ASSEMBLY COMMITTEE ON PUBLIC SAFETY

PUBLIC SAFETY 1999

CREATING A SAFER CALIFORNIA

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ANIMAL ABUSE

Animal Abandonment

Current law punishes the abandonment of any domestic dog or cat as a misdemeanor. At least 30 states have specific abandonment laws that include "any" animal.

AB 1540 (Vincent), Chapter 303, provides that abandoning any animal is a misdemeanor. This new law does not apply to the release or rehabilitation and release of native California wildlife pursuant to statute or regulations of the Department of Fish and Game.

Dog Bites: Penalties

Existing law provides that a person who owns or has control of a dog trained to fight, attack or kill is guilty of a misdemeanor if he or she fails to exercise ordinary care and the dog either bites a person on two separate occasions or on one occasion causes substantial physical injury.

SB 103 (Johannessen), Chapter 265, increases the penalty from a misdemeanor to either a felony or misdemeanor. This new law:

- Creates a felony punishable by imprisonment in state prison for two, three, or four years; or a misdemeanor punishable by imprisonment in a county jail not to exceed one year; by a fine not exceeding $10,000; or by both the fine and imprisonment.

- Exempts veterinarians and on-duty animal control officers from prosecution.

- Exempts peace officers assigned to canine units from prosecution.

BACKGROUND CHECKS

Section 8 Housing Programs

Existing law allows law enforcement agencies to provide state summary criminal history information to public housing authorities for the purpose of screening prospective residents, or screening prospective and current staff of a regional, county, city, or other public housing authority. Public housing authorities may only obtain this information if they operate housing at which children under the age of 18 years reside or if the housing is for persons categorized as aged, blind, or disabled.

AB 234 (Lowenthal), Chapter 31, authorizes local law enforcement to release criminal history information to the housing authority if the authority manages a Section 8 housing program pursuant to federal law. Specifically, this new law allows local law enforcement to provide state criminal history information obtained through the California Law Enforcement Telecommunications System for the purpose of screening participants and staff of a regional, county, city, or other local public housing authority upon a showing that the authority manages a Section 8 housing program pursuant to federal law.

Child Pornography: School Employees

Current law inadvertently omits certain child pornography and obscenity violations from the list of specified offenses that result in the mandatory revocation of a teaching credential.

AB 457 (Scott), Chapter 281, adds specified child pornography and obscenity violations to the list of sex offenses that prohibit school districts from employing persons who have committed such crimes. Also prohibits local education agencies from issuing temporary certificates to applicants with revoked or suspended teaching credentials. Specifically, this new law:

- Adds the offenses of bringing obscene matter or child pornography into California, distributing obscene matter depicting persons under the age of 18, and possession of child pornography to the list of sex offenses that prohibit a school district from employing or retaining a person convicted of such an offense.

- Requires a local education agency to immediately place on compulsory leave of absence an employee charged with an offense added by this bill.

- Prohibits a county or city and county board of education from issuing a temporary certificate to an applicant whose teaching credential is revoked or suspended.

Background Checks

In recent years, the public has expressed a concern that those who work with children should undergo background checks. The Legislature has responded. For example, SB 933 (Thompson), Chapter 311, Statues of 1998, significantly expanded fingerprinting requirements for all community day facilities, expanded the pool of individuals required to be fingerprinted, and required the facilities to submit a second fingerprint of specified persons to DOJ for purposes of searching FBI records. With the current requirements, the cost of conducting a background check has risen to $95 per applicant.

SB 618 (Chesbro), Chapter 934, limits fees for criminal background checks in licensed, child day-care facilities. Effective January 1, 2000, this law provides that a reduced fee, or no fee, shall be charged by the Department of Social Services (DSS) for processing fingerprints or for obtaining a California or Federal Bureau of Investigation criminal record on license applicants, employees, and other individuals in licensed child care facilities, provided funding for that purpose is included in the annual Budget Act. This new law also requires DSS to convene a working group by March 1, 2000 to review background check requirements and make recommendations regarding methods to reduce costs and expedite the background check process.

School Volunteers

Schools are not required to conduct background checks on school volunteers, although they may request such checks from the Department of Justice (DOJ). Under existing law, fingerprint-based background checks are performed once, when requested, but the records are only retained for six months and destroyed. Since these records are not retained, the DOJ does not notify school districts of subsequent arrest of school volunteers.

SB 965 (Leslie), Chapter 476, permits a school district, county office of education, or private school to request the DOJ to provide subsequent arrest information related to criminal offenses committed by a volunteer. Specifically, this new law:

- Authorizes a school district or county office of education to request from DOJ criminal arrest information related to a volunteer that occurs after the initial background check.

- Requires DOJ to comply with any request made under the provisions of this law.

- Specifies that the provisions of this law apply also to a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level that requests records involving criminal offenses committed by a volunteer.

BAIL

Bail Fugitive Recovery Act

Currently, bail fugitive recovery persons, commonly known as "bounty hunters", are not required to meet any background requirements, have any training, or communicate their intentions to law enforcement.

AB 243 (Wildman), Chapter 426, establishes the Bail Recovery Fugitive Act which requires that all bail fugitive recovery persons meet specified requirements and conform to specified regulations. Specifically, this new law:

- Provides that no person other than a certified law enforcement officer must be authorized to apprehend, detain, or arrest a bail fugitive unless that person has met one of the following conditions:
  - He or she was a bail licensee as defined by the provisions of this new law;
  - He or she was a bail fugitive recovery person as defined by the provisions of this new law;
  - He or she was a bail licensee issued by a state other than California and was in compliance with California law relating to the apprehension of an out-of-state fugitive;
  - He or she was licensed by the State of California as a private investigator; or,
  - He or she held a private investigator license issued by another state; was authorized, by a surety, to apprehend the bail fugitive; and was in compliance with California law relating to the apprehension of an out-of-state fugitive.
- Requires bail fugitive recovery persons to comply with all of the following:
  - The person must be at least 18 years of age;
  - The person must have completed a 40-hour power of arrest course certified by the Commission of Peace Officer Standards and Training (POST), which is not intended to confer the same powers of arrest as a peace officer;
  - The person must have completed 12 hours of education in subjects pertinent to the duties and responsibilities of a bail licensee; and,
  - The person must not have been convicted of a felony.

- Requires a bail fugitive recovery person who, in the course of his or her employment was required to carry a firearm, to complete 24-hour firearms training program certified by POST.

- Requires a bail fugitive recovery person to have in his or her possession completed certificates of required training.

- Requires a bail fugitive recovery person to have in his or her possession proper documentation of authority to apprehend issued by the bail licensee.

- Requires that a bail, depositor of bail, or bail fugitive recovery person, except under exigent circumstances, notify local law enforcement prior to and no more than six hours before of the intent to apprehend a bail fugitive.

- Prohibits the bail, depositor of bail, or bail fugitive recovery person from forcibly entering a premises unless positive identification of the bail fugitive had been made, or there is reasonable grounds to believe that the bail fugitive is present, and after having demanded admittance and explained the purpose for which the admittance had been desired.

- Prohibits the bail, depositor of bail, or bail fugitive recovery person from wearing any uniform or badge that represents himself or herself as a member of local, state, or federal law enforcement.

- Makes it a misdemeanor punishable by up to one year in the county jail and/or a fine of up to $5,000 for a violation of any of the provisions of this new law.

- Defines "bail recovery fugitive person" as a person given written authorization by a bail or depositor of bail and contracted to locate and arrest a bail fugitive.

- Requires bail agents, who obtain licensing after January 1, 2000 and who in the arrest of bail fugitives, to obtain training, as specified.

- Provides that any person who violates this Act, or hires an individual to apprehend a bail fugitive knowing that the individual is not authorized to apprehend a bail fugitive, is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed $5,000, or by both imprisonment and a fine.

- Clarifies that a person authorized to apprehend a bail fugitive may not forcibly enter a premise except as specifically provided for under provisions of law governing arrest of a private person.

Bail

Existing law provides that a bail agent may request identifying information from a law enforcement agency after the court issues a bench warrant. Such information may include a booking photograph, known aliases, whether the individual has been convicted of a violent felony and a copy of the booking record. Information regarding the fugitive is important for the safety of the officer, the bail agent, and individuals in close proximity to the arrest.

AB 468 (Baugh), Chapter 33, provides that a bail agent may request information regarding a fugitive in a case involving a forfeiture of bail. A court orders a bail forfeiture when a defendant fails to appear without sufficient excuse for any of the following: an arraignment, trial, any occasion before judgement where the defendant's appearance is required, judgement, and the date to surrender.

Post-Conviction Bail

Under existing law, if a verdict is rendered against a defendant who is out on bail, he or she may be remanded to the proper authority to await sentencing. If an on-bail defendant fails to appear for arraignment, trial, judgement, or any other scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor or the defendant is brought before the court within 180 days.

AB 476 (Ackerman), Chapter 570, requires that a defendant on bail convicted after trial be taken into custody unless the court finds that release on bail is justified based on enumerated factors. This law also extends the time period after bail is forfeited during which a surety must pay a summary judgement or be prohibited from acting as a surety on bail bonds. Specifically, this new law:

- States that the factors to be considered by the court in deciding whether to release a defendant on bail after being convicted are protection of the public, seriousness of the offense, previous criminal record, probability of a failure to appear, and public safety.

- Extends the time period from 20 to 30 days during which a surety must pay a summary judgment or be prohibited from acting as a surety on bail bonds after a bail forfeiture.

- Adds surety insurers and bail agents to the class of persons permitted to petition the court for an extension of time regarding bail forfeitures.

Bail In Domestic Violence Cases

A person arrested for serious or violent felonies, spousal rape, stalking, inflicting corporal injury on a spouse or cohabitant, or battery on a spouse or cohabitant may not

be released on his or her own recognizance or on bail in an amount that is either more or less than on the bail schedule without a hearing in open court.

AB 1284 (Jackson), Chapter 703, adds to the list of domestic violence-related offenses that require a hearing in open court regarding the setting of bail. In addition, victims are to be notified of bail hearings and certain conditions must to be imposed on defendants admitted to bail in stalking cases. Specifically, this new law:

- Adds the offenses of making a threat to commit a crime involving death or great bodily injury as a felony and attempting to dissuade a witness by the threat of or use of force or violence to the list of specified offenses that required a hearing in open court before a person may be released on bail in an amount more or less than the county bail schedule.

- Requires a county sheriff to notify the domestic violence unit of the prosecuting agency of the release on bail of any person arrested for stalking.

- Requires a prosecutor to make all reasonable efforts to notify the alleged stalking victim of the bail hearing.

- Specifies conditions of release on bail for a person accused of stalking, including a stay-away order and the defendant providing the court with current address and telephone information.

CHILD ABUSE

Child Abuse: Dependency Proceedings

Under certain circumstances courts in juvenile dependency hearings may declare a child to be a dependent of the court. Current law requires the state to prove by clear and convincing evidence that a person in the minor's household is a danger to the minor before making a finding of dependency.

SB 208 (Polanco), Chapter 417, creates a presumption that a child is a dependent of the juvenile court if the parent, guardian, or any person currently living with the minor has a prior sex conviction, a previous judicial finding of sexual abuse, or is required to register as a sex offender. This new law:

- Creates the presumption that a minor is a dependent of the juvenile court if the minor's parent, guardian, or any person currently residing with the minor has a prior conviction for sexual abuse, has been found in a prior dependency proceeding to have committed an act of sexual abuse, or is required to register as a sex offender for a felony sexual abuse conviction.

- Creates the presumption that a minor is a dependent of the juvenile court if the parent, guardian, or any person currently residing with the minor has been previously convicted of an act in another state that would constitute sexual abuse if committed in California or has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse.

- Provides that the court may direct Child Protective Services to investigate and notify appropriate state agencies and file reports as required if the court believes a child has suffered criminal abuse or neglect.

Child Death Review Council

California has one of the highest child abuse fatality rates in the nation. Coordination of all entities involved in the protection of children should be encouraged. Currently, these entities are prevented by law from sharing information and do not have a proper integrated system to prevent child fatalities.

SB 525 (Polanco), Chapter 1012, expands the Child Death Review Council membership, and increases and makes mandatory the responsibilities of the Department of Justice (DOJ) related to child deaths suspected to be a result of abuse or neglect. Specifically, this new law:

- Expands the Child Death Review Council to include the following public and private agencies: (1) Office of Criminal Justice Planning (OCJP); (2) Inter-

Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review; (3) California Conference of Local Health Officers; (4) California Conference of Local Directors of Maternal, Child and Adolescent Health; (5) California Conference of Local Health Department Nursing Directors; (6) California District Attorneys Association; and, (7) three regional representatives chosen by other members of the council.

- Provides that DOJ is authorized to carry out the purposes of this new law by coordinating council activities and working collaboratively with the agencies and organizations on the California State Child Death Review Council.

- Requires DOJ and the agencies and organizations involved to analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams, with copies to the Governor and the Legislature. The state data shall include DOJ's Child Abuse Central Index and Supplemental Homicide File and the Department of Health Services' (DHS) Vital Statistics Child Welfare Services/Case Management System.

- Requires the DHS in collaboration with the California State Child Death Review Council to design and implement a statewide child abuse and neglect fatality tracking system, as specified, incorporating information collected by local child death review teams. This provision shall become operative July 1, 2000, and shall be implemented to the extent that funds are appropriated in the Budget Act.

- Requires DOJ and the State Child Death Review Council in conjunction with OCJP to coordinate specified statewide and local training for county child death review teams.

- Requires DOJ to create, maintain, update, and distribute electronically and by paper a directory containing the names of the members of the agencies, organizations, and local child death review teams participating in the project; to work in collaboration with members of the Child Death Review Council to develop a relevant directory of experts, resources and information; and to facilitate regional working relationships among teams.

- Requires OCJP in coordination with the Department of Social Services, DOJ, and the California State Child Death Review Council to contract with state or nationally recognized child death review organizations to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standards and protocol for the investigation of fatal child abuse, and other related topics and programs.

- These provisions shall only be implemented to the extent OCJP can absorb the costs within its current funding.

- Requires county child welfare agencies to create a record in the Child Welfare Services/Case Management System on all cases of child death suspected to be related to child abuse or neglect; and if the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information in the system.

- Requires law enforcement and child welfare agencies to cross report all cases of child death suspected to be related to child abuse and neglect whether or not the deceased child has any known surviving siblings.

Child Protective Services

Under existing law, there are procedures for notifying local law enforcement of the release or parole of persons convicted of violent crimes and for reporting to a child protective agency incidents of suspected child abuse and neglect. However, there are no procedures for notifying child protective services if a parolee violates the terms of his or her parole restricting contact with the victim or the victim's family.

SB 1199 (Costa), Chapter 957, requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Specifically, this new law:

- Provides that whenever a person confined in the state prison for a conviction of child abuse, as specified, or any sex offense where the victim was a minor, the CDC or the BPT shall notify the sheriff, chief of police, or both, and the district attorney who has jurisdiction over the community in which the person was convicted and additionally notify the same agencies having jurisdiction over the community in which the person is scheduled to be released.

- Requires all parole officers to report to the appropriate child protective service if a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

- Provides that if the court orders the immediate release of an inmate, as specified, notice shall be given to the sheriff, chief of police, and district attorney having jurisdiction over the community in which the person was convicted and additionally notify the same agencies having jurisdiction over the community in which the person is scheduled to be released.

COMPUTER CRIME

Computer Crime

As computers and computer systems become more sophisticated, criminals find more opportunities to employ these mechanisms for illegal purposes. This law expands the ability of law enforcement to forfeit computers and computer systems used to commit a variety of crimes.

AB 451 (Maddox), Chapter 254, authorizes forfeiture of computers and computer-related systems used to commit a variety of theft, counterfeiting and computer crimes listed below, and gives the court discretion to deny forfeiture under certain circumstances. This law:

- Provides that a computer, computer system, computer network, and any software or data used to commit any of the violations listed subject the computer-related equipment to forfeiture: (1) forgery; (2) forging a driver's license or identification card; (3) counterfeiting public and private seals; (4) forging bills, notes, and checks; (5) counterfeiting money; (6) acquiring four or more access cards in a 12-month period; (7) acquiring access card account information with intent to defraud; (8) making or altering a counterfeit access card with intent to defraud; (9) altering/modifying access card account information with intent to defraud; (10) knowingly accessing and without permission using computer systems to defraud, deceive, extort or obtain money or property; (11) knowingly accessing and without permission taking, copying, or using computer data; (12) knowingly and without permission using computer services; (13) knowingly accessing and without permission adding, deleting or destroying data, software, or programs; (14) knowingly and without permission disrupting or denying computer services to an authorized user; (15) knowingly and without permission providing a means of accessing a computer; (16) knowingly and without permission accessing any computer, computer system or network; (17) knowingly introducing a contaminant into any computer, computer system or network; (18) knowingly and without permission using the Internet domain name of another person to send e-mail which damages a computer, or computer system or network; (19) avoiding phone charges by specified means; (20) advertising, possessing or using illegal telecommunications equipment to avoid paying charges; (21) false impersonation; (22) producing, selling or transferring a false birth or baptism certificate; and (23) using personal identifying information without consent.

- Authorizes a court to return seized computer-related property to a claimant who has a valid interest. However, no person shall hold a valid interest if the prosecutor shows the claimant knew or should have known the property was being used to commit one of the violations enumerated in the paragraph above.

- Provides that if a minor uses computer-related equipment owned by parents or guardians to commit a violation listed in the first paragraph, the equipment is subject to forfeiture. However, the parent or guardian can prevent the forfeiture by affirming that the minor will not have access to any such equipment for two years. Further provides that within two years of the minor being sentenced, if the minor is convicted subsequently of any crime listed in the first paragraph, the computer equipment will be subject to forfeiture.

