200 feet of an occupied residence or any structure where another person was present at the time the offense was committed, a sentencing court may consider that fact as a factor in aggravation.
- States that if concentrated cannabis is chemically extracted by means of a volatile solvent within 300 feet of an occupied residence or any structure where another

person was present at the time the offense was committed, a sentencing court may consider that fact as a factor in aggravation.

Juveniles: Jurisdiction

Generally, persons under the age of 18 who are alleged to have committed a crime are within the jurisdiction of the juvenile court. However, current law allows minors as young as 14 to be charged as adults. Some youth may be direct filed by prosecutors, bypassing the courts, while other youth must go through a fitness hearing where a judge makes the determination to remove the youth from juvenile proceedings into adult court, or keep the youth in juvenile court.

Current law requires judges to apply five criteria to make this determination. These five criteria include (1) the degree of criminal sophistication exhibited by the minor; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) the minor's previous delinquent history; (4) success of previous attempts by the juvenile court to rehabilitate the minor; and, (5) the circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subds. (a) & (c).)

These criteria are outdated and not based on recent case law or cognitive science that recognizes that juveniles are more able to reform and become productive members of society, if allowed to access the appropriate rehabilitation. The juvenile court system is focused on rehabilitation and provides far more support and opportunities for juvenile offenders compared to adult criminal facilities. Updating the current criteria to allow judges to consider the actual behavior of the individual and their ability to grow, mature, and be rehabilitated would ensure that judges make this important determination with a full picture of the individual.

SB 382 (Lara), Chapter 234, adds guidance to the existing criteria used by judges in determining the fitness of a minor to have his or her case adjudicated in juvenile court. Specifically, this new law:

- Specifies that, as to the degree of criminal sophistication exhibited by the minor, the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

- Provides that, in evaluating whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction, the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

- Provides that, as to the minor's previous delinquent history, the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and

community environment and childhood trauma on the minor's previous delinquent behavior.

- Specifies that, in evaluating the success of previous attempts by the juvenile court to rehabilitate the minor, the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

- Specifies that, as to the circumstances and gravity of the offense alleged in the petition, the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

- Revises the five criteria that a juvenile must demonstrate to the court when requesting a juvenile court disposition in his or her case, which was initiated in adult criminal court without a prior finding that the person was not fit for juvenile court, to add the same discretionary factors above.

Failure to Appear in Court: Fines

Existing law authorizes the court, in addition to any other penalty in an infraction, misdemeanor, or felony case, to impose a civil assessment of up to $300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law, or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified. Existing law provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant, and requires the court, if the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment.

Due to increases in fines and fees, a staggering number of Californians have no access to courts when they are cited for traffic citations. Exorbitant fees can make it challenging for low-income people to resolve minor traffic infractions since many counties require fines to be paid prior to a hearing on the infraction. As a result of unclear policy and high fees, drivers often do not have the opportunity to see a judge and essentially lose the right to due process.

SB 405 (Hertzberg), Chapter 385, requires courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed. Specifically, this new law:

- Specifies that the ability to post bail or to pay the civil assessment shall not prevent a person from filing a request that the court vacate the assessment.

- States that imposition or collection of a civil assessment or bail shall not prevent a defendant from scheduling a court hearing on the underlying charge.

- Specifies that an assessment imposed because a person failed to appear in court, or pay a fine as ordered by the court, not go into effect until at least 20 calendar days after the court mails warning notice to the person.

- Makes a person ineligible for the traffic amnesty program if they have made any payments to a court comprehensive-collection program after September 30, 2015.

State Hospitals: Involuntary Medication

Under current law, a defendant must be competent to stand trial. If the defendant is not competent, he or she may be placed on antipsychotic medication. The treating psychiatrist must make efforts to gain consent from the defendant. If these efforts fail and it is deemed medically necessary and appropriate, the treating psychiatrist can place an involuntary medication order on the defendant and require him or her to take medications without his or her consent. Before the defendant can be involuntarily placed on antipsychotic medications, a hearing must take place where the treating psychiatrist testifies and certifies that the antipsychotic drug(s) is necessary. If the judge agrees with the certification, then the court will issue an order for the administration of the involuntary medication for a period up to 21 days. A separate hearing is needed to extend the involuntary medication order.

In May 2013 and July 2014, it became more apparent that the Department of State Hospital (DSH) psychiatrists were being assaulted or seriously injured following their testimony in involuntary medication hearings. To help reduce the number of injuries, the DSH proposed legislation that would allow non-treating psychiatrist to testify at those hearings and expand the time superior courts could schedule a hearing.

SB 453 (Pan), Chapter 260, allows appointment of an acting psychiatrist to seek an order for involuntary medication of a person who is incompetent to stand trial based on the need to maintain the doctor-patient relationship or to prevent harm. Specifically, this new law:

- Allows the treating psychiatrist of a person that is incompetent to stand trial to request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist to testify at a hearing on the involuntary administration of medication, based on a need to preserve his or her rapport with the patient, or to prevent harm.

- Requires that if the medical director of the facility designates another psychiatrist to testify at a hearing on the involuntary administration of medication the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the patient prior to the hearing.

Courts: Record Sealing

Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst.

Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court "five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18." (*Ibid.*) Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. (*Ibid.*) The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. (*Ibid.*) For minors who are convicted of a misdemeanor in adult court, Penal Code section 1203.45 authorizes sealing of such records.

Current law provides that a parent, spouse, or other person liable for the support of a minor, the minor when he or she becomes an adult, or the estates of those persons, is liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records. The fee to petition the court to seal records can cost up to $150 which the person must pay at the time of filing the petition. This fee and costs of investigation create an obstacle for many people who would otherwise be eligible to have their record sealed, especially youth who cannot find employment or housing due to a prior criminal record.

SB 504 (Lara), Chapter 388, provides that only a person 26 years of age or older may be charged a fee for petitioning the court for an order sealing his or her record. Specifically, this new law:

- States that only a person who is 26 years of age or older shall, unless indigent, be liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records.

- Prohibits an unfulfilled order of restitution that has been converted to a civil judgment from barring the sealing of a record.

- States that outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record.

- Provides that a court is not prohibited from enforcing a civil judgment for an unfulfilled order of restitution and a minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

- Specifies that a victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed and the juvenile court shall have access to any records sealed pursuant to the provisions in this bill for the limited purposes of enforcing a civil judgment or restitution order.

Supervised Release

Prior to the implementation of criminal justice realignment under AB 109, the California Department of Corrections and Rehabilitation (CDCR) had the authority to issue arrest warrants for parole violations along with issuing and recalling parole holds. While the courts were given the statutory authority to issue arrest warrants for parole violations under realignment, the legislation failed to give explicit statutory authority for the courts to recall a parole hold. Without this statutory authority, a supervising parole or probation officer has the sole authority over custody decisions of a supervised individual in jail on a parole hold.

Courts need the discretion to determine the custody status of an individual on probation, parole, or post release community supervision (PRCS) who is placed in county jail on a parole hold for violating their terms of supervision. This measure will correct an oversight of realignment and ensure that courts have the same authority CDCR had prior to realignment.

> **SB 517 (Monning), Chapter 61,** authorizes a court to release from custody a person on probation, mandatory supervision, PRCS, or parole, who is alleged to have violated the terms of supervision under any terms and conditions the court deems appropriate, unless the person is serving a period of flash incarceration.

Disorderly Conduct: Forfeiture

Current law authorizes pre-conviction forfeiture and destruction of matter that depicts persons under the age of 18 years personally engaging in or simulating sexual conduct when that matter is in the possession of a government entity. California law also authorizes the forfeiture of computer equipment and related software when a defendant is convicted of specified computer crimes, including computer access crimes, identity theft, forgery and fraud, possession and distribution of child pornography, criminal threats, and stalking. This law is meant to take away the tools of the trade. The property that is forfeitable is limited to specified telecommunications equipment, a computer, computer system, network, software, or data residing on it.

Disorderly conduct, including revenge porn, is not currently included in the list of computer crimes subject to forfeiture, and there is currently no effective mechanism for removing images that have been found to be in violation of cyber-exploitation laws before the defendant is convicted.

> **SB 676 (Canella), Chapter 291,** creates a process for pre-conviction forfeiture and destruction of images which are the subject of disorderly conduct cases, and allows computers and electronic devices used in the commission of those crimes to be subject to forfeiture after a conviction is obtained. Specifically, this new law:
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> - States that matter, as defined, obtained or distributed in violation of specified disorderly conduct offenses, including "revenge porn," and which is in the possession of a government official or agency is subject to forfeiture.

- Allows the Attorney General, district attorney, county counsel, or city attorney to initiate a forfeiture petition filed in the superior court in the county in which the matter is located.

- Adds disorderly conduct offenses to the list of offenses for which a computer may be subject to forfeiture upon a criminal conviction.

CRIME PREVENTION

Hit-and-Run: Yellow Alert

The National Highway Traffic Safety Administration reports that the number of hit-and-run accidents is increasing nationally. According to the AAA Foundation for Traffic Safety, one in five of all pedestrian fatalities involve hit-and-run accidents and 60% of hit-and-run fatalities have pedestrian victims. Additionally, USA Today writes that in 2013 an estimated 20,000 hit-and-run incidents occur each year in the City of Los Angeles alone and 4,000 of these incidents involved injuries or death.

Colorado recently enacted legislation that established an alert system that has been instrumental in locating hit and run suspects. There are a number of similar alert systems already in use in California. The first alert system developed in California was "Amber Alert", established by AB 415, (Runner) Chapter 517, Statutes of 2002, that authorized law enforcement agencies to use the digital messaging on overhead roadway signs to assist in recovery efforts for child abduction cases. Following on the success of the "Amber Alert" program, the "Blue Alert" and the "Silver Alert" notification systems were developed. The "Blue Alert" system, established by SB 839 (Runner), Chapter 311, Statutes of 2010, provides for public notification when a law enforcement officer has been attacked and the "Silver Alert" notification system, established by SB 1047 (Alquist), Chapter 651, Statutes of 2012, provides for public notification when a person age 65 years or older is missing. The "Silver Alert" system was recently broadened with the passage of SB 1127 (Torres) Chapter 440, Statutes of 2014, to include missing persons who are developmentally disabled or cognitively impaired.

AB 8 (Gatto), Chapter 326, authorizes a law enforcement agency to issue a "Yellow Alert" if a person has been killed or has suffered serious bodily injury due to a hit-and-run incident, and the law enforcement agency has specified information regarding the suspect or the suspect's vehicle. Specifically, this new law:

- Provides that if a hit-and-run incident is reported to a law enforcement agency and that agency determines that specified requirements are met, the agency may request the California Highway Patrol (CHP) to activate a Yellow Alert. If the CHP concurs that the specified requirements are met, it shall activate a Yellow Alert in the geographic area requested by the investigating agency.

- Defines a "Yellow Alert" to mean a notification system activated by the CHP, at the request of a local law enforcement agency, designed to issue and coordinate alerts with respect to a hit-and-run incident resulting in death or serious bodily injury to a person.

- Authorizes a law enforcement agency to request that a Yellow Alert be activated if the agency determines the following conditions are met in regard to the investigation of the hit-and-run incident:

- A person has been killed or has suffered serious bodily injury due to a hit-and-run incident;
- The investigating law enforcement agency has additional information concerning the suspect or the suspect's vehicle, including, but not limited to, any of the following:
  - The complete license plate number of the suspect's vehicle;
  - A partial license plate number and the make, model, and color of the suspect's vehicle; and,
  - The identity of the suspect.
- Public dissemination of available information could either help avert further harm or accelerate the apprehension of the suspect.

- States that radio, television, and cable and satellite systems are encouraged, but are not required, to cooperate with disseminating the information contained in a Yellow Alert.
- Requires the CHP, upon activation of a Yellow Alert, to assist the investigating law enforcement agency by issuing the Yellow Alert via a local digital sign.
- States that this section shall only remain in effect until January 1, 2019, unless a statute enacted before that date deletes or extends that date.

Prisons: Inmate Threats

In December 2014, the Division of Adult Institutions within the California Department of Corrections and Rehabilitation (CDCR) conducted a survey of its 35 adult institutions in an effort to determine which institutions have notification procedures for threats against staff. The survey inquired whether the institutions had established policies and procedures in place for inmate threats against an employee, either verbally or non-verbally. Out of the 35 institutions surveyed, 28 institutions had established local policies and procedures and the remaining seven institutions did not have localized procedures. The survey found that some institutions have notification procedures that are kept in the confidential section of their operations manual, while others do not. Of the institutions that do have notification procedures, some do not provide training to staff on these procedures.

AB 293 (Levine), Chapter 195, requires CDCR to establish a statewide policy on operational procedures for the handling of threats made by inmates, wards, or by the family members of inmates and wards, against CDCR staff. Specifically, this new law:

- Requires the policy to include methods to ensure that CDCR staff members are advised of threats made against them by inmates, wards, or the family members of

inmates and wards.

- Requires that all threats against CDCR staff made by inmates, wards, or the family members of inmates and wards be thoroughly investigated.

- Requires that a copy of the statewide policy be made accessible to members of the public, upon request.

- Does not prohibit an individual institution within CDCR from developing a more detailed notification procedure for advising staff members of threats made against them. If an individual institution has a more detailed policy, the policy is required to be accessible to every member of the staff of the institution.

- Requires CDCR to provide training on the policy developed pursuant to this law.

- States that the policy developed pursuant to this new law shall be fully implemented by July 1, 2016.

Student Safety: Reporting

Education Code section 67383 states that a report to law enforcement must be made without identifying the victim, unless the victim consents to being identified. If the victim does not consent to being identified, the alleged assailant cannot be identified in the information shared with the local law enforcement agency. While this provision is well intentioned, it would prohibit a university from sharing the name of the alleged assailant even under circumstances in which the university believes assistance from law enforcement is necessary to protect the student body and the broader campus community.

AB 636 (Medina), Chapter 697, provides specific circumstances under which a post-secondary institution must release an alleged assailant's name to local law enforcement. Specifically, this new law:

- Requires a postsecondary institution to disclose the identity of an alleged assailant to local law enforcement even if the victim does not consent to being identified if the institution determines that he or she represents a serious and ongoing threat to the safety of persons or the institution, and that the immediate assistance of law enforcement is necessary to contact or to detain him or her.

- Requires the institution to immediately inform the victim of that disclosure.

Student Safety: Sexual Assaults

The U.S. Department of Education's Office for Civil Rights is investigating 101 postsecondary institutions, including UC Berkeley, Stanford, UCLA, Occidental, UCSD, and USC, over their handling of sexual violence complaints under Title IX, the federal law that protects against discrimination in education. Complainants allege schools violated Title IX by failing to

thoroughly investigate sexual assaults, and others assert schools violated the Clery Act, a federal law requiring reporting of campus crime-by underreporting sex crimes.

Steps must be taken to ensure allegations of campus sexual assault are appropriately responded to and investigated. The White House Task Force to Protect Students from Sexual Assault recommended campus and local law enforcement agencies establish written agreements (MOUs) regarding campus sexual assault, stating that cooperation between campus and local law enforcement on sexual assault is critical.

AB 913 (Santiago), Chapter 701, provides for changes to the written jurisdictional agreements between postsecondary educational institutions and local law enforcement. Specifically, this new law:

- Requires the Trustees of the California State University, the Regents of the University of California, and the governing board of independent postsecondary institutions to update their existing written jurisdictional agreements with local law enforcement for investigation of Part 1 violent crimes to include sexual assaults and hate crimes by July 1, 2016, and requires agreements to be reviewed, and updated if necessary, every five years.

- Requires the governing board of each community college district (CCD) to adopt rules requiring each of their respective campuses to enter into written agreements; provides that upon adoption of such a rule, the CCD and its colleges shall be subject to those agreements; and, encourages the governing board of each CCD to adopt a rule requiring each of its respective campuses to update these agreements.

- Defines "hate crime" to mean any offense described in Penal Code Section 422.55; and, defines "sexual assault" to include, but not be limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of any of these.

- Deletes provisions requiring agreements be in place by July 1, 1999, and submitted to the Legislative Analyst by September 1, 1999.

- Provides for reimbursement if the State Mandates Commission determines that this act contains costs mandated by the state.

Grant Program: Supervised Population Workforce Training

Job skills training for the formerly incarcerated is one of the most critical tools that the State can implement to help insure that ex-offenders succeed post-release in supporting themselves and their families, and ultimately, avoid recidivating.

In 2014, the Legislature established the Supervised Population Workforce Training Grant Program to be administered by the California Workforce Investment Board. The program provides 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.

AB 1093 (E. Garcia), Chapter 220, modifies the criteria for the Supervised Population Workforce Training Grant Program to allow grant applicants to address the education and training needs of people who have some postsecondary education or individuals who require basic education, or people in both categories. Specifically, this new law:

- Revises program criteria to allow applicants to address either the education and training needs of individuals with some postsecondary education, or individuals who require basic education and training to obtain entry level jobs, instead of requiring the applicants to serve both education needs.

- Authorizes the California Workforce Investment Board to delegate the responsibility for determining the sufficiency of a prior assessment to one or more local workforce investment boards.

- Expands the content of the report to be given to the Legislature evaluating the Supervised Population Workforce Training Grant Program to include the following:

    - The education and workforce readiness of the supervised population at the time individual participants entered the program and how this impacted the types of services needed and offered; and,

    - Whether the metrics used to evaluate the individual grants were sufficiently aligned with the objectives of the program.

Corrections: Librarians

The California Rehabilitation Oversight Board (C-ROB) is required to regularly examine and annually report to the Governor and the Legislature regarding rehabilitative programming provided to inmates and parolees by the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 6141.) In its last report issued September 2014, C-ROB noted the following regarding CDCR libraries:

"The current vacancy rate for CDCR librarians is approximately 25 percent. Libraries are a fundamental program support area for literacy, reentry resources, continuing education, tutoring, legal research, and recreational reading. Many librarians from non-reentry institutions have independently created reentry binders for inmates containing information on housing, employments, social services agencies, family services, and other reentry information specific to counties in California. Not all institutions offer this type of service, yet inmates are released from non-reentry institutions on a regular basis. Libraries are a logical nexus to find information specific to the county the inmate will be released, regardless of whether the inmate is released under county supervision or assigned to a parole agent. The C-ROB report noted that there were 87 budgeted librarian positions, but only 68 filled. C-ROB recommended that CDCR "develop a strategy to address the chronic staffing shortages of CDCR librarians across the state."

SB 343 (Hancock), Chapter 798, requires CDCR to strongly consider the use of libraries and librarians in its literacy programs. Specifically, this new law:

- Requires CDCR, in complying with its goals to reduce illiteracy, to give strong consideration to the use of libraries and librarians in its prison literacy programs.

- Repeals provisions of law concerning the fiscal formula supporting the academic education program for inmates.

- Includes the completion of a community college or four-year academic degree by an inmate in the existing requirement that CDCR incentivize inmate participation in educational programming.

CRIMINAL JUSTICE PROGRAMS

Wrongful Convictions: Assistance Upon Release

When an exoneree is released from state prison, the individual is frequently released without access to reentry services. A 2008 report by the California Commission on the Fair Administration of Justice addressed some of the obstacles faced by persons who have established their innocence after the conviction of a crime in gaining access to post-conviction relief, achieving reintegration into society, and gaining compensation for their wrongful convictions. As to reintegration in particular, the report states:

"Ironically, even the limited resources made available to convicted felons who have served their sentences and are released from prison are not available to those whose convictions have been set aside. Parolees are released to the community in which they were arrested or convicted; services such as counseling and assistance in locating housing or jobs are limited to those who remain under parole supervision. But those who are being released because their conviction is set aside, including those who have been found innocent, receive none of these services. Those who have been released back into the community after successfully challenging their convictions, whether innocent or not, face the same obstacles encountered by parolees, and more."

AB 672 (Jones-Sawyer), Chapter 403, requires the California Department of Corrections and Rehabilitation (CDCR) to provide transitional services to exonerated persons upon their release. Specifically, this new law:

- Requires CDCR to assist an individual who was exonerated and has been released with transitional services, including housing assistance, job training, and mental health services, for a minimum of six months and a maximum of one year after the date of release.

- Defines "exonerated" as a person has been convicted and subsequently either of the following has occurred:

    - A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person's conviction was reversed on appeal on the basis of insufficient evidence; or

    - The person was given an absolute pardon by the governor on the basis that the person was innocent.

- Requires CDCR to provide a form for a driver's license or identification card fee exemption to any person who was exonerated and released from state prison within the prior six months.

- Requires the exonerated person to take the form, along with a copy of a court order, if provided by the court, to the Department of Motor Vehicles in order to qualify for the driver's license or identification card fee exemption.

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- Revises program criteria to allow applicants to address either the education and training needs of individuals with some postsecondary education, or individuals who require basic education and training to obtain entry level jobs, instead of requiring the applicants to serve both education needs.

- Authorizes the California Workforce Investment Board to delegate the responsibility for determining the sufficiency of a prior assessment to one or more local workforce investment boards.

- Expands the content of the report to be given to the Legislature evaluating the Supervised Population Workforce Training Grant Program to include the following:

    - The education and workforce readiness of the supervised population at the time individual participants entered the program and how this impacted the types of services needed and offered; and,

    - Whether the metrics used to evaluate the individual grants were sufficiently aligned with the objectives of the program.

Sexual Assault Response Teams

Slow and steady progress has been made over the past 40 years since the first rape crisis center was established in Berkeley, California in 1971. Law enforcement officers, prosecutors, forensic scientists, sexual assault forensic examination teams and rape crisis centers have brought about

positive change. Given the endemic nature of sexual assault in today's society, effectively organized interagency Sexual Assault Response Teams (SART) are essential.

AB 1475 (Cooper), Chapter 210, Authorizes each county to establish and implement an SART program for the purpose of, among other things, effectively addressing the problem of sexual assault. Specifically, this new law:

- Authorizes each county to establish and implement a SART program for the purpose of providing a forum for interagency cooperation and coordination, to assess and make recommendations for the improvement in local sexual assault intervention, and to facilitate improved communications and working relationships to effectively address the problem of sexual assault in California.

- States that each SART may consist of representatives from the following public and private agencies or organizations:

    - Law enforcement agencies;
    - County district attorney's offices;
    - Rape crisis centers;
    - Local sexual assault forensic teams; and,
    - Crime laboratories.

- Provides that depending on local needs and goals, each SART may consist of representatives from the following public and private agencies or organizations:

    - Child protective services;
    - Local victim and witness service centers;
    - County public health departments;
    - University and college Title IX coordinators;
    - University and college police departments;
    - County mental health service departments; and,
    - Forensic interview centers.

- Requires SART programs to have the following objectives:

- Review of local sexual assault intervention undertaken by all disciplines to promote effective intervention and best practices;

- Assessment of relevant trends, including drug-facilitated sexual assault, the incidence of predator date rape, and human sex trafficking;

- Evaluation of the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component;

- Evaluation of the effectiveness of individual agency and interagency protocols and systems by conduction case reviews of cases involving sexual assault; and,

- Plan and implement effective prevention strategies and collaborate with other agencies and educational institutions to prevent sexual assault.

Corrections: Alternative Custody Program

SB 1266 (Liu), Chapter 664, Statutes of 2011, authorized the California Department of Corrections and Rehabilitation (CDCR) to create an Alternative Custody Program (ACP) for specified inmates, including female inmates, pregnant inmates, or inmates who were the primary caregiver immediately prior to incarceration. Inmates must not have committed a serious or violent felony, been required to register as a sex offender, been determined to pose a high risk to commit a violent offense by a validated risk assessment tool, or have a history of escape within the last 10 years in order to be eligible for this program.

ACP, while effective, has gone under-utilized. Since being implemented in 2011, 7,200 applications have been submitted, with only 460 offenders being approved to participate in the program. Of those 460 women, 90% have successfully completed the program. Offering inmates rehabilitative settings in the community represents a cost savings for California.

SB 219 (Liu), Chapter 762, provides that an inmate's psychiatric or medical condition is not a basis for excluding an inmate from CDCR's voluntary ACP, and establishes timelines for the processing of applications to participate in the program. Specifically, this new law:

- Provides that an inmate's existing psychiatric condition or medical condition that requires ongoing care is not a basis for excluding the inmate from the CDCR's voluntary ACP program.

- Prescribes specific time lines for, among other things, notice to the inmate of the receipt of the application to participate in the alternative custody program, notice of the eligibility criteria of the program, and written notice to the inmate of his or her acceptance or denial into the program. If an applicant is found potentially eligible for

the program, an individualized treatment program shall be developed in consultation with the inmate. If the inmate is denied participation in the program, the notice of denial shall specify the reason the inmate was denied.

- Requires CDCR to maintain a record of the application and notice of the denials of participation in the alternative custody program, and allows an inmate, after denial of an application, to reapply for participation in the program, or appeal the decision through normal grievance procedures.

- Require CDCR to assist individuals participating in the alternative custody program in obtaining health care coverage, including, but not limited to Medi-Cal benefits.

Mentally Ill Offenders: Crime Reduction Grants

The Mentally Ill Offender Crime Reduction Grant Program supports the implementation and evaluation of locally developed demonstration projects designed to reduce recidivism among persons with mental illness. The program recognizes that the cooperation between law enforcement, corrections, mental health, and other agencies is critical to improve California's response to mentally ill offenders. Projects are to be collaborative and address locally identified gaps in jail and community-based services for persons with a serious mental illness.

Last year, SB 1054 (Steinberg), Chapter 436, Statutes of 2014, reestablished the Mentally Ill Offender Crime Reduction Program with some differences from its previous incarnation. Specifically, it allows grants to be awarded to specialized alternative custody programs that offer appropriate mental health treatment and services. Previous legislation prevented the use of grants towards programs providing an alternative to incarceration.

SB 621 (Hertzberg), Chapter 473, explicitly authorizes the funds from the Mentally Ill Offender Crime Reduction Program to be used for diversion programs that offer appropriate mental health and treatment services.

CRIMINAL OFFENSES

Unauthorized Access to Computer Systems

Today, we live in a digitally connected world where our devices are connected to the internet. This new form of digital access has also spawned a new type of criminal, one who can invade our homes by breaking into our computer networks from afar. These cybercrimes range from breaking into someone's computer network to steal financial information to other crimes such as corporate espionage, fraud, and extortion.

Under current law, it is a crime to solicit another to commit certain crimes, such as bribery, kidnapping, and robbery. In addition, it is a crime for someone to knowingly hack into another's computer network without permission. However, it is not a crime to solicit someone to knowingly and without permission hack into a computer network or smartphone.

AB 195 (Chau), Chapter 552, makes it a misdemeanor, punishable by up to six months, for any person to solicit another to join in the commission of specified crimes relating to unauthorized access of computer systems. Specifically, this new law:

- Includes specified computer offenses in the list of target crimes in the offense of solicitation of another person to commit a crime.

- Defines offering to solicit assistance for a person to violate specified computer crimes as a form of criminal solicitation.

Destruction of Evidence: Digital and Video Recordings

Existing law prohibits any individual from willfully destroying or concealing, knowing it will be evidence in a case, with the intent of keeping it from being produced in that case. It is generally a misdemeanor but is a felony if a peace officer knowingly, willfully and intentionally alters, modifies, plants, places, manufacturers conceals or moves and physical matter with the intent that the action will result in a person being charged with a crime or that he evidence will be represented as original in a trial.

In recent years there have been instances of police misconduct documented by civilians on their personal mobile devices. In many instances, peace officers have temporarily confiscated a person's mobile device as possible evidence, only to return the device with material digital images and/or videos deleted or destroyed.

AB 256 (Jones-Sawyer), Chapter 463, expands the prohibition against knowingly, willfully, and intentionally tampering with evidence to include digital images and video recordings owned by another. Specifically, this new law:

- Specifies that the prohibition on destroying or concealing evidence applies to a digital image or a video recording owned by another and applies also if it was erased with

the intent to prevent it or its content from being produced.

- Specifies that the prohibition against a peace officer knowingly, willfully and intentionally tampering with physical evidence to charge someone with a crime or to produce as true evidence at trial, includes tampering with a digital image or video recording.

- Makes it a felony for a peace officer to knowingly, willfully, intentionally and wrongfully tamper with a digital image, or video recording with the specific intent that the physical matter, digital image or video recording will be concealed or destroyed or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry.

Domestic Violence: Penalties

Under existing law, when probation is granted in a case involving a battery committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child, a former spouse, a fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship (domestic battery), and the person has previously been convicted of domestic battery, the person is subject to a minimum jail term of two days. The judge retains the discretion to waive the minimum jail requirement on a showing of good cause.

Under existing law, a discrepancy exists when the person has a prior domestic violence conviction, as opposed to a prior domestic battery conviction. Currently, a person granted probation for a new domestic battery conviction, with a domestic violence prior conviction, is not required to serve a two day minimum jail sentence.

AB 545 (Melendez), Chapter 626, imposes a minimum period of imprisonment in county jail of two days for individuals convicted of domestic battery with a prior conviction for domestic violence. Specifically, this new law:

- Requires a minimum of two days of imprisonment when an individual is convicted of a domestic battery probation is granted, and the individual has a prior conviction for domestic violence.

- Allows the court, on a showing of good cause, to choose not to impose the minimum imprisonment.

Controlled Substances: Transportation

Prior to January 1, 2014, a person could be convicted of transportation of a controlled substance if such a substance was minimally moved, regardless of the amount of the controlled substance or intent of the possessor. Courts had interpreted the word "transports" to include transport of controlled substances for personal use.

Effective January 1, 2014, some statutes prohibiting transportation of a controlled substance were amended to add an intent-to-sell element. The new crime of transportation for sale applies to numerous drugs, including heroin, cocaine, methamphetamine. However, other transportation-of-controlled-substance statutes were not affected. This has resulted in a situation where transportation of some drugs for personal use can be charged only as a possession offense, while transportation of other drugs for personal use can be charged as both possession and transportation. Such disparate treatment raises equal protection concerns.

AB 730 (Quirk), Chapter 77, provides that a conviction for transportation of marijuana, psilocybin mushrooms or phencyclidine (PCP) requires proof of intent to sell. Specifically, this new law:

- Provides that transportation of psilocybin mushrooms, PCP, or marijuana shall be defined to mean to "transport for sale."

- Provides that these provisions of law do not preclude or limit prosecution under an aiding and abetting, or conspiracy offenses.

Criminal Acts against Law Enforcement Animals

Penal Code section 600 currently protects animals that are being used by peace officers. However, there are many public safety agencies in California that use volunteer peace officers. Some of those volunteer peace officers use their personal animals while on duty. Under current law, their personal animals that are being used while protecting the public are not protected from harm at the same level as an animal being used by an employed peace officer.

AB 794 (Linder), Chapter 201, expands criminal acts against law enforcement animals to include offenses against animals used by volunteers acting under the direct supervision of a peace officer. Specifically, this new law:

- Expands crimes against law enforcement animals to include acts carried out against a horse or dog being used by, or under the supervision of, a volunteer who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of his or her assigned volunteer duties.

- Expands the restitution requirements for defendants convicted of those acts to include a volunteer who is acting under the direct supervision of a peace officer using their own horse or dog. In such a case, the defendant would be required to make restitution to the volunteer, or the agency or individual or individual that provides veterinary care for the horse or dog.

Vehicular Manslaughter: Statute of Limitations

Penal Code section 803 allows, that if a person flees the scene of an accident that caused death or permanent, serious injury, a criminal complaint to be filed within one or three years after the completion of the offense, as specified, or one year after the person is initially identified by law

enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense.

Under current law there is inconsistency in the application of statute of limitations between crimes involving hit and run with injury and vehicular manslaughter when the offender leaves the scene of the accident. The same rationale to extend the statute of limitations to allow for the identification of a suspect that has fled the scene of the hit and run with injury also apply when a suspect flees the scene of a vehicular manslaughter.

AB 835 (Gipson), Chapter 338, provides that, in addition to filing a criminal complaint within the existing statute of limitations, if a person flees the scene of an accident that results in a vehicular manslaughter, as specified, a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, up to a maximum of six years after the offense date.

Crimes: Videotaping of Peace Officers in Public

Under existing law, every person who willfully resists, delays, or obstructs any public officer, peace officer, or emergency medical technician in the discharge or attempt to discharge any of his or her duties shall be punished by a fine or imprisonment, or both, as specified.

Over the past decade, technological advances have made it so that nearly every citizen has a hand-held recording device. Current statues do not reflect the advancements of recording technology and existing law is not clear on what constitutes an obstruction of an officer when using these devices to record officers exercising their duties in public. This lack of clarity has increased conflict between police officers and members of the public. The law's obscurity has led to confusion about protected citizen oversight activities, such as filming and photographing.

SB 411 (Lara), Chapter 177, provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer, peace officer, or executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of specified offenses for obstruction of an officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person. Specifically, this new law:

- States that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of attempting by means of threats or violence, to deter or prevent an executive officer from performing their duty, or resisting by the use of force or violence the officer, in performance of his or her duty.

- Provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of willfully resisting, delaying, or

obstructing a public officer, or peace officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

- States that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute reasonable suspicion to detain the person or probable cause to arrest the person.

Crimes: Taking a Person from Lawful Custody

Under existing law, the statutory meaning of "lynching" is the taking of a person from the lawful custody of a peace officer by means of a riot. But the commonly accepted meaning of the term is an extrajudicial hanging. "Lynching" is defined in all dictionaries searched by the author's office as the practice of killing a person or people by extrajudicial mob action. The term "lynching" carries with it cultural significance and its current usage in code is contrary to what the vast majority of people understand the crime of lynching to entail.

SB 629 (Mitchell), Chapter 47, eliminates the characterization of the taking of a person from the lawful custody of a peace officer as a "lynching."

CRIMINAL PROCEDURE

Criminal Profiteering: Counterfeit Goods

Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Often, the same jury who heard the criminal charges also determines whether the defendant's assets were the ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime.

It was the intent of the Legislature, when enacting the criminal asset forfeiture law, to punish and deter criminal activities of organized crime through the forfeiture of profits acquired and accumulated as a result of such criminal activities. Criminal asset forfeiture is allowed upon conviction of more than 30 crimes, including extortion, pimping and pandering, robbery, grand theft, trafficking in controlled substance, money laundering, and offenses related to counterfeiting. Proceeds can be forfeited if the proceeds were gained through a pattern of criminal activity and were gained through involvement in organized crime.

AB 160 (Dababneh), Chapter 427, expands the list of crimes that allow for forfeiture of assets and prosecution of criminal profiteering and broadens the definition of criminal profiteering by broadening the organized crime element to include other specified offenses. Specifically, this new law:

- Adds piracy of musical or audiovisual works, and unemployment insurance fraud to the list of crimes for which criminal asset forfeiture is authorized.

- Expands the definition of "organized crime" for purposes of criminal asset forfeiture to include pimping and pandering, loan-sharking, trademark counterfeiting, the piracy of a recording or audiovisual work, embezzlement, securities fraud, unemployment insurance fraud, grand theft, money laundering, and forgery.

- Defines a "retail sale" or "sale at retail" to include any sale by a convicted seller of tangible personal property with a counterfeit label or an illicit label.

- Provides that "storage" and "use" include a purchase by a convicted purchaser of tangible personal property with a counterfeit label or an illicit label.

- Defines "counterfeit label" and "illicit label" as "a label that appears to be genuine but is not, and a genuine label that a person uses without authorization respectively."

Appellate Procedure: Fines and Fees

The statutory scheme that governs the imposition and calculation of fines and other monetary penalties in California criminal cases is vast, complex, and frequently modified by the Legislature. As a result, appellate courts are often called upon to correct the erroneous imposition or calculation of fines and other monetary penalties on appeal.

When a sentencing error is the sole issue on appeal, trial and appellate courts incur significant costs and burdens associated with preparation of the formal record on appeal and resulting resentencing proceedings.

AB 249 (Obernolte), Chapter 194, requires a defendant to make a motion in the trial court before filing an appellate brief alleging only errors in the imposition or calculation of fines, fees, and assessments. Specifically, this new law:

- Provides that an appeal may not be taken solely on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharge, fees or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be informally in writing.

- Provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction.

- Clarifies that a request to correct presentence custody credits in the trial court may be made informally in writing.

- Provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction.

Juveniles: Sealing of Records

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court five years or more after the jurisdiction of the juvenile court has terminated over the person adjudged a ward of the court or after the minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18. Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records.

The court may also automatically order the dismissal of a minor's juvenile court case and have the court records sealed without a petition from the minor if the minor has been found to have satisfactorily completed an informal program of supervision or probation, except in specified cases. Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. This process allowing for automatic dismissal and sealing of a minor's juvenile court records was established by SB 1038 (Leno), Chapter 249, Statutes of

2014. Unlike the sealing process authorized under Welfare and Institutions Code section 781, the automatic sealing process under SB 1038 did not require the court to order records sealed in the possession of other public agencies such as law enforcement or probation. Arrest records and probation records can be damaging on an individual's ability to pursue higher education or find a job.

AB 666 (Stone), Chapter 368, requires records in the custody of law enforcement agencies, the probation department, or the Department of Justice (DOJ), to also be sealed, in a case where a court has ordered a juvenile's records to be sealed, as specified. Specifically, this new law:

- Requires the court to send a copy of the order to each agency and official named therein, directing the agency to seal its records and specifying a date thereafter to destroy the sealed records.

- States that each such agency and official shall seal the records in its custody as directed by the order, advise the court of its compliance and thereupon seal the copy of the court's order or sealing of records that was received.

- Specifies that a record that has been ordered sealed by the court under this section may be accessed, inspected or used only under the following circumstances:

    - By the prosecuting attorney, the probation department or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment or is eligible for a program of supervision, as defined.

    - By the court for the limited purpose of verifying the prior jurisdictional purpose of a ward who is petitioning the court to resume its jurisdiction.

    - If a new petition has been filed against a minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained under this exception shall not be disseminated to other agencies or individuals, except as necessary to implement referral to a remedial program or service, and shall not be used to support the imposition of penalties or detention or other sanctions upon the minor.

    - Upon a subsequent adjudication of a minor whose record has been sealed and a finding that the minor is delinquent based on a felony offense, by the probation department, prosecuting attorney, counsel for the minor, or the court for the limited purpose of determining an appropriate juvenile court disposition. Access, inspection, or use of a sealed record in this circumstance shall not be construed as a reversal or modification of the court's order

dismissing the petition and to sealing record in the prior case.

- Upon the prosecuting attorney's motion to initiate court proceedings to determine a minor's fitness for juvenile court, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining the minor's fitness to be dealt with under the juvenile court law. "Access, inspection, or use of a sealed record" in this circumstances shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

- By the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records, as specified.

- Provides that these provisions do not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution, as specified, and that a minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

- Provides that a victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed, and that the juvenile court shall have access to any records sealed for the limited purpose of enforcing a civil judgment or restitution order.

- Authorizes a record sealed, excluding personal identifying information, to be accessed by a law enforcement agency, probation department, court, or other state or local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other provisions of law.

- Provides that a court may authorize a researcher or research organization to access information contained in records that have been sealed for the purpose of conducting research on juvenile justice populations, practices, policies, or trends, subject to specified conditions.

Probation and Mandatory Supervision: Fines and Fees

Penal Code section 1203.9 was enacted to establish a process whereby persons on probation could have their supervision and case transferred from the sentencing county to their county of residence. Currently, this section calls for the transfer of the "entire case" to the new jurisdiction. However, Penal Code section 1203.9 is silent on court ordered debt as it relates to the transfer and the process for collection and distribution once transferred. Therefore, there are varying degrees of how the collection and distribution of these funds are handled.

AB 673 (Santiago), Chapter 251, establishes procedures for the payment and collection of fines, fees, forfeitures, penalties, assessments, or restitution if a person is released on

probation or mandatory supervision, and the jurisdiction of the case is transferred to the superior court of another county. Specifically, this new law:

- Requires the receiving court, when probation or mandatory supervision is transferred to the superior court in another county, to accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer.

- Provides that, notwithstanding, the fact that jurisdiction over the case transfers to the receiving court effective the date that the transferring court orders the transfer, if the transferring court has ordered the defendant to pay fines, fees, or restitution, the transfer order shall require that those and any other collections ordered by the transferring court be paid by the defendant to the collection agency for the transferring court for proper distribution and accounting.

- States that the receiving court and receiving county probation department may amend financial orders and add additional local fees as authorized, and shall notify the responsible collection agency of those changes.

- Provides that any local fees imposed by the receiving court shall be collected by the collection agency for the receiving court, and shall not be sent to the collection agency for the transferring court.

- Allows a receiving court to collect court-ordered payments from a defendant, provided however, that the collection agency for the receiving court transmit the funds to the collection agency for the transferring court for deposit and accounting. A collection agency for the receiving court shall not charge administrative fees for collections completed for the transferring without an agreement with the other agency.

- Allows a collection agency for a receiving court to voluntarily collect funds for the transferring court, and shall not report funds owed or collected on behalf of the transferring court as part of those collections required to be reported by the court to the Administrative Office of the courts.
- Clarifies that a receiving court may only collect payment from a defendant attributable to the case for which the defendant is being supervised.

- Requires the Judicial Council to consider adoption of rules of court as it deems appropriate to implement the collection, accounting, and disbursement of revenue relating to the transfer of jurisdiction of a case to another county.

Vehicular Manslaughter: Statute of Limitations

Penal Code section 803 allows, that if a person flees the scene of an accident that caused death or permanent, serious injury, a criminal complaint to be filed within one or three years after the completion of the offense, as specified, or one year after the person is initially identified by law

enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense.

Under current law there is inconsistency in the application of statute of limitations between crimes involving hit and run with injury and vehicular manslaughter when the offender leaves the scene of the accident. The same rationale to extend the statute of limitations to allow for the identification of a suspect that has fled the scene of the hit and run with injury also apply when a suspect flees the scene of a vehicular manslaughter.

> **AB 835 (Gipson), Chapter 338**, provides that, in addition to filing a criminal complaint within the existing statute of limitations, if a person flees the scene of an accident that results in a vehicular manslaughter, as specified, a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, up to a maximum of six years after the offense date.

Juveniles: Sealing of Records

Current law provides for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation. Since implementation of this law, there have been varying legal opinions as to whether probation officers are prohibited from accessing all files, including their own department's files, for any purpose.

Probation officers argue that without access to earlier files, the probation department has no ability to determine the proper course of action as it pertains to placement and/or rehabilitative placement. This prohibition also inhibits the probation officer's ability to provide a comprehensive dispositional report to the court.

> **AB 989 (Cooper), Chapter 375,** provides limited access to otherwise sealed juvenile records to district attorneys and probation departments. Specifically, this new law:
>
> - Authorizes the prosecuting attorney and the probation department of any county to access the records to determine if the minor is eligible for informal supervision.
>
> - Provides that if a new petition has been filed against the minor for a felony offense, the probation department of any county shall have access to the records for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained shall not be disseminated to other agencies or individuals, except as necessary to implement a referral to a remedial program or service, and shall not be used to support the imposition of penalties, detention, or other sanctions upon the minor.
>
> - Provides that the probation department of any county may access the records for the limited purpose of meeting federal Title IV-B and IV-E compliance;

- Allows law enforcement, including probation, a court or other local agency having custody of a sealed record to access an otherwise sealed juvenile record to comply with data collection or data reporting requirements in other laws, providing that personal identifying information from a sealed record accessed pursuant to this provision would not be disclosed.

- Includes language to ensure that restitution orders, fines and fees continue to be enforceable, notwithstanding a sealed juvenile record.

Cyber Exploitation: Venue for "Revenge Porn"

For violations of cyber exploitation (Pen. Code, § 647, subd. (j)), current law requires each case be brought in the county where the crime occurred (unless an additional crime of identity theft or conspiracy can also be proven). With e-crime, the county in which the crime occurred is not always well-defined, but is typically thought of as where the photo was uploaded or posted.

These jurisdictional restrictions cause two primary problems. First, if a criminal commits cyber exploitation in more than one county, he or she must be tried separately in each jurisdiction, which can result in unnecessary costs for taxpayers, prosecutors, and defendants. In addition to the waste of public resources, it is particularly difficult on victims who must testify repeatedly about the same crime in different trials.

Existing law details procedures for a governmental entity to gather specified records from a provider of electronic communication service or a remote computing service by search warrant. Existing law specifies that no notice is required to be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures.