- Provides that if the parent or guardian makes full restitution to the victim in an amount or manner determined by the court, the parent's/guardian's computer equipment is not subject to forfeiture.

- Provides an exemption to specified computer-related violations for any person who accesses his or her employer's computer system, network, program or data when acting within the scope of lawful employment.

- Provides that using computer services without permission does not penalize any acts committed outside a person's employment, so long as the acts do not cause an injury to any computer system, or provided that the value of supplies used does not exceed $100.

- Specifies that forfeiture shall not be available for any property used solely in the commission of an infraction.

- Provides that a court has discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

High Technology Theft Apprehension and Prosecution Program

In 1997, SB 438 (Johnston), Chapter 906, Statutes of 1997, created the High Technology Theft Apprehension and prosecution Program (HTTAPP). The Federal Bureau of Investigation (FBI) has stated that regional programs, such as the HTTAPP, are essential to the investigation and prosecution of high-tech crimes. By sharing information, regional task forces greatly improve the intelligence capability of each participating agency and allow smaller departments to benefit from the pooling of information on a statewide basis.

SB 157 (Johnston), Chapter 427, extends the HTTAPP until January 1, 2003.

Search Warrants: Internet Records

Internet service companies that provide services to California residents are often located out of state. In order for the police to obtain records of computer users who may

be involved out of state in criminal activity, law enforcement agents are required to use other states' often unfamiliar warrant procedures.

SB 662 (Figueroa), Chapter 896, authorizes the issuance of California search warrants that apply to records of foreign corporations registered to conduct business in California that provide electronic communication or remote computing services to the public. Specifically, this new law:

- Notifies foreign corporations that registering to conduct business in California also involves consenting to search warrants for specified electronic communication records.

- Provides that after an agent designated for service of process is served with a California search warrant, a foreign corporation must provide specified records within five business days.

- Provides that a law enforcement agency may request the court to order production of records within less than five business days if there is the risk of destruction of evidence, flight from prosecution, serious jeopardy to an investigation, danger to a witness, or undue delay of a trial.

- Requires that a foreign corporation seeking to challenge the search warrant must make such a request within five business days. The court must decide the motion no later than five court days after it is filed.

- Provides that a California corporation that provides electronic communication or remote computing services shall produce records in response to a search warrant from another state as if the warrant had been issued by a California court.

- Grants civil immunity to any corporation for providing records, information, or assistance pursuant to search warrants for computer records.

CONTROLLED SUBSTANCES

Products Containing Ephedrine

Ephedrine and ephedrine-like chemicals are available in a variety of over-the-counter cold, cough, and allergy medicine. In addition, these chemicals are key ingredients in the manufacture of methamphetamine.

In order to curb the supply of methamphetamine while allowing the use of these chemicals for legitimate purposes, a statewide standard for the distribution and sale of products containing ephedrine is needed. One enforceable standard will protect consumers while limiting use for illegal purposes.

AB 162 (Runner), Chapter 978, makes it a misdemeanor for a retail distributor to sell, in a single transaction, more than nine grams or three packages of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine.

This new law pre-empts all local ordinances and regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine or ephedrine-like chemicals.

"Blue Nitro"

Existing law categorizes controlled substances into 5 schedules and places the greatest restrictions on those contained in Schedule I. Schedule II contains the controlled substance gamma-hydroxybutyrate (GBH). Gamma-butyrolactone (GBL), commonly referred to as "Blue Nitro", is an analog of GBH. GBL is a powerful depressant, but not a scheduled controlled substance.

The United States Food and Drug Administration and the California Department of Health Services have issued health warnings related to the dangers associated with GBL. Nationally, there have been at least 55 adverse health effects, including one death. At least 19 individuals became unconscious or comatose, and most have experienced vomiting, headaches, seizure, slowed breathing and slowed heart rate.

AB 924 (Committee on Public Safety), Chapter 975, adds GBL to the list of Schedule II controlled substances. Specifically, this new law:

- Adds GBL to the Schedule II controlled substance list.
- Requires any manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes GBL to any person or business entity in California or any other state to submit a transaction report to the Department of Justice.

- Makes possession of GBL punishable by 16 months, 2 or 3 years in the state prison.

- Makes possession for sale of GBL a felony, punishable 16 months, 2 or 3 years in the state prison.

- Makes sale or transportation of GBL a felony, punishable by two, three or four years in the state prison.

- Subjects GBL transactions involving minors and sales near schools and other protected areas to enhancements.

CORRECTIONS

Out-of-State Inmates

Private prison companies have built facilities, on speculation, in one state and then imported inmates under sentence from other states. This practice has resulted in a lack of state authority or oversight in the receiving state, and the inability to monitor these facilities and inmates. In addition, the state has no authority to regulate these companies' training, security, construction standards, inmate/staff grievances, or use of force.

AB 1222 (Kuehl), Chapter 707, provides that except as authorized by statute, no city, county, city and county, or private entity shall cause to be brought into, housed in, confined in, or detained in this state any person sentenced to serve a criminal commitment under the authority of any jurisdiction outside of California.

Further, this new law states that it is the Legislature's intent that this law not prohibit nor authorize the confinement of federal prisoners in California.

California Department of Corrections' Office of Internal Affairs

The California Department of Corrections' (CDC) Office of Internal Affairs was created in July 1997 to better address the problem of alleged criminal activity by CDC employees. The Office of Internal Affairs members need increased peace officer powers in order to properly carry out their responsibilities.

AB 1502 (Washington), Chapter 917, revises the peace officer status of the CDC's Office of Internal Affairs investigators. Specifically, this new law:

- Provides that any member of the CDC's Office of Internal is a peace officer if the person's primary duties involve criminal investigations of CDC personnel and the coordination of those activities with other criminal justice agencies, and the person possesses certification from the Commission on Peace Officers Standards and Training for investigators.

- Allows the CDC to withdraw $10,000 per fiscal year from appropriated funds for confidential use.

- Requires the CDC at the close of each fiscal year to provide a certificate of the purpose and necessity for secrecy regarding the confidential use of the $10,000.

- Authorizes the Controller to perform audits of vouchers and itemized statements submitted by CDC accounting for the $10,000 confidential fund withdrawals during the year.

New Prison Construction

To accommodate increases in the state prison population, the Department of Corrections (CDC) requires an additional prison.

AB 1535 (Florez), Chapter 54, authorizes the expenditure of $351 million to plan and build a 2,248 cell medium- or maximum-security prison in Kern County. Specifically, this new law:

- Appropriates $24 million from the General Fund for site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, and other necessary planning.

- Appropriates $15.5 million from the General Fund to the CDC to hire additional parole officers.

- Permits an appropriation of $311.5 million from funds derived from lease-purchase financing methods for capital outlays.

- Appropriates a maximum of $4 million for mitigation costs of local government and school districts.

- Specifies that the prison shall not be occupied until the Director of the Department of Finance finds and reports to the Legislature that CDC has activated or made available 9,000 in-prison therapeutic drug treatment slots or "similar modalities."

Extending Confinement of Mentally Disordered Offenders for Needed Treatment

The California Supreme Court's recent decision in People v. Anzalone, (1999) 19 Cal. 4th 1074 held that the authorities could not keep a mentally disordered offender (MDO) whose commitment offense involved implied force beyond his or her routine parole date even where further treatment was called for. The Court limited the definition of a MDO by excluding crimes involving "implied force." The Supreme Court concluded that a bank robbery involving no actual force or violence did not qualify as a crime of "force or violence" within the meaning of Penal Code Section 2962(e)(2)(P).

SB 279 (Dunn), Chapter 16, responds to the Anzalone decision. This law expands the definition of a MDO who can be compelled to remain in custody for treatment to include crimes that involved the implied use of force likely to produce substantial physical harm. This new law:

- Expands the list of crimes that empower the Department of Mental Health to require treatment of an inmate to include crimes where the perpetrator expressly

or impliedly threatened another person with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used.

- Specifies further that "substantial physical harm" does not require proof that the threatened act was likely to cause great or serious bodily injury.

- Provides that this new law applies to any person committed pursuant to Penal Code Sections 2960 et seq. after July 1, 1986.

- Is an urgency measure to prevent the immediate release of MDO's based on the Supreme Court's Anzalone decision.

Sexual Misconduct in Correctional Facilities

Proper oversight of California correctional facilities is an important public safety concern. Nationally, there have been reported incidents of sexual misconduct between persons confined in detention facilities and persons in positions of authority over them. California has had reported incidents as well.

In addition, as recently demonstrated at Corcoran State Prison, "whistle blowers" who report misconduct need protection from retaliation by state departments.

SB 377 (Polanco), Chapter 806, expands the scope and increases the penalty for the crime of sexual activity in a public detention facility between staff and a person detained in the facility, and provides for a minimum 30-day suspension for any Youth and Adult Correctional Agency (YACA) employee who engages in acts of retaliation against another employee. Specifically, this new law:

- Increases the penalty for an employee in a detention facility, as specified, convicted of engaging in sexual activity with a consenting adult confined in the facility to 16 months, 2 or 3 years in the state prison or up to one year in the county jail, by a fine of not more than $10,000, or by both that fine and imprisonment.

- Provides that any person convicted of a felony violation for a violation of this new law and employed by a department, board or authority within YACA shall be terminated in accordance with the State Civil Service Act and not be eligible to be re-hired or reinstated.

- Adds volunteers and employees of private entities who contract with public detention facilities to the list of persons prohibited from engaging in sexual activity in detention facilities, and adds the Federal Government to the definition of "public entity."

- Includes an employee of entities under YACA jurisdiction who, during the course of his or her employment, directly provides treatment, care, control or supervision of inmates, wards, or parolees.

- Adds to the definition of "sexual activity" the rubbing or touching of the breasts or sexual organs of another person, or of oneself in the presence of and with knowledge of another person, with the intent of arousing, appealing to, or of gratifying the lust, passions or desires of oneself or another person.

- Makes the "rubbing or touching" violation a misdemeanor punishable by up to six months in the county jail, by a fine of up to $1,000, or by both.

- Provides that any employee of YACA found by the State Personnel Board (SPB) to have intentionally engaged in acts of "retaliation" against another employee shall be suspended without pay for not less than 30 days; the SPB may impose a lesser period of suspension if warranted and if the reasons for that determination are justified in writing.

- Defines "retaliation" as intentionally engaging in acts of reprisal, or is disclosing retaliation, threats or coercion, or similar acts against another employee who has disclosed what the employee in good faith believes to be improper governmental activities or where the employee is cooperating with an investigation of improper activities.

- Provides that in investigating a complaint of whether retaliation has occurred, the Inspector General (IG) shall consider, among other things, the following:

  - Unwarranted or unjustified staff changes;

  - Unwarranted or unjustified letters of reprimand, other disciplinary actions, or unsatisfactory evaluations;

  - Unwarranted or unjustified formal or informal investigations;

  - Engaging in acts or encouraging or permitting other employees to engage in acts that are hostile, unprofessional, or foster a hostile work environment; and,

  - Engaging in acts or encouraging or permitting other employees to engage in acts that are contrary to the rules, regulations, or policies of the workplace.

- States that nothing in this law prohibits an employing entity from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in prohibited conduct.

- Requires that IG commence investigation of every complaint of retaliation received by an employee within 30 days of receiving the complaint. All investigations of peace officer employees shall be conducted in accordance with the Peace Officer Bill of Rights.

- Provides that the SPB may refuse to examine or certify any person who has engaged in unlawful retaliation or reprisal as defined.

Corrections: Office of the Inspector General

The Office of the Inspector General (OIG) is responsible for conducting investigations and audits of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, or the Board of Corrections.

SB 868 (Wright), Chapter 918, clarifies existing law regarding OIG investigative duties and the peace officer status of OIG staff. This new law:

- Clarifies the peace officer status of specified OIG employees by designating them as peace officers with authority any place in California provided that they are conducting investigations or audits of correctional agencies.

- Revises the general authority of the Inspector General (IG) to include additional entities within the purview of the OIG: the Youth and Adult Correctional Agency, the Narcotic Addict Evaluation Authority, and the Prison Industry Authority. This law allows the OIG to initiate an investigation or audit and to make the requestor's response public.

- Revises and adds to the authority of OIG to have access to documents and records of specified agencies. This law provides that failure to permit access to the records is a misdemeanor. This law extends the access authority to "private" entities as well, if the private entity is subject to review or access by the public agency that OIG is investigating.

- Adds to the authority of the IG to require employees to be interviewed on a confidential basis. This law exempts records of such interviews from the Public Records Act. This law limits the purpose of these communications to address any disciplinary action or grievance procedure that may routinely occur. If the facts of the case could lead to punitive action, the OIG shall be subject to the provisions of the Public Safety Officers Procedural Bill of Rights.

- Authorizes the OIG to administer oaths, certify official acts, and issue subpoenas. This law requires a management review audit following the confirmation of a new warden or superintendent unless the IG determines that the audit is not warranted at that time.

- Prohibits the IG from destroying certain papers and memoranda used in connection with an audit for a period of not less than three years. This designates certain records as subject to public disclosure while creating a misdemeanor to wrongfully disclose restricted information.

Corrections

Since 1988, Santa Clara County has sought to implement the voters' mandate to separate the county jails from the sheriff's authority. The major issue has been how to classify the officers who work in the jails; these employees are not peace officers but they must exercise some peace officer duties as part of their jobs. Local administrative attempts to confer peace officer status on the correctional officers, have not succeeded because the courts have declared that the county cannot unilaterally confer peace officer status on the correctional officers.

SB 1019 (Vasconcellos), Chapter 635, specifies the additional "peace officer" duties that Santa Clara County Department of Correction custodial officers are authorized to undertake, including arrests, searches, and classification of prisoners. The new law:

- Provides that Santa Clara County custodial officers are public officers, not peace officers.

- Specifies the additional duties that Santa Clara County custodial officers are authorized to undertake:

  - Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person has committed a felony in the presence of the officer that is a violation of a statute or ordinance that the officer has a duty to enforce;

  - Search property, cells, prisoners, or visitors;

  - Conduct strip or body cavity searches of prisoners;

  - Conduct searches and seizures pursuant to a duly issued warrant;

  - Segregate prisoners; and,

- Classify prisoners for the purpose of housing or participation in supervised activities.

- Specifies that this new law does not authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

Video Arraignment

SB 840 (Beverly), Chapter 367,Statutes of 1995, authorized the California Department of Corrections (CDC) to establish a three-year pilot project which permits the CDC to arrange for the initial court appearance and arraignment to be conducted by two-way audio video electronic conferencing between the defendant and the courtroom.

A 1995 report required by the Legislature found the pilot project to be a success as the project increased public safety for surrounding communities by reducing the number of inmates removed from the institution and reduced costs for CDC, county courts, and jails.

SB 1126 (Costa), Chapter 888, makes permanent provisions of the law that allow the CDC to arrange for the initial court appearance and arraignment in municipal or superior court of a defendant incarcerated in the state prison to be conducted by a two-way electronic audio video communication, and allows for two-way electronic audio video conferencing when the Board of Control (BOC) seeks imposition or modification of a restitution order. Specifically, this new law:

- Eliminates the pilot project aspect of the audio video arraignment program, and makes the project permanent.

- Deletes provisions of the pilot project that limits the audio video arraignment program to five institutions.

- Removes the requirement that the CDC report to the Legislature on the costs and benefits of the pilot project.

- Deletes the sunset clause, which provided that the provisions of the pilot project remain in effect until January 1, 2000.

- Expands the audio video conferencing program to include hearings conducted at the request of the BOC when the BOC seeks to amend or impose a restitution order.

- Allows the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

- Allows the court to retain jurisdiction over a person subject to a restitution order when the economic losses of a victim cannot be ascertained at the time of sentencing until such time as the losses may be determined, and allows a restitution order to be corrected at any time when the sentence is invalid due to the omission of a restitution order or fine.

- States that nothing in this law prohibits an individual or district attorney's office from independently pursuing the imposition or amendment of a restitution order regardless of whether the victim has received assistance from the Restitution Fund.

Child Protective Services

Under existing law, there are procedures for notifying local law enforcement of the release or parole of persons convicted of violent crimes, and for reporting incidents of suspected child abuse and neglect to a child protective agency. However, there are no procedures for notifying child protective services if a parolee violates the terms of his or her parole restricting contact with the victim or the victim's family.

SB 1199 (Costa), Chapter 957, requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Specifically, this new law:

- Provides that whenever a person confined in the state prison for a conviction of child abuse, as specified, or any sex offense where the victim was a minor, the CDC or the BPT shall notify the sheriff, chief of police, or both, and the district attorney who has jurisdiction over the community in which the person was convicted; and additionally notify the same agencies having jurisdiction over the community in which the person is scheduled to be released.

- Requires all parole officers to report to the appropriate child protective service if a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

- Provides that if the court orders the immediate release of an inmate, as specified, notice shall be given to the sheriff, chief of police, and district attorney having jurisdiction over the community in which the person was convicted and additionally notify the same agencies having jurisdiction over the community in which the person is scheduled to be released.

COURT HEARINGS AND PROCEDURES

Recusal Motions

Prior law concerning recusal motions did not provide for the use of affidavits to assist both parties and the court in defining the issues and deciding whether an evidentiary hearing is required to resolve the motion. The use of affidavits is now authorized expressly in these types of motions.

AB 154 (Cunneen), Chapter 363, changes the procedures regarding a defense motion to recuse the prosecutor. The new law provides specific details to guide the defense, the prosecution, and the court:

- Requires the notice of motion to contain a statement of facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the moving party.