AB 1310 (Gatto), Chapter 643, expands jurisdiction for crimes involving cyber exploitation (a.k.a. "revenge porn"), and allows law enforcement to use a search warrant to get the contents of communications between the customer and the service provider. Specifically, this new law:

- Expands the jurisdiction of a criminal action involving "revenge porn" to include the county in which the offense occurred, the county in which the victim resided at the time the offense was committed, or the county in which the intimate image was used for an illegal purpose.

- Allows prosecution in any of the jurisdictions when multiple offenses of "revenge porn," either all involving the same defendants or defendants and the same intimate image belonging to the one person, or all involving the same defendant or defendants and the same scheme of substantially similar activity, occur in multiple jurisdictions.

- Authorizes jurisdiction to extend to all associated offenses connected together in their commission to the underlying unauthorized distribution of an intimate image.

- Requires the court to hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed, when charges alleging multiple offenses of unauthorized distribution of an intimate image occurring in multiple territorial jurisdictions are filed in one county.

- States that a provider of electronic communication service or remote computing service, as specified, shall disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, the types of services the subscriber or customer utilized, and the contents of communication originated by or addressed to the service provider when the governmental entity is granted a search warrant, as specified.

- States that a governmental entity receiving subscriber records or information under this section is required to provide notice to a subscriber or customer upon receipt of the requested records. This notification may be delayed by the Court, in 90 day increments, upon showing that there is reason to believe that notification of the existence of the search warrant may have an adverse result.

- Provides that notice need not be provided under specified circumstances.

Criminal Dispositions: Consideration of Immigration Consequences

In *Padilla v. Kentucky* (2010) 559 U.S. 356, the U.S. 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. California courts have long since held the same, including that defense counsel must investigate, advise, and defend against, potential adverse immigration consequences of a proposed disposition.

In order for the consideration of immigration consequences to result in meaningful change, it is important for both the prosecution and defense to consider immigration consequences in plea negotiations. The U.S. Supreme Court stated that "informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties."

AB 1343 (Thurmond), Chapter 705, requires defense counsel to provide accurate advice of the potential immigration consequences of a proposed disposition and attempt to defend against those consequences. Requires the prosecution and defense counsel contemplate immigration consequences in the plea negotiation process. Specifically, this new law:

- Requires defense counsel to provide accurate and affirmative advice of the potential immigration consequences of a proposed disposition and to defend against those

consequences, consistent with the goals of the defendant.

- Requires that prosecution, in the interests of justice, to consider immigration consequences in the plea negotiation process as one factor to reach a just resolution.

Deferred Entry of Judgment: Withdrawal of Plea

Deferred entry of judgment (DEJ) provides an opportunity for non-violent drug offenders to participate in drug treatment programming and probation supervision rather than being imprisoned. Participation in a DEJ program requires a defendant to enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of the program or other conditions. If the defendant successfully completes DEJ, the charges are dismissed and the arrest shall be deemed to never have occurred.

A defendant who completes DEJ and has his or her case dismissed cannot have the offense used against him or her to deny any employment benefit, license or certificate unless the defendant consents to the release of his or her record. (Pen. Code, § 1000.3.) The purpose of dismissal upon successful completion of DEJ is to allow offenders to take advantage of having a clean record so that they can get or retain jobs become, or remain, productive members of society. However, a dismissal after completion of a DEJ program for a drug related offense may subject an immigrant defendant to immigration consequences such as deportation. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.) This is because the guilty plea remains on a person's record and counts as a "conviction" for certain purposes under federal law.

AB 1352 (Eggman), Chapter 646, allows any person who successfully completed a DEJ drug treatment program and obtained dismissal of the underlying drug charges to withdraw his or her guilty or nolo contendere plea and enter a not guilty plea. Specifically, this new law:

- Applies to cases in which a defendant was granted DEJ on or after January 1, 1997.

- States that upon entering a not guilty plea based on prior successful completion of DEJ and subsequent dismissal of the underlying charges, the court shall dismiss the complaint or information against the defendant.

- Provides that if court records showing the case resolution are no longer available, the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements for DEJ, shall be presumed to be true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the DEJ program or that the record is incomplete in that it does not show a final disposition.

- Defines "final disposition" to mean that the state summary criminal history information shows either a dismissal after completion of the program or a sentence after termination of the program.

Child Witnesses: Testimony via Closed-Circuit Television

Under existing law, a minor 13 years of age or younger, who is a victim of a "violent" or sexual crime can testify via closed-circuit television. This allows the child victim to testify without being subjected to being in the same room as the accused perpetrator, a person who may have caused physical or mental distress to the child. The law does not contain a similar provision to protect child witnesses when they are a witness to a "violent" crime.

> **SB 176 (Mitchell), Chapter 155,** authorizes a minor 13 years of age or younger who is a witness, but not a victim, to a "violent" felony to testify by contemporaneous examination and cross examination by closed-circuit television, as specified.

Grand Juries: Powers and Duties

Existing law authorizes a grand jury to inquire into all public offenses committed or triable within the county in which the grand jury is impaneled, sworn, and charged, and to present them to the court by indictment. Existing law also authorizes a member of a grand jury, if he or she knows or has reason to believe that a public offense has been committed, to declare it to his or her fellow jurors, who are then authorized by existing law to investigate it.

The grand jury system has recently come under fire nationally as several incidents of officer-involved deaths have resulted in the officers in question being released without charges. To the public who has witnessed these incidents, the outcome of the criminal grand jury proceedings can seem unfair or inexplicable. The criminal grand jury system lacks transparency and is not adversarial in nature; no judges or defense attorneys participate. The rules of evidence do not apply; there are no cross-examinations of witnesses, and there are no objections.

> **SB 227 (Mitchell), Chapter 175**, prohibits a grand jury from inquiring into an offense or misconduct that involves a shooting or use of excessive force by a peace officer that led to the death of a person being detained or arrested by the peace officer, unless the offense was declared to the grand jury by one of its members.

DNA

DNA Samples: Contingency Legislation

In 2004, California voters passed Proposition 69, expanding the State's DNA collection and testing program to allow for the collection of DNA samples from every person arrested for a felony. In December of 2014, a California appellate court struck down the state's criminal-DNA-testing program contained in Proposition 69. In *People v. Buza*, review granted February 18, 2015, S223698, the court found several aspects of California's DNA-testing practices to be unconstitutional. The Attorney General has appealed the *Buza* decision, but during the period of between the appellate court decision and the California Supreme Court's decision to hear the case, the Department of Justice was forced to halt the collection of DNA from felony arrestees. DNA collection of felony arrestees has resumed since the *Buza* decision was depublished and while the Supreme Court considers the case. This legislation provides a back-up system to be put in place only if the California Supreme Court upholds the appellate court's decision in *Buza*.

AB 1492 (Gatto), Chapter 487, requires that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony be forwarded to the department after a felony arrest warrant has been signed by a judicial officer, a grand jury indictment has been found and issued, or a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been made, if the California Supreme Court rules to uphold *People v. Buza*. Specifically, this new law:

- Requires that DNA samples obtained during an arrest on a felony not be sent to DOJ for analysis until after a finding of probable cause, operative if the California Supreme Court upholds the case of *People v. Buza*, review granted February 18, 2015, S223698.

- Specifies that a DNA sample taken pursuant to a felony arrest shall be destroyed after six months, if the law enforcement agency has not received notice to forward the sample to DOJ following a determination of probable cause, operative if *People v. Buza, supra*, is upheld.

- Establishes a procedure for a person's DNA sample and searchable database profile to be removed if the case is dismissed, or the accused is acquitted, or otherwise exonerated, and the person has no past qualifying offense, without the requirement of an application from the person, operative if *People v. Buza, supra*, is upheld.

DOMESTIC VIOLENCE

Domestic Violence: Penalties

Under existing law, when probation is granted in a case involving a battery committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child, a former spouse, a fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship (domestic battery), and the person has previously been convicted of domestic battery, the person is subject to a minimum jail term of two days. The judge retains the discretion to waive the minimum jail requirement on a showing of good cause.

Under existing law, a discrepancy exists when the person has a prior domestic violence conviction, as opposed to a prior domestic battery conviction. Currently, a person granted probation for a new domestic battery conviction, with a domestic violence prior conviction, is not required to serve a two day minimum jail sentence.

AB 545 (Melendez), Chapter 626, imposes a minimum period of imprisonment in county jail of two days for individuals convicted of domestic battery with a prior conviction for domestic violence. Specifically, this new law:

- Requires a minimum of two days of imprisonment when an individual is convicted of a domestic battery probation is granted, and the individual has a prior conviction for domestic violence.

- Allows the court, on a showing of good cause, to choose not to impose the minimum imprisonment.

Restraining Orders: Domestic Violence and Sex Crimes

In domestic violence and sex cases, current law allows the issuance of a post-conviction restraining order which can last up to 10 years. The language of the statute specifies that "This protective order may be issued regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation." (Pen. Code, § 136.2, subd. (i)(1).)

Under realignment, the court has the authority to sentence a defendant convicted of a felony punishable by incarceration in the county jail to either a full term in custody, or to split the sentence between time in custody and mandatory supervision in the community in any proportion the court deems appropriate. However, effective January 1, 2015, there is a presumption in favor of the imposition of a split sentence unless the court finds that it is in the best interest of justice not to do so. (Pen. Code, §1170, subd. (h)(5).) Thus, mandatory supervision is a component of a split sentence which follows a period of incarceration in county jail. It is not a separate sentencing alternative.

Because mandatory supervision is period of supervision that follows a county jail commitment, under the current language of the statute, a court can already issue a post-conviction restraining order even when a defendant has to serve part of his or her sentence under mandatory supervision. However, arguably, it is possible that the court could allow a defendant to serve the custody portion of a split sentence in some form of alternative custody, rather than the county jail. In such a situation, the defendant might argue he or she was not "sentenced to county jail" for purposes of the statute allowing post-conviction restraining orders.

SB 307 (Pavley), Chapter 60, expressly provides that post-conviction restraining orders may be issued by the court in domestic violence or sex crimes when a defendant's sentence includes a period of mandatory supervision.

DRIVING UNDER THE INFLUENCE

Search Warrants: Boating Under the Influence

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

But existing law fails to grant the statutory authority to law enforcement to seek and obtain a search warrant when a person suspected of operating a marine vessel under the influence of drugs and/or alcohol refuses to submit to, or fails to complete, a blood test.

AB 539 (Levine), Chapter 118, authorizes the issuance of a search warrant to compel a blood draw from a person suspected of operating a boat while under the influence of alcohol or drugs. Specifically, this new law:

- Permits the issuance of a search warrant when all of the following apply:
    - A blood sample constitutes evidence that tends to show a violation of specified sections of the Harbors and Navigation Code relating to the operation of a marine vessel while under the influence of drugs or alcohol;
    - The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test; and,
    - The sample will be drawn from the person in a reasonable, medically approved manner.
- States that these provisions are not intended to abrogate the court's duty to determine the propriety of issuing a search warrant on a case-by-case basis.

ELDER ABUSE

Elder Abuse: Restraining Orders

With 4.2 million individuals over the age of 65 years, California has the highest number of aging adults in the nation. Currently, loopholes in the law restrict a prosecutor's ability to protect victims of elder abuse through the use of post-conviction criminal protective orders. This loophole leaves our most vulnerable crime victims with an unnecessary level of exposure to re-victimization. Elders are also among the least equipped victims able to pursue protection through civil remedies such as temporary restraining orders since they are often complicated, costly and time consuming to obtain.

SB 352 (Block), Chapter 279, requires a sentencing court to consider issuing a protective order upon a conviction of elder abuse. Specifically, this new law:

- Requires the court to consider issuing a restraining order lasting up to ten years when a defendant is convicted of a violation of any of the following crimes:
    - Infliction of unjustifiable physical pain or mental suffering upon an elder or dependent adult, or willfully causing or permitting such a person to suffer or become endangered;
    - Theft, identity theft, embezzlement, forgery, or fraud of an elder or dependent adult;
    - False imprisonment of an elder or dependent adult by violence, menace, fraud or deceit.
- States that the length of the restraining order should be based on the seriousness of the facts in the case, the probability of future violations, and the safety of the victim and his or her immediate family.
- States that the protective order may be issued regardless of whether the defendant is sentenced to state prison, county jail, or to probation.

EVIDENCE

Destruction of Evidence: Digital and Video Recordings

Existing law prohibits any individual from willfully destroying or concealing, knowing it will be evidence in a case, with the intent of keeping it from being produced in that case. It is generally a misdemeanor but is a felony if a peace officer knowingly, willfully and intentionally alters, modifies, plants, places, manufacturers conceals or moves and physical matter with the intent that the action will result in a person being charged with a crime or that he evidence will be represented as original in a trial.

In recent years there have been instances of police misconduct documented by civilians on their personal mobile devices. In many instances, peace officers have temporarily confiscated a person's mobile device as possible evidence, only to return the device with material digital images and/or videos deleted or destroyed.

AB 256 (Jones-Sawyer), Chapter 463, expands the prohibition against knowingly, willfully, and intentionally tampering with evidence to include digital images and video recordings owned by another. Specifically, this new law:

- Specifies that the prohibition on destroying or concealing evidence applies to a digital image or a video recording owned by another and applies also if it was erased with the intent to prevent it or its content from being produced.

- Specifies that the prohibition against a peace officer knowingly, willfully and intentionally tampering with physical evidence to charge someone with a crime or to produce as true evidence at trial, includes tampering with a digital image or video recording.

- Makes it a felony for a peace officer to knowingly, willfully, intentionally and wrongfully tamper with a digital image, or video recording with the specific intent that the physical matter, digital image or video recording will be concealed or destroyed or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry.

Withholding Exculpatory Evidence

The United States Supreme Court has made clear that prosecutors are required by the Constitution to provide the defense with all evidence that may be favorable to a defendant. "A prosecutor that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice." (*Brady v. Maryland* (1963) 373 U.S. 83, 88.) In addition, prosecutors are required to ensure that law enforcement officers involved in the case also provide all evidence in their possession that may be favorable to the defense.

There is a growing problem with prosecutorial misconduct throughout the country and in California. As recently as this February, 9th Circuit Judge Alex Kozinski has described rampant Brady violations as a growing "epidemic." Judge Kozinski says that judges must put a stop to such injustice.

AB 1328 (Weber), Chapter 467, requires the court to notify the State Bar if a prosecuting attorney has intentionally or knowingly failed to disclose relevant exculpatory evidence, as specified, and authorizes the court to disqualify the prosecuting attorney from the case, and the prosecuting attorney's office if other employees in the office knowingly participated in, or sanctioned the withholding of the exculpatory evidence. Specifically, this new law:

- Provides that if a court determines that a prosecuting attorney has deliberately and intentionally withheld relevant exculpatory material or information in violation of the law, the court shall notify the State Bar of California if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or if identified prior to the conclusion of trial seriously limited the ability to present a defense.

- Authorizes a court, upon its own motion, to disqualify a prosecuting attorney from a case, if he court determines that prosecutor deliberately and intentionally withheld relevant exculpatory material or information in violation of the law and that the prosecuting attorney acted in bad faith.

- Allows a court to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly participated in, or sanctioned the withholding of the relevant exculpatory material or information and that withholding is part of a pattern or practice of violations.

- States that these provisions do not limit the authority or discretion of the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, remedies, or actions.

Child Witnesses: Testimony via Closed-Circuit Television

Under existing law, a minor 13 years of age or younger, who is a victim of a "violent" or sexual crime can testify via closed-circuit television. This allows the child victim to testify without being subjected to being in the same room as the accused perpetrator, a person who may have caused physical or mental distress to the child. The law does not contain a similar provision to protect child witnesses when they are a witness to a "violent" crime.

SB 176 (Mitchell), Chapter 155, authorizes a minor 13 years of age or younger who is a witness, but not a victim, to a "violent" felony to testify by contemporaneous examination and cross examination by closed-circuit television, as specified.

Controlled Substances: Destruction of Seized Marijuana

Law enforcement agencies are required by law to store 10 pounds of marijuana and 5 additional representative samples for evidence. According to a June report by the California Attorney General's Office, nine counties in California: Shasta, Glenn, Mendocino, Sacramento, Merced, Madera, Fresno, Ventura, and Los Angeles currently possess over 1,000 pounds of marijuana. This can be very burdensome on these agencies because most facilities were not intended to store such large quantities, forcing these agencies to create additional storage facilities onsite resulting in significant costs to law enforcement.

In addition to the lack of adequate storage facilities to store the marijuana held for evidence, it is also a serious threat to the health of law enforcement personnel. Because marijuana is a plant, it begins to develop spores and mold within a short period of time. This leads to difficulty breathing and other harmful side effects as a result of frequent handling of the storage items inside these evidence rooms.

The laws and practices in various counties concerning return of marijuana to a qualified patient and compensation to a patient for destruction of marijuana do not appear to be consistent or clear.

SB 303 (Hueso), Chapter 713, permits the destruction of excess seized marijuana by law enforcement agencies, subject to specified evidentiary and preservation requirements. Specifically, this new law:

- Authorizes law enforcement agencies to destroy seized marijuana in excess of two pounds, or the amount of marijuana a medical marijuana patient or designated caregiver is authorized to possess by ordinance in the city or county where the marijuana was seized, whichever is greater, subject to specified requirements.

- Requires a law enforcement agency to retain at least one two-pound sample and five random and representative samples consisting of leaves or buds, for evidentiary purposes, from the total amount to be destroyed.

- Specifies that law enforcement should take video of the marijuana seized prior to destruction of the evidence and further specifies that they should accurately demonstrate the total amount to be destroyed.

University or College Police: Eavesdropping

Penal Code section 633 allows sworn officers to record the statements of suspects without notifying them, which would otherwise be prohibited under state wiretapping laws. This is most often utilized during suspect interviews/interrogations, in-car recordings of suspects in custody, and in a pretext phone call situation. A pretext phone call is the recording of a conversation between a victim and a known suspect arranged by law enforcement to gain admissions or other incriminating statements. This technique provides some of the best evidence in cases of date rape and other crimes involving no independent witnesses.

Unfortunately, the Commission of Peace Officer Standards and Training (POST) certified officers who protect campuses such as the California State University and University of California systems were not among those listed within Penal Code section 633, while virtually all other police entities in the state were included. The exact cause of this omission is difficult to ascertain, however, it is clear today that college and university law enforcement entities need the ability to obtain these recordings as dictated by their investigations. Not only does this omission undermine effective law enforcement, it has the effect of prohibiting use of Body Worn Cameras by college and university officers in some circumstances.

SB 424 (Pan), Chapter159, allows a university or college police officer to eavesdrop in any criminal investigation relating to sexual assault or other sexual offense, and to wear body worn-cameras. Specifically, this new law:

- Authorizes any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus acting within the scope of his or her authority, to overhear or record any communication in any criminal investigation related to sexual assault or other sexual offense.

- Provides that nothing in existing privacy statutes shall prohibit any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus from using or operating body-worn cameras.

- States that the provisions of this bill shall not be used to impinge upon the lawful exercise of constitutionally protected rights of free speech, or the constitutionally protected right of personal privacy.

FINES AND FEES

Computer Crimes: Fines

In recent years the attention of the media and policymakers has turned to privacy concerns raised by the sheer volume of data shared over internet connections. With the advent of wireless internet, more data is being transmitted than ever before through cyberspace. Over the last couple of years several serious incidents of the invasion of privacy have come to the forefront of national attention.

In August and September of 2014, dozens of women had revealing photos misappropriated from Apple's iCloud storage site and they were posted on the "4chan" bulletin board for the public to view. Apple represents that the site was not hacked, but others believe that the photos were obtained by guessing the passwords of the victims. The incident alerted the public to the fact that many people's phones may be copying material automatically to the internet.

In October of 2014 an unknown hacker assembled a gallery of more than 100,000 images and videos that people had sent via Snapchat. Snapchat markets itself as a web based mobile application that allows users to send photos and videos to one another in a format that can only be viewed by the recipient, not copied or saved by the recipient. As it turns out, other web developers have created systems that enable users to make permanent copies of the temporary Snapchat files and store them in "the cloud" wherein they can be obtained by knowledgeable hackers.

> **AB 32 (Waldron), Chapter 614,** increases fines for felony convictions of specified computer crimes from a maximum of $5,000, to a maximum of $10,000.

Appellate Procedure: Fines and Fees

The statutory scheme that governs the imposition and calculation of fines and other monetary penalties in California criminal cases is vast, complex, and frequently modified by the Legislature. As a result, appellate courts are often called upon to correct the erroneous imposition or calculation of fines and other monetary penalties on appeal.

When a sentencing error is the sole issue on appeal, trial and appellate courts incur significant costs and burdens associated with preparation of the formal record on appeal and resulting resentencing proceedings.

> **AB 249 (Obernolte), Chapter 194,** requires a defendant to make a motion in the trial court before filing an appellate brief alleging only errors in the imposition or calculation of fines, fees, and assessments. Specifically, this new law:
>
> - Provides that an appeal may not be taken solely on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharge, fees or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if

the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be informally in writing.

- Provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction.

- Clarifies that a request to correct presentence custody credits in the trial court may be made informally in writing.

- Provides that the trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction.

Probation and Mandatory Supervision: Fines and Fees

Penal Code section 1203.9 was enacted to establish a process whereby persons on probation could have their supervision and case transferred from the sentencing county to their county of residence. Currently, this section calls for the transfer of the "entire case" to the new jurisdiction. However, Penal Code section 1203.9 is silent on court ordered debt as it relates to the transfer and the process for collection and distribution once transferred. Therefore, there are varying degrees of how the collection and distribution of these funds are handled.

AB 673 (Santiago), Chapter 251, establishes procedures for the payment and collection of fines, fees, forfeitures, penalties, assessments, or restitution if a person is released on probation or mandatory supervision, and the jurisdiction of the case is transferred to the superior court of another county. Specifically, this new law:

- Requires the receiving court, when probation or mandatory supervision is transferred to the superior court in another county, to accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer.

- Provides that, notwithstanding, the fact that jurisdiction over the case transfers to the receiving court effective the date that the transferring court orders the transfer, if the transferring court has ordered the defendant to pay fines, fees, or restitution, the transfer order shall require that those and any other collections ordered by the transferring court be paid by the defendant to the collection agency for the transferring court for proper distribution and accounting.

- States that the receiving court and receiving county probation department may amend financial orders and add additional local fees as authorized, and shall notify the responsible collection agency of those changes.

- Provides that any local fees imposed by the receiving court shall be collected by the collection agency for the receiving court, and shall not be sent to the collection

agency for the transferring court.

- Allows a receiving court to collect court-ordered payments from a defendant, provided however, that the collection agency for the receiving court transmit the funds to the collection agency for the transferring court for deposit and accounting. A collection agency for the receiving court shall not charge administrative fees for collections completed for the transferring without an agreement with the other agency.

- Allows a collection agency for a receiving court to voluntarily collect funds for the transferring court, and shall not report funds owed or collected on behalf of the transferring court as part of those collections required to be reported by the court to the Administrative Office of the courts.

- Clarifies that a receiving court may only collect payment from a defendant attributable to the case for which the defendant is being supervised.

- Requires the Judicial Council to consider adoption of rules of court as it deems appropriate to implement the collection, accounting, and disbursement of revenue relating to the transfer of jurisdiction of a case to another county.

Fines and Fees: Collection Methods

Penal Code section 1205 gives the court power to enforce payment of fines in criminal cases by imprisonment. Penal Code section 1205 also allows defendants to request that the trial court exercise its discretion to convert fines to jail time. The statute, however, cannot be used to pay off restitution fines or victim restitution orders.

Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. A recent San Francisco Daily Journal article noted, "California courts and counties collect nearly $2 billion in fines and fees every year. Nevertheless, the state still has a more than $10.2 billion balance of uncollected debt from prior years, according to the most recent date from 2012." (See Jones & Sugarman, State Judges Bemoan Fee Collection Process, San Francisco Daily Journal, (January 5, 2015).) "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*) In the same article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Ibid.*)

By raising the rate at which defendants can pay off fines and fees by converting them to jail time, defendants may be incentivized to address delinquent debt.

AB 1375 (Thurmond), Chapter 209, increases the statutory rate for payment of fines by incarceration from not less than $30 per day to not less than $125 per day. Specifically, this new law:

- Requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every $125 of the fine.

- Provides that all days spent in custody by the defendant must first be applied to the term of imprisonment and then to any fine including, but not limited to, base fines at the rate of not less than $125 per day.

Production or Cultivation of a Controlled Substance: Civil Penalties

In the almost two decades since California voters passed Proposition 215, the Compassion Use Act of 1996, the cultivation of illegal marijuana on California's public and private lands has exploded. In 2014 alone, the Department of Fish and Wildlife (DFW) participated in close to 250 marijuana-related operations in which 609,480 marijuana plants were eradicated and 15,839 pounds of processed marijuana was seized.

Many of these marijuana grow-sites operate on a commercial scale, leaving behind devastating impacts on the terrestrial and aquatic habitats they occupy. Some growers routinely divert streams and tributaries to get enough water. Also, some of these unregulated grow-sites are responsible for the release of rodenticides, highly toxic insecticides, chemical fertilizers, fuels, and hundreds of pounds of waste dumped into the surrounding habitats and watershed systems.

Current law allows civil fines to be levied against those who commit environmental crimes while engaging in the cultivation of a controlled substance. The DFW has the ability to assess these civil fines administratively. The civil fines collected under this fine structure can be divided up primarily between enforcement agencies, to cover the cost of their investigations, and the Timber Regulation and Forest Restoration Fund, for the purposes of improving forest health by remediating former marijuana growing operations.

SB 165 (Monning), Chapter 139, adds additional crimes or violations to an existing Fish and Game Code statute which authorizes civil fines for certain natural resource-related violations in connection with the production or cultivation of a controlled substance. Specifically, this new law:

- Expands provisions of law which impose civil penalties for Fish and Game Code violations committed while trespassing on public or private lands to include violations of the following laws while trespassing on other public or private land in connection with the production or cultivation of a controlled substance:

    - Unlawful dumping of waste matter or other specified materials on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, authorizing a civil penalty of up to $40,000.

    - Knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified,

authorizing a civil penalty of up to $40,000.

- Willfully or negligently cutting, destroying, mutilating, or removing specified vegetation growing upon state or county highway rights-of-way, or upon public land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, authorizing a civil penalty of up to $10,000.

- Engaging in timber operations without a license, as specified, authorizing a civil penalty up to $10,000.

- Unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, authorizing a civil penalty of not more than $10,000.

- Unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, authorizing a civil penalty of up to $10,000.

- Expands the scope of civil penalties where violations in connection with the production or cultivation of a controlled substance occur on land that the person owns, leases, or occupies with the consent of the landowner to include the following additional offenses:

  - Unlawful dumping of waste matter on a public or private highway, road, right-of-way, easement, private property without consent, public park, or other public property without permission, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Unlawful dumping of waste matter in commercial quantities on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified, is subject to a civil penalty of up to $20,000 for each violation.

  - Willfully or negligently cutting, destroying, mutilating, or removing specified growing upon state or county highway rights-of-way, or upon public land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, is subject to a civil penalty of up to $10,000 for each violation.

  - A violation of engaging in timber operations without a license, as specified, is subject to a civil penalty of up to $8,000 for each violation.

- A violation of unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, is subject to a civil penalty of up to $8,000 for each violation.

- A violation of unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, is subject to a civil penalty of up to $8,000 for each violation.

- Provides that each day that a violation of any of these sections occurs or continues to occur shall constitute a separate violation, as specified.

- Specifies that any civil penalty imposed shall be offset by the amount of any restitution ordered by a criminal court, as specified.

Failure to Appear in Court: Fines

Existing law authorizes the court, in addition to any other penalty in an infraction, misdemeanor, or felony case, to impose a civil assessment of up to $300 against any defendant who fails, after notice and without good cause, to appear in court for any proceeding authorized by law, or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail, as specified. Existing law provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the defendant, and requires the court, if the defendant appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine or installment of bail, to vacate the assessment.

Due to increases in fines and fees, a staggering number of Californians have no access to courts when they are cited for traffic citations. Exorbitant fees can make it challenging for low-income people to resolve minor traffic infractions since many counties require fines to be paid prior to a hearing on the infraction. As a result of unclear policy and high fees, drivers often do not have the opportunity to see a judge and essentially lose the right to due process.

SB 405 (Hertzberg) Chapter 385, requires courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed. Specifically, this new law:

- Specifies that the ability to post bail or to pay the civil assessment shall not prevent a person from filing a request that the court vacate the assessment.

- States that imposition or collection of a civil assessment or bail shall not prevent a defendant from scheduling a court hearing on the underlying charge.

- Specifies that an assessment imposed because a person failed to appear in court, or pay a fine as ordered by the court, not go into effect until at least 20 calendar days after the court mails warning notice to the person.

- Makes a person ineligible for the traffic amnesty program if they have made any payments to a court comprehensive-collection program after September 30, 2015.

FIREARMS

Unsafe Handguns: Peace Officer Transfer to Spouse

Under current law it is unclear whether the spouse of domestic partner of a peace officer who was killed in the line of duty would be allowed to receive their spouse or domestic partner's state-issued service weapon, regardless of whether it has been deemed unsafe by the Department of Justice.

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, as defined, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

The Department of Justice deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, but they are deemed "unsafe" for purposes of categorization. Law enforcement agencies may still use these weapons. Some of these weapons may be used on duty by officers who have died. The spouse or domestic partners of a deceased officer may wish to purchase these weapons for sentimental reasons.

> **AB 892 (Achadjian), Chapter 203,** exempts the purchase of a state-issued handgun by the spouse or domestic partner of a peace officer who died in the line of duty from the prohibition on unsafe handguns.

Firearms: Gun Violence Restraining Orders

AB 1014 (Skinner), Chapter 872, Statutes of 2014, enacted a novel gun violence restraining order (GVRO) law in California to address concerns related to mental health and firearms possession after the Isla Vista shooting in Santa Barbara. Under the provisions of AB 1014, persons subject to GVROs are required to either sell their weapons or surrender those firearms to law enforcement. Prior to AB 1014, AB 539 (Pan) (Ch. 739, Stats. of 2013) created a process, in addition to surrendering or selling the firearms, whereby a person who is prohibited from owning or possessing firearms, may transfer their firearms to a federal firearm licensed (FFL) dealer during the duration of the restraining order. The 2014 GVRO law took precedent over the 2013 statutes. The option to transfer (not sell or surrender) firearms to a registered FFL dealer has been eliminated.

> **AB 950 (Melendez), Chapter 205,** allows a person, who is subject to a GVRO, to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. Specifically, this new law:
>
> - Allows a person, who is subject to a GVRO, to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition.

- Provides for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition.

- Authorizes state and local agencies to adopt ordinances to impose a charge equal to its administrative costs for the transfer of ammunition to licensed firearms dealers.

Firearms: Carry Concealed Weapons Permits

Under existing law, a municipal police chief may enter into an agreement with a county sheriff to process all applications to carry a concealed weapon (CCW). However, there is not a similar provision of law that allows a county sheriff to enter into an agreement with a local municipal police chief to process all applications for CCW permits from city residents. A municipal police chief may be more familiar with a city's residents than a county sheriff, and may be in a better position to make a determination whether an application for a CCW permit should be granted.

AB 1134 (Stone), Chapter 785, authorizes the sheriff of the county to enter into an agreement with the chief or other head of a municipal police department of a city to process all applications for licenses to carry a concealed handgun upon the person, renewal of those licenses, and amendments to those licenses for applicants who reside within the city.

Firearms: Gun-Free School Zone

The California Gun-Free School Zone Act, enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, prohibits bringing a firearm on any school, college, or university campus, but exempts those who carry a concealed weapons permit. The Act generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is a within a "school zone" as defined, without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

SB 707 (Wolk), Chapter 766, specifies that persons who possess a concealed weapons permit may not possess that firearm on school grounds, as specified. Specifically, this new law:

- Deletes the exemption that allows a person holding a valid license to carry a concealed firearm to possess a firearm on the campus of a university or college.

- Permits a person holding a valid license to carry a concealed firearm to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12.

- Specifies further exceptions to the prohibition on carrying ammunition on school grounds:

    - Exempts specified active and honorably retired peace officers from the prohibition;

    - Exempts persons carrying ammunition onto school ground that is in a motor vehicle which is in a locked container within the trunk of the vehicle; and,

Deletes an existing exemption permitting persons who possess a concealed weapons permit.

JUVENILES

Juveniles: Sealing of Records

Under existing law, minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court five years or more after the jurisdiction of the juvenile court has terminated over the person adjudged a ward of the court or after the minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18. Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records.

The court may also automatically order the dismissal of a minor's juvenile court case and have the court records sealed without a petition from the minor if the minor has been found to have satisfactorily completed an informal program of supervision or probation, except in specified cases. Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. This process allowing for automatic dismissal and sealing of a minor's juvenile court records was established by SB 1038 (Leno), Chapter 249, Statutes of 2014. Unlike the sealing process authorized under Welfare and Institutions Code section 781, the automatic sealing process under SB 1038 did not require the court to order records sealed in the possession of other public agencies such as law enforcement or probation. Arrest records and probation records can be damaging on an individual's ability to pursue higher education or find a job.

AB 666 (Stone), Chapter 368, requires records in the custody of law enforcement agencies, the probation department, or the Department of Justice (DOJ), to also be sealed, in a case where a court has ordered a juvenile's records to be sealed, as specified. Specifically, this new law:

- Requires the court to send a copy of the order to each agency and official named therein, directing the agency to seal its records and specifying a date thereafter to destroy the sealed records.

- States that each such agency and official shall seal the records in its custody as directed by the order, advise the court of its compliance and thereupon seal the copy of the court's order or sealing of records that was received.

- Specifies that a record that has been ordered sealed by the court under this section may be accessed, inspected or used only under the following circumstances:

- By the prosecuting attorney, the probation department or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment or is eligible for a program of supervision, as defined.

- By the court for the limited purpose of verifying the prior jurisdictional purpose of a ward who is petitioning the court to resume its jurisdiction.

- If a new petition has been filed against a minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained under this exception shall not be disseminated to other agencies or individuals, except as necessary to implement referral to a remedial program or service, and shall not be used to support the imposition of penalties or detention or other sanctions upon the minor.

- Upon a subsequent adjudication of a minor whose record has been sealed and a finding that the minor is delinquent based on a felony offense, by the probation department, prosecuting attorney, counsel for the minor, or the court for the limited purpose of determining an appropriate juvenile court disposition. Access, inspection, or use of a sealed record in this circumstance shall not be construed as a reversal or modification of the court's order dismissing the petition and to sealing record in the prior case.

- Upon the prosecuting attorney's motion to initiate court proceedings to determine a minor's fitness for juvenile court, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining the minor's fitness to be dealt with under the juvenile court law. "Access, inspection, or use of a sealed record" in this circumstances shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

- By the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records, as specified.

- Provides that these provisions do not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution, as specified, and that a minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

- Provides that a victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed, and that the juvenile court shall have access to any records sealed for the

limited purpose of enforcing a civil judgment or restitution order.

- Authorizes a record sealed, excluding personal identifying information, to be accessed by a law enforcement agency, probation department, court, or other state or local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other provisions of law.

- Provides that a court may authorize a researcher or research organization to access information contained in records that have been sealed for the purpose of conducting research on juvenile justice populations, practices, policies, or trends, subject to specified conditions.

Juveniles: Sealing of Records

Current law provides for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation. Since implementation of this law, there have been varying legal opinions as to whether probation officers are prohibited from accessing all files, including their own department's files, for any purpose.

Probation officers argue that without access to earlier files, the probation department has no ability to determine the proper course of action as it pertains to placement and/or rehabilitative placement. This prohibition also inhibits the probation officer's ability to provide a comprehensive dispositional report to the court.

AB 989 (Cooper), Chapter 375, provides limited access to otherwise sealed juvenile records to district attorneys and probation departments. Specifically, this new law:

- Authorizes the prosecuting attorney and the probation department of any county to access the records to determine if the minor is eligible for informal supervision.

- Provides that if a new petition has been filed against the minor for a felony offense, the probation department of any county shall have access to the records for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained shall not be disseminated to other agencies or individuals, except as necessary to implement a referral to a remedial program or service, and shall not be used to support the imposition of penalties, detention, or other sanctions upon the minor.

- Provides that the probation department of any county may access the records for the limited purpose of meeting federal Title IV-B and IV-E compliance;

- Allows law enforcement, including probation, a court or other local agency having custody of a sealed record to access an otherwise sealed juvenile record to comply with data collection or data reporting requirements in other laws, providing that

personal identifying information from a sealed record accessed pursuant to this provision would not be disclosed.

- Includes language to ensure that restitution orders, fines and fees continue to be enforceable, notwithstanding a sealed juvenile record.

Juveniles: Jurisdiction

Generally, persons under the age of 18 who are alleged to have committed a crime are within the jurisdiction of the juvenile court. However, current law allows minors as young as 14 to be charged as adults. Some youth may be direct filed by prosecutors, bypassing the courts, while other youth must go through a fitness hearing where a judge makes the determination to remove the youth from juvenile proceedings into adult court, or keep the youth in juvenile court.

Current law requires judges to apply five criteria to make this determination. These five criteria include (1) the degree of criminal sophistication exhibited by the minor; (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) the minor's previous delinquent history; (4) success of previous attempts by the juvenile court to rehabilitate the minor; and, (5) the circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subds. (a) & (c).)

These criteria are outdated and not based on recent case law or cognitive science that recognizes that juveniles are more able to reform and become productive members of society, if allowed to access the appropriate rehabilitation. The juvenile court system is focused on rehabilitation and provides far more support and opportunities for juvenile offenders compared to adult criminal facilities. Updating the current criteria to allow judges to consider the actual behavior of the individual and their ability to grow, mature, and be rehabilitated would ensure that judges make this important determination with a full picture of the individual.

SB 382 (Lara), Chapter 234, adds guidance to the existing criteria used by judges in determining the fitness of a minor to have his or her case adjudicated in juvenile court. Specifically, this new law:

- Specifies that, as to the degree of criminal sophistication exhibited by the minor, the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

- Provides that, in evaluating whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction, the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

- Provides that, as to the minor's previous delinquent history, the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

- Specifies that, in evaluating the success of previous attempts by the juvenile court to rehabilitate the minor, the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

- Specifies that, as to the circumstances and gravity of the offense alleged in the petition, the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

- Revises the five criteria that a juvenile must demonstrate to the court when requesting a juvenile court disposition in his or her case, which was initiated in adult criminal court without a prior finding that the person was not fit for juvenile court, to add the same discretionary factors above.

Courts: Record Sealing

Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court "five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18." (*Ibid.*) Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. (*Ibid.*) The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. (*Ibid.*) For minors who are convicted of a misdemeanor in adult court, Penal Code section 1203.45 authorizes sealing of such records.

Current law provides that a parent, spouse, or other person liable for the support of a minor, the minor when he or she becomes an adult, or the estates of those persons, is liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records. The fee to petition the court to seal records can cost up to $150 which the person must pay at the time of filing the petition. This fee and costs of investigation create an obstacle for many people who would otherwise be eligible to have their record sealed,

especially youth who cannot find employment or housing due to a prior criminal record.

SB 504 (Lara), Chapter 388, provides that only a person 26 years of age or older may be charged a fee for petitioning the court for an order sealing his or her record. Specifically, this new law:

- States that only a person who is 26 years of age or older shall, unless indigent, be liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records.

- Prohibits an unfulfilled order of restitution that has been converted to a civil judgment from barring the sealing of a record.

- States that outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record.

- Provides that a court is not prohibited from enforcing a civil judgment for an unfulfilled order of restitution and a minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

- Specifies that a victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed and the juvenile court shall have access to any records sealed pursuant to the provisions in this bill for the limited purposes of enforcing a civil judgment or restitution order.

MENTAL HEALTH

Peace Officer Training: Mental Health

Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Commission on Peace Officer Standards and Training (POST). Existing law requires POST to include in its basic training course adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Existing law also requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

According to POST representatives, there are currently 38 mental health training courses that have been certified by POST available statewide to law enforcement officers and dispatchers. Although training resources exists, there is no standardized mental health training curriculum statewide other than the mandatory six hours in the academy. The lack of uniformity creates a patchwork of training programs offered by California law enforcement agencies. Some agencies offer robust training programs while others offer far less.

SB 11 (Beall), Chapter 468, requires POST to establish a training course on law enforcement interaction with persons with mental illness as part of its basic training course, that is at least 15 hours. Requires POST to have a three hour continuing education course on the same subject matter. Specifically, this new law:

- Requires POST to review the training module in the regular basic course relating to persons with a mental illness, intellectual disability, or substance use disorder, and analyze existing training curricula in order to identify areas where additional training is needed to better prepare law enforcement to effectively address incidents involving mentally disabled persons.

- Specifies that upon identifying what additional training is needed, the commission shall update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disability, and substance use disorders, and with appropriate consumer and family advocate groups.

- Requires the course of instruction to be at least 15 hours, and shall include training scenarios and facilitated learning activities relating to law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders.

- Specifies that the course shall be presented within the existing hours allotted for the regular basic law enforcement training course.

- Specifies that POST shall establish and keep updated a promising or evidence-based behavioral health continuing training course relating to law enforcement interaction

with persons with mental illness.

- Requires that the continuing training course be three consecutive hours and address issues related to stigma, and shall be culturally relevant and appropriate.

- Requires POST to make the continuing training course on mental illness available to every law enforcement officer with the rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties.

Field Officer Training: Mental Health

Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Commission on Peace Officer Standards and Training (POST). Existing law requires POST to include in its basic training course adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Existing law also requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

A recent survey published in August of 2014 by Disability Rights California found that of the 192 POST affiliated law enforcement agencies in the State of California who responded—almost half of all law enforcement agencies— many affirmed that they were concerned about mental health crisis calls and the great demands on their resources and wanted better training and collaboration with county mental health. Furthermore, the majority of responding agencies (75%) reported that officers spend more time on mental health calls than other calls for service.

SB 29 (Beall), Chapter 469, requires law enforcement field training officers to have training from POST regarding law enforcement interaction with persons with mental illness or intellectual disability. Specifically, this new law:

- Requires field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention classroom training and instructor-led active learning relating to behavioral health to better train new peace officers how to effectively interact with persons with mental illness or intellectual disability. Training should be taught in segments that are at least four hours long.

- Excludes a field training officer who has completed 8 hours of crisis intervention behavioral health training within the past 24 months, from the training requirement.

- Specifies that field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention course by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention course within 180 days of assignment or appointment.

- Requires POST to establish and keep updated a field training officer course relating to competencies of the field training program and police training program that

addresses how to interact with persons with mental illness or intellectual disability. This course shall be at least four hours of classroom instruction and instructor-led active learning.

- Requires all prospective field training officers to complete the course as part of the field training officer program.

- Directs POST to update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disabilities, and substance abuse disorders, and with appropriate consumer and family advocate groups.

State Hospitals: Involuntary Medication

Under current law, a defendant must be competent to stand trial. If the defendant is not competent, he or she may be placed on antipsychotic medication. The treating psychiatrist must make efforts to gain consent from the defendant. If these efforts fail and it is deemed medically necessary and appropriate, the treating psychiatrist can place an involuntary medication order on the defendant and require him or her to take medications without his or her consent. Before the defendant can be involuntarily placed on antipsychotic medications, a hearing must take place where the treating psychiatrist testifies and certifies that the antipsychotic drug(s) is necessary. If the judge agrees with the certification, then the court will issue an order for the administration of the involuntary medication for a period up to 21 days. A separate hearing is needed to extend the involuntary medication order.

In May 2013 and July 2014, it became more apparent that the Department of State Hospital (DSH) psychiatrists were being assaulted or seriously injured following their testimony in involuntary medication hearings. To help reduce the number of injuries, the DSH proposed legislation that would allow non-treating psychiatrist to testify at those hearings and expand the time superior courts could schedule a hearing.

SB 453 (Pan), Chapter 260, allows appointment of an acting psychiatrist to seek an order for involuntary medication of a person who is incompetent to stand trial based on the need to maintain the doctor-patient relationship or to prevent harm. Specifically, this new law:

- Allows the treating psychiatrist of a person that is incompetent to stand trial to request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist to testify at a hearing on the involuntary administration of medication, based on a need to preserve his or her rapport with the patient, or to prevent harm.

- Requires that if the medical director of the facility designates another psychiatrist to testify at a hearing on the involuntary administration of medication the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the patient prior to the hearing.