- Requires the motion to be supported by affidavits of witnesses competent to testify to the facts set forth in the affidavits.

- Permits the prosecutor and the Attorney General to file affidavits in opposition to the motion, both may appear at the hearing on the motion, and both may file with the court a written opinion on the disqualification issue.

- Provides that if the motion to recuse was brought at or before the preliminary hearing, the motion may not be renewed in the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

- Requires the court to review affidavits submitted in support of, and in opposition to, the recusal motion to determine if an evidentiary hearing is necessary to decide the merits of the motion.

Continuances In Career Criminal Prosecutions

Existing law authorizes the court to grant a continuance of a trial only for good cause. In addition, when scheduling a date for trial, the court must make reasonable efforts to avoid setting that trial on the same day that another trial is set involving the same prosecuting attorney. The Career Criminal Prosecution Program requires individual prosecutors to reduce the time between arrest and case disposition and to perform all court appearances on a particular case.

AB 501 (Nakano), Chapter 382, allows the court to continue a trial or hearing date for up to 10 court days where a prosecutor assigned to the Career Criminal Prosecution Program has another trial or hearing in progress. This new law requires

the court to make reasonable efforts to avoid scheduling a career criminal case when the prosecutor has another trial set. The number of such continuances is limited to one per case.

Juvenile Court Records: Sealing and Destruction

An adult criminal defendant found to be factually innocent may petition the law enforcement agency and district attorney's office having jurisdiction over the offense to seal and destroy the defendant's arrest record. Upon a determination by the law enforcement agency that the defendant is factually innocent, the agency, with the concurrence of the district attorney, will seal the defendant's arrest record and petition for a period of three years after which the records are destroyed. There is no similar procedure for a juvenile who is factually innocent.

AB 744 (McClintock), Chapter 167, permits a minor to file a petition for a finding of factual innocence that results in the sealing and destruction of records. Specifically, this new law:

- Provides that a minor cited or arrested but not subjected to formal prosecution may request the local law enforcement agency and probation department to make a determination of factual innocence and thereafter seal and destroy the records. The law enforcement agency, probation department, and district attorney determine if reasonable cause exists to believe that the minor committed the offense.

- Provides that a minor not subjected to formal prosecution whose request to seal and destroy the record is denied may petition the juvenile court for review. The minor has the initial burden of proof. The district attorney may present evidence. The court will not make a finding of factual innocence unless the court finds no reasonable cause exists to believe the minor committed the offense for which the arrest was made.

- Provides that when a minor who has been arrested and an accusatory pleading has been filed but not sustained, the minor may petition the court in writing any time after dismissal of the proceeding for a finding of factual innocence. After receiving notice, the district attorney may present evidence.

- States that at the time that the petition is dismissed the court may, upon its own motion or of any party, order the records sealed if it appears to the judge that the minor was factually innocent of the offense.

- States that a finding of factual innocence exonerates the minor. The finding is not admissible as evidence in any action. The arrest is deemed not to have occurred.

Bail In Domestic Violence Cases

A person arrested for serious or violent felonies, spousal rape, stalking, inflicting corporal injury on a spouse or cohabitant, or battery on a spouse or cohabitant may not be released on his or her own recognizance or on bail in an amount that is either more or less than on the bail schedule without a hearing in open court.

AB 1284 (Jackson), Chapter 703, adds to the list of domestic violence-related offenses that require a hearing in open court regarding the setting of bail. In addition, victims are to be notified of bail hearings and certain conditions must to be imposed on defendants admitted to bail in stalking cases. Specifically, this new law:

- Adds the offenses of making a threat to commit a crime involving death or great bodily injury as a felony and attempting to dissuade a witness by the threat of or use of force or violence to the list of specified offenses that required a hearing in open court before a person may be released on bail in an amount more or less than the county bail schedule.

- Requires a county sheriff to notify the domestic violence unit of the prosecuting agency of the release on bail of any person arrested for stalking.

- Requires a prosecutor to make all reasonable efforts to notify the alleged stalking victim of the bail hearing.

- Specifies conditions of release on bail for a person accused of stalking, including a stay-away order and the defendant providing the court with current address and telephone information.

Continuances In Stalking Cases

Existing law authorizes the court to grant a continuance of a trial only for good cause. In addition, when scheduling a date for trial, the court must make reasonable efforts to avoid setting that trial on the same day that another trial is set involving the same prosecuting attorney.

SB 69 (Murray), Chapter 580, allows the court to continue a trial or hearing date for up to 10 court days where a prosecutor assigned to a stalking case has another trial or hearing in progress. This new law:

- Adds to the definition of what constitutes good cause to continue a trial or hearing to include the unavailability of a prosecutor assigned to a stalking case.

- Provides that a continuance shall be for the shortest time possible, not to exceed 10 court days.

- Limits the number of such continuances to one per case.

Child Abuse: Dependency Proceedings

Under certain circumstances courts in juvenile dependency hearings may declare a child to be a dependent of the court. Current law requires the state to prove by clear and convincing evidence that a person in the minor's household is a danger to the minor before making a finding of dependency.

SB 208 (Polanco), Chapter 417, creates a presumption that a child is a dependent of the juvenile court if the parent, guardian, or any person currently living with the minor has a prior sex conviction, a previous judicial finding of sexual abuse, or is required to register as a sex offender. This new law:

- Creates the presumption that a minor is a dependent of the juvenile court if the minor's parent, guardian, or any person currently residing with the minor has a prior conviction for sexual abuse, has been found in a prior dependency proceeding to have committed an act of sexual abuse, or is required to register as a sex offender for a felony sexual abuse conviction.

- Creates the presumption that a minor is a dependent of the juvenile court if the parent, guardian, or any person currently residing with the minor has been previously convicted of an act in another state that would constitute sexual abuse if committed in California or has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse.

- Provides that the court may direct Child Protective Services to investigate and notify appropriate state agencies and file reports as required if the court believes a child has suffered criminal abuse or neglect.

Search Warrants: Internet Records

Internet service companies that provide services to California residents are often located out of state. In order for the police to obtain records of computer users who may be involved in criminal activity, law enforcement agents are required to use other states' often unfamiliar warrant procedures.

SB 662 (Figueroa), Chapter 896, authorizes the issuance of California search warrants that apply to records of foreign corporations registered to conduct business in California that provide electronic communication or remote computing services to the public. This new law:

- Notifies foreign corporations that registering to conduct business in California also involves consenting to search warrants for specified electronic communication records.

- Provides that after an agent designated for service of process is served with a California search warrant, a foreign corporation must provide specified records within five business days.

- Provides that a law enforcement agency may request the court to order production of records within less than five business days if there is the risk of destruction of evidence, flight from prosecution, serious jeopardy to an investigation, danger to a witness, or undue delay of a trial.

- Requires that a foreign corporation seeking to challenge the search warrant must make such a request within five business days. The court must decide the motion no later than five court days after it is filed.

- Provides that a California corporation that provides electronic communication or remote computing services shall produce records in response to a search warrant from another state as if the warrant had been issued by a California court.

- Grants civil immunity to any corporation for providing records, information, or assistance pursuant to search warrants for computer records.

Video Arraignment

SB 840 (Beverly), Chapter 367,Statutes of 1995, authorized the California Department of Corrections (CDC) to establish a three-year pilot project which permits the CDC to arrange for the initial court appearance and arraignment to be conducted by two-way audio video electronic conferencing between the defendant and the courtroom.

A 1995 report required by the Legislature found the pilot project to be a success as the project increased public safety for surrounding communities by reducing the number of inmates removed from the institution and reduced costs for CDC, county courts, and jails.

SB 1126 (Costa), Chapter 888, makes permanent provisions of the law that allow the CDC to arrange for the initial court appearance and arraignment in municipal or superior court of a defendant incarcerated in the state prison to be conducted by a two-way electronic audio video communication, and allows for two-way electronic audio video conferencing when the Board of Control (BOC) seeks imposition or modification of a restitution order. Specifically, this new law:

- Eliminates the pilot project aspect of the audio video arraignment program, and makes the project permanent.

- Deletes provisions of the pilot project that limits the audio video arraignment program to five institutions.

- Removes the requirement that the CDC report to the Legislature on the costs and benefits of the pilot project.

- Deletes the sunset clause, which provided that the provisions of the pilot project remain in effect until January 1, 2000.

- Expands the audio video conferencing program to include hearings conducted at the request of the BOC when the BOC seeks to amend or impose a restitution order.

- Allows the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

- Allows the court to retain jurisdiction over a person subject to a restitution order when the economic losses of a victim cannot be ascertained at the time of sentencing until such time as the losses may be determined, and allows a restitution order to be corrected at any time when the sentence is invalid due to the omission of a restitution order or fine.

- States that nothing in this law prohibits an individual or district attorney's office from independently pursuing the imposition or amendment of a restitution order regardless of whether the victim has received assistance from the Restitution Fund.

CRIME PREVENTION

Rural Crime Prevention Project

Prior law authorized Tulare County to develop the Rural Crime Prevention Demonstration Project for a three-year period to be administered under a joint powers agreement between the district attorney and the county sheriff. This new law expands the program to cover eight Central Valley counties and appropriates more than $3.5 million to fund the undertaking.

AB 157 (Reyes), Chapter 564, establishes the Rural Crime Prevention Demonstration Project to develop crime control techniques, timely reporting of crimes, and evaluation of the efforts for specified counties in the Central Valley. The aim is to strengthen the ability of law enforcement agencies in rural areas to detect and monitor agricultural-based and rural-based crimes. The main features of this law are:

- Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare Counties are authorized to develop the Rural Crime Prevention Program, to be administered by each county's district attorney and sheriff.

- The participating counties shall form a regional task force, the "Rural Crime Task Force", including the respective county office of the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owner groups or associations. The Task Force is responsible for developing crime prevention, problem solving and crime control techniques, encouraging timely reporting of crimes, and evaluating the results of these activities.

- The crime prevention programs shall contain a system for reporting rural crimes that enables the swift recovery of stolen goods and the apprehension of suspects. Further, the Task Force shall develop computer software and use communication technology to implement the reporting system.

- By September 30, 2000, each county must submit to the Legislative Analyst a detailed cost-benefit analysis of the entire program. Thereafter, the Legislative Analyst, in consultation with the Office of Criminal Justice Planning, must evaluate the program and submit to the Governor, the Joint Legislative Budget Committee and the fiscal committees of the Legislature a detailed cost-benefit analysis of the entire program by December 31, 2000.

Child Pornography: School Employees

Current law inadvertently omits certain child pornography and obscenity violations from the list of specified offenses that result in the mandatory revocation of a teaching credential.

AB 457 (Scott), Chapter 281, adds specified child pornography and obscenity violations to the list of sex offenses that prohibit school districts from employing persons who have committed such crimes. Also prohibits local education agencies from issuing temporary certificates to applicants with revoked or suspended teaching credentials. Specifically, this new law:

- Adds the offenses of bringing obscene matter or child pornography into California, distributing obscene matter depicting persons under the age of 18, and possession of child pornography to the list of sex offenses that prohibit a school district from employing or retaining a person convicted of such an offense.

- Requires a local education agency to immediately place on compulsory leave of absence an employee charged with an offense added by this bill.

- Prohibits a county or city and county board of education from issuing a temporary certificate to an applicant whose teaching credential is revoked or suspended.

DNA Databanks and Crime Prevention

The DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Data Bank Act of 1998) provided for the collection of specified biological samples, as well as fingerprint and palmprint samples, from certain categories of convicted sex offenders and violent criminals. SB 654 enhances the scope and operation of the Data Bank Act of 1998 and thereby increases the ability of law enforcement to employ scientific means to prevent and solve crime.

SB 654 (Schiff), Chapter 475, revises the DNA and Forensic Identification Data Base and Data Bank Act of 1998. This new law expands the offenses that trigger the collection of the data, and revises and further defines the scope of the Data Bank Act of 1998:

- Removes an exception from the Data Bank Act of 1998 which excluded the sample collection for offenses involving lewd and lascivious conduct and for those persons convicted of loitering by public toilets for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

- Requires the prosecutor to verify in writing that the samples have been taken, or are scheduled to be taken, before the offender's release. This new law further provides that a failure by the prosecutor to verify the samples does not relieve the offender of the obligation to provide the samples.

- Provides that the court's abstract of judgment shall indicate that the court has ordered the offender to give the samples, and that the offender's samples be included in the state's DNA and Forensic Identification Data Base and Data Bank program. This new law further provides that a court's failure to enter the preceding information in the abstract of judgment does not invalidate the conviction or relieve the offender from the obligation to provide the samples.

- Provides that Department of Justice (DOJ) laboratories accredited by the Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB), or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin.

- Requires that all laboratories, including DOJ DNA laboratories, which contribute DNA profiles for inclusion in California's DNA Data Bank, be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. This new law further requires each laboratory to submit to DOJ the annual report required by ASCLD/LAB, or any certifying body approved by ASCLD/LAB, which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any approved certifying body.

- Authorizes the release of DNA and other forensic information to defense counsel upon court order made pursuant to the Penal Code's general discovery provisions.

- Specifies that the population data base and data bank of the DOJ DNA Laboratory may be made available to and searched by the FBI, any other agency participating in the FBI's National DNA Data Base System, or any other national law enforcement data bank system.

- Requires any local public DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program to comply with all the rules, regulations, and policies of the DOJ DNA Laboratory.

- Requires the parole authority to revoke the parole of any prisoner who refuses to provide samples of blood or saliva as required by law.

CRIMINAL JUSTICE PROGRAMS

Vehicles

With jail overcrowding a serious problem in many counties, alternatives to jail for non-violent offenses gain importance as policy objectives. On a trial basis, this law allows certain counties to explore an alternative to jail for those who drive with a suspended license.

AB 1311 (Romero), Chapter 122, allows certain counties to establish a pilot program to explore alternatives to jail for a person who pleads guilty or no contest to driving with a suspended license. Provides that participation in the alternative program takes the place of jail. Requires each district attorney who participates in this alternative program to report to the Legislature by December 31, 2003. Provides a sunset date of December 31, 2003. Specifically, this new law:

- Provides that the district attorneys of Alameda, Kern, Los Angeles, Orange, Placer, Sacramento, San Joaquin, San Luis Obispo, and Santa Barbara Counties may establish, with the approval of the board of supervisors, a pilot program for persons who plead guilty or no contest to, or who are found guilty of, driving with suspended licenses.

- Provides that, with the approval of the court, the district attorney and the accused may enter into a written agreement requiring the accused to complete an alternative program within 60 days or within the maximum sentence period for the charge.

- Provides that the court has the authority to refer a case to the alternative program and to order the accused to comply with terms of the written agreement mentioned above.

- Requires that the alternative program include a home detention component utilizing an electronic monitoring device for not less than the minimum jail sentence and not more than the maximum jail sentence.

- Requires that the accused attend one or more classes conducted by the district attorney (or by a private entity under contract with the district attorney), which class/classes shall include instruction in the following: the legal requirements of the various driving with a suspended license charges and their penalties, available transportation alternatives for those who do not have a valid driver's license, and the procedure for regaining the privilege to drive.

- Authorizes the court to impose any fine allowed under the applicable driving with suspended license statutes.

- Provides that the following types of statements shall not be admissible in any action or proceeding:

  - No statement or information gained from a statement made by a person in connection with the determination of his or her eligibility;

  - No statement or information gained from a statement made subsequent to being referred to the alternative program or while participating in the program;

  - No statement contained in any report made regarding the alternative program; and

  - No statement or other information concerning the person's participation in the alternative program.

- Authorizes the district attorney or the private entity running the program to recover fees for the alternative program.

- Permits the court to determine the accused's ability to pay the fees described in the paragraph above. If the court determines that the accused does not have the ability to pay the fees, the accused does not have to pay the fees in order to participate in the alternative program.

- Provides that a person who participates in an electronic monitoring program as part of the alternative to jail may attend school, work or other activities with the court's approval.

- Requires every district attorney who elects to participate in this program to submit a report to the Legislature not later than December 31, 2003 concerning that county's participation in the program.

- Provides that this law will be repealed January 1, 2004 unless that date is deleted or extended by later legislation.

Crime Laboratories

The Legislature has recognized that California crime laboratories are an integral part of the criminal justice system. A recent state audit has shown that most of California's crime laboratories are in need of significant repair and renovation.

AB 1391 (Hertzberg), Chapter 727, creates the Hertzberg-Polanco Crime Laboratories Construction Bond Act of !999 which authorizes the construction and remodeling of new and existing local forensic laboratories. Specifically, this new law:

- Authorizes the issuance and sale of $220 million of general obligation bonds upon approval of the voters at the March 7, 2000 primary election to be used for the construction of new local forensic laboratories, and the renovation of existing forensic laboratories.

- Creates the Forensic Laboratories Capital Expenditure Fund in the State Treasury.

- Creates within the Department of Justice the Forensics Laboratory Authority composed of seven members, including the Attorney General, the State Director of Crime Laboratories, and five members to be appointed by the Governor with the advice and consent of the Senate.

- Requires the Authority to meet by May 15, 2000 and to meet at least twice a year.

- Requires the Authority to consider applications for funding and to make grants from the Forensics Laboratories Capital Expenditure Fund for the construction and renovation of forensic laboratories.

- Restricts distribution of funds to an applicant city, county, or region that provides 10 percent matching funds which may be waived by the Legislature where necessary as specified, and requires the applicant to be responsible for operating costs.

CRIMINAL OFFENSES

Felony Offenses

Hate-Related Murder

Under existing law, the intentional killing of a person because of his or her race, color, religion or nationality, or country of origin is punishable by the death penalty. The state may be sending the signal that some hate crimes are not as serious as others as evidenced by the disparity in penalties. The penalty for first-degree murder based on a victim's gender, sexual orientation, or disability should be more consistent with the penalty when the victim is intentionally killed because of the victim's race, color, religion, nationality, or country of origin.