Mentally Ill Offenders: Crime Reduction Grants

The Mentally Ill Offender Crime Reduction Grant Program supports the implementation and evaluation of locally developed demonstration projects designed to reduce recidivism among persons with mental illness. The program recognizes that the cooperation between law enforcement, corrections, mental health, and other agencies is critical to improve California's response to mentally ill offenders. Projects are to be collaborative and address locally identified gaps in jail and community-based services for persons with a serious mental illness.

Last year, SB 1054 (Steinberg), Chapter 436, Statutes of 2014, reestablished the Mentally Ill Offender Crime Reduction Program with some differences from its previous incarnation. Specifically, it allows grants to be awarded to specialized alternative custody programs that offer appropriate mental health treatment and services. Previous legislation prevented the use of grants towards programs providing an alternative to incarceration.

> **SB 621 (Hertzberg), Chapter 473,** explicitly authorizes the funds from the Mentally Ill Offender Crime Reduction Program to be used for diversion programs that offer appropriate mental health and treatment services.

PEACE OFFICERS

Peace Officers: Body-Worn Cameras

Body-worn cameras are the newest law enforcement tool being implemented by several police departments statewide to capture law enforcement officers' interactions with the public.

In September 2014, the U.S. Department of Justice (DOJ) recently released a report titled *"Implementing a Body-Worn Camera Program"* which detailed recommendations and warnings regarding the use of body-worn cameras by police. The report, authored by the DOJ's Community Oriented Policing Services, consists of a survey of 254 law enforcement agencies and how they implement the technology into everyday encounters with the public. One significant conclusion that the report reached was that there is a correlation between the use of body-worn cameras and the reduction of excessive use of force complaints.

Benefits cited from having law enforcement officers wear cameras include documenting evidence; providing the opportunity for officer training by reviewing data of different situations to ensure officers are following best practices and improving ways to best handle an incident; preventing and resolving citizen complaints by members of the public; and strengthening law enforcement transparency and accountability. However, there are also concerns that need to be addressed as we continue to learn how this new developing technology actually works in the field including privacy rights and the impact on community relations.

Although many law-enforcement departments currently using body-worn cameras have formal policies covering some key issues, existing law does not require these agencies to have a policy prior to utilizing them.

AB 69 (Rodriguez), Chapter 461, requires law enforcement agencies to consider specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras. Specifically, this new law:

- Requires law enforcement agencies, departments, or entities to consider the following best practices when establishing policies and procedures for the implementation and operation of a body-worn camera system:
    - Designate the person responsible for downloading the recorded data from the body-worn camera. If the storage system does not have automatic downloading capability, the officer's supervisor should take immediate physical custody of the camera and should be responsible for downloading the data in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident.
    - Establish when data should be downloaded to ensure the data is entered into the system in a timely manner, the cameras are properly maintained and ready for the next use, and for purposes of tagging and categorizing the data.

- Establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data.

- Categorize and tag body-worn camera video at the time the data is downloaded and classified according to the type of event or incident captured in the data.

- Specifically state the length of time that recorded data shall be stored.

- State where the body-worn camera data will be stored; including, for example, an in-house server which is managed internally, or an online cloud database which is managed by a third- party vendor.

- If using a third-party vendor to manage the data storage system, consider specified factors to protect the security and integrity of the data.

- Require that all recorded data from body-worn cameras are property of their respective law enforcement agency and shall not be accessed or released for any unauthorized purpose, explicitly prohibit agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media Internet web sites, and include sanctions for violations of this prohibition.

- Clarifies that the provisions in the bill shall not be interpreted to limit the public's right to access recorded data under the California Public Records Act.

Peace Officer Use of Force: Reporting

The California Department of Justice (DOJ) is statutorily required to collect and maintain data and develop statistical reports related to crime and the criminal justice process in California. Local agencies are also statutorily required to maintain statistical data and provide those to DOJ.

Under current law, local law enforcement agencies are required to report to DOJ all justifiable homicides committed in that agency's jurisdiction. (Pen. Code, § 13022.) Arrest information from local agencies must also be provided to DOJ in order to maintain its arrest and citation database. (Pen. Code, §§ 13020 and 13021.) This database contains information including name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. Using statistical data from local jurisdictions, DOJ publishes an annual report on crime, as well as other reports as required by statute.

Because current law only requires justifiable homicides to be reported to DOJ, there is no way to compare those numbers to those that are not deemed justifiable. This is due to the lack of data on officer-involved shootings and use of force in general.

AB 71 (Rodriguez), Chapter 462, requires each law enforcement agency to annually furnish to DOJ, in a manner defined and prescribed by the Attorney General, a report of specified instances when a peace officer employed by that agency is involved in a shooting or use of force incident, as specified. Specifically, this new law:

- Provides that the following incidents must be reported:
    - An incident involving the shooting of a civilian by a peace officer;
    - An incident involving the shooting of a peace officer by a civilian;
    - An incident in which use of force by a peace officer against a civilian results in serious bodily injury or death; or
    - An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.
- Requires, for each incident reported, law enforcement to report, at a minimum:
    - The gender, race, and age of each individual who was shot, injured, or killed;
    - The date, time, and location of the incident;
    - Whether the civilian was armed, and, if so, the type of weapon the civilian had;
    - The type of force used against the officer, the civilian, or both, including the types of weapons used;
    - The number of officers involved in the incident;
    - The number of civilians involved in the incident; and,
    - A brief description regarding the circumstances surrounding the incident which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.
    - Requires DOJ to include a summary of the information contained these reports in its annual crime report and to classify the information according to the reporting law enforcement jurisdiction.

Public Safety Officer Medal of Valor

The Public Safety Medal of Valor is the highest state award given to public safety officers for showing "extraordinary valor beyond the call of duty." Lifeguards in most jurisdictions in California are classified as public safety officers and they should be eligible to qualify for this

award. Their heroic actions save thousands of lives each year and the dangerous work they perform has led some to pay the ultimate price, yet they cannot be considered for this honor.

> **AB 489 (Gonzalez), Chapter 329,** adds ocean lifeguards to the list of public safety officers eligible to receive the Public Safety Officer Medal of Valor for extraordinary valor above and beyond the call of duty, and authorizes the United States Lifesaving Association to represent ocean lifeguards on the Public Safety Officer Medal of Valor Review Board.

Peace Officers: Basic Training Requirements

The introductory training course prescribed in Penal Code section 832, subdivision (a) is commonly referred to as the "PC 832 Arrest and Firearms" course and is the minimum training standard required of California peace officers in order to exercise peace officer powers, namely those of making arrests and using and carrying firearm throughout the state (with specified exceptions). According to Commission on Peace Officer Standards and Training (POST), this course is the "entry-level training requirement for many California peace officers." The course can be completed through a 664-hour-minimum Standard Format training or a 730-hour-minimum modular format, which can be taken over an extended period of time. The curriculum for the course is divided among 41 topics called "Learning Domains," which contain the minimum required foundational information for given subjects. The Learning Domains include the following topics: leadership, professionalism, and ethics; criminal justice system; policing in the community; laws of arrests; search and seizure; presentation of evidence; investigative report writing; use of force; crime scene, evidence, and forensics; arrest and control; firearms/chemical agents; and cultural diversity/discrimination. Currently, there is a significant waiting list for probation department officers to receive the basic "PC 832" training due to a lack of vacancies in existing classes which are offered by other agencies.

> **AB 546 (Gonzalez), Chapter 200,** requires POST, when evaluating a certification request from a probation department for the introductory and requisite peace officer training course, to deem that there is an identifiable and unmet need for the training course.

Unsafe Handguns: Peace Officer Transfer to Spouse

Under current law it is unclear whether the spouse of domestic partner of a peace officer who was killed in the line of duty would be allowed to receive their spouse or domestic partner's state-issued service weapon, regardless of whether it has been deemed unsafe by the Department of Justice.

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, as defined, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

The Department of Justice deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, but they are deemed "unsafe" for purposes of categorization. Law enforcement agencies may still use these weapons. Some of these weapons may be used on duty by officers who have died. The spouse or domestic partners of a deceased officer may wish to purchase these weapons for sentimental reasons.

AB 892 (Achadjian), Chapter 203, exempts the purchase of a state-issued handgun by the spouse or domestic partner of a peace officer who died in the line of duty from the prohibition on unsafe handguns.

Law Enforcement: Racial Profiling

Racial and identity profiling occurs when law enforcement personnel stop, search, seize property from, or interrogate a person without evidence of criminal activity. Studies show that profiling often occurs due to unconscious biases about particular demographic identities. Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur.

For example, according to a recent report by the Oakland Police Department, African-Americans, who compose 28 percent of Oakland's population, accounted for 62 percent of police stops from last April to November. The figures also showed that stops of African-Americans were more likely to result in felony arrests. And, while African-Americans were more likely to be searched after being stopped, police were no more likely to find contraband from searching African-Americans than members of other racial groups.

AB 953 (Weber), Chapter 466, requires local law enforcement agencies to report specified information on stops conducted by peace officers to the Attorney General's Office; and establishes the Racial and Identity Profiling Advisory Board (RIPA). Specifically, this new law:

- Requires each state and local agency that employs peace officers to report, at least annually, to the Attorney General's office data on stops, as specified, conducted by that agency's peace officers for the preceding calendar year.

- Phases-in the mandated data reporting requirement on law enforcement agencies, as follows:

    - Each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019.

    - Each agency that employs 667 or more but less than 1,000 peace officers shall issue its first round of reports on or before April 1, 2020.

    - Each agency that employs 334 or more but less than 667 peace officers shall issue its first round of reports on or before April 1, 2022.

- Each agency that employs one or more but less than 334 peace officers shall issue its first round of reports on or before April 1, 2023.

- Requires the reporting to include the following information for each stop:
  - The reason for the stop;
  - The result of the stop, such as no action, warning, citation, property seizure, or arrest;
  - If a warning or citation was issued, the warning provided or violation cited;
  - If an arrest was made, the offense charged;
  - The perceived race or ethnicity, gender, and approximate age of the person stopped. The identification of these characteristics shall be based on the observation and perception of the peace officer making the stop. For auto stops, this requirement applies only to the driver unless actions taken by the officer apply in relation to a passenger, in which case his or her characteristics shall also be reported; and,
  - Actions taken by the officer during the stop, including, but not limited to, the following:
    - Whether the officer asked for consent to search the person, and if so, whether consent was provided;
    - Whether the officer searched the person or any property, and if so, the basis for the search, and the type of contraband or evidence discovered, if any; and,
    - Whether the officer seized any property and, if so, the type of property that was seized, and the basis for seizing the property.

- Requires the Attorney General to issue regulations for the collection and reporting of data.

- Mandates that the Attorney General annually analyze the data collected and report its findings and post them on the Department of Justice (DOJ) Web site.

- Revises the content of the DOJ annual report on criminal statistics to report the total number of citizen complaints, as specified.

- Renames "racial profiling" as "racial or identity profiling" and redefines it as "consideration of or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual

orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope and substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as, asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest."

- Mandates the Attorney General establish the RIPA beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement.

- Provides that the RIPA shall include a number of members, a specified.

- Tasks the RIPA with the following:

    - Analyzing data reported, as specified;

    - Analyzing law enforcement training on racial and identity profiling;

    - Working in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California;

    - Conducting, and consulting available, evidenced-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics;

    - Issuing an annual report the first of which shall be issued by January 1, 2018, and posting the reports on its Internet Web site; and,

    - Holding at least three annual public meetings to discuss racial and identity profiling and potential reforms, as specified.

Custodial Officers: Training Requirements

All peace officers in California are required to complete a mandated basic training course which is certified by the Commission on Peace Officers Standards and Training (POST). Additionally, the peace officer must pass an examination. Once the officer completes the course and satisfactorily passes the examination, the officer must become a peace officer within three years of passing the examination, and may not have a break in service of three years of longer. If the officer does not become employed as a peace officer, or has the proscribed break in service they must repeat the training and retake the examination.

Some officers who complete the full basic training course for peace officers and pass the examination are assigned to custodial officer positions. These positions may also be filled by

officers who complete a significantly less strenuous training course, and thus they do not have the full powers of peace officers. Since these positions are not "patrol" positions, the officers who have completed full training experience a lapse in their full peace officer status and must re-train and pass the examination after three years in a custodial position. However, many counties only hire fully trained peace officers for the same custodial positions so their officers are considered peace officers will the full powers permitted under Penal Code § 832 and they do not experience a lapse in status. Therefore, a fully trained peace officer who is hired in Marin County and employed as a custodial officer will not have to re-train if he or she later decides to transfer to a patrol position. While at the same time, a fully trained peace officer who is hired in Kings County as a custodial officer will have to re-train after three years because their peace officer status as lapsed.

> **AB 1168 (Salas), Chapter 207,** exempts a custodial peace officer, who has completed the regular basic course and has maintained his or her perishable skills training, from requalification requirements if he or she has been continuously employed as a custodial peace officer for a period not exceeding five years by the agency appointing that officer to a non-custodial position.

Peace Officer Training: Mental Health

Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Commission on Peace Officer Standards and Training (POST). Existing law requires POST to include in its basic training course adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Existing law also requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

According to POST representatives, there are currently 38 mental health training courses that have been certified by POST available statewide to law enforcement officers and dispatchers. Although training resources exists, there is no standardized mental health training curriculum statewide other than the mandatory six hours in the academy. The lack of uniformity creates a patchwork of training programs offered by California law enforcement agencies. Some agencies offer robust training programs while others offer far less.

> **SB 11 (Beall), Chapter 468,** requires POST to establish a training course on law enforcement interaction with persons with mental illness as part of its basic training course, that is at least 15 hours. Requires POST to have a three hour continuing education course on the same subject matter. Specifically, this new law:
>
> - Requires POST to review the training module in the regular basic course relating to persons with a mental illness, intellectual disability, or substance use disorder, and analyze existing training curricula in order to identify areas where additional training is needed to better prepare law enforcement to effectively address incidents involving mentally disabled persons.

- Specifies that upon identifying what additional training is needed, the commission shall update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disability, and substance use disorders, and with appropriate consumer and family advocate groups.

- Requires the course of instruction to be at least 15 hours, and shall include training scenarios and facilitated learning activities relating to law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders.

- Specifies that the course shall be presented within the existing hours allotted for the regular basic law enforcement training course.

- Specifies that POST shall establish and keep updated a promising or evidence-based behavioral health continuing training course relating to law enforcement interaction with persons with mental illness.

- Requires that the continuing training course be three consecutive hours and address issues related to stigma, and shall be culturally relevant and appropriate.

- Requires POST to make the continuing training course on mental illness available to every law enforcement officer with the rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties.

Field Officer Training: Mental Health

Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Commission on Peace Officer Standards and Training (POST). Existing law requires POST to include in its basic training course adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Existing law also requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

A recent survey published in August of 2014 by Disability Rights California found that of the 192 POST affiliated law enforcement agencies in the State of California who responded—almost half of all law enforcement agencies— many affirmed that they were concerned about mental health crisis calls and the great demands on their resources and wanted better training and collaboration with county mental health. Furthermore, the majority of responding agencies (75%) reported that officers spend more time on mental health calls than other calls for service.

SB 29 (Beall), Chapter 469, requires law enforcement field training officers to have training from POST regarding law enforcement interaction with persons with mental illness or intellectual disability. Specifically, this new law:

- Requires field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention classroom training and instructor-led active learning relating to behavioral health to better train new peace officers how to effectively interact with persons with mental illness or intellectual disability. Training should be taught in segments that are at least four hours long.

- Excludes a field training officer who has completed 8 hours of crisis intervention behavioral health training within the past 24 months, from the training requirement.

- Specifies that field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention course by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention course within 180 days of assignment or appointment.

- Requires POST to establish and keep updated a field training officer course relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability. This course shall be at least four hours of classroom instruction and instructor-led active learning.

- Requires all prospective field training officers to complete the course as part of the field training officer program.

- Directs POST to update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disabilities, and substance abuse disorders, and with appropriate consumer and family advocate groups.

Crimes: Videotaping of Peace Officers in Public

Under existing law, every person who willfully resists, delays, or obstructs any public officer, peace officer, or emergency medical technician in the discharge or attempt to discharge any of his or her duties shall be punished by a fine or imprisonment, or both, as specified.

Over the past decade, technological advances have made it so that nearly every citizen has a hand-held recording device. Current statues do not reflect the advancements of recording technology and existing law is not clear on what constitutes an obstruction of an officer when using these devices to record officers exercising their duties in public. This lack of clarity has increased conflict between police officers and members of the public. The law's obscurity has led to confusion about protected citizen oversight activities, such as filming and photographing.

SB 411 (Lara), Chapter 177, provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer, peace officer, or executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of

specified offenses for obstruction of an officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person. Specifically, this new law:

- States that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of attempting by means of threats or violence, to deter or prevent an executive officer from performing their duty, or resisting by the use of force or violence the officer, in performance of his or her duty.

- Provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of willfully resisting, delaying, or obstructing a public officer, or peace officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

- States that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute reasonable suspicion to detain the person or probable cause to arrest the person.

University or College Police: Eavesdropping

Penal Code section 633 allows sworn officers to record the statements of suspects without notifying them, which would otherwise be prohibited under state wiretapping laws. This is most often utilized during suspect interviews/interrogations, in-car recordings of suspects in custody, and in a pretext phone call situation. A pretext phone call is the recording of a conversation between a victim and a known suspect arranged by law enforcement to gain admissions or other incriminating statements. This technique provides some of the best evidence in cases of date rape and other crimes involving no independent witnesses.

Unfortunately, POST certified officers who protect campuses such as the California State University and University of California systems were not among those listed within Penal Code section 633, while virtually all other police entities in the state were included. The exact cause of this omission is difficult to ascertain, however, it is clear today that college and university law enforcement entities need the ability to obtain these recordings as dictated by their investigations. Not only does this omission undermine effective law enforcement, it has the effect of prohibiting use of Body Worn Cameras by college and university officers in some circumstances.

SB 424 (Pan), Chapter159, allows a university or college police officer to eavesdrop in any criminal investigation relating to sexual assault or other sexual offense, and to wear body worn-cameras. Specifically, this new law:

- Authorizes any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus acting within the scope of his or her authority, to overhear or record any communication in any criminal investigation related to sexual assault or other sexual offense.

- Provides that nothing in existing privacy statutes shall prohibit any POST-certified chief of police, assistant chief of police, or police officer of a university or college campus from using or operating body-worn cameras.

- States that the provisions of this bill shall not be used to impinge upon the lawful exercise of constitutionally protected rights of free speech, or the constitutionally protected right of personal privacy.

RESTITUTION

Victim Compensation Program

The California Victim Compensation and Government Claims Board administers the California Victim Compensation Program (CalVCP) and is authorized to compensate victims and derivative victims of specified types of crimes through a continuously appropriated fund, the Restitution Fund. Existing law sets forth the eligibility requirements and limits on the amount of compensation the CalVCP may award.

The CalVCP framework was developed several decades ago and has not been thoroughly revised since that time. The CalVCP conducted a statute modernization project, bringing various stakeholder groups together to make recommendations on revising and updating the state compensation program to better serve victims. The statute modernization project found the need to modernize the program to reflect changing technologies and crimes, and to address ongoing issues with outdated restrictions.

AB 1140 (Bonta), Chapter 569, revises various rules governing the CalVCP. Specifically, this new law:

- Expands the definition of a victim's "authorized representative" to include any person having written authorization by the victim or derivative victim, or any person designated by law such as a legal guardian, as specified.

- Provides that an applicant may be found to have been "uncooperative" for purposes of verifying information necessary to process a claim under specified circumstances.

- Authorizes compensation for a victim's emotional injury incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the victim appeared, if the victim is a minor.

- Revises provisions allowing compensation for emotional injury suffered in child abduction to delete the requirement that the deprivation of custody lasted for 30 days, and instead requires only that criminal charges be filed.

- Revises provisions concerning denial of a claim because of the nature of the applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gave rise to the claim, with exceptions to such denials in cases of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor.

- Specifies factors that may be used to mitigate or overcome involvement in the events leading to a crime.

- Prohibits a domestic violence victim from being found to be uncooperative based on his or her conduct with law enforcement at the scene of a crime.

- Prohibits a victim of domestic violence, sexual assault, or human trafficking from being found to be uncooperative because of a delay in reporting the crime.

- Prohibits the denial of a claim arising from a sexual assault based solely on the failure to file a police report.

- Requires the board to adopt guidelines allowing it to consider and approve applications for assistance in sexual assault cases by relying upon evidence other than a police report.

- Denies compensation to any person convicted of a violent felony, as specified, until that person is no longer incarcerated and discharged from supervision.

- Denies compensation to any person who is required to register as a sex offender.

- Removes provisions which prioritize the applications of victims who are not felons.

- Removes limits for statutory rape counseling.

- Expands eligibility to recoup the costs of mental health counseling to grandparents and grandchildren.

- Limits reimbursement for medically-related expenses to those that were provided by a licensed medical provider.

- Eliminates the board's authority to reimburse for expenses of nonmedical remedial care and treatment given in accordance with a religious method of healing recognized under state law.

- Prohibits reimbursement for peer counseling if the services can only be provided by a licensed professional.

- Eliminates verification requirements for reimbursement of increased residential-security measures.

- Allows reimbursement for the purchase of a vehicle for a victim who becomes permanently disabled.

- Specifies that, as to reimbursement of costs for a victim's relocation, the victim may have to repay the reimbursement if the victim notifies the perpetrator of his or her new address or allows the offender on the premises.

- Provides that if a security deposit is required for relocation services, the board will be its recipient.

- Expands reimbursement to cover cleaning expenses when the crime scene is a vehicle.

- Prohibits the board from creating a regulation or policy that mandates an award of less than $7,500 for funeral and burial expenses.

- Allows the board to request verification before it reimburses for attorney's fees.

- Permits an applicant who seeks a hearing on the denial of compensation to request a telephonic hearing.

- Provides that evidence submitted after the board has denied a request for reconsideration shall not be considered unless the board chooses to reconsider the decision on its own motion.

- Requires any board actions to collect overpayments be commenced within seven years of the date of the overpayment, except under specified circumstances.

- Authorizes the recipient of an alleged overpayment to contest that finding.

- Provides that the board need only forward restitution proceeds collected from a prisoner or parolee to a victim when the payment is $25 or more, unless the victim requests payments of a lesser amount.

- Prohibits the board from requiring an applicant to submit tax and related documents in conjunction with an application, but allows the board to use such material to verify the amount paid to a victim.

- Requires the board to provide application materials in a number of specified languages and requires the board to communicate with a victim in the language the victim uses in submitting an application.

- Requires the board to allow a victim to have a support animal while testifying.

- Allows a victim to testify in a criminal restitution hearing by live audio or audiovisual means, as specified.

Victim Restitution: Crimes Committed by Juveniles

In 1999 and 2004 the Legislature amended the restitution statute applicable in adult criminal cases, Penal Code section 1202.4, to include payment of restitution for specified derivative victims; but the Legislature did not similarly amend section 730.6, the restitution statute applicable in juvenile delinquency proceedings.

SB 651 (Leyva), Chapter 131, conforms the definition of "victim" for purposes of restitution in juvenile delinquency proceedings to the definition of "victim" applicable in

adult criminal proceedings. Specifically, this new law: Adds the following to the definition of a "victim" for purposes of the restitution statute applicable in juvenile dependency proceedings:

- A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime; and,

- A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

    - At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim;

    - At the time of the crime was living in the household of the victim;

    - At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed above;

    - Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime; or,

    - Is the primary caretaker of a minor victim.

SEARCH WARRANTS

Search Warrants: Electronic Submission

Existing law authorizes a magistrate, before issuing a search warrant, to examine upon oath the person seeking the warrant and requires the magistrate to take his or her affidavit in writing. Existing law allows a magistrate, in lieu of a written affidavit, to take an oral statement under oath using a telephone or facsimile transmission equipment, by using a telephone and electronic mail, or by using a telephone and computer server. Existing law requires if one of these means is utilized, the oath shall be made during a telephone conversation with the magistrate, after which the affiant signs the affidavit and sends the proposed search warrant and all supporting documents to the magistrate. Existing law requires the affiant to telephonically acknowledge the receipt of the signed search warrant and designates the completed search warrant, as signed by the magistrate and received by the affiant, as the duplicate original warrant.

AB 39 (Medina), Chapter 193, revises the procedure by which a magistrate may issue a search warrant by use of a telephone and facsimile transmission, electronic mail, or computer server. Specifically, this new law:

- Requires an affiant to first sign his or her affidavit in support of the application for the search warrant and then transmit the proposed search warrant and all supporting affidavits and documents to the magistrate.

- Provides that the oath shall be made during a telephone conversation with the magistrate, after the affiant has signed his or her affidavit in support of the application for search warrant and transmitted the documents to the magistrate.

- States that the completed search warrant as signed by the magistrate and transmitted via facsimile transmission, electronic mail, or computer server, and received by the affiant shall be deemed to be the original warrant.

- Deletes the existing requirement that the affiant telephonically acknowledge receipt of the signed search warrant.

Search Warrants: Boating Under the Influence

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

But existing law fails to grant the statutory authority to law enforcement to seek and obtain a search warrant when a person suspected of operating a marine vessel under the influence of drugs and/or alcohol refuses to submit to, or fails to complete, a blood test.

AB 539 (Levine), Chapter 118, authorizes the issuance of a search warrant to compel a blood draw from a person suspected of operating a boat while under the influence of alcohol or drugs. Specifically, this new law:

- Permits the issuance of a search warrant when all of the following apply:
    - A blood sample constitutes evidence that tends to show a violation of specified sections of the Harbors and Navigation Code relating to the operation of a marine vessel while under the influence of drugs or alcohol;
    - The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test; and,
    - The sample will be drawn from the person in a reasonable, medically approved manner.
- States that these provisions are not intended to abrogate the court's duty to determine the propriety of issuing a search warrant on a case-by-case basis.

Service of Process: Foreign Corporations and Foreign Limited Liability Companies

Existing law requires both a domestic and foreign corporation to designate an agent for the purpose of service of process when the corporation files a certificate in the office of the Secretary of State to transact business in California. An agent for service of process is an individual who resides in the state, or a corporation, designated to accept court documents if the business entity is sued. Designating a person or an entity to receive service of process ensures that the corporation has formal notice of a law suit and any related court documents. The designated agent for service of process is also the entity upon whom a search warrant would be served for records or documents that are in the possession of the foreign corporation.

In order to be "properly served," current law requires the court documents to be delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed as specified. However, it is becoming increasingly common for companies to insist on electronic service, either by email or via a web portal established for this purpose

AB 844 (Bloom), Chapter 57, specifies that a foreign corporation and foreign limited liability company may consent to service of process for a search warrant by any means specified by the foreign corporation or the foreign limited liability corporation, such as email or submission to a designated Internet Web portal.

Pen Registers: Authorized Use

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 registers 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.

AB 929 (Chau), Chapter 204, authorizes state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices. Specifically, this new law:

- Defines "pen register" as a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication. "Pen register" does not include a device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or a device or process used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.

- Defines "trap and trace device" as a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.

- Provides that in general, a person may not install or use a pen register or a trap and trace device without first obtaining a court order. However, a provider of electronic or wire communication service may use a pen register or a trap and trace device for any of the following purposes: to operate, maintain, and test a wire or electronic communication service; to protect the rights or property of the provider; to protect users of the service from abuse of service or unlawful use of service; to record the fact that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a sue of that service from fraudulent, unlawful or abusive use of service; or, if the consent of the user of that service has been obtained.

- Provides that illegally installing a pen register or trap and trace device is a misdemeanor with a fine of up to $2,500 and/or up to one year in county jail, or by imprisonment in state prison for offenders with specified prior convictions.

- Specifies that a peace officer may make an application to a magistrate for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device. The application shall be in writing under oath or equivalent affirmation, and shall include the identity of the peace officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant shall certify that the information likely to be obtained is relevant to an ongoing criminal investigation and shall include a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

- States that the magistrate shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if he or she finds that the information likely to be obtained by the installation and the use of a pen register or a trap and trace device is relevant to an ongoing investigation and the that there is probable cause to believe that the pen register or trap and trace device will lead to any of the following:

    - Recovery of stolen or embezzled property;

    - Property or things used as the means of committing a felony;

    - Property or things in the possession of a person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have been delivered them for the purpose of concealing them or preventing them from being discovered;

    - Evidence tends to show a felony has been committed or tends to show that a particular person has committed or is committing a felony;

    - Evidence tends to show that sexual exploitation of a child or possession of a matter depicting the sexual conduct of a person under 18 years of age has occurred or is occurring;

    - The location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause;

    - Evidence that tends to show specified Labor Code violations; and

    - Evidence that does any of the following:

        - Tends to show a felony, a misdemeanor violation of the Fish and Game Code or a misdemeanor violation of the Public Resources Code;

- Tends to show that a particular person has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code or a misdemeanor violation of the Public Resources Code; and

- Will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.

- Provides that information acquired solely pursuant to the authority for a pen register or trap and trace device shall not include any information that may disclose the physical location of the subscriber, except to the extent that the location may be determined from the telephone number.

- Provides that an order issued by a magistrate shall specify all of the following:

    - The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

    - The identity, if known, of the person who is the subject of the criminal investigation;

    - The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

    - A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

    - The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

- Provides that an order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

- Provides that extensions of the original order may be granted upon a new application for an order if the officer shows that there is a continued probable cause that the information or items sought under this subdivision are likely to be obtained under the extension. The period of an extension shall not exceed 60 days.

- Provides that the magistrate, before issuing the order, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take

his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the parties making them.

- Provides that an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the magistrate who issued the order, or a judge of the superior court, and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the magistrate or a judge of the superior court.

- States that upon the presentation of an order issued by a magistrate for installation of a pen register or trap and trace device by a peace officer authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall immediately provide the peace officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the assistance is directed by the order.

- Provides that upon the request of a peace officer authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall immediately install the device on the appropriate line and provide the peace officer all information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by the order.

- States that unless otherwise ordered by the magistrate, the results of the pen register or trap and trace device shall be provided to the peace officer at reasonable intervals during regular business hours for the duration of the order.

- Provides that the magistrate before issuing the order pursuant may examine on oath the person seeking the pen register or the trap and trace device, and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the parties making them.

- Provides that except as otherwise provided, upon an oral application by a peace officer, a magistrate may grant oral approval for the installation and use of a pen register or a trap and trace device, without an order, if he or she determines all of the following:

- There are grounds upon which an order could be issued under specified normal application for a pen register or trap and trace device;

- There is probable cause to believe that an emergency situation exists with respect to the investigation of a crime; and,

- There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate installation and use of a pen register or a trap and trace device before an order authorizing the installation and use can, with due diligence, be submitted and acted upon.

- Provides that by midnight of the second full court day after the pen register or trap and trace device is installed by oral application, a written application pursuant to Penal Code Section 638.52 shall be submitted by the peace officer who made the oral application to the magistrate who orally approved the installation and use of a pen register or trap and trace device. If an order is issued the order shall also recite the time of the oral approval and shall be retroactive to the time of the original oral approval.

- Specifies that in the absence of an authorizing order, the use shall immediately terminate when the information sought is obtained, when the application for the order is denied, or by midnight of the second full court day after the pen register or trap and trace device is installed, whichever is earlier.

- Provides that a provider of a wire or electronic communication service, landlord, custodian, or other person who provides facilities or technical assistance pursuant to this section shall be reasonably compensated by the requesting peace officer's law enforcement agency for the reasonable expenses incurred in providing the facilities and assistance.

Search Warrants: Controlled Substances

In California, Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued when property or things were used as the means to commit a felony. Other enumerated circumstances authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as when the property subject to search was stolen or embezzled or when the property or things are in the possession of any person with the intent to use them as a means of committing a public offense. A "public offense" is defined as crimes which include felonies, misdemeanors, and infractions.

Health and Safety Code section 11472 provides that controlled substances or paraphernalia may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law. However, because Penal Code section 1524 is relied upon as the statute that provides direction on when warrants may be issued, some agencies are unaware that they may seek a warrant for controlled substances.

AB 1104 (Rodriguez), Chapter 124, clarifies in the Penal Code that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.

Search Warrants: Electronic Communications

Californians are guaranteed robust constitutional rights to privacy and free speech and the Legislature has long been a leader in protecting individual privacy. However, the emergence of new technology has left California's statutory protections behind, and currently, a handwritten letter in a citizen's mailbox enjoys more robust protection from warrantless surveillance than an email in someone's inbox.

California residents use technology every day to connect, communicate, work, and learn. Our state's leading technology companies rely on consumer confidence in these services to help power the California economy. But consumers are increasingly concerned about warrantless government access to their digital information, and for good reason. While technology has advanced exponentially, California privacy law has remained largely unchanged. Law enforcement is increasingly taking advantage of outdated privacy laws to turn mobile phones into tracking devices and to access emails, digital documents, and text messages without proper judicial oversight.

SB 178 (Leno), Chapter 651, 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. Specifically, this new law:

- Prohibits a government entity from:
    - Compelling the production, of or access to, electronic communication information from a service provider;
    - Compelling the production of or access to electronic device information from any person or entity other than the authorized possessor of the device; and,
    - Accessing electronic device information by means of physical interaction or electronic communication with the device, although voluntary disclosure to a government entity is permitted.
- Permits a government entity to compel the production of, or access to, electronic communication information subject from a service provider, or compel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device pursuant to a warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to existing state law, as

specified.

- Permits a government entity to access electronic device information by means of physical interaction or electronic communication with the device only as follows:
    - Pursuant to a warrant;
    - Pursuant to a wiretap order;
    - With the specific consent of the authorized possessor of the device;
    - With the specific consent of the owner of the device, only when the device has been reported as lost or stolen;
    - If the government entity, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires access to the electronic device information; and,
    - If the government entity, in good faith, believes the device to be lost, stolen, or abandoned, provided that the entity shall only access electronic device information in order to attempt to identify, verify, or contact the owner or authorized possessor of the device.
    - If the device is seized from an inmate's possession or found in an area of a correctional facility where inmates have access and the device is not in the possession of an individual and the device is not known or believed to be the possession of an authorized visitor, except as otherwise provided by state or federal law.
- Requires any warrant for electronic information to comply with the following:
    - The warrant shall describe with particularity the information to be seized, including specifying the time periods covered, and as appropriate and reasonable, the target individuals or accounts, the applications or services covered, and the types of information sought.
    - The warrant shall require that any obtained information unrelated to the objective of the warrant shall be sealed and not subject to further review, use, or disclosure unless a court issues an order that there is probable cause to believe that the information is relevant to an active investigation, or is otherwise required by state or federal law.
    - The warrant or order shall comply with all other provisions of California and federal law, including any provisions prohibiting, limiting, or imposing additional requirements on the use of search warrants. Warrants directed to a service provider must be accompanied by an order to verify the authenticity of

the electronic information produced, as specified.

- When issuing any warrant for electronic information, or upon the petition from the target or recipient of the warrant, a court may, at its discretion, do any or all of the following:
    - Appoint a special master, who is charged with ensuring that only information necessary to achieve the objective of the warrant or order is produced or accessed.
    - Require that any information obtained through the execution of the warrant or order that is unrelated to the objective of the warrant be destroyed as soon as feasible after termination of current or related investigations.
- Authorizes a service provider to voluntarily disclose electronic communication information or subscriber information when that disclosure is not otherwise prohibited by state or federal law.
- Requires a government entity that receives electronic communication information voluntarily provided by a service provider to destroy that information within 90 days unless the entity has or obtains the specific consent of the sender or recipient, obtains a court order, or the information is retained for the investigation of child pornography and related crimes, as specified.
- Requires a government entity that obtains electronic information pursuant to an emergency to seek an authorizing warrant or order, or an approval motion, within three days after obtaining the electronic information, from the appropriate court.
- Declares that certain of these provisions do not limit the authority of a government entity to use an administrative, grand jury, trial, or civil discovery subpoena to do either of the following:
    - Require an originator, addressee, or intended recipient of an electronic communication to disclose any electronic communication information associated with that communication;
    - Require an entity that provides electronic communications services to its officers, directors, employees, or agents for the purpose of carrying out their duties, to disclose electronic communication information associated with an electronic communication to or from an officer, director, employee, or agent of the entity; or,
    - Require a service provider to provide subscriber information.
- Requires a government entity that executes a warrant or obtains electronic information in an emergency pursuant to these provisions to serve or deliver a notice,

as specified, to the identified targets stating that information about the target has been compelled or requested, and states with reasonable specificity the nature of the government investigation under which the information is sought, including a copy of the warrant, or a written statement setting forth facts giving rise to the emergency.

- Authorizes the government entity, when a search warrant is sought or electronic information obtained under emergency circumstances, to submit a request supported by a sworn affidavit for an order delaying notification and prohibiting any party providing information from notifying any other party that information has been sought. Further requires the court to issue the order if the court determines that there is reason to believe that notification may have an adverse result, not to exceed 90 days, and the court may grant extensions of the delay of up to 90 days each, as specified.

- Requires, upon expiration of the period of delay of the notification, the government entity to serve or deliver to the identified targets of the warrant a document that includes the information required above, as well as a copy of all electronic information obtained or a summary of that information, and a statement of the grounds for the court's determination to grant a delay in notifying the target, as specified.

- Provides that if there is no identified target of a warrant or emergency request at the time of issuance, the government entity shall submit to the Department of Justice (DOJ) within three days of the execution of the warrant or issuance of the request all of the information required above. If an order delaying notice is obtained, the government entity shall submit to the DOJ upon the expiration of the period of delay of the notification the information required above. The DOJ shall publish those reports on its web site within 90 days of receipt, and may redact names or other personal identifying information from the reports.

- Declares that nothing in these provisions shall prohibit or limit a service provider or any other party from disclosing information about any request or demand for electronic information, except as provided.

- Permits any person in a trial, hearing, or proceeding to move to suppress any electronic information obtained or retained in violation of the Fourth Amendment to the United States Constitution or of this chapter, as specified.

- Authorizes the Attorney General to commence a civil action to compel any government entity to comply with these provisions.

- Authorizes an individual whose information is targeted by a warrant, order, or other legal process that is inconsistent with these provisions, or the California Constitution or the United States Constitution, or a service provider or any other recipient of the warrant, order, or other legal process, to petition the issuing court to void or modify the warrant, order, or process, or to order the destruction of any information obtained

in violation of this chapter, the California Constitution, or the United States Constitution.

- Declares that a California or foreign corporation, and its officers, employees, and agents, are not subject to any cause of action for providing records, information, facilities, or assistance in accordance with the terms of a warrant, court order, statutory authorization, emergency certification, or wiretap order issued pursuant to these provisions.

SEX OFFENSES

Sexual Assault Response Teams

Slow and steady progress has been made over the past 40 years since the first rape crisis center was established in Berkeley, California in 1971. Law enforcement officers, prosecutors, forensic scientists, sexual assault forensic examination teams and rape crisis centers have brought about positive change. Given the endemic nature of sexual assault in today's society, effectively organized interagency Sexual Assault Response Teams (SART) are essential.

AB 1475 (Cooper), Chapter 210, Authorizes each county to establish and implement an SART program for the purpose of, among other things, effectively addressing the problem of sexual assault. Specifically, this new law:

- Authorizes each county to establish and implement a SART program for the purpose of providing a forum for interagency cooperation and coordination, to assess and make recommendations for the improvement in local sexual assault intervention, and to facilitate improved communications and working relationships to effectively address the problem of sexual assault in California.

- States that each SART may consist of representatives from the following public and private agencies or organizations:

    - Law enforcement agencies;

    - County district attorney's offices;

    - Rape crisis centers;

    - Local sexual assault forensic teams; and,

    - Crime laboratories.

- Provides that depending on local needs and goals, each SART may consist of representatives from the following public and private agencies or organizations:

    - Child protective services;

    - Local victim and witness service centers;

    - County public health departments;

    - University and college Title IX coordinators;

    - University and college police departments;

- County mental health service departments; and,
- Forensic interview centers.

- Requires SART programs to have the following objectives:
  - Review of local sexual assault intervention undertaken by all disciplines to promote effective intervention and best practices;
  - Assessment of relevant trends, including drug-facilitated sexual assault, the incidence of predator date rape, and human sex trafficking;
  - Evaluation of the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component;
  - Evaluation of the effectiveness of individual agency and interagency protocols and systems by conduction case reviews of cases involving sexual assault; and,
  - Plan and implement effective prevention strategies and collaborate with other agencies and educational institutions to prevent sexual assault.

Restraining Orders: Domestic Violence and Sex Crimes

In domestic violence and sex cases, current law allows the issuance of a post-conviction restraining order which can last up to 10 years. The language of the statute specifies that "This protective order may be issued regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation." (Pen. Code, § 136.2, subd. (i)(1).)

Under realignment, the court has the authority to sentence a defendant convicted of a felony punishable by incarceration in the county jail to either a full term in custody, or to split the sentence between time in custody and mandatory supervision in the community in any proportion the court deems appropriate. However, effective January 1, 2015, there is a presumption in favor of the imposition of a split sentence unless the court finds that it is in the best interest of justice not to do so. (Pen. Code, §1170, subd. (h)(5).) Thus, mandatory supervision is a component of a split sentence which follows a period of incarceration in county jail. It is not a separate sentencing alternative.

Because mandatory supervision is period of supervision that follows a county jail commitment, under the current language of the statute, a court can already issue a post-conviction restraining order even when a defendant has to serve part of his or her sentence under mandatory supervision. However, arguably, it is possible that the court could allow a defendant to serve the custody portion of a split sentence in some form of alternative custody, rather than the county

jail. In such a situation, the defendant might argue he or she was not "sentenced to county jail" for purposes of the statute allowing post-conviction restraining orders.

SB 307 (Pavley), Chapter 60, expressly provides that post-conviction restraining orders may be issued by the court in domestic violence or sex crimes when a defendant's sentence includes a period of mandatory supervision.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Disclosure of Treatment Records

Under current law, the prosecuting attorney can access the mental health records of a person who is initially referred to a state hospital for a sexually violent predator (SVP) screening. (Welf. & Inst. Code, § 6601, subd. (d).) The psychotherapist-patient privilege arguably does not attach because the consultation is not for purposes of treatment; rather the person is being examined by a potential adversary's doctor for the potential adversary's purpose.

However, once the person is in treatment, Welfare and Institutions Code section 5328 requires the confidentiality of all information and records obtained in the course of providing services to either voluntary or involuntary recipients of treatment under the Sexually Violent Predator Act, with limited exceptions. Additionally, under section 6603, the prosecution may access "otherwise confidential treatment information … to the extent such information is contained in an updated evaluation."

In *Albertson v. Superior Court* (2001) 25 Cal.4th 796, the California Supreme Court considered whether the legislation amending section 6603, subdivision (c), regarding updated and replacement evaluations authorized the prosecutor to obtain access to the SVP's treatment records. The court concluded that the provision provides an exception to the general rule of confidentiality of treatment records, and allows the district attorney access to treatment record information, insofar as that information is contained in an updated evaluation.

Some trial courts have interpreted this language to grant the DA access only to treatment information and not to the records themselves. At least one recent appellate court case has interpreted section 6603 to give prosecutors limited direct access to such records. (See *Gilbert v. Superior Court* (2014) 224 Cal.App.4th 367, 382.)

SB 507 (Pavley), Chapter 576, allows the prosecutor petitioning for commitment of a person alleged to be a SVP to access treatment records reviewed by the expert evaluators. Specifically, this new law:

- Requires an evaluator who is performing an updated evaluation to include a statement listing all records reviewed to make that evaluation.

- Allows either party to subpoena for a certified copy of the records. The records shall be provided to both the attorney petitioning for commitment and the attorney for the SVP.

- Allows the attorneys to use the records for the SVP proceedings, but prohibits disclosure for any other purpose.

- Specifies that the right of any party to object to all or a portion of a subpoenaed record on grounds of prejudicial effect outweighing probative value, or on the basis of

materiality to the issue of whether the person is a SVP or to any other issue to be decided by the court remains unaffected.

- States that if the objection is sustained in whole or in part, the record or records shall retain their confidentiality, as specified.

- Specifies that this subdivision does not affect the right of a party to seek other records regarding the SVP.

- Provides that with the exception created above, the rights of a SVP to assert that his or her records are confidential are not affected.

- States that this bill does not affect the California Supreme Court's determination of the issue of whether or not an expert retained by the district attorney in a SVP proceeding is entitled to review otherwise confidential treatment information.