AB 208 (Knox), Chapter 566, requires that a person who commits first-degree murder be punished by life imprisonment without the possibility of parole if the victim was intentionally killed because of the victim's actual or perceived disability, gender, or sexual orientation. Specifically, this new law:

- Provides that a person who committed first-degree murder and intentionally killed the victim because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation shall be punished by imprisonment in the state prison for life without the possibility of parole.

- Provides that the punishment prescribed shall not apply unless the allegation was charged in the accusatory pleading and admitted by the defendant or found true by the trier of fact.

- States that the term "because of" means that the bias motivation must be a cause of the offense; and when multiple motivations existed, the prohibited bias must be a substantial factor in bringing about the result.

- Provides that this new law shall not prevent a greater or more severe penalty from being imposed pursuant to any other provision of law, prohibits the court from striking the "hate crime" allegation except in the interest of justice, and requires the court to state in writing its reason for doing so.

Weapons

Existing law allows felony prosecution for carrying many concealed weapons such as pen knives, brass knuckles, dirks, daggers, and zip guns. AB 491 allows the possibility of felony prosecution at the district attorney's discretion for the possession of unregistered concealable firearms under specified circumstances.

AB 491 (Scott), Chapter 571, makes possession of a concealed or loaded firearm an alternate misdemeanor/felony under certain circumstances. This new law requires the Attorney General (AG) to keep an electronic record in the Department of Justice (DOJ) firearms registry of firearms owners indicated by a Dealers' Record of Sale (DROS) prior to 1979 if the owner makes a written request that the AG do so. This new law requires the AG to make the record within three days of the request and to notify the owner that the request has been honored. Specifically, this new law:

- Requires the AG to keep an electronic record in the DOJ firearms registry (as well as in the record's existing photographic, photostatic or non-erasable, optically-stored form) of any person listed in the registry as the owner of a firearm through a DROS prior to 1979 if the owner requests by letter that the AG do so. This new law requires the AG to make the record within three days of the request, and to notify the owner that the request has been honored.

- Makes possession of a concealable firearm and unexpended ammunition an alternate misdemeanor/felony if both of the following conditions are met: (1) both the firearm and unexpended ammunition are in the person's immediate possession or readily accessible, and (2) the person is not listed with DOJ as the registered owner of the firearm.

- Makes carrying a loaded firearm on one's person, or in a vehicle on any public street, where the person is not listed with DOJ as the registered owner an alternate misdemeanor/felony.

- Authorizes a peace officer to arrest a person if the officer has probable cause to believe the person is carrying a concealable firearm, the person is not listed with DOJ as the registered owner of that firearm, and either or both of the following:

    - Has a concealable firearm and unexpended ammunition in his or her immediate possession, or readily accessible; and/or,

    - Has a loaded concealable firearm in his or her immediate possession.

- Requires the district attorney of each county to submit an annual report to the (AG) detailing profiles by race, age, gender, and ethnicity of any person charged under this new law.

- Requires the AG to submit an annual report to the Legislature compiling all the reports described in the paragraph above.

- Provides that this new law's Penal Code sections will remain in effect until January 1, 2005.

Dangers in the Workplace

The vast majority of companies practice safety at the workplace, adhering to or exceeding Occupational Safety and Health Act (OSHA) standards. At the same time, some businesses "cut corners" and consequently risk the safety of employees. AB 1127 establishes a range of penalties when such conduct rises to a criminal level.

AB 1127 (Steinberg), Chapter 615, increases the penalties for an employer who knowingly creates a hazard for employees, or willfully, or repeatedly violates OSHA standards, causing serious harm or death. This new law:

- Makes it a misdemeanor for every employer, officer, management official or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee to do any of the following:
  - Knowingly or negligently violating any standard, order, or special order; the violation of which is deemed a serious violation pursuant to Labor Code Section 6432 [Item 1(a)];
  - Repeatedly violating any standard, order, or special order which creates a real and apparent hazard to employees [Item 1(b)];
  - Failing or refusing to comply, after notice and expiration of any abatement period, with any standard, order, or special order which creates a real and apparent hazard to employees (Item 1(c)]; and,
  - Knowingly inducing, directly or indirectly, another person to violate the items above [Item 1(d)].
- Makes a violation of Item 1(a) punishable by imprisonment up to six months in the county jail, a $5,000 fine, or both.
- Makes a violation of Items 1(b), 1(c) or 1(d) punishable by imprisonment up to one year in county jail, a fine up to $15,000, or both. If the defendant is a corporation or a limited liability company, the fine may not exceed $150,000.
- Specifies that where the violation causes death or permanent or prolonged impairment of the body of any employee, the violation can be charged as a misdemeanor or a felony. A misdemeanor is punishable by up to one year in the county jail, a fine not exceeding $100,000, or both; a felony is punishable by 16 months, 2 or 3 years in state prison, a fine not exceeding $250,000, or both. If the defendant is a corporation or a limited liability company, the fine may not exceed $1.5 million. (Item 2)

- Specifies that if a violation of Item 2 occurs within seven years of: (1) a conviction for violating Items 1(b), 1(c) or 1(d); or, (2) a conviction for submitting a signed statement affirming compliance with abatement of a hazard when the hazard has not been abated, the defendant is guilty of a felony, punishable by 16 months, 2 or 3 years in state prison, a fine not to exceed $250,000, or both; however, if the defendant is a corporation or a limited liability company, the fine may not be less than $500,000 nor more than $2.5 million.

- Specifies that if a violation of Item 2 occurs within seven years of a conviction for violating Item 2, the defendant is guilty of a felony, punishable by two, three, or four years in state prison, a fine not to exceed $250,000, or both; however, if the defendant is a corporation or a limited liability company, the fine may not be less than $1 million nor more than $3.5 million.

- Makes it a misdemeanor for an employer to submit a signed statement affirming compliance with abatement of a hazard when the hazard in fact was not abated. A violation can be punished by up to one year in county jail, a $30,000 fine, or both. If the defendant is a corporation, the fine shall not exceed $300,000.

- Defines "serious violation" as either: (1) a substantial probability that death or serious physical harm could result from a violation, including circumstances where either of the following could lead to death or great bodily injury, an exposure exceeding an established permissible exposure limit, or the existence of one or more practices, means, methods, operations, or processes which have been adopted or are in use; and, (2) the violation results in an occupational injury or illness indicative of a condition that may result in serious physical harm.

Dog Bites: Penalties

Existing law provides that a person who owns or has control of a dog trained to fight, attack or kill is guilty of a misdemeanor if he or she fails to exercise ordinary care and the dog either bites a person on two separate occasions or on one occasion causes substantial physical injury.

SB 103 (Johannessen), Chapter 265, increases the penalty from a misdemeanor to either a felony or misdemeanor. This new law:

- Creates a felony punishable by imprisonment in state prison for two, three, or four years; or a misdemeanor punishable by imprisonment in a county jail not to exceed one year; by a fine not exceeding $10,000; or by both the fine and imprisonment.

- Exempts veterinarians and on-duty animal control officers from prosecution.

- Exempts peace officers assigned to canine units from prosecution.

Sexual Misconduct in Correctional Facilities

Proper oversight of California correctional facilities is an important public safety concern. Nationally, there have been reported incidents of sexual misconduct between persons confined in detention facilities and persons in positions of authority over them. California has had reported incidents as well.

In addition, as recently demonstrated at Corcoran State Prison, "whistle blowers" who report misconduct need protection from retaliation by state departments.

SB 377 (Polanco), Chapter 806, expands the scope and increases the penalty for the crime of sexual activity in a public detention facility between staff and a person detained in the facility, and provides for a minimum 30-day suspension for any Youth and Adult Correctional Agency (YACA) employee who engages in acts of retaliation against another employee. Specifically, this new law:

- Increases the penalty for an employee in a detention facility, as specified, convicted of engaging in sexual activity with a consenting adult confined in the facility to 16 months, 2 or 3 years in the state prison or up to one year in the county jail, by a fine of not more than $10,000, or by both that fine and imprisonment.

- Provides that any person convicted of a felony violation for a violation of this new law and employed by a department, board or authority within YACA shall be terminated in accordance with the State Civil Service Act and not be eligible to be re-hired or reinstated.

- Adds volunteers and employees of private entities who contract with public detention facilities to the list of persons prohibited from engaging in sexual activity in detention facilities, and adds the Federal Government to the definition of "public entity."

- Includes an employee of entities under YACA jurisdiction who, during the course of his or her employment, directly provides treatment, care, control or supervision of inmates, wards, or parolees.

- Adds to the definition of "sexual activity" the rubbing or touching of the breasts or sexual organs of another person, or of oneself in the presence of and with knowledge of another person, with the intent of arousing, appealing to, or of gratifying the lust, passions or desires of oneself or another person.

- Makes the "rubbing or touching" violation a misdemeanor punishable by up to six months in the county jail, by a fine of up to $1,000, or by both.

- Provides that any employee of YACA found by the State Personnel Board (SPB) to have intentionally engaged in acts of "retaliation" against another employee

shall be suspended without pay for not less than 30 days; the SPB may impose a lesser period of suspension if warranted and if the reasons for that determination are justified in writing.

- Defines "retaliation" as intentionally engaging in acts of reprisal, or is disclosing retaliation, threats or coercion, or similar acts against another employee who has disclosed what the employee in good faith believes to be improper governmental activities or where the employee is cooperating with an investigation of improper activities.

- Provides that in investigating a complaint of whether retaliation has occurred, the Inspector General (IG) shall consider, among other things, the following:

  - Unwarranted or unjustified staff changes;

  - Unwarranted or unjustified letters of reprimand, other disciplinary actions, or unsatisfactory evaluations;

  - Unwarranted or unjustified formal or informal investigations;

  - Engaging in acts or encouraging or permitting other employees to engage in acts that are hostile, unprofessional, or foster a hostile work environment; and,

  - Engaging in acts or encouraging or permitting other employees to engage in acts that are contrary to the rules, regulations, or policies of the workplace.

- States that nothing in this law prohibits an employing entity from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in prohibited conduct.

- Requires that IG commence investigation of every complaint of retaliation received by an employee within 30 days of receiving the complaint. All investigations of peace officer employees shall be conducted in accordance with the Peace Officer Bill of Rights.

- Provides that the SPB may refuse to examine or certify any person who has engaged in unlawful retaliation or reprisal as defined.

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Felony Sentencing, Prior Prison Terms and Enhancements

Sentence Enhancement: Vulnerable Victims

Currently, there is a one-year sentence enhancement statute for serious crimes committed against the elderly, children under the age of 14, and persons who are either blind or paralyzed. There is a two-year sentence enhancement for persons who commit specified offenses and have a prior conviction against the elderly, children under the age of 14, and persons who are either blind, paralyzed, deaf, or developmentally disabled.

AB 313 (Zettel), Chapter 569, adds deaf and developmentally disabled persons as qualifying victims to the existing one-year enhancement statute for serious crimes committed against the elderly, children under age 14, and persons who are either blind, or paralyzed.

Felony Sentencing: False Imprisonment

Existing law prohibits plea-bargaining in any case involving the commission of a serious felony. Existing law permits prosecutors to allege a consecutive five-year sentence enhancement for each prior serious felony conviction.

AB 381 (Cardoza), Chapter 298, adds the offense of false imprisonment for purposes of protection from arrest which substantially increases the risk of harm to a victim or using the victim as a shield to the list of serious felonies. This new law:

- Prohibits plea bargaining in cases involving false imprisonment by taking hostages unless there is insufficient evidence to prove the prosecution's case, testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

- Permits prosecutors to allege a consecutive five-year sentence enhancement for each prior felony conviction of false imprisonment by taking hostages.

Felony Sentencing

There have been numerous revisions to felony sentencing statutes since the enactment of the Determinate Sentencing Law.

AB 1236 (Battin), Chapter 706, makes non-substantive changes to sentencing provisions by correcting cross-referencing errors, eliminating redundant language and conforming specified code sections. This new law:

- Makes technical, non-substantive changes to provisions relating to the unlawful disposal of hazardous materials.

- Updates existing, non-substantive sentencing schedules by including newly enacted sentence enhancements and deleting obsolete provisions.

- Corrects referencing errors by amending several code provisions to reflect accurate subdivisions and subsections for false imprisonment of elderly victims, the statute of limitations, serious felonies, and probation for persons who commit food stamp fraud by means of electronic transfers.

- Eliminates multiple references to the same definition for the offense of penetration with a foreign object.

- Clarifies existing provisions regarding conduct credits for persons sentenced to state prison for murder.

- Repeals a habitual child molester provision in light of the habitual sexual offender statute and the "One-Strike Sex Law."

- Clarifies existing law relating to imposing separate enhancements for additional victims injured in certain vehicular crimes.

Arson Registration

In 1994, urgency legislation made arson registration a lifetime requirement for those persons convicted of certain arson offenses.

SB 555 (Karnette), Chapter 518, clarifies existing law regarding registration of arson offenders. Specifically, this new law:

- Clarifies existing law by requiring persons convicted of aggravated arson to register.

- Clarifies existing law by stating that registration as an arson offender is a life-long requirement for a person convicted after November 30, 1994, and a five-year duty for a person convicted between January 1, 1985 and November 29, 1994 and ordered to do so by the court.

- Reinstates for five years the factor in aggravation of $5 million damages for the offense of aggravated arson. This provision expired on January 1, 1999.

- Shortens the period of time from 30 to 14 days that a person convicted of arson must register with law enforcement after entering a city, county, or college campus.

- Simplifies existing law by stating that a juvenile committed to the California Youth Authority for arson must register until he or she is 25 years old or until the record is sealed, whichever occurs first.

- Provides that the probation department, rather than the court, has the duty to inform a defendant released on probation of his or her duty to register as an arson offender.

- Provides that a person convicted of a misdemeanor may be relieved of the duty to register if he or she successfully petitions the court to dismiss a complaint following the successful completion of probation.

Prior Convictions and Sentencing

Under existing law, a defendant who commits a new offense punishable by imprisonment in state prison, and has suffered one or more specified prior convictions can have his or her sentence enhanced under certain circumstances. This new law addresses the situation where a defendant's prior convictions came under predecessor statutes with variations in the statutory language, or the convictions occurred in a foreign jurisdiction, but the prior nonetheless contained the elements needed to qualify as an enhancing prior conviction for the new offense.

SB 786 (Schiff), Chapter 350, clarifies that a prior felony conviction based on a predecessor statute can be used at the time of sentencing for a new offense to impose an enhancement or a term of imprisonment so long as the predecessor statute included all the elements of the current offense specified as a qualifying "prior felony conviction." Further, this new law conforms sentencing provisions of the "sexually violent predator" (SVP) law as described above. Also, this new law expressly codifies the decision in People v. Butler, (1998) 68 Cal. App. 4th 421.

- Provides that an offense specified as a "prior felony conviction" that permits enhancing a criminal sentence or imposing a prison term due to a defendant's prior conviction or a prior prison term includes any prior felony conviction under any predecessor statute of the specified offense that includes all the elements of the specified offense. Further, this new law provides SB 786 applies to all statutes that allow an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

- Provides, for the purpose of determining who is a SVP, that a conviction for an offense under a predecessor statute that includes all the elements of an offense described statutorily as a "sexually violent offense" shall qualify as a "sexually violent offense" even if the offender did not receive a determinate sentence for that prior offense.

- Provides that this new law is intended "to be declaratory of existing law as contained in People v. Butler, (1998) 68 Cal. App. 4th 421, at pages 435-441."

Misdemeanors and Infractions

Secret Videotaping

Looking or filming through an opening into a bathroom, changing room, fitting room, dressing room, tanning booth or the interior of any other area in which the occupant has a reasonable expectation of privacy is a misdemeanor. Existing law does not allow prosecution of those persons who deliberately invade the privacy of unsuspecting victims for sexual gratification in public places by using concealed cameras or other devices.

AB 182 (Ackerman), Chapter 231, creates a new misdemeanor offense of secretly photographing or videotaping under or through the clothing of another person under circumstances in which the victim has a reasonable expectation of privacy. This new law:

- Provides that it is a misdemeanor to use a concealed camcorder or camera of any type to secretly videotape or photograph another person under or through his or her clothing for the purpose of viewing the body of, or the undergarments of, the other person without his or her consent or knowledge with the intent to invade his or her privacy and in a place where the person had a reasonable expectation of privacy.

- Requires that secret filming is only criminal if done with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person.

- Requires that the alleged victim be identifiable.

Laser Pointers

The increasing availability of laser pointers and laser scopes has led to an increasing number of incidents of misuse. Pointing such an instrument at another person can make him or her feel the threat of an imminent attack; particularly dangerous in this regard is shining the beam at a police officer who may feel especially vulnerable to an armed assault.

AB 221 (Wildman), Chapter 438, prohibits aiming or pointing a laser pointer or laser scope at another person in a threatening manner with specific intent to cause fear of bodily harm. This law also prohibits aiming or pointing a laser scope or laser pointer at a peace officer with the specific intent to cause the officer apprehension or fear of bodily harm. This new law:

- Prohibits aiming or pointing a laser pointer or laser scope at a person in a threatening manner with the specific intent to cause fear of bodily harm. A

violation of this provision is a misdemeanor, punishable by imprisonment in county jail up to 30 days.

- Prohibits aiming or pointing a laser scope or laser pointer at a peace officer when done with specific intent to cause the officer apprehension or fear of bodily harm, and the offender knows or reasonably should know that the person at whom he or she is aiming or pointing is a peace officer. A violation of this provision is a misdemeanor, punishable by imprisonment in county jail up to six months. A subsequent violation is punishable up to one year in county jail.

- Defines "laser pointer" to include "any hand held laser beam device or demonstration laser product that emits a single point of light amplified by the stimulated emission of radiation that is visible to the human eye."

Laser Pointers

As AB 221 (Wildman), Chapter 438, Statutes of 1999, addressed the public safety impact of laser pointers, so does AB 293. When mishandled, such implements can pose a danger to others. AB 293 addresses the concerns surrounding the use by minors, the risks of directing beams into moving vehicles, and pointing the beam into the eyes of certain trained dogs.

AB 293 (Wesson), Chapter 621, makes it an infraction to sell a laser pointer to a minor, for a minor to possess a laser pointer unless used in a supervised school setting, or direct the beam from a laser pointer into another person's eyes or into a moving vehicle with the intent to harass or annoy the person or the occupants of the moving vehicle. Prohibits directing the beam from a laser pointer directly or indirectly into the eyes of a guide dog, signal dog, service dog, or dog being used by a peace officer with the intent to harass or annoy the animal.

- Prohibits aiming or pointing a laser pointer at another person in a threatening manner with the specific intent to cause a reasonable person fear of harm. (Item 1)

- Prohibits selling a laser pointer to a person under age 18, unless that minor is accompanied by a parent, guardian, or other person 18 years of age or older. (Item 2)

- Provides that no student possess a laser pointer on any elementary or secondary school premises unless such possession is for a valid instructional or other school-related purpose, including employment. (Item 3)

- Defines laser pointer as "any hand held laser beam device or demonstration product that emitted a single point of light amplified by the stimulated emission of radiation that was visible to the human eye." (Item 4)

- Prohibits any person from directing the beam from a laser pointer directly or indirectly into another person's eyes, or into a moving vehicle, with the intent to harass or annoy the person or occupants of the moving vehicle. (Item 5)

- Prohibits directing a laser pointer beam directly or indirectly into the eyes of a guide dog, signal dog, service dog, or dog being used by a peace officer with the intent to harass or annoy the animal. (Item 6)

- States that a violation of Items 2, 3, 5 or 6 above is an infraction punishable by a $50 fine or four hours of community service. A second or subsequent violation is an infraction punishable by a $100 fine or eight hours of service.

- States that a violation of Item 1 above is a misdemeanor, punishable by up to 30 days in county jail.

Alcoholic Beverage Control

Existing law does not apply a progressive penalty scheme for second and subsequent offenses involving the possession or purchase of alcohol by a minor. Instead, there is a prescribed punishment for the first offense, and violators are subject to the same penalty for multiple violations.

AB 749 (Wesson), Chapter 787, increases available penalties for crimes associated with the purchase of alcohol by a minor, regulates the display of video recordings in retail alcohol outlets, and authorizes the Department of Alcoholic Beverage Control (ABC) to directly obtain a court order to destroy drug paraphernalia and controlled substances. Specifically, this new law:

- Allows the ABC to directly request and receive a court order to seize and destroy drug paraphernalia and controlled substances for businesses licensed by ABC.

- Adds as an alternative punishment for the attempted purchase of alcohol by a minor, the performance of community service not less than 24 hours or more than 32 hours.

- Increases the community service penalty available from a maximum of 36 hours to not less than 36 or more than 48 hours for the second or subsequent offense of the attempted purchase of alcohol by a minor.

- Establishes the penalty for the second or subsequent offense of a minor purchasing alcohol or consuming alcohol in an on-sale premises of a fine of not more than $500 or community service of not less than 36 or more than 48 hours.

- Establishes the punishment of a fine of not more than $500 or performance of community service of not less than 36 or more than 48 hours for the second or subsequent offense of a person under the age of 21 who presented or offered to

any licensee, his or her agent or employee, any written, printed, or photostatic evidence of age and identity which was false, fraudulent or not actually his or her own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who had in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity.

- Establishes the misdemeanor punishment of a fine of $250 or performance of not less than 32 hours of community service for any person under the age of 21 who had any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public.

- Establishes the misdemeanor punishment of a fine of at least $500 or performance of community service of not less than 36 hours and not more than 48 hours for the second or subsequent offense of any person under the age of 21 who had any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public.

- Requires a retailer licensed by ABC to create an "adults only" section for video recordings containing "harmful matter" as defined by Penal Code Section 313. The retailer shall make a reasonable effort to arrange the video recordings in such a way that they were not readily accessible to minors.

- Makes it an infraction, punishable of up to $100, for a retailer to fail to create an "adults only" section as described in this new law.

- Prohibits a retailer for being punished for errant judgment as to whether a video recording contains "harmful matter".

- Provides that when the use of a minor decoy results in the issuance of a citation, notification as required shall be given within 72 hours of the issuance of the citation.

Concealing Accidental Death

After the commission of a felony, any person who aids or conceals the perpetrator with the purpose of evading arrest or prosecution is guilty of an alternate misdemeanor or felony. Any person who receives anything of value in exchange for the destruction or concealment of evidence of a crime is guilty of either a felony or misdemeanor. Existing law does not apply to cases where a person actively conceals an accidental death.

SB 139 (Johnson), Chapter 396, creates the new offense of concealing an accidental death. This new law:

- Provides that any person who actively conceals an accidental death is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year; or by a fine of not less than $1,000 nor more than $10,000; or by both such fine and imprisonment.

- Defines "actively conceal" as concealing or impeding the discovery of the deceased or destroying or suppressing evidence related to the death.

Safe Schools

A person who interferes with California's mission to educate students by being violent at a school faces severe consequences. A person may stop short of actual violence against a student or an employee; nonetheless, that person's conduct constitutes a clear interference with a school's legitimate activities. The Legislature has made it clear that such conduct will not be tolerated.

SB 570 (Alarcon), Chapter 570, increases misdemeanor penalties for interfering with classes or activities on school grounds, and for disrupting a class or activity where a school employee is present. This new law also declares the Legislature's intent that specified school personnel report missing children "in a timely manner." This new law:

- Increases misdemeanor penalties for every 17-year-old person or adult who is not a school pupil, comes onto school grounds, and willfully interferes with the discipline, good order, lawful conduct or administration of any class or activity with the intent to disrupt, obstruct, or inflict damage to property or injury to any person. The penalties are:

  - Upon the first conviction, a fine of not less than $500 and not more than $1,000, or imprisonment for not more than one year in county jail, or both.

  - Upon the second conviction, serving no less than 10 days in county jail and not more than one year, and a fine not exceeding $1,000.

  - Upon the third or subsequent conviction, serving a minimum 90 days in county jail and not more than one year, and a fine not exceeding $1,000. (Item 1)

- Provides that a court, upon a showing of good cause, may exempt any person from the mandatory minimum jail time described in the last two items above and, instead, the court may immediately grant a defendant probation or suspend the execution of the court's sentence.

- Increases the misdemeanor penalties for any parent, guardian or other person whose conduct in a place where a school employee is required to be materially disrupts class work or extracurricular activities or involves substantial disorder.

The penalties follow the scheme described in Item 1 above.

- Declares legislative intent to require that school teachers, school administrators, school aides, school playground workers, and school bus drivers report missing children to law enforcement agencies in a timely manner.

Unlawful Practice of Dentistry

Any person who presents himself or herself as a practicing dentist without having a valid license as required by law creates a substantial risk to the public health and safety. Existing law make such an offense punishable by no more than six months in the county jail.

SB 1308 (Committee on Business and Professions), Chapter 655, increases the penalty up to one year in the county jail for practicing dentistry without a valid, unrevoked, or unsuspended certificate as required by law.

DOMESTIC VIOLENCE

Recording Communications

Under current law, domestic violence victims are unable to stop harassing phone calls. Only when a threatening phone call is left on an answering machine can a victim prosecute. Current law permits a party to a phone conversation to confidentially record that conversation only for the purposes of obtaining evidence believed to relate to the commission of extortion, kidnapping, bribery, or a felony involving violence.

AB 207 (Thomson), Chapter 367, provides that a judge issuing a domestic violence restraining order may permit a victim to record a prohibited communication in violation of the order.

Child Life Specialists

Child Life Specialists (CLS) work with children who have experienced severely traumatic or fatal situations. Child Life Specialists are specifically trained to help children work through the mourning process and serve as a critical early healing intervention to positively affect health, development and well being. Child Life Specialists often work in hospitals and are considered part of the health care team. However, there are very few funding sources for their services.

AB 606 (Jackson), Chapter 584, authorizes a study of whether services provided by a CLS should be reimbursed by the state and allows for cash payments to victims of spousal and elder abuse. This new law requires the Board of Control (BOC) to conduct a program entitling a victim to reimbursement for grief, mourning and bereavement services provided by a CLS in specified circumstances. Specifically, this new law:

- Specifies that the BOC shall conduct a program until January 1, 2004 that entitles a victim or derivative victim to be reimbursed from the Restitution Fund for grief, mourning and bereavement services in cases of death or severe trauma, except that such services shall not include mental health services for which a state license is required.

- Specifies that these services shall be performed under the supervision of a court, hospital, physician and surgeon, licensed psychotherapist, community-based organization, or county.

- Requires the BOC to include in the program a certified CLS who has been determined by the current employer or a state licensing entity not to have a criminal history that would prevent the employment or the issuance of a license. This new law furthers authorize the BOC, in the event neither of the preceding

determinations has been made, to secure from the Department of Justice a criminal record to make the necessary determination regarding the CLS's background.

- Authorizes a one-time payment, not to exceed $2,000, from the Citizens Indeminification Fund to an adult domestic violence victim for expenses related to relocation if it was necessary for the victim's personal safety or mental well-being.

- Limits payment for relocation to: (1) deposits for utilities and telephone; (2) deposit for rental housing not to exceed first and last-month's rent and not to exceed $2,000; (3) cost of moving possessions including, but not limited to, vehicle rental, fuel and labor; (4) temporary lodging and food expenses not to exceed $1,000; and, (5) clothing and other personal items not to exceed $500.

- Allows the BOC to authorize a one-time cash payment or reimbursement to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provided to be necessary for the victim's emotional well-being. Permit the BOC to award a second payment to the same victim under compelling circumstance if both of the following conditions are met: (1) the crime(s) giving rise to the second request for funds occurred more than three years after the date of the crime(s) giving rise to the first request, and (2) the second crime does not involve the same perpetrator.

- Allows for a reimbursement for installing or increasing home security up to $1,000 available to a victim of a crime that occurred in the victim's residence. Further, this new law conditions such a reimbursement upon verification by law enforcement that it is necessary for the victim's personal safety or by a mental health treatment provider that it is necessary for the victim's emotional well-being.

- Authorizes reimbursement for the cost of renovating or retrofitting a victim's residence or vehicle where the victim was permanently disabled as a direct result of the crime upon verification that the expense is medically necessary. Further, this new law authorizes the BOC to exceed the $5,000 maximum award under this provision when justified by the victim's disability.

Bail In Domestic Violence Cases

A person arrested for serious or violent felonies, spousal rape, stalking, inflicting corporal injury on a spouse or cohabitant, or battery on a spouse or cohabitant may not be released on his or her own recognizance or on bail in an amount that is either more or less than on the bail schedule without a hearing in open court.

AB 1284 (Jackson), Chapter 703, adds to the list of domestic violence-related offenses that require a hearing in open court regarding the setting of bail. In addition, victims are to be notified of bail hearings and certain conditions must to be imposed on defendants admitted to bail in stalking cases. Specifically, this new law:

- Adds the offenses of making a threat to commit a crime involving death or great bodily injury as a felony and attempting to dissuade a witness by the threat of or use of force or violence to the list of specified offenses that required a hearing in open court before a person may be released on bail in an amount more or less than the county bail schedule.

- Requires a county sheriff to notify the domestic violence unit of the prosecuting agency of the release on bail of any person arrested for stalking.

- Requires a prosecutor to make all reasonable efforts to notify the alleged stalking victim of the bail hearing.

- Specifies conditions of release on bail for a person accused of stalking, including a stay-away order and the defendant providing the court with current address and telephone information.

Restraining Order Enforcement

School campuses are not exempt from the effects of domestic violence. Victims of domestic violence should be free of abuse and harassment while on a college or school campus. Current law does not allow a college or school police department to enforce domestic violence restraining orders, which are the cornerstone of domestic violence enforcement strategies.

SB 355 (Hughes), Chapter 659, grants a California community college police officer and a K-12 school district peace officer the authority to request, serve, and enforce an emergency protective order (EPO) based on an allegation of domestic violence, stalking or family violence and allows these officers to confiscate a firearm from the scene of a violent incident. Specifically, this new law:

- Expands the definition of peace officer referenced in Family Code Section 6250 to include officers of the California community college and K-12 school districts police departments. As a result, these officers are authorized to request an ex parte order from a court if the officers can assert reasonable grounds to believe any of the following:

  - A person is in immediate danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

- A child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

- A child is in immediate danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child or based on an allegation of a recent threat to abduct the child or flee with the child.

- Adds officers of a California community college and K-12 school district police department to the list of peace officers authorized to request and receive an ex parte order if he or she can assert reasonable grounds to believe that a person is in present and immediate danger of stalking based upon that person's allegation of willful, malicious, and repeated harassment. This new law requires the EPO to be authorized by a memorandum of understanding (MOU) between the college or school and local law enforcement.

- Requires any officer of a California community college or a K-12 school district police department who receives an ex parte order to protect a person from an alleged stalker to notify the local law enforcement entity after the issuance of such an order.

- Requires every California community college or a K-12 school district police department whose officer serves a protective order in response to an allegation of domestic violence to notify the local law enforcement entity of the service.

- Expands the list of peace officers authorized to take temporary custody of a firearm used at a scene of a family violence incident involving a threat to human life or physical assault when the officer is personally present to include an officer of a California community college or a K-12 school district police department.

- Requires a California community college or school district office peace officer that confiscates a gun to deliver it within 24 hours to local law enforcement.

- Requires officers of a California community college district or a K-12 school district police department to receive training on how to handle a domestic violence case every two years as offered by the Commission on Peace Officer Standards and Training (POST).

- Authorizes a judicial officer to issue an ex parte EPO to a community college and school district peace officer if the EPO is consistent with an MOU between the school and local law enforcement.

- Authorizes a judicial officer to issue an ex parte EPO to a community college officer or a school district officer if the issuance of the order is consistent with an

existing MOU between the college or school police department and the sheriff or police chief of the city in whose jurisdiction the college or school is located, and the officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety.

Domestic Violence

Before SB 563, criminal laws directed expressly at the domestic violence offender generally protected a victim based on an existing relationship. However, experience has demonstrated that the dangerous time - if not the most dangerous time - for a domestic violence victim is the first two years after separation. Before SB 563, a batterer who injured a victim after marriage or cohabitation ended had to inflict greater injury to sustain a felony charge compared to the injury necessary to sustain a felony charge if they were still married or living together (unless they had children in common). Cross-reference SB 563 with SB 218 (Solis), Chapter 662, Statutes of 1999, makes additional changes to Penal Code domestic violence.

SB 563 (Speier), Chapter 660, redefines the list of domestic violence victims to include a former spouse and a former cohabitant. This new law adds a former spouse and a former cohabitant to the list of victims (spouse, cohabitant, mother or father of his or her child) protected against corporal injury resulting in a traumatic condition, which can be charged either as a misdemeanor or a felony.

ELDER ABUSE

Mandated Reporting Exemption

Existing law provides for the reporting of actual or suspected physical or other abuse of an elder or dependent adult by specified persons and entities. Existing law also provides that a mandated reporter is not required to report a suspected instance of abuse of an elder or dependent adult in specified circumstances.

AB 739 (Pescetti), Chapter 236, exempts a physician, registered nurse, and psychotherapist from having to report an allegation of elder abuse that he or she clinically determines to be the result of mental illness or dementia. This law allows for an exemption from the mandatory reporting requirement if all of the following exists:

- The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

- The mandated reporter is not aware of any independent evidence that corroborated the statement that the abuse occurred.

- The elder or dependent adult had been diagnosed with a mental illness or dementia, or was the subject of a court-ordered conservatorship because of a mental illness or dementia.

- In the exercise of clinical judgement, the physician and surgeon, registered nurse or the psychotherapist reasonably believes that the abuse did not occur.

EVIDENCE

Child Abuse: Dependency Proceedings

Under certain circumstances courts in juvenile dependency hearings may declare a child to be a dependent of the court. Current law requires the state to prove by clear and convincing evidence that a person in the minor's household is a danger to the minor before making a finding of dependency.

SB 208 (Polanco), Chapter 417, creates a presumption that a child is a dependent of the juvenile court if the parent, guardian, or any person currently living with the minor has a prior sex conviction, a previous judicial finding of sexual abuse, or is required to register as a sex offender. This new law:

- Creates the presumption that a minor is a dependent of the juvenile court if the minor's parent, guardian, or any person currently residing with the minor has a prior conviction for sexual abuse, has been found in a prior dependency proceeding to have committed an act of sexual abuse, or is required to register as a sex offender for a felony sexual abuse conviction.

- Creates the presumption that a minor is a dependent of the juvenile court if the parent, guardian, or any person currently residing with the minor has been previously convicted of an act in another state that would constitute sexual abuse if committed in California or has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse.

- Provides that the court may direct Child Protective Services to investigate and notify appropriate state agencies and file reports as required if the court believes a child has suffered criminal abuse or neglect.

HATE CRIMES

Hate-Related Murder

Under existing law the intentional killing of a person because of his or her race, color, religion or nationality, or country of origin is punishable by the death penalty. Unfortunately, the state may be giving a signal that some crimes based on hate are not as serious as others as evidenced by the disparity in penalties. The penalty for first-degree murder based on the victim's gender, sexual orientation, or disability should be more consistent with the penalty when the victim is intentionally killed because of the victim's race, color, religion, nationality, or country of origin.