TECHNOLOGY CRIMES

Computer Crimes: Fines

In recent years the attention of the media and policymakers has turned to privacy concerns raised by the sheer volume of data shared over internet connections. With the advent of wireless internet, more data is being transmitted than ever before through cyberspace. Over the last couple of years several serious incidents of the invasion of privacy have come to the forefront of national attention.

In August and September of 2014, dozens of women had revealing photos misappropriated from Apple's iCloud storage site and they were posted on the "4chan" bulletin board for the public to view. Apple represents that the site was not hacked, but others believe that the photos were obtained by guessing the passwords of the victims. The incident alerted the public to the fact that many people's phones may be copying material automatically to the internet.

In October of 2014 an unknown hacker assembled a gallery of more than 100,000 images and videos that people had sent via Snapchat. Snapchat markets itself as a web based mobile application that allows users to send photos and videos to one another in a format that can only be viewed by the recipient, not copied or saved by the recipient. As it turns out, other web developers have created systems that enable users to make permanent copies of the temporary Snapchat files and store them in "the cloud" wherein they can be obtained by knowledgeable hackers.

> **AB 32 (Waldron), Chapter 614,** increases fines for felony convictions of specified computer crimes from a maximum of $5,000, to a maximum of $10,000.

Unauthorized Access to Computer Systems

Today, we live in a digitally connected world where our devices are connected to the internet. This new form of digital access has also spawned a new type of criminal, one who can invade our homes by breaking into our computer networks from afar. These cybercrimes range from breaking into someone's computer network to steal financial information to other crimes such as corporate espionage, fraud, and extortion.

Under current law, it is a crime to solicit another to commit certain crimes, such as bribery, kidnapping, and robbery. In addition, it is a crime for someone to knowingly hack into another's computer network without permission. However, it is not a crime to solicit someone to knowingly and without permission hack into a computer network or smartphone.

> **AB 195 (Chau), Chapter 552,** makes it a misdemeanor, punishable by up to six months, for any person to solicit another to join in the commission of specified crimes relating to unauthorized access of computer systems. Specifically, this new law:

- Includes specified computer offenses in the list of target crimes in the offense of solicitation of another person to commit a crime.

- Defines offering to solicit assistance for a person to violate specified computer crimes as a form of criminal solicitation.

Cyber Exploitation: Venue for "Revenge Porn"

For violations of cyber exploitation (Pen. Code, § 647, subd. (j)), current law requires each case be brought in the county where the crime occurred (unless an additional crime of identity theft or conspiracy can also be proven). With e-crime, the county in which the crime occurred is not always well-defined, but is typically thought of as where the photo was uploaded or posted.

These jurisdictional restrictions cause two primary problems. First, if a criminal commits cyber exploitation in more than one county, he or she must be tried separately in each jurisdiction, which can result in unnecessary costs for taxpayers, prosecutors, and defendants. In addition to the waste of public resources, it is particularly difficult on victims who must testify repeatedly about the same crime in different trials.

Existing law details procedures for a governmental entity to gather specified records from a provider of electronic communication service or a remote computing service by search warrant. Existing law specifies that no notice is required to be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures.

AB 1310 (Gatto), Chapter 643, expands jurisdiction for crimes involving cyber exploitation (a.k.a. "revenge porn"), and allows law enforcement to use a search warrant to get the contents of communications between the customer and the service provider. Specifically, this new law:

- Expands the jurisdiction of a criminal action involving "revenge porn" to include the county in which the offense occurred, the county in which the victim resided at the time the offense was committed, or the county in which the intimate image was used for an illegal purpose.

- Allows prosecution in any of the jurisdictions when multiple offenses of "revenge porn," either all involving the same defendants or defendants and the same intimate image belonging to the one person, or all involving the same defendant or defendants and the same scheme of substantially similar activity, occur in multiple jurisdictions.

- Authorizes jurisdiction to extend to all associated offenses connected together in their commission to the underlying unauthorized distribution of an intimate image.

- Requires the court to hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed, when charges alleging multiple offenses of unauthorized distribution of an intimate image occurring

in multiple territorial jurisdictions are filed in one county.

- States that a provider of electronic communication service or remote computing service, as specified, shall disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, the types of services the subscriber or customer utilized, and the contents of communication originated by or addressed to the service provider when the governmental entity is granted a search warrant, as specified.

- States that a governmental entity receiving subscriber records or information under this section is required to provide notice to a subscriber or customer upon receipt of the requested records. This notification may be delayed by the Court, in 90 day increments, upon showing that there is reason to believe that notification of the existence of the search warrant may have an adverse result.

- Provides that notice need not be provided under specified circumstances.

Disorderly Conduct: Forfeiture

Current law authorizes pre-conviction forfeiture and destruction of matter that depicts persons under the age of 18 years personally engaging in or simulating sexual conduct when that matter is in the possession of a government entity. California law also authorizes the forfeiture of computer equipment and related software when a defendant is convicted of specified computer crimes, including computer access crimes, identity theft, forgery and fraud, possession and distribution of child pornography, criminal threats, and stalking. This law is meant to take away the tools of the trade. The property that is forfeitable is limited to specified telecommunications equipment, a computer, computer system, network, software, or data residing on it.

Disorderly conduct, including revenge porn, is not currently included in the list of computer crimes subject to forfeiture, and there is currently no effective mechanism for removing images that have been found to be in violation of cyber-exploitation laws before the defendant is convicted.

SB 676 (Canella), Chapter 291, creates a process for pre-conviction forfeiture and destruction of images which are the subject of disorderly conduct cases, and allows computers and electronic devices used in the commission of those crimes to be subject to forfeiture after a conviction is obtained. Specifically, this new law:

- States that matter, as defined, obtained or distributed in violation of specified disorderly conduct offenses, including "revenge porn," and which is in the possession of a government official or agency is subject to forfeiture.

- Allows the Attorney General, district attorney, county counsel, or city attorney to initiate a forfeiture petition filed in the superior court in the county in which the

matter is located.

- Adds disorderly conduct offenses to the list of offenses for which a computer may be subject to forfeiture upon a criminal conviction.

VICTIMS

Post Release Community Supervision: Placement

Current law states that a victim of a stalking offense may request that a parolee, who is released under state supervision, not be returned to a location within 35 miles of the victim's actual residence or place of employment if the California Department of Corrections and Rehabilitation determines there is a need to protect the life, safety, or well-being of the victim. The need for this bill arose because current statute was not updated to include offenders released under local jurisdiction on Post Release Community Supervision (PRCS) when this category of supervised persons was created pursuant to the Public Safety Realignment Act of 2011.

AB 231 Eggman, Chapter 498, provides that an inmate who is released on PRCS for conviction of a stalking offense shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim has requested additional distance in the placement of the inmate.

Victim Compensation Program

The California Victim Compensation and Government Claims Board administers the California Victim Compensation Program (CalVCP) and is authorized to compensate victims and derivative victims of specified types of crimes through a continuously appropriated fund, the Restitution Fund. Existing law sets forth the eligibility requirements and limits on the amount of compensation the CalVCP may award.

The CalVCP framework was developed several decades ago and has not been thoroughly revised since that time. The CalVCP conducted a statute modernization project, bringing various stakeholder groups together to make recommendations on revising and updating the state compensation program to better serve victims. The statute modernization project found the need to modernize the program to reflect changing technologies and crimes, and to address ongoing issues with outdated restrictions.

AB 1140 (Bonta), Chapter 569, revises various rules governing the CalVCP. Specifically, this new law:

- Expands the definition of a victim's "authorized representative" to include any person having written authorization by the victim or derivative victim, or any person designated by law such as a legal guardian, as specified.

- Provides that an applicant may be found to have been "uncooperative" for purposes of verifying information necessary to process a claim under specified circumstances.

- Authorizes compensation for a victim's emotional injury incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the victim appeared, if the victim is a minor.

- Revises provisions allowing compensation for emotional injury suffered in child abduction to delete the requirement that the deprivation of custody lasted for 30 days, and instead requires only that criminal charges be filed.

- Revises provisions concerning denial of a claim because of the nature of the applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gave rise to the claim, with exceptions to such denials in cases of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor.

- Specifies factors that may be used to mitigate or overcome involvement in the events leading to a crime.

- Prohibits a domestic violence victim from being found to be uncooperative based on his or her conduct with law enforcement at the scene of a crime.

- Prohibits a victim of domestic violence, sexual assault, or human trafficking from being found to be uncooperative because of a delay in reporting the crime.

- Prohibits the denial of a claim arising from a sexual assault based solely on the failure to file a police report.

- Requires the board to adopt guidelines allowing it to consider and approve applications for assistance in sexual assault cases by relying upon evidence other than a police report.

- Denies compensation to any person convicted of a violent felony, as specified, until that person is no longer incarcerated and discharged from supervision.

- Denies compensation to any person who is required to register as a sex offender.

- Removes provisions which prioritize the applications of victims who are not felons.

- Removes limits for statutory rape counseling.

- Expands eligibility to recoup the costs of mental health counseling to grandparents and grandchildren.

- Limits reimbursement for medically-related expenses to those that were provided by a licensed medical provider.

- Eliminates the board's authority to reimburse for expenses of nonmedical remedial care and treatment given in accordance with a religious method of healing recognized under state law.

- Prohibits reimbursement for peer counseling if the services can only be provided by a licensed professional.

- Eliminates verification requirements for reimbursement of increased residential-security measures.

- Allows reimbursement for the purchase of a vehicle for a victim who becomes permanently disabled.

- Specifies that, as to reimbursement of costs for a victim's relocation, the victim may have to repay the reimbursement if the victim notifies the perpetrator of his or her new address or allows the offender on the premises.

- Provides that if a security deposit is required for relocation services, the board will be its recipient.

- Expands reimbursement to cover cleaning expenses when the crime scene is a vehicle.

- Prohibits the board from creating a regulation or policy that mandates an award of less than $7,500 for funeral and burial expenses.

- Allows the board to request verification before it reimburses for attorney's fees.

- Permits an applicant who seeks a hearing on the denial of compensation to request a telephonic hearing.

- Provides that evidence submitted after the board has denied a request for reconsideration shall not be considered unless the board chooses to reconsider the decision on its own motion.

- Requires any board actions to collect overpayments be commenced within seven years of the date of the overpayment, except under specified circumstances.

- Authorizes the recipient of an alleged overpayment to contest that finding.

- Provides that the board need only forward restitution proceeds collected from a prisoner or parolee to a victim when the payment is $25 or more, unless the victim requests payments of a lesser amount.

- Prohibits the board from requiring an applicant to submit tax and related documents in conjunction with an application, but allows the board to use such material to verify the amount paid to a victim.

- Requires the board to provide application materials in a number of specified languages and requires the board to communicate with a victim in the language the victim uses in submitting an application.

- Requires the board to allow a victim to have a support animal while testifying.

- Allows a victim to testify in a criminal restitution hearing by live audio or audiovisual means, as specified.

Elder Abuse: Restraining Orders

With 4.2 million individuals over the age of 65 years, California has the highest number of aging adults in the nation. Currently, loopholes in the law restrict a prosecutor's ability to protect victims of elder abuse through the use of post-conviction criminal protective orders. This loophole leaves our most vulnerable crime victims with an unnecessary level of exposure to re-victimization. Elders are also among the least equipped victims able to pursue protection through civil remedies such as temporary restraining orders since they are often complicated, costly and time consuming to obtain.

SB 352 (Block), Chapter 279, requires a sentencing court to consider issuing a protective order upon a conviction of elder abuse. Specifically, this new law:

- Requires the court to consider issuing a restraining order lasting up to ten years when a defendant is convicted of a violation of any of the following crimes:

    - Infliction of unjustifiable physical pain or mental suffering upon an elder or dependent adult, or willfully causing or permitting such a person to suffer or become endangered;

    - Theft, identity theft, embezzlement, forgery, or fraud of an elder or dependent adult;

    - False imprisonment of an elder or dependent adult by violence, menace, fraud or deceit.

- States that the length of the restraining order should be based on the seriousness of the facts in the case, the probability of future violations, and the safety of the victim and his or her immediate family.

- States that the protective order may be issued regardless of whether the defendant is sentenced to state prison, county jail, or to probation.

Victim Restitution: Crimes Committed by Juveniles

In 1999 and 2004 the Legislature amended the restitution statute applicable in adult criminal cases, Penal Code section 1202.4, to include payment of restitution for specified derivative

victims; but the Legislature did not similarly amend section 730.6, the restitution statute applicable in juvenile delinquency proceedings.

SB 651 (Leyva), Chapter 131, conforms the definition of "victim" for purposes of restitution in juvenile delinquency proceedings to the definition of "victim" applicable in adult criminal proceedings. Specifically, this new law: Adds the following to the definition of a "victim" for purposes of the restitution statute applicable in juvenile dependency proceedings:

- A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime; and,

- A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

    - At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim;

    - At the time of the crime was living in the household of the victim;

    - At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed above;

    - Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime; or,

    - Is the primary caretaker of a minor victim.

Victims of Crime: U-visa

In 2000, Congress created the U-visa under the Violence Against Women Act as a form of relief for immigrant victims of crimes. The intent of Congress was: (1) to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes; and (2) to offer protection to victims of such crimes. To be eligible for a U-visa, the immigrant victim must meet four statutory requirements including a certification from a certifying official (such as a judge or law enforcement official) or agency that he or she aided in the detection, investigation or prosecution of a qualifying criminal activity. The certification must affirm the immigrant victim's helpfulness in the detection, investigation or prosecution of certain qualifying criminal activity. The certification does not confer any immigration status upon the victim, but enables the victim to meet one of the eligibility requirements as he or she submits the application to the Department of Homeland Security.

The discretion that is given to certifying officials under current law leads to wide disparities among jurisdictions in how likely a victim is to receive this certification. Reports show that some agencies will only certify for open cases, and others only for cases that are closed or resulted in a conviction. Others put further limits on the type of crime or rule out victims whose injuries aren't deemed severe enough even though that is not a requirement under federal law. And some agencies systematically refuse to certify crime victims in every case. This frustrates the purpose of the U-visa by leaving victims helpless and prevents perpetrators from being held accountable.

SB 674 (De León), Chapter 721, provides that upon the request of a victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the applicable certification form when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. Specifically, this new law:

- States that in determining helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

- States that a certifying entity shall process a certification that the person was a victim of a qualifying crime within 90 days of request, unless the non-citizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

- Specifies that a current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain certification from a certifying official.

- Provides that a certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

- Prohibits a certifying entity from disclosing the immigration status of a victim or person requesting certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the certification.

- Mandates a certifying entity that receives a request for certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the entity, the number of those certification forms that were signed, and the number that were denied.

- Provides the following list of "qualifying criminal activity": rape; torture; human trafficking; incest; domestic violence; sexual assault; abusive sexual conduct; prostitution; sexual exploitation; female genital mutilation; being held hostage;

peonage; perjury; involuntary servitude; slavery; kidnaping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; fraud in foreign labor contracting; or stalking.

MISCELLANEOUS

Hit-and-Run: Yellow Alert

The National Highway Traffic Safety Administration reports that the number of hit-and-run accidents is increasing nationally. According to the AAA Foundation for Traffic Safety, one in five of all pedestrian fatalities involve hit-and-run accidents and 60% of hit-and-run fatalities have pedestrian victims. Additionally, USA Today writes that in 2013 an estimated 20,000 hit-and-run incidents occur each year in the City of Los Angeles alone and 4,000 of these incidents involved injuries or death.

Colorado recently enacted legislation that established an alert system that has been instrumental in locating hit and run suspects. There are a number of similar alert systems already in use in California. The first alert system developed in California was "Amber Alert", established by AB 415, (Runner) Chapter 517, Statutes of 2002, that authorized law enforcement agencies to use the digital messaging on overhead roadway signs to assist in recovery efforts for child abduction cases. Following on the success of the "Amber Alert" program, the "Blue Alert" and the "Silver Alert" notification systems were developed. The "Blue Alert" system, established by SB 839 (Runner), Chapter 311, Statutes of 2010, provides for public notification when a law enforcement officer has been attacked and the "Silver Alert" notification system, established by SB 1047 (Alquist), Chapter 651, Statutes of 2012, provides for public notification when a person age 65 years or older is missing. The "Silver Alert" system was recently broadened with the passage of SB 1127 (Torres) Chapter 440, Statutes of 2014, to include missing persons who are developmentally disabled or cognitively impaired.

AB 8 (Gatto), Chapter 326, authorizes a law enforcement agency to issue a "Yellow Alert" if a person has been killed or has suffered serious bodily injury due to a hit-and-run incident, and the law enforcement agency has specified information regarding the suspect or the suspect's vehicle. Specifically, this new law:

- Provides that if a hit-and-run incident is reported to a law enforcement agency and that agency determines that specified requirements are met, the agency may request the California Highway Patrol (CHP) to activate a Yellow Alert. If the CHP concurs that the specified requirements are met, it shall activate a Yellow Alert in the geographic area requested by the investigating agency.

- Defines a "Yellow Alert" to mean a notification system activated by the CHP, at the request of a local law enforcement agency, designed to issue and coordinate alerts with respect to a hit-and-run incident resulting in death or serious bodily injury to a person.

- Authorizes a law enforcement agency to request that a Yellow Alert be activated if the agency determines the following conditions are met in regard to the investigation of the hit-and-run incident:

- A person has been killed or has suffered serious bodily injury due to a hit-and-run incident;
- The investigating law enforcement agency has additional information concerning the suspect or the suspect's vehicle, including, but not limited to, any of the following:
  - The complete license plate number of the suspect's vehicle;
  - A partial license plate number and the make, model, and color of the suspect's vehicle; and,
  - The identity of the suspect.
- Public dissemination of available information could either help avert further harm or accelerate the apprehension of the suspect.

- States that radio, television, and cable and satellite systems are encouraged, but are not required, to cooperate with disseminating the information contained in a Yellow Alert.
- Requires the CHP, upon activation of a Yellow Alert, to assist the investigating law enforcement agency by issuing the Yellow Alert via a local digital sign.
- States that this section shall only remain in effect until January 1, 2019, unless a statute enacted before that date deletes or extends that date.

Searches: County Jails

On April 2, 2012, the Supreme Court upheld the validity of strip searches by jail officials for even minor offenses when a person is being placed in the general population. The Court, however, did not directly address the issue of strip searches before a person's detention is reviewed by a judicial officer.

California law regulates when and how strip searches occur in local detention facilities. The provision, which was passed in 1984, has the codified legislative intent to strictly limit strip and body cavity searches. The provisions of the law apply only to adult and juvenile pre-arraignment detainees arrested for infractions or misdemeanors.

AB 303 (Gonzalez), Chapter 464, requires that all persons within sight of specified detainees and incarcerated juveniles during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians or licensed medical personnel.

Public Safety Officer Medal of Valor

The Public Safety Medal of Valor is the highest state award given to public safety officers for showing "extraordinary valor beyond the call of duty." Lifeguards in most jurisdictions in California are classified as public safety officers and they should be eligible to qualify for this award. Their heroic actions save thousands of lives each year and the dangerous work they perform has led some to pay the ultimate price, yet they cannot be considered for this honor.

> **AB 489 (Gonzalez), Chapter 329,** adds ocean lifeguards to the list of public safety officers eligible to receive the Public Safety Officer Medal of Valor for extraordinary valor above and beyond the call of duty, and authorizes the United States Lifesaving Association to represent ocean lifeguards on the Public Safety Officer Medal of Valor Review Board.

Student Safety: Reporting

Education Code section 67383 states that a report to law enforcement must be made without identifying the victim, unless the victim consents to being identified. If the victim does not consent to being identified, the alleged assailant cannot be identified in the information shared with the local law enforcement agency. While this provision is well intentioned, it would prohibit a university from sharing the name of the alleged assailant even under circumstances in which the university believes assistance from law enforcement is necessary to protect the student body and the broader campus community.

> **AB 636 (Medina), Chapter 697,** provides specific circumstances under which a post-secondary institution must release an alleged assailant's name to local law enforcement. Specifically, this new law:
>
> - Requires a postsecondary institution to disclose the identity of an alleged assailant to local law enforcement even if the victim does not consent to being identified if the institution determines that he or she represents a serious and ongoing threat to the safety of persons or the institution, and that the immediate assistance of law enforcement is necessary to contact or to detain him or her.
>
> - Requires the institution to immediately inform the victim of that disclosure.

Student Safety: Sexual Assaults

The U.S. Department of Education's Office for Civil Rights is investigating 101 postsecondary institutions, including UC Berkeley, Stanford, UCLA, Occidental, UCSD, and USC, over their handling of sexual violence complaints under Title IX, the federal law that protects against discrimination in education. Complainants allege schools violated Title IX by failing to thoroughly investigate sexual assaults, and others assert schools violated the Clery Act, a federal law requiring reporting of campus crime-by underreporting sex crimes.

Steps must be taken to ensure allegations of campus sexual assault are appropriately responded to and investigated. The White House Task Force to Protect Students from Sexual Assault recommended campus and local law enforcement agencies establish written agreements (MOUs) regarding campus sexual assault, stating that cooperation between campus and local law enforcement on sexual assault is critical.

AB 913 (Santiago), Chapter 701, provides for changes to the written jurisdictional agreements between postsecondary educational institutions and local law enforcement. Specifically, this new law:

- Requires the Trustees of the California State University, the Regents of the University of California, and the governing board of independent postsecondary institutions to update their existing written jurisdictional agreements with local law enforcement for investigation of Part 1 violent crimes to include sexual assaults and hate crimes by July 1, 2016, and requires agreements to be reviewed, and updated if necessary, every five years.

- Requires the governing board of each community college district (CCD) to adopt rules requiring each of their respective campuses to enter into written agreements; provides that upon adoption of such a rule, the CCD and its colleges shall be subject to those agreements; and, encourages the governing board of each CCD to adopt a rule requiring each of its respective campuses to update these agreements.

- Defines "hate crime" to mean any offense described in Penal Code Section 422.55; and, defines "sexual assault" to include, but not be limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of any of these.

- Deletes provisions requiring agreements be in place by July 1, 1999, and submitted to the Legislative Analyst by September 1, 1999.

- Provides for reimbursement if the State Mandates Commission determines that this act contains costs mandated by the state.

Child Abuse and Neglect Reporting Act: Mandated Training

Although licensees, administrators, and employees of licensed child day care facilities and employees of child care institutions are mandated reporters under California's Child Abuse and Neglect Reporting Act, the law does not require them to complete any training on recognizing the signs of child abuse or neglect or how to comply with mandated reporter requirements.