AB 208 (Knox), Chapter 566, requires that a person who commits first-degree murder be punished by life imprisonment without the possibility of parole if the victim was intentionally killed because of the victim's actual or perceived disability, gender, or sexual orientation. Specifically, this new law:

- Provided that a person who committed first-degree murder and intentionally killed the victim because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation shall be punished by imprisonment in the state prison for life without the possibility of parole.

- Provides that the punishment prescribed shall not apply unless the allegation was charged in the accusatory pleading and admitted by the defendant or found true by the trier of fact.

- Stated that the term "because of" meant that the bias motivation must be a cause of the offense; and when multiple motivations existed, the prohibited bias must be a substantial factor in bringing about the result.

- Provided that this bill shall not prevent a greater or more severe penalty from being imposed pursuant to any other provision of law, and prohibits the court from striking the "hate crime" allegation except in the interest of justice, and requires the court to state in writing it's reason for doing so.

JUVENILES

Restorative Justice

Under existing law, the Youth Authority Act governs the commitment of juvenile offenders to the Department of the Youth Authority. The Act states that the purpose of its provisions is to protect society from the consequences of criminal activity and, to that end, training and treatment shall be substituted for retributive punishment.

AB 637 (Migden), Chapter 333, adds "community restoration" and "victim restoration" to the stated objectives of the Youth Authority Act which governs the Department of the Youth Authority.

Juvenile Court Records: Sealing and Destruction

An adult criminal defendant found to be factually innocent may petition the law enforcement agency and district attorney's office having jurisdiction over the offense to seal and destroy the defendant's arrest record. Upon a determination by the law enforcement agency that the defendant is factually innocent, the agency, with the concurrence of the district attorney, will seal the defendant's arrest record and petition for a period of three years after which the records are destroyed. There is no similar procedure for a juvenile who is factually innocent.

AB 744 (McClintock), Chapter 167, permits a minor to file a petition for a finding of factual innocence that results in the sealing and destruction of records. Specifically, this new law:

- Provides that a minor cited or arrested but not subjected to formal prosecution may request the local law enforcement agency and probation department to make a determination of factual innocence and thereafter seal and destroy the records. The law enforcement agency, probation department, and district attorney determine if reasonable cause exists to believe that the minor committed the offense.

- Provides that a minor not subjected to formal prosecution whose request to seal and destroy the record is denied may petition the juvenile court for review. The minor has the initial burden of proof. The district attorney may present evidence. The court will not make a finding of factual innocence unless the court finds no reasonable cause exists to believe the minor committed the offense for which the arrest was made.

- Provides that when a minor who has been arrested and an accusatory pleading has been filed but not sustained, the minor may petition the court in writing any

time after dismissal of the proceeding for a finding of factual innocence. After receiving notice, the district attorney may present evidence.

- States that at the time that the petition is dismissed the court may, upon its own motion or of any party, order the records sealed if it appears to the judge that the minor was factually innocent of the offense.

- States that a finding of factual innocence exonerates the minor. The finding is not admissible as evidence in any action. The arrest is deemed not to have occurred.

Alcoholic Beverage Control

Existing law does not apply a progressive penalty scheme for second and subsequent offenses involving the possession or purchase of alcohol by a minor. Instead, there is a prescribed punishment for the first offense, and violators are subject to the same penalty for multiple violations.

AB 749 (Wesson), Chapter 787, increases available penalties for crimes associated with the purchase of alcohol by a minor, regulates the display of video recordings in retail alcohol outlets, and authorizes the Department of Alcoholic Beverage Control (ABC) to directly obtain a court order to destroy drug paraphernalia and controlled substances. Specifically, this new law:

- Allows the ABC to directly request and receive a court order to seize and destroy drug paraphernalia and controlled substances for businesses licensed by ABC.

- Adds as an alternative punishment for the attempted purchase of alcohol by a minor, the performance of community service not less than 24 hours or more than 32 hours.

- Increases the community service penalty available from a maximum of 36 hours to not less than 36 or more than 48 hours for the second or subsequent offense of the attempted purchase of alcohol by a minor.

- Establishes the penalty for the second or subsequent offense of a minor purchasing alcohol or consuming alcohol in an on-sale premises of a fine of not more than $500 or community service of not less than 36 or more than 48 hours.

- Establishes the punishment of a fine of not more than $500 or performance of community service of not less than 36 or more than 48 hours for the second or subsequent offense of a person under the age of 21 who presented or offered to any licensee, his or her agent or employee, any written, printed, or photostatic evidence of age and identity which was false, fraudulent or not actually his or her own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who

had in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity.

- Establishes the misdemeanor punishment of a fine of $250 or performance of not less than 32 hours of community service for any person under the age of 21 who had any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public.

- Establishes the misdemeanor punishment of a fine of at least $500 or performance of community service of not less than 36 hours and not more than 48 hours for the second or subsequent offense of any person under the age of 21 who had any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public.

- Requires a retailer licensed by ABC to create an "adults only" section for video recordings containing "harmful matter" as defined by Penal Code Section 313. The retailer shall make a reasonable effort to arrange the video recordings in such a way that they were not readily accessible to minors.

- Makes it an infraction, punishable of up to $100, for a retailer to fail to create an "adults only" section as described in this new law.

- Prohibits a retailer for being punished for errant judgment as to whether a video recording contains "harmful matter".

- Provides that when the use of a minor decoy results in the issuance of a citation, notification as required shall be given within 72 hours of the issuance of the citation.

Juvenile Justice Reform

School safety, violence prevention, detention for minors charged with firearm crimes, victim access and direct filing in adult court has been the subject of recent legislation.

SB 334 (Alpert), Chapter 996, enacts numerous changes to juvenile court procedure and addresses school safety and youth violence prevention programs and policy. Specifically, this new law:

- Appropriates $1.8 million to the City and County of San Francisco for acquiring and installing surveillance cameras on public transit vehicles.

- Provides that K-7 schools must develop ongoing comprehensive school safety plans. The plans concern school-based crime, crime prevention, emergency services, sexual harassment, notification regarding dangerous pupils, and child abuse reporting.

- Creates the "School Safety and Violence Prevention Strategy Program." The Superintendent of Public Education and the AG evaluate and award grants to projects that provide counseling to at-risk youth, technical assistance, in-service training, and cooperation with local law enforcement.

- Provides that a minor 16 years of age or older shall be prosecuted in adult criminal court under the following circumstances:

  - When accused of committing murder in the first degree, attempted premeditated murder, an aggravated sex offense, aggravated kidnapping, or any specified felony where a firearm was used and discharged; and,

  - When previously adjudicated as a ward of the court by committing any felony when 14 years of age or older.

- Provides that a minor directly charged as an adult has the right to a preliminary hearing. The case shall proceed in criminal court unless the defendant minor prevails in a motion to dismiss.

- Provides that a minor who was prosecuted directly in adult court and convicted shall be sentenced as an adult convicted of the same offense subject to the specified provisions for commitment or housing in the California Youth Authority (CYA).

- Enacts a reverse remand provision authorizing the court to impose a juvenile disposition for a minor convicted after a direct file prosecution if the minor satisfies specified criteria.

- Provides that any minor who personally uses a firearm to commit a violent felony shall be placed in a juvenile hall, ranch, camp, or the CYA. However, the court may impose a treatment-based alternative if the minor has a mental disorder requiring intensive treatment.

- Provides that a minor who is 14 years of age or older and taken into custody for the possession of a firearm during the commission of a felony shall not be released until he or she is brought before a judicial officer. The judicial officer shall order an assessment of the minor's mental health.

- Provides that crime victims have the right to present victim impact statements in all juvenile court hearings. This law requires the probation department to notify victims of all judicial proceedings. This law allows a victim to designate two support persons who may accompany the victim to any court proceeding.

- Reorganizes existing provisions regarding closed hearings. This law requires the juvenile court to make written findings if it orders the name or the records of

specified proceedings to be kept confidential. This law requires daily posting of hearings open to the public.

- Requires the juvenile court to report information regarding violent felony offenses to the Department of Justice (DOJ). This law requires that a minor ordered to make restitution or to perform community service provide, at a minimum, annual progress reports until completion. This law requires the CYA to monitor compliance with restitution orders.

- Authorizes law enforcement to disclose information regarding violent felony offenders for protection of the public.

- Authorizes law enforcement to disclose the name of a minor 14 years of age or older alleged to have committed a serious felony upon the filing of a petition rather than upon commencement of a contested hearing.

- Authorizes law enforcement to release the name of a minor 14 years of age or older who is wanted as a suspect in connection with a violent felony without seeking prior judicial approval.

- Requires CYA to enroll in appropriate educational programs wards who have not attained high school diplomas or General Equivalency Diploma certificates.

Sex Offender Registration: Juvenile Adjudications

Under current law, any person paroled or discharged from the Department of Corrections or the California Youth Authority (CYA) who has been convicted of, or adjudicated a ward of the court because of the commission of, specified sex offenses is required to register as a sex offender. Existing law specifies the penalties for failing to register; however, existing law does not expressly refer to juvenile adjudications.

SB 341 (Figueroa), Chapter 901, clarifies current penalties for failing to register as a sex offender to include specified juvenile adjudications resulting in a commitment to the California Youth Authority. This new law:

- Provides that failing to register after having been found to have committed a specified misdemeanor sex offense as a juvenile that resulted in a commitment to CYA is a misdemeanor, punishable by imprisonment in the county jail not exceeding one year.

- Provides that failing to register after having been found to have committed a specified felony sex offense as a juvenile that resulted in a commitment to CYA is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years.

- Provides that a juvenile who committed an offense requiring registration but was found not guilty by reason of insanity, and who willfully violates the registration requirements, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year. A second violation for failing to register is punishable as a felony, punishable by 16 months, 2 or 3 years in state prison.

Sexually Violent Predators: Juvenile Adjudications

Existing law provides for the civil commitment of sexually violent predators (SVP). A "SVP" is defined as a person who has been convicted of a specified sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health or safety of others. There are currently 492 juvenile court offenders housed by the California Youth Authority (CYA) for the commission of violent sex offenses.

SB 746 (Schiff), Chapter 995, expands the definition of prior convictions for purposes of SVP statutes to include juvenile adjudications where the minor was age 16 or older, committed a sexually violent offense, and was committed to the CYA. This new law provides:

- One prior juvenile adjudication for a sexually violent offense may be used as a prior conviction for purposes of the SVP law.

- To qualify as a prior conviction, the prior juvenile offense must meet all of the following conditions: (a) the juvenile was 16 years of age or older at the time he or she committed the offense, (b) the prior offense was sexually violent, and (c) the juvenile was committed to CYA.

- A minor found to be a ward of the court based on a sexually violent offense shall be entitled to sexual offender treatment.

MURDER

Hate-Related Murder

Under existing law, the intentional killing of a person because of his or her race, color, religion or nationality, or country of origin is punishable by the death penalty. The state may be sending the signal that some hate crimes are not as serious as others as evidenced by the disparity in penalties. The penalty for first-degree murder based on a victim's gender, sexual orientation, or disability should be more consistent with the penalty when the victim is intentionally killed because of the victim's race, color, religion, nationality, or country of origin.

AB 208 (Knox), Chapter 566, requires that a person who commits first-degree murder be punished by life imprisonment without the possibility of parole if the victim was intentionally killed because of the victim's actual or perceived disability, gender, or sexual orientation. Specifically, this new law:

- Provides that a person who committed first-degree murder and intentionally killed the victim because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation shall be punished by imprisonment in the state prison for life without the possibility of parole.

- Provides that the punishment prescribed shall not apply unless the allegation was charged in the accusatory pleading and admitted by the defendant or found true by the trier of fact.

- States that the term "because of" means that the bias motivation must be a cause of the offense; and when multiple motivations existed, the prohibited bias must be a substantial factor in bringing about the result.

- Provides that this new law shall not prevent a greater or more severe penalty from being imposed pursuant to any other provision of law, prohibits the court from striking the "hate crime" allegation except in the interest of justice, and requires the court to state in writing its reason for doing so.

Felony Murder by Torture

California has specified by statute those crimes which trigger application of the felony murder rule. Prior to this new law, that list of crimes did not include torture.

AB 1574 (Corbett), Chapter 694, adds torture to the list of felonies which trigger the application of the felony-murder rule. A murder committed in the perpetration of torture or attempt to perpetrate torture (as defined in Penal Code Section 206) is first-degree murder. This new law removes the need to prove that torturing the

victim who died was willful, deliberate and premeditated. If the prosecutor can prove beyond a reasonable doubt that the defendant had the specific intent to inflict extreme and prolonged pain and suffering, and that the death occurred as a result of the torture, the defendant will be guilty of first-degree murder. Further, this new law eliminates second-degree felony murder by torture because if a prosecutor charges felony murder by torture and the jury makes a finding of guilt, the result must be first-degree murder based on the inclusion of torture in Penal Code Section 189's felony murder list.

PEACE OFFICERS

Transportation Investigators

Currently, the City of Los Angeles' Department of Transportation investigators are required to enforce laws and regulations designed to protect the public from unsafe public transportation providers.

AB 89 (Cedillo), Chapter 331, allows 17 non-sworn civilian employees of the City of Los Angeles to issue citations and to make arrests. Specifically, this new law:

- Adds persons employed as inspectors or investigators by the City of Los Angeles' Department of Transportation to the list of persons who are not peace officers but may exercise the powers of arrest of peace officers upon completion of a specified training course.

- Provides that the primary duty of these persons shall be the enforcement of the law related to public transportation as authorized by local ordinance.

- Specifies that transportation inspectors or investigators are not peace officers for purposes of the provisions that prohibit assault and battery against peace officers.

- Requires a memorandum of understanding with the chief of police before transportation inspectors may exercise the expanded powers of arrest.

Dental Board of California

Existing law requires the Director of the Department of Consumer Affairs to designate seven persons as peace officers and assigned to the investigations unit of the Board of Dental Examiners.

AB 900 (Alquist), Chapter 840, allows the Director of the Department of Consumer Affairs to designate 10 peace officers to be assigned to the investigations unit of the Dental Board of California. Additionally, this new law:

- Authorizes the Director of the Department of Consumer Affairs to designate as peace officers an additional seven people who shall be assigned to the investigations unit of the Dental Board, which authorization expires July 1, 2002.

- Requires the Dental Board to study the need for sworn peace officers in its Investigation Unit.

Custodial Officers: Concealed Firearm Licenses

A county sheriff and police chief may issue a license to carry a concealed weapon to a person of good moral character who demonstrates good cause for the issuance of the license and satisfies certain training requirements. A concealed firearm license is generally valid for up to two years. The license is valid up to three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer.

AB 1322 (Oller), Chapter 142, gives a sheriff or police chief the option of issuing a four-year license to carry a concealed firearm to a custodial officer who is an employee of a sheriff. A custodial officer is a public employee responsible for maintaining custody of prisoners and performing tasks related to the operation of local detention facilities. This new law provides that such a license becomes invalid upon the conclusion of employment as a custodial officer if the four-year period has not otherwise expired or unless the license was limited to a shorter period of time by the issuing authority.

Commission on Peace Officer Standards and Training

Peace officers understand what training works and what does not. Therefore, police officers should be represented proportionately on the Commission on the Peace Officers Standards and Training (POST).

AB 1334 (Lowenthal), Chapter 702, increases POST from 13 members to 14 members by increasing the number of peace officers from three to four, and makes the Attorney General an ex officio member of POST.

Housing Authority Police

Housing authorities are local government entities that provide safe and sanitary publicly subsidized housing to low-income families. These public housing sites are almost always located in urban, high-density poverty areas which require significant law enforcement services by carefully selected and well-trained officers. In order to continue training, it is necessary that specific housing authority police departments receive training reimbursement.

AB 1336 (Washington), Chapter 301, requires the Commission on Police Officers Standards and Training (POST) to reimburse the housing authority police departments of the Cities of Oakland and Los Angeles for training expenses. Specifically, this new law:

- Adopts rules establishing minimum standards relating to physical, mental, and moral fitness that governs the recruitment of housing authority police departments of the City of Los Angeles and the City of Oakland.

- Adopts rules establishing minimum standards for training for housing authority police departments of the Cities of Oakland and Los Angeles.

- Reimburses the housing authority police department of the Cities of Oakland and Los Angeles for training expenses.

Peace Officer Photographs

Public safety officers are subject to threats of violence while. Officers should have the option of keeping their photographs off the Internet if they believe that such disclosure could result in threats of violence.

AB 1586 (Florez), Chapter 338, allows a peace officer to prohibit a public agency from posting his or her photograph on the Internet. Specifically, this new law:

- Adds a provision to the Public Safety Officers Procedural Bill of Rights to prohibit a public agency from requiring a public safety officer to consent to the posting of his or her photograph or identity on the Internet if the officer reasonably believed that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

- Authorizes the issuance of an injunction requiring an agency to cease and desist from disclosure if the officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

- Permit only an officer, district attorney, or United States attorney to request an injunction to prohibit the posting of the officer's photograph on the Internet. This new law deletes the right of an officer's family member to seek in injunction.

- Sets a $500 per-day, civil fine for every day that a public agency fails to adhere to an order to cease and desist.

Reserve Peace Officers

Under current law, a reserve peace officer who transfers between law enforcement agencies must undergo the same training as a new officer in order to retain his or her current classification.

SB 359 (Knight), Chapter 111, allows a Level I or II reserve peace officer who has previously satisfied specified Commission on Peace Officer Standards and Training (POST) training requirements to remain qualified at the same level if he or she accepts a new appointment in another law enforcement agency. In addition, this new law adds reserve peace officers to existing categories of law enforcement agencies that may use short-barreled rifles and shotguns in the course and scope of their duties. Specifically, this new law:

- Provides that a Level I or II reserve officer who has previously satisfied training requirements shall be deemed to remain qualified as to POST requirements if the officer accepts a new appointment at the same level in another law enforcement agency.

- Permits reserve peace officers to possess and use short-barreled rifles and shotguns in the course and scope of their employment by adding reserve officers to the list of exempt law enforcement personnel and agencies.

- Requires reserve peace officers to complete a POST-certified training course in the use of short-barreled rifles and shotguns.

Peace Officer Standards and Training

In the Commission on Peace Officer Standard and Training's (POST) regular basic course, required testing is accomplished through the administration of 26 learning domain tests. Regular basic course presenters and other law enforcement officials have requested that POST develop a mid-course and end-of-course test, and require that trainees successfully pass these courses in order to graduate.

SB 747 (Burton), Chapter 852, requires POST to develop a testing program, including standardized tests, that enable assessment of trainee achievement and requires these tests be passed in order to successfully complete training. This new law provides that the Department of Consumer Affairs shall be responsible for approval of tear gas training for private investigators and private patrol operators. Specifically, this new law:

- Provides that for the purpose of ensuring competent peace officers, POST shall develop a testing program, including standardized tests, enabling assessment of trainee achievement.

- Requires POST to take all steps necessary to maintain the confidentiality of test scores, test items, scoring keys, and other examination data used in the testing program.

- States that POST shall determine the minimum passing score for each test and the conditions for re-testing students who fail.

- Provides that passing these tests shall be required for the successful completion of peace officer training.

- Makes the Department of Consumer Affairs responsible for the approval of tear gas training for private investigators and private patrol operators.

Police Security Officers

Currently, a county sheriff may hire a public employee designated as a security officer provided that the person completes a course certified by the Commission on Peace Officer Standards and Training (POST). The primary duty of a sheriff's security officer is to provide security and protection to facilities owned, operated, or administered by the county or other entities contracting with the county for police services.

SB 1163 (Ortiz), Chapter 112, authorizes police chiefs to employ police security officers to provide security on public property. This new law:

- Requires both the sheriff and a police security officer to satisfactorily complete a POST-certified course of training before being assigned to perform his or her duties.

- Limits the duties of police and sheriff security officers to providing security on public property.

RESTITUTION

Computer Crime

As computers and computer systems become more sophisticated, criminals find more opportunities to employ these mechanisms for illegal purposes. This bill expands the ability of law enforcement to forfeit computers and computer systems used to commit a variety of crimes.

AB 451 (Maddox), Chapter 254, authorizes forfeiture of computers and computer-related systems used to commit a variety of theft, counterfeiting and computer crimes listed below, and gives the court discretion to deny forfeiture under certain circumstances. Specifically, this law:

- Provides that a computer, computer system, computer network, and any software or data used to commit any of the violations listed subject the computer-related equipment to forfeiture: (1) forgery; (2) forging a driver's license or identification card; (3) counterfeiting public and private seals; (4) forging bills, notes, and checks; (5) counterfeiting money; (6) acquiring four or more access cards in a 12-month period; (7) acquiring access card account information with intent to defraud; (8) making or altering a counterfeit access card with intent to defraud;
  (9) altering/modifying access card account information with intent to defraud; (10) knowingly accessing and without permission using computer systems to defraud, deceive, extort or obtain money or property; (11) knowingly accessing and without permission taking, copying, or using computer data; (12) knowingly and without permission using computer services; (13) knowingly accessing and without permission adding, deleting or destroying data, software, or programs; (14) knowingly and without permission disrupting or denying computer services to an authorized user; (15) knowingly and without permission providing a means of accessing a computer; (16) knowingly and without permission accessing any computer, computer system or network; (17) knowingly introducing a contaminant into any computer, computer system or network; (18) knowingly and without permission using the Internet domain name of another person to send e-mail which damages a computer, or computer system or network; (19) avoiding phone charges by specified means; (20) advertising, possessing or using illegal telecommunications equipment to avoid paying charges; (21) false impersonation; (22) producing, selling or transferring a false birth or baptism certificate; and (23) using personal identifying information without consent.

- Authorizes a court to return seized computer-related property to a claimant who has a valid interest. However, no person shall hold a valid interest if the prosecutor shows the claimant knew or should have known the property was being used to commit one of the violations enumerated in the paragraph above.

- Provides that if a minor uses computer-related equipment owned by parents or guardians to commit a violation listed in the first paragraph, the equipment is subject to forfeiture. However, the parent or guardian can prevent the forfeiture by affirming that the minor will not have access to any such equipment for two years. Further provides that within two years of the minor being sentenced, if the minor is convicted subsequently of any crime listed in the first paragraph, the computer equipment will be subject to forfeiture.

- Provides that if the parent or guardian makes full restitution to the victim in an amount or manner determined by the court, the parent's/guardian's computer equipment is not subject to forfeiture.

- Provides an exemption to specified computer-related violations for any person who accesses his or her employer's computer system, network, program or data when acting within the scope of lawful employment.

- Provides that using computer services without permission does not penalize any acts committed outside a person's employment, so long as the acts do not cause an injury to any computer system, or provided that the value of supplies used does not exceed $100.

- Specifies that forfeiture shall not be available for any property used solely in the commission of an infraction.

- Provides that a court has discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

Mental Health Therapy Expenses

Existing law provides that a crime victim who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

SB 1250 (Escutia), Chapter 121, adds the cost of a crime victim's mental health therapy to the list of expenses to be considered when imposing an order of restitution upon a criminal defendant. Mental health treatments are not on the list of restitution expenses owed by offenders.

SEX OFFENSES

Secret Videotaping

Looking or filming through an opening into a bathroom, changing room, fitting room, dressing room, tanning booth or the interior of any other area in which the occupant has a reasonable expectation of privacy is a misdemeanor. Existing law does not allow prosecution of those persons who deliberately invade the privacy of unsuspecting victims for sexual gratification in public places by using concealed cameras or other devices.

AB 182 (Ackerman), Chapter 231, creates a new misdemeanor offense of secretly photographing or videotaping under or through the clothing of another person under circumstances in which the victim has a reasonable expectation of privacy. This new law:

- Provides that it is a misdemeanor to use a concealed camcorder or camera of any type to secretly videotape or photograph another person under or through his or her clothing for the purpose of viewing the body of, or the undergarments of, the other person without his or her consent or knowledge with the intent to invade his or her privacy and in a place where the person had a reasonable expectation of privacy.

- Requires that secret filming is only criminal if done with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person.

- Requires that the alleged victim be identifiable.

Child Pornography: School Employees

Current law inadvertently omits certain child pornography and obscenity violations from the list of specified offenses that result in the mandatory revocation of a teaching credential.

AB 457 (Scott), Chapter 281, adds specified child pornography and obscenity violations to the list of sex offenses that prohibit school districts from employing persons who have committed such crimes. Also prohibits local education agencies from issuing temporary certificates to applicants with revoked or suspended teaching credentials. Specifically, this new law:

- Adds the offenses of bringing obscene matter or child pornography into California, distributing obscene matter depicting persons under the age of 18, and possession of child pornography to the list of sex offenses that prohibit a school district from employing or retaining a person convicted of such an

offense.

- Requires a local education agency to immediately place on compulsory leave of absence an employee charged with an offense added by this bill.

- Prohibits a county or city and county board of education from issuing a temporary certificate to an applicant whose teaching credential is revoked or suspended.

Sex Offender Registration

Under current law, convicted sex offenders from other states who are not permanent residents of California are free to enter the California and work or attend college without the knowledge of California law enforcement. This situation threatens public safety and places law enforcement at a disadvantage.

AB 1193 (Leonard), Chapter 576, requires an out-of-state resident convicted of specified sex offenses to register with local law enforcement while attending school or working in California, and requires a registrant with more than address to list all addresses where the person may be located. Specifically, this new law:

- Requires that a person convicted of specified sex offenses and employed in California on a full-time or part-time basis for more than 14 days, or for more than an aggregate of 30 days in a calendar year, or enrolled in any educational institution in California to register his or her address and place of employment or school.

- Requires any person required to register who had more than one residence or location at which he or she regularly resided or is located to provide the registering authority in each jurisdiction with all addresses or locations.

- Requires a person convicted of a misdemeanor violation of annoying or molesting a child and had received a certificate of rehabilitation to continue to register as a sex offender for the rest of his or her life.

- Requires that any person adjudicated a sexually violent predator to verify his or her address no less than once every 90 days.

- Increases the period of rehabilitation necessary to obtain a certificate of rehabilitation by an additional five years for any person required to register as a convicted sex offender.

- Adds two years to the five-year rehabilitation period for any person convicted of specified offenses involving obscene matter or indecent exposure.

- Makes conforming changes to other provisions of law and deletes obsolete cross-references.

Child Abuse: Dependency Proceedings

Under certain circumstances courts in juvenile dependency hearings may declare a child to be a dependent of the court. Current law requires the state to prove by clear and convincing evidence that a person in the minor's household is a danger to the minor before making a finding of dependency.

SB 208 (Polanco), Chapter 417, creates a presumption that a child is a dependent of the juvenile court if the parent, guardian, or any person currently living with the minor has a prior sex conviction, a previous judicial finding of sexual abuse, or is required to register as a sex offender. This new law:

- Creates the presumption that a minor is a dependent of the juvenile court if the minor's parent, guardian, or any person currently residing with the minor has a prior conviction for sexual abuse, has been found in a prior dependency proceeding to have committed an act of sexual abuse, or is required to register as a sex offender for a felony sexual abuse conviction.

- Creates the presumption that a minor is a dependent of the juvenile court if the parent, guardian, or any person currently residing with the minor has been previously convicted of an act in another state that would constitute sexual abuse if committed in California or has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse.

- Provides that the court may direct Child Protective Services to investigate and notify appropriate state agencies and file reports as required if the court believes a child has suffered criminal abuse or neglect.

Sex Offender Registration: Juvenile Adjudications

Under current law, any person paroled or discharged from the Department of Corrections or the California Youth Authority (CYA) who has been convicted of, or adjudicated a ward of the court because of the commission of, specified sex offenses is required to register as a sex offender. Existing law specifies the penalties for failing to register; however, existing law does not expressly refer to juvenile adjudications.

SB 341 (Figueroa), Chapter 901, clarifies current penalties for failing to register as a sex offender to include specified juvenile adjudications resulting in a commitment to the California Youth Authority. This new law:

- Provides that failing to register after having been found to have committed a specified misdemeanor sex offense as a juvenile that resulted in a commitment

to CYA is a misdemeanor, punishable by imprisonment in the county jail not exceeding one year.

- Provides that failing to register after having been found to have committed a specified felony sex offense as a juvenile that resulted in a commitment to CYA is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years.

- Provides that a juvenile who committed an offense requiring registration but was found not guilty by reason of insanity, and who willfully violates the registration requirements, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year. A second violation for failing to register is punishable as a felony, punishable by 16 months, 2 or 3 years in state prison.

Sexually Violent Predators: Juvenile Adjudications

Existing law provides for the civil commitment of sexually violent predators (SVP). A "SVP" is defined as a person who has been convicted of a specified sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health or safety of others. There are currently 492 juvenile court offenders housed by the California Youth Authority (CYA) for the commission of violent sex offenses.

SB 746 (Schiff), Chapter 995, expands the definition of prior convictions for purposes of SVP statutes to include juvenile adjudications where the minor was age 16 or older, committed a sexually violent offense, and was committed to the CYA. This new law provides:

- One prior juvenile adjudication for a sexually violent offense may be used as a prior conviction for purposes of the SVP law.

- To qualify as a prior conviction, the prior juvenile offense must meet all of the following conditions: (1) the juvenile was 16 years of age or older at the time he or she committed the offense, (2) the prior offense was sexually violent, and (3) the juvenile was committed to CYA.

- A minor found to be a ward of the court based on a sexually violent offense shall be entitled to sexual offender treatment.

Employment Information

Existing law requires that a registered sex offender provide local law enforcement with the address of the offender's place of residence, but not with the address of the offender's place of employment. Law enforcement authorities believe it would be

extremely helpful if they could access a registered sex offender's place of employment when investigating a crime in the area.

SB 1275 (Schiff), Chapter 730, requires a convicted sex offender to report employment information to law enforcement. Specifically, this new law:

- Requires any person convicted of specified crimes and who must register with a local law enforcement agency to provide the name and address of his or her employer to the Department of Justice (DOJ) and update this information annually within five days of his or her birthday.

- Requires any person convicted of specified crimes and who must register as a sexually violent predator (SVP) to provide the name and address of his or her employer to the DOJ and to update this information in a manner determined by the DOJ.

- Requires a registered sex offender to provide the address of his or her employment when it is different from the main address of his or her employer.

- Requires the DOJ to collect the name and address of the employer of a registered sex offender on a pre-registration form.

- Prohibits public access to the name and address of the employer of a registered sex offender.

- Require a SVP who registers to verify no less than every 90 days his or her place of employment including the name and address of the employer.

- Make it a misdemeanor punishable by up to one year in county jail if a person is required to register based on a misdemeanor juvenile adjudication and willfully fails to do so.

- Make it a felony punishable by 16 months, 2 or 3 years in state prison if a person is required to register based on a felony juvenile adjudication and willfully fails to do so.

- Require a person to register for life while residing or located in California who is required to register in his or her state of residence who is an out-of-state resident for more than 14 days or an aggregate period of 30 days in a calendar year. This duty becomes operative on November 25, 2000.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators

The California Court of Appeals ruled in *Terhune v. Superior Court* that the Board of Prison Terms improperly used psychiatric parole regulations to detain mentally ill prisoners prior to their release on parole. This ruling jeopardized Sexually Violent Predator (SVP) petitions which were filed while inmates were being "unlawfully" detained.

SB 11 (Schiff), Chapter 136, provides that a petition to have an offender declared a SVP shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful as the result of a good faith mistake of fact or law. Specifically, this new law:

- Provides that a SVP petition may be filed if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or where a hold has been placed for SVP evaluation.

- Provides that a SVP petition may not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good-faith mistake of fact or law.

- States that this new law applies to any SVP petition filed on or after January 1, 1996.

- Requires the Department of Justice, in cooperation with the Youth and Adult Correctional Agency and the Department of Mental Health, to report to the Legislature on or before January 1, 2002 specified information regarding persons affected by the provisions of this new law between July 1, 1999 through June 30, 2001. This new law sunsets as of January 1, 2003.

VEHICLES

Vehicles

With jail overcrowding a serious problem in many counties, jail alternatives for non-violent offenses gain importance as policy objectives. On a trial basis, this new law allows certain counties to explore an alternative to jail for those who drive with a suspended license.

AB 402 (Romero), Chapter 877, authorizes Santa Cruz County to establish a pilot program regarding people who drive without valid licenses identical to the program described in AB 1311 (Romero), Chapter 122, Statutes of 1999.

Vehicles

With jail overcrowding a serious problem in many counties, alternatives to jail for non-violent offenses gain importance as policy objectives. On a trial basis, this law allows certain counties to explore an alternative to jail for those who drive with a suspended license.

AB 1311 (Romero), Chapter 122, allows certain counties to establish a pilot program to explore alternatives to jail for a person who pleads guilty or no contest to driving with a suspended license. Provides that participation in the alternative program takes the place of jail. Requires each district attorney who participates in this alternative program to report to the Legislature by December 31, 2003. Provides a sunset date of December 31, 2003. Specifically, this new law:

- Provides that the district attorneys of Alameda, Kern, Los Angeles, Orange, Placer, Sacramento, San Joaquin, San Luis Obispo, and Santa Barbara Counties may establish, with the approval of the board of supervisors, a pilot program for persons who plead guilty or no contest to, or who are found guilty of, driving with suspended licenses.

- Provides that, with the approval of the court, the district attorney and the accused may enter into a written agreement requiring the accused to complete an alternative program within 60 days or within the maximum sentence period for the charge.

- Provides that the court has the authority to refer a case to the alternative program and to order the accused to comply with terms of the written agreement mentioned above.

- Requires that the alternative program include a home detention component utilizing an electronic monitoring device for not less than the minimum jail sentence and not more than the maximum jail sentence.

- Requires that the accused attend one or more classes conducted by the district attorney (or by a private entity under contract with the district attorney), which class/classes shall include instruction in the following: the legal requirements of the various driving with a suspended license charges and their penalties, available transportation alternatives for those who do not have a valid driver's license, and the procedure for regaining the privilege to drive.

- Authorizes the court to impose any fine allowed under the applicable driving with a suspended license statute.

- Provides that the following types of statements shall not be admissible in any action or proceeding:

  - No statement or information gained from a statement made by a person in connection with the determination of his or her eligibility;

  - No statement or information gained from a statement made subsequent to being referred to the alternative program or while participating in the program;

  - No statement contained in any report made regarding the alternative program; and

  - No statement or other information concerning the person's participation in the alternative program.

- Authorizes the district attorney or the private entity running the program to recover fees for the alternative program.

- Permits the court to determine the accused's ability to pay the fees described in the paragraph above. If the court determines that the accused does not have the ability to pay the fees, the accused does not have to pay the fees in order to participate in the alternative program.

- Provides that a person who participates in an electronic monitoring program as part of the alternative to jail may attend school, work or other activities with the court's approval.

- Requires every district attorney who elects to participate in this program to submit a report to the Legislature not later than December 31, 2003 concerning that county's participation in the program.

- Provides that this law will be repealed January 1, 2004 unless that date is deleted or extended by later legislation.