California Community Care Licensing Division requires child care licensee applicants to sign a statement entitled "Statement Acknowledging Requirement to Report Child Abuse." However, without instruction or guidance on how to recognize the signs of child abuse and neglect, how to support a child and work with a family during or after a report, and how to make a report, many

child care providers are unaware of what being a mandated reporter entails.

AB 1207 (Lopez), Chapter 414, requires a child day care licensee applicant to take training in the duties of mandated reporters under the Child Abuse and Neglect Reporting Act (CANRA) as a precondition of licensure, and requires child day care administrators and employees to take mandated reporter training on or before March 30, 2018, and requires renewal mandated reporter training every two years after completion of the initial training. Specifically, this new law:

- Requires the Office of Child Abuse Prevention (OCAP) within the Department of Social Services (DSS) in consultation with Community Care Licensing Division within DSS to do all of the following:
    - Develop and disseminate information to all licensees, administrators, and employees of licensed child day care facilities regarding detecting and reporting child abuse.
    - Provide statewide guidance on the responsibilities of a mandated reporter who is a licensee, administrator, or employee of a licensed child day care facility in accordance with CANRA. These guidelines shall include, but is not necessarily limited to, both of the following:
        - Information on the identification of child abuse and neglect; and,
        - Reporting requirements for child abuse and neglect.
    - Develop appropriate means of instruction child care licensees, administrators, and employees of licensed child day care facilities in detecting child abuse and neglect and the proper action that a child care licensee, administrator, or employees of a licensed child day care facility is required to take, including, but not limited to, using the free online Mandated Reporter "General Training Module" and "Child Care Professionals Training Module" provided by the OCAP.
- Provides that a child care licensee shall do both of the following:
    - Complete training, as specified, using the online training model provided by the OCAP and provide the training to their administrators, employees, and persons working on their behalf, who are mandated reporters of suspected child abuse and neglect, of the mandated reporting requirements. Completing mandated reporter training is a condition of licensure, and child care administrators and employees of licensed child day care facilities shall complete mandated reporter training during the first six weeks of employment. This training shall include information that failure to failure to report an incident of known or reasonably suspected child abuse or neglect, is a misdemeanor punishable by up to six months confinement in a county jail,

or by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

- States that a child care licensee, administrator, or employee of licensed child day care facility shall take required the training as frequently as prescribed by regulations adopted by DSS.

- Requires the OCAP to develop a process for all persons required to receive CANRA training to obtain proof of completing the training as a condition of licensure, or within the first six weeks of that person's employment. The process may include, but is not necessarily limited to, a child care licensee applicant obtaining a certificate of completion and submitting the certificate to the DSS prior to acquiring a child care license. A child care administrator, or employee of a licensed child day care facility shall submit a current certificate of completion to the child care director or the licensee within six weeks of employment. A current certificate of completion for each child day care licensee, administrator, or employee of a licensed child day care facility, shall be submitted to the DSS upon inspection of the facility, when proof of other required training is submitted to DSS, or upon request of the DSS.

- Requires the DSS to issue a notice of deficiency at the time of a site visit to a licensee who is not in compliance with proof of training requirements. The licensee shall, at the time the notice is issued develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The DSS may revoke the facility's license if the facility fails to correct the deficiency within the 90-day period.

- States that a child care licensee, administrator, or employee of a licensed child day care facility who does not use the online training module provided by the DSS shall report to, and obtain approval from, the DSS regarding the training that person shall use in lieu of the online training module.

- Requires the DSS to adopt regulations to implement the required CANRA training, and proof of completion of training requirements, including, but not limited to, defining "current certificate of completion" and prescribing how frequently a licensee is required to take the training.

DNA Samples: Contingency Legislation

In 2004, California voters passed Proposition 69, expanding the State's DNA collection and testing program to allow for the collection of DNA samples from every person arrested for a felony. In December of 2014, a California appellate court struck down the state's criminal-DNA-testing program contained in Proposition 69. In *People v. Buza*, review granted February 18, 2015, S223698, the court found several aspects of California's DNA-testing practices to be unconstitutional. The Attorney General has appealed the *Buza* decision, but during the period of between the appellate court decision and the California Supreme Court's decision to hear the case, the Department of Justice was forced to halt the collection of DNA from felony arrestees. DNA collection of felony arrestees has resumed since the *Buza* decision was depublished and

while the Supreme Court considers the case. This legislation provides a back-up system to be put in place only if the California Supreme Court upholds the appellate court's decision in *Buza*.

AB 1492 (Gatto), Chapter 487, requires that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony be forwarded to the department after a felony arrest warrant has been signed by a judicial officer, a grand jury indictment has been found and issued, or a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been made, if the California Supreme Court rules to uphold *People v. Buza*. Specifically, this new law:

- Requires that DNA samples obtained during an arrest on a felony not be sent to DOJ for analysis until after a finding of probable cause, operative if the California Supreme Court upholds the case of *People v. Buza*, review granted February 18, 2015, S223698.

- Specifies that a DNA sample taken pursuant to a felony arrest shall be destroyed after six months, if the law enforcement agency has not received notice to forward the sample to DOJ following a determination of probable cause, operative if *People v. Buza, supra*, is upheld.

- Establishes a procedure for a person's DNA sample and searchable database profile to be removed if the case is dismissed, or the accused is acquitted, or otherwise exonerated, and the person has no past qualifying offense, without the requirement of an application from the person, operative if *People v. Buza, supra*, is upheld.

Grand Juries: Powers and Duties

Existing law authorizes a grand jury to inquire into all public offenses committed or triable within the county in which the grand jury is impaneled, sworn, and charged, and to present them to the court by indictment. Existing law also authorizes a member of a grand jury, if he or she knows or has reason to believe that a public offense has been committed, to declare it to his or her fellow jurors, who are then authorized by existing law to investigate it.

The grand jury system has recently come under fire nationally as several incidents of officer-involved deaths have resulted in the officers in question being released without charges. To the public who has witnessed these incidents, the outcome of the criminal grand jury proceedings can seem unfair or inexplicable. The criminal grand jury system lacks transparency and is not adversarial in nature; no judges or defense attorneys participate. The rules of evidence do not apply; there are no cross-examinations of witnesses, and there are no objections.

SB 227 (Mitchell), Chapter 175, prohibits a grand jury from inquiring into an offense or misconduct that involves a shooting or use of excessive force by a peace officer that led to the death of a person being detained or arrested by the peace officer, unless the offense was declared to the grand jury by one of its members.

Public Transit: Prohibited Conduct

In 2006, SB 1749 (Migden), Chapter 258, Statutes of 2006, authorized certain transit operators to enforce administrative penalties for transit violations. While SB 1749 provided this administrative process for adults, it specifically precluded minors from using it with the intention that forcing minors to go to court would serve as a deterrent to engaging in prohibited conduct. As it stands, minors are instead required to enter the court system with respect to transit citations. This has overburdened the court system. Subsequent legislation expanded the list of specified violations and increased the number of transit agencies authorized to seek administrative penalties against violators.

SB 413 (Wieckowski), Chapter 765, specifies that local jurisdictions may pass ordinances that permit the issuance of infraction tickets for failing to yield a seat to an elderly or disabled person, or for playing sound equipment in an unreasonably loud manner, and allows transit operators to levy administrative penalties against minors for specified transit violations. Specifically, this new law:

- Makes failing to yield seating reserved for elderly or disabled persons on public transit property punishable as an infraction provided that the governing board of the public transportation agency enacts an ordinance following a public hearing on the issue.

- Clarifies that playing unreasonably loud sound equipment on or in a transit facility or vehicle or failing to comply with the warning of a transit official regarding disturbing others with unreasonably loud noise is punishable as an infraction.

- Allows transit operators to levy administrative penalties against minors who have committed certain violations on their systems.

- Clarifies what constitutes rail transit property.

Public Utilities Commission: Enforcement of Passenger Carrier Laws

In a 2014 report, the California State Auditor concluded that the California Public Utilities Commission's (CPUC) Transportation Enforcement Branch "does not provide sufficient oversight of charter-party carriers and passenger stage corporation (passenger carriers) to ensure consumer safety." The Auditor found a multitude of problems including: the branch has not established written guidelines for processing consumer complaints; it takes the branch an average of 238 days to complete an investigation and the branch does not conduct proper investigations; the branch does not know if revenue is aligned with program activities; and the branch was not aware of the significant fund surplus it had accumulated, which at the time of the audit was over $9 million and has since grown to $14 million.

SB 541 (Hill), Chapter 718, codifies the State Auditor report's recommendations on strengthening the CPUC oversight of transportation-related activities. Allows peace

officers to impound buses and limousines of specified companies that carry passengers when they lack the required permits or licensing. Specifically, this new law:

- Directs the CPUC to coordinate enforcement with peace officers.

- Authorizes the Attorney General, a district attorney, or a city attorney to prosecute actions or proceedings for the violation of any law committed in connection with a transaction involving the transportation of household goods and personal effects.

- Requires the CPUC to establish specified goals related to its existing authority to provide oversight and regulation of transportation-related activities of household goods carriers and charter party carriers (CPC) and passenger stage corporations (PSC).

- Requires the CPUC to assess its capabilities to carry out the activities, specified in the goals, and report to the Legislature with an analysis of current capabilities and deficiencies, and recommendations to overcome any deficiencies identified by January 1, 2017.

- Allows peace officers to impound a bus or limousine of a CPC or PSC for 30 days if an officer determines that specified violations occurred while the driver was operating the vehicle of the CPC.

- Allows a peace officer to impound a bus or limousine of a CPC for 30 days if the officer determines that the driver was operating the bus or limousine without a passenger vehicle endorsement, or the required certificate.

- Clarifies that impoundment provisions do not apply to privately owned, personal vehicles, or to charter-party carriers that are not required to carry individual permits.

Corrections: Reports

In March of 2004, then-Governor Schwarzenegger announced the creation of an "Independent Review Panel" ("IRP") led by former Governor George Deukmejian to examine ways to improve adult and youth corrections in California. In June of 2004 the IRP released its report, urging in part the establishment of "a system of accountability that includes performance measures by which to evaluate employees and monitor levels of achievement."

Comstat (short for "computer statistics") is an organizational management tool modeled after the Los Angeles and the New York Police Departments to monitor and reduce crimes and is easily accessible to the public. In 2006, the California Department of Corrections and Rehabilitation (CDCR) designed and implemented Compstat to monitor and provide operational review of prisons, parole, and CDCR as a whole. As part of Governor Schwarzenegger's government transparency efforts in 2009, the Compstat reports were moved from the CDCR's Web site and made available on the Reporting Transparency on Government's Web site; however, the Compstat reports and audits are hard for the public to find and view, and are among the thicket

of reports on that site. In addition, the Compstat audits and reports are non-descriptive and difficult to understand.

SB 601 (Hancock), Chapter 162, requires the Secretary of the CDCR to develop a Corrections Accountability Report on January 10, March 15, and a fiscal year-end report, containing specified information regarding each institution, including, among other information, the total budget, including actual expenditures, staff vacancies and the number of authorized staff positions, overtime, sick leave, and the average length of lockdowns, and to post those reports on CDCR's Web site, as provided. Specifically, this new law:

- Provides that the Secretary of the CDCR shall develop a Corrections Accountability Report for each institution on January 10, March 15, and a fiscal year-end report and post those reports on the department's Web site. CDCR shall post both current fiscal-year reports and reports for the immediately preceding three fiscal years for each institution. CDCR shall also post corrections made to inaccurate or incomplete data to current or previous reports.

- Specifies that each report shall include the three-year statewide recidivism rate, a brief biography of the warden, including whether he or she is an acting or permanent warden, contact information for the warden, and a brief description of the prison, including the total number of inmates.

- Specifies that each report shall be created using, when possible, information collected using the Compstat reports for each prison, or other verifiable information collected by the department, and shall include, but not be limited to, all of the following indicators:

    - Total budget, including actual expenditures, staff vacancies, overtime, sick leave, and number of authorized staff positions;

    - Rehabilitation programs, including capacity, enrollment, and diploma and GED completion rate;

    - Average length of lockdowns;

    - Number of deaths, specifying homicides, suicides, unexpected deaths, and expected deaths;

    - Number of use of force incidents;

    - Number of inmate appeals, including the number being processed, overdue, and dismissed;

    - Number of inmates in administrative segregation; and,

- Total contraband seized, specifying the number of cellular telephones.

Indemnification: Erroneously Convicted Persons

AB 1799 (Baugh), Chapter 630, Statutes of 2000, increased potential compensation for wrongful incarceration from a maximum of $10,000 to a sum of $100 per day for each day spent incarcerated. That level of compensation has not been adjusted for inflation in nearly two decades.

SB 635 (Nielsen), Chapter 422, increases the compensation for innocent persons who were wrongly convicted from $100 per day of wrongful incarceration to $140 per day, and deletes the existing requirement that a wrongly convicted person sustain a pecuniary loss in order to receive compensation.

Victims of Crime: U-visa

In 2000, Congress created the U-visa under the Violence Against Women Act as a form of relief for immigrant victims of crimes. The intent of Congress was: (1) to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes; and (2) to offer protection to victims of such crimes. To be eligible for a U-visa, the immigrant victim must meet four statutory requirements including a certification from a certifying official (such as a judge or law enforcement official) or agency that he or she aided in the detection, investigation or prosecution of a qualifying criminal activity. The certification must affirm the immigrant victim's helpfulness in the detection, investigation or prosecution of certain qualifying criminal activity. The certification does not confer any immigration status upon the victim, but enables the victim to meet one of the eligibility requirements as he or she submits the application to the Department of Homeland Security.

The discretion that is given to certifying officials under current law leads to wide disparities among jurisdictions in how likely a victim is to receive this certification. Reports show that some agencies will only certify for open cases, and others only for cases that are closed or resulted in a conviction. Others put further limits on the type of crime or rule out victims whose injuries aren't deemed severe enough even though that is not a requirement under federal law. And some agencies systematically refuse to certify crime victims in every case. This frustrates the purpose of the U-visa by leaving victims helpless and prevents perpetrators from being held accountable.

SB 674 (De León), Chapter 721, provides that upon the request of a victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the applicable certification form when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. Specifically, this new law:

- States that in determining helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

- States that a certifying entity shall process a certification that the person was a victim of a qualifying crime within 90 days of request, unless the non-citizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

- Specifies that a current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain certification from a certifying official.

- Provides that a certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

- Prohibits a certifying entity from disclosing the immigration status of a victim or person requesting certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the certification.

- Mandates a certifying entity that receives a request for certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested certifications from the entity, the number of those certification forms that were signed, and the number that were denied.

- Provides the following list of "qualifying criminal activity": rape; torture; human trafficking; incest; domestic violence; sexual assault; abusive sexual conduct; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; perjury; involuntary servitude; slavery; kidnaping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; fraud in foreign labor contracting; or stalking.

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 these deficiencies.

SB 795 (Committee on Public Safety), Chapter 499, makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, this new law:

- Exempts a person from the requirement that they be taken in front of a magistrate without unreasonable delay, if the person is arrested for driving under the influence of

alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery to a magistrate.

- Deletes the January 1, 2016 repeal date on the provisions of the interstate compact and would thereby extend the operation of the provisions indefinitely.

- Clarifies that a person who violates the rules and regulations relating to damage to state park property and state vehicle recreation areas and trail system is guilty of an alternate misdemeanor/infraction.

- Makes other additional non-substantive technical changes.

APPENDIX A – INDEX BY AUTHOR

AUTHOR	BILL NO.		CHAPTER	PAGE
Achadjian	AB	892	203	77, 93
Bloom	AB	844	57	107
Bonta	AB	1140	569	102, 127
Brown	AB	1156	378	12, 25
Chau	AB	195	552	47, 123
	AB	929	204	107
Cooper	AB	989	375	57, 82
	AB	1475	210	43, 118
Dababneh	AB	160	427	25, 52
E. Garcia	AB	1093	220	39, 43
Eggman	AB	231	498	10, 127
	AB	1352	646	28, 60
Gatto	AB	8	326	36, 134
	AB	1310	643	58,124
	AB	1492	487	62, 139
Gipson	AB	835	338	49, 56
Gonzalez	AB	303	464	11, 135
	AB	489	329	92, 136
	AB	546	200	93
Jones-Sawyer	AB	256	463	47, 67
	AB	672	403	11, 42
Levine	AB	293	195	10, 37
	AB	539	118	65, 106
Linder	AB	794	201	1, 49
Lopez	AB	1207	414	2, 137

APPENDIX A – INDEX BY AUTHOR

AUTHOR	BILL NO.		CHAPTER	PAGE
Mark Stone	AB	666	368	53, 80
	AB	1134	785	78
	AB	1423	381	14
Medina	AB	39	193	106
	AB	636	697	38, 136
Melendez	AB	545	626	48, 63
	AB	950	205	77
Obernolte	AB	249	194	52, 71
Quirk	AB	730	77	5, 48
Rodriguez	AB	69	461	90
	AB	71	462	91
	AB	1104	124	5, 112
Salas	AB	1168	207	13, 96
Santiago	AB	673	251	55, 72
	AB	913	701	38, 136
Thurmond	AB	1343	705	28, 59
	AB	1375	209	73
Waldron	AB	32	614	71, 123
Weber	AB	953	466	94
	AB	1328	467	26, 67
Beall	SB	11	468	86, 97
	SB	29	469	87, 98
Block	SB	352	279	66, 130
Cannella	SB	676	291	34, 125
De León	SB	674	721	131, 144

APPENDIX A – INDEX BY AUTHOR

AUTHOR	BILL NO.		CHAPTER	PAGE
Hancock	SB	230	470	19
	SB	261	471	20
	SB	343	798	21, 40
	SB	519	472	22
	SB	601	162	22, 142
Hertzberg	SB	405	385	31, 76
	SB	621	473	46, 89
Hill	SB	541	718	141
Hueso	SB	303	713	8, 69
Lara	SB	382	234	30, 83
	SB	411	177	50, 99
	SB	504	388	32, 84
Leno	SB	178	651	113
Leyva	SB	651	131	104, 130
Liu	SB	219	762	18, 45
Mendoza	SB	212	141	8, 29
Mitchell	SB	176	155	61, 68
	SB	227	175	61, 140
	SB	629	47	51
Monning	SB	165	139	6, 74
	SB	517	61	21, 34
Nielsen	SB	635	422	24, 144
Pan	SB	424	159	69, 100
	SB	453	260	32, 88
Pavley	SB	307	60	63, 119
	SB	507	576	121
SCOPS	SB	795	499	145

APPENDIX A – INDEX BY AUTHOR

AUTHOR	BILL NO.	CHAPTER	PAGE
Wieckowski	SB 413	765	141
Wolk	SB 707	766	78

APPENDIX B – INDEX BY BILL NUMBER

BILL NO.	AUTHOR	CHAPTER	PAGE
AB 8	Gatto	326	36, 134
AB 32	Waldron	614	71, 123
AB 39	Medina	193	106
AB 69	Rodriguez	461	90
AB 71	Rodriguez	462	91
AB 160	Dababneh	427	25, 52
AB 195	Chau	552	47, 123
AB 231	Eggman	498	10, 127
AB 249	Obernolte	194	52, 71
AB 256	Jones-Sawyer	463	47, 67
AB 293	Levine	195	10, 37
AB 303	Gonzalez	464	11, 135
AB 489	Gonzalez	329	92, 136
AB 539	Levine	118	65, 106
AB 545	Melendez	626	48, 63
AB 546	Gonzalez	200	93
AB 636	Medina	697	38, 136
AB 666	Mark Stone	368	53, 80
AB 672	Jones-Sawyer	403	11, 42
AB 673	Santiago	251	55, 72
AB 730	Quirk	77	5, 48

APPENDIX B – INDEX BY BILL NUMBER

BILL NO.	AUTHOR	CHAPTER	PAGE
AB 794	Linder	201	1, 49
AB 835	Gipson	338	49, 56
AB 844	Bloom	57	107
AB 892	Achadjian	203	77, 93
AB 913	Santiago	701	38, 136
AB 929	Chau	204	107
AB 950	Melendez	205	77
AB 953	Weber	466	94
AB 989	Cooper	375	57, 82
AB 1093	E. Garcia	220	39, 43
AB 1104	Rodriguez	124	5, 112
AB 1134	Mark Stone	785	78
AB 1140	Bonta	569	102, 127
AB 1156	Brown	378	12, 25
AB 1168	Salas	207	13, 96
AB 1207	Lopez	414	2, 137
AB 1310	Gatto	643	58, 124
AB 1328	Weber	467	26, 67
AB 1343	Thurmond	705	28, 59
AB 1352	Eggman	646	28, 60
AB 1375	Thurmond	209	73

APPENDIX B – INDEX BY BILL NUMBER

BILL NO.	AUTHOR	CHAPTER	PAGE
AB 1423	Mark Stone	381	14
AB 1475	Cooper	210	43, 118
AB 1492	Gatto	487	62, 139
SB 11	Mitchell	468	86, 97
SB 29	Beall	469	87, 98
SB 165	Monning	139	6, 74
SB 176	Mitchell	155	61, 68
SB 178	Leno	651	113
SB 212	Mendoza	141	8, 29
SB 219	Liu	762	18, 45
SB 227	Mitchell	175	61, 140
SB 230	Hancock	470	19
SB 261	Hancock	471	20
SB 303	Hueso	713	8, 69
SB 307	Pavley	60	63, 119
SB 343	Hancock	798	21, 40
SB 352	Block	279	66, 130
SB 382	Lara	234	30, 83
SB 405	Hertzberg	385	31, 76
SB 411	Lara	177	50 99
SB 413	Wieckowski	765	141

APPENDIX B – INDEX BY BILL NUMBER

BILL NO.	AUTHOR	CHAPTER	PAGE
SB 424	Pan	159	69, 100
SB 453	Pan	260	32, 88
SB 504	Lara	388	32, 84
SB 507	Pavley	576	121
SB 517	Monning	61	21, 34
SB 519	Hancock	472	22
SB 541	Hill	718	141
SB 601	Hancock	162	22, 142
SB 621	Hertzberg	473	46, 89
SB 629	Mitchell	47	51
SB 635	Nielsen	422	24, 144
SB 651	Leyva	131	104, 130
SB 674	De León	721	131, 144
SB 676	Cannella	291	34, 125
SB 707	Wolk	766	78
SB 795	SCOPS	499	145