Vehicles

This omnibus bill covers a number of driving-related offenses whose viability was affected by two 1998 Senate bills.

SB 24 (Committee on Public Safety), Chapter 22, resolves chaptering and technical problems which occurred due to the veto of SB 2067 (Rosenthal), of the 1997-98 Legislative Session, and SB 1186 (Committee on Public Safety), Chapter 118, Statutes of 1998, which took effect July 1, 1999. This new law:

- Provides that a person's driving privilege suspended due to a conviction for driving under the influence (DUI) can be reinstated only after completion of an approved alcohol treatment program; enrollment, participation and completion of the program must be subsequent to the date of the current violation.

- Requires the Department of Motor Vehicles (DMV) to terminate a person's restricted license immediately and instead suspend the license if the treatment program notifies the DMV that the person has failed to comply with program requirements.

- Authorizes the court to declare the vehicle driven by the defendant is a nuisance, surrendered to local law enforcement, and subject to sale when a person has suffered a conviction for one of the following:

  - Gross vehicular manslaughter while intoxicated.

  - Vehicular manslaughter.

  - DUI within seven years of two or more convictions for any combination of the following: (1) gross vehicular manslaughter while intoxicated; (2) vehicular manslaughter; (3) DUI; and, (4) DUI and causing injury.

  - DUI causing injury within seven years of one or more convictions for any offense in the paragraph above.

- Requires the DMV to suspend immediately any person's driving privilege restricted for a DUI conviction if the person is subsequently convicted of driving without a functional ignition interlock device.

- Requires the DMV to notify the registered owner of a vehicle in the final notice of delinquent registration that the vehicle can be impounded for failure to register properly.

- Requires the court, when sentencing a first-time DUI offender whose blood-alcohol concentration was less than 0.2 percent, to participate for at least three months in a licensed program that includes at least 30 hours of activities.

- Requires the court, when sentencing a first-time DUI offender whose blood-alcohol concentration was 0.2 percent or higher, or who refused to take a chemical test, to participate for at least six months in a licensed program that includes at least 45 hours of activities.

- Requires any person whose car has had an ignition interlock device installed to arrange for service and calibration at least every 60 days. Further, this new law requires the installer to notify the court of any sign that the device has been tampered with or if the person fails three or more times to comply with maintenance requirements.

Hit and Run: Death or Serious Injury

Existing law requires the driver of any vehicle involved in an accident resulting in injury or death to another person to immediately stop the vehicle at the scene of the accident and to fulfill specified requirements.

SB 1282 (Lewis), Chapter 854, clarifies existing law regarding hit and run accidents that result in death or permanent serious injury and administrative hearing procedures. This new law:

- Conforms the existing statute for hit-and-run with death or serious injury with the original legislative intent to provide for increased punishment when a driver is involved in a serious accident and leaves the scene.

- Provides that any document maintained in the government forensic laboratory computerized data base system that is electronically transmitted to the Department of Motor Vehicles (DMV) may be admissible in driving under the influence administrative hearings if a DMV employee certifies that the information was retrieved directly from the computerized system.

VICTIMS

Sentence Enhancement: Vulnerable Victims

Currently, there is a one-year sentence enhancement statute for serious crimes committed against the elderly, children under the age of 14, and persons who are either blind or paralyzed. There is a two-year sentence enhancement for persons who commit specified offenses and have a prior conviction against the elderly, children under the age of 14, and persons who are either blind, paralyzed, deaf, or developmentally disabled.

AB 313 (Zettel), Chapter 569, adds deaf and developmentally disabled persons as qualifying victims to the existing one-year enhancement statute for serious crimes committed against the elderly, children under age 14, and persons who are either blind, or paralyzed.

Child Life Specialists

Child Life Specialists (CLS) work with children who have experienced severely traumatic or fatal situations. Child Life Specialists are specifically trained to help children work through the mourning process and serve as a critical early healing intervention to positively affect health, development and well being. Child Life Specialists often work in hospitals and are considered part of the health care team. However, there are very few funding sources for their services.

AB 606 (Jackson), Chapter 584, authorizes a study of whether services provided by a CLS should be reimbursed by the state and allows for cash payments to victims of spousal and elder abuse. This new law requires the Board of Control (BOC) to conduct a program entitling a victim to reimbursement for grief, mourning and bereavement services provided by a CLS in specified circumstances. Specifically, this new law:

- Specifies that the BOC shall conduct a program until January 1, 2004 that entitles a victim or derivative victim to be reimbursed from the Restitution Fund for grief, mourning and bereavement services in cases of death or severe trauma, except that such services shall not include mental health services for which a state license is required.

- Specifies that these services shall be performed under the supervision of a court, hospital, physician and surgeon, licensed psychotherapist, community-based organization, or county.

- Requires the BOC to include in the program a certified CLS who has been determined by the current employer or a state licensing entity not to have a criminal history that would prevent the employment or the issuance of a license.

This new law furthers authorize the BOC, in the event neither of the preceding determinations has been made, to secure from the Department of Justice a criminal record to make the necessary determination regarding the CLS's background.

- Authorizes a one-time payment, not to exceed $2,000, from the Citizens Indeminification Fund to an adult domestic violence victim for expenses related to relocation if it was necessary for the victim's personal safety or mental well-being.

- Limits payment for relocation to: (1) deposits for utilities and telephone; (2) deposit for rental housing not to exceed first and last-month's rent and not to exceed $2,000; (3) cost of moving possessions including, but not limited to, vehicle rental, fuel and labor; (4) temporary lodging and food expenses not to exceed $1,000; and, (5) clothing and other personal items not to exceed $500.

- Allows the BOC to authorize a one-time cash payment or reimbursement to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provided to be necessary for the victim's emotional well-being. Permit the BOC to award a second payment to the same victim under compelling circumstance if both of the following conditions are met: (1) the crime(s) giving rise to the second request for funds occurred more than three years after the date of the crime(s) giving rise to the first request, and (2) the second crime does not involve the same perpetrator.

- Allows for a reimbursement for installing or increasing home security up to $1,000 available to a victim of a crime that occurred in the victim's residence. Further, this new law conditions such a reimbursement upon verification by law enforcement that it is necessary for the victim's personal safety or by a mental health treatment provider that it is necessary for the victim's emotional well being.

- Authorizes reimbursement for the cost of renovating or retrofitting a victim's residence or vehicle where the victim was permanently disabled as a direct result of the crime upon verification that the expense is medically necessary. Further, this new law authorizes the BOC to exceed the $5,000 maximum award under this provision when justified by the victim's disability.

Bail In Domestic Violence Cases

A person arrested for serious or violent felonies, spousal rape, stalking, inflicting corporal injury on a spouse or cohabitant, or battery on a spouse or cohabitant may not be released on his or her own recognizance or on bail in an amount that is either more or less than on the bail schedule without a hearing in open court.

AB 1284 (Jackson), Chapter 703, adds to the list of domestic violence-related offenses that require a hearing in open court regarding the setting of bail. In addition, victims are to be notified of bail hearings and certain conditions must to be imposed on defendants admitted to bail in stalking cases. Specifically, this new law:

- Adds the offenses of making a threat to commit a crime involving death or great bodily injury as a felony and attempting to dissuade a witness by the threat of or use of force or violence to the list of specified offenses that required a hearing in open court before a person may be released on bail in an amount more or less than the county bail schedule.

- Requires a county sheriff to notify the domestic violence unit of the prosecuting agency of the release on bail of any person arrested for stalking.

- Requires a prosecutor to make all reasonable efforts to notify the alleged stalking victim of the bail hearing.

- Specifies conditions of release on bail for a person accused of stalking, including a stay-away order and the defendant providing the court with current address and telephone information.

Mental Health Therapy Expenses

Existing law provides that a crime victim who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

SB 1250 (Escutia), Chapter 121, adds the cost of a crime victim's mental health therapy to the list of expenses to be considered when imposing an order of restitution upon a criminal defendant. Mental health treatments are not on the list of restitution expenses owed by offenders.

WEAPONS

Firearm Safety Devices

The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related deaths. A 1997 study by the federal Center for Disease Control and Prevention reports the rate of death in the United States was nine times higher than in 25 other industrialized nations for unintentional, firearms-related deaths of children under the age of 15.

AB 106 (Scott), Chapter 246, requires the Attorney General (AG) to develop and implement minimum safety standards for firearms safety devices and gun safes, and mandates that all firearms manufactured in California or sold or transferred by a licensed firearms dealer be accompanied by an approved firearms safety device and be accompanied by a safety warning label or language, as specified.

- Provides that effective January 1, 2002, all firearms sold or transferred in California, except as provided, by a licensed firearms dealer, including private transfers through dealers, and all firearms manufactured include or be accompanied by a firearms safety devices approved by the AG.

- Requires the AG, not later than January 1, 2000, to commence development of regulations to implement a minimum safety standard for firearm safety devices and gun safes to reduce the risk of firearms-related injuries to children.

- Required that the AG adopt and issue regulations regarding a final safety standard for firearm safety devices and gun safes, and report these standards to the Legislature by January 1, 2001. These standards are effective January 1, 2002.

- Requires the Department of Justice (DOJ) to certify laboratories to test firearm safety devices in order to verify compliance with standards, and to compile and publish a roster of approved safety devices that have met the DOJ's standards.

- Authorizes the AG after January 1, 2002 to order recall and replacement of any gun safe or firearm safety device that did not conform to the standards required by the provisions of this new law, required that the licensed manufacturer bring the firearm or the firearm safety device into conformity, or provided a replacement.

- Requires that all firearms sold or transferred in California by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured be accompanied by a specific warning language or a label.

- Requires that each lead law enforcement investigating an incident must report to the Department of Health Services any incident in which a child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound in which the child suffered serious injury or was treated for an injury by a medical professional.

- Provides that a violation of this new law is punishable by a fine of $1,000; a second violation is punishable by a fine of $1,000 and a 30-day license suspension; and a third violation results in a permanent loss of a license.

- Provides that the DOJ may require a $1 charge on all firearms purchased or transferred to pay for the costs of the program.

Prevention of Terrorism/Weapons of Mass Destruction

Modern technology has presented unlimited opportunities for terrorists. The potential loss of life, damage to the environment, and damage to property by terrorists threatens society. California needs a comprehensive scheme to deter and punish those persons who would use such weapons.

AB 140 (Hertzberg), Chapter 563, makes the possession, use, manufacture, threat to use or attempt to use a weapon of mass destruction (WMD) illegal. This new law defines "WMDs" and sets the penalties for specified criminal conduct with WMDs.

- A WMD includes chemical warfare agents, weaponized biological or biologic warfare agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon:

  - Chemical agents include Tabun, Sarin, Soman, choking agents, Phosgene and Diphosgene, blood agents, Hydrogen Cyanide, Cyanogen Chloride, Arsine, and blister agents.

  - Weaponized biological or biologic agents include weaponized pathogens such as bacteria, viruses, rickettsia, yeasts, fungi or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators.

  - Nuclear or radiological agents include any improvised nuclear device, radiological dispersal device, or any simple radiological dispersal device.

  - Intentional release of a dangerous chemical or hazardous material generally used in industrial or commercial processes is use of a WMD if the user intends to cause harm and the use places humans or animals at risk of death, illness or serious injury, or endangers environment.

- "Weaponization" is defined as the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition.

- "Weaponized agents" are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic or mechanical means.

- The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural or commercial purposes is not prohibited by this new law.

- No university, research institution, private company, individual or hospital engaged in scientific or public health research and registered with the Centers for Disease Control and Prevention is subject to this new law.

- Specifies that any person who possesses, develops, manufactures, produces, transfers, acquires, or retains any WMD is guilty of a felony punishable by three, six, or nine years in state prison.

- Provides that any person convicted of violating the paragraph above and has previously been convicted of the following crimes is punishable by 4, 8, or 12 years in state prison:

  - Terrorizing an owner of property.

  - Threatening harm to cause another person to refrain from religious practices.

  - Exploding or attempting to explode a destructive device or explosive in specified locations with the intent to terrorize.

  - Paramilitary organizations practicing with weapons or training another person in explosives or destructive devices.

  - Placing an explosive or destructive device on a vehicle.

  - Possessing an explosive or destructive device on a street or near a public building.

  - Possessing, exploding or attempting to explode a destructive device or explosive with intent to injure, intimidate, or terrify.

- Specifies that any person who uses or directly employs a WMD against another person in a form that may cause widespread, disabling illness or injury in a human being shall be punished by life in state prison.

- Specifies that a person who uses a WMD in a form that may cause widespread damage to, and disruption of, the water or food supply shall be punished by 4, 8, or 12 years in state prison and a fine of not more than $100,000.

- Specifies that a person who uses a WMD against animals or crops in a form that may cause widespread and substantial diminution in the value of stock animals or crops shall be punished by 4, 8, or 12 years in state prison, a fine not to exceed $100,000, or both.

- Specifies that any person who uses a WMD in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment in the state prison for three, four, or six years.

- Specifies that any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for the purposes specified in this new law shall be guilty of an alternate misdemeanor/felony. A misdemeanor violation is punishable by up to one year in county jail, a fine not to exceed $250,000, or both; a felony violation is punishable by three, six, or nine years in state prison, a fine not to exceed $250,000 or both.

- Provides that any person who threatens to use a WMD, with the specific intent that the statement is to be taken as a threat even if there is no intent of actually carrying it out, which threat is so unequivocal, immediate and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, and thereby causes the person reasonably to be in sustained fear for his or her safety, or his or her immediate family's safety, resulting in an isolation, quarantine, or decontamination effort, shall be punished as an alternate misdemeanor/felony. A misdemeanor violation shall be punished by up to one year in county jail, by a fine of not more than $250,000, or both; a felony violation shall be punished by three, four, or six years in state prison, or by a fine of not more than $250,000, or both.

- Provides that any person or entity possessing any restricted biological agents shall be punished by 4, 8, or 12 years in state prison, a fine not to exceed $250,000, or both; except that physicians, veterinarians, pharmacists, universities, research institutions, pharmaceutical corporations, or individuals lawfully possessing specified agents are not subject to this section's prohibitions.

- Defines restricted biological agents as follows:

- Viruses such as Crimean-Congo hemorrhagic fever virus, eastern equine encephalitis virus, ebola viruses, equine morbilli virus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

- Bacteria such as bacillus anthracis (anthrax), brucella abortus, brucella melitensis, brucella suis, burkholderia (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei, clostridium botulinum, francisella tularensis, yersinia pestis (plague).

- Rickettsia such as coxiella burnetii, rickettsia prowazekii, rickettsia ricketsii.

- Fungi such as coccidioides immitis.

- Toxins such as abrin, aflatoxins, botulinum toxins, clostridium, perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin, saxitoxin, shigatoxin, staphylococcal enterotoxins, tetrodotoxin, T-2 toxin.

- Requires a peace officer who encounters any of the restricted biological agents to notify immediately and consult with a local public health officer to ensure proper consideration of any public health risk.

Purchase of Concealable Firearms

Prior law imposed no limits on the number of concealable firearms a person could apply to purchase at any one time. A person's ability to purchase multiple concealable firearms at one time facilitated "straw purchases" which are illegal. A "straw purchase" involves a buyer who transfers a firearm to another person who did not, or could not, legally buy the firearm.

AB 202 (Knox), Chapter 128, prohibits a person from applying for more than one concealable firearm within a 30-day period, and prohibits a dealer from delivering a concealable firearm to any person who has made an application to purchase more than one concealable firearm within 30 days. Specifically, this new law:

- Prohibits making an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period.

- Prohibits a dealer from delivering a concealable firearm to any person who has made an application to purchase more than one pistol, revolver, or other firearm

capable of being concealed on the person within any 30-day period, and the Department of Justice has notified the dealer of that fact.

- Provides penalties for a dealer who delivers a concealable firearm in violation of the paragraph above: as a felony, by 16 months, two or three years in state prison, a fine not to exceed $1000, or both; as a misdemeanor, by up to one year in county jail, a fine not to exceed $1000, or both.

- Exempts law enforcement agencies and peace officers; correctional facilities; entertainment/theatrical companies; transactions conducted through licensed dealers and law enforcement agencies, as specified; and licensed collectors from the exchange, replacement or return of a concealable firearm under specified conditions.

- Provides penalties for making an application for more than one concealable firearm in any 30-day period: (1) a first violation is an infraction punishable by a fine of $50; (2) a second violation is an infraction punishable by a fine of $100; (3) a third or subsequent violation is a misdemeanor punishable in the county jail up to six months, or by a fine not greater than $1,000, or both.

- Provides that each application to purchase a concealable firearm shall be considered a separate offense.

Laser Pointers

As AB 221 (Wildman), Chapter 438, Statutes of 1999, addressed the public safety impact of laser pointers, so does AB 293. When mishandled, such implements can pose a danger to others. AB 293 addresses the concerns surrounding the use by minors, the risks of directing beams into moving vehicles, and pointing the beam into the eyes of certain trained dogs.

AB 293 (Wesson), Chapter 621, makes it an infraction to sell a laser pointer to a minor, for a minor to possess a laser pointer unless used in a supervised school setting, or direct the beam from a laser pointer into another person's eyes or into a moving vehicle with the intent to harass or annoy the person or the occupants of the moving vehicle. Prohibits directing the beam from a laser pointer directly or indirectly into the eyes of a guide dog, signal dog, service dog, or dog being used by a peace officer with the intent to harass or annoy the animal.

- Prohibits aiming or pointing a laser pointer at another person in a threatening manner with the specific intent to cause a reasonable person fear of harm. (Item 1)

- Prohibits selling a laser pointer to a person under age 18, unless that minor is accompanied by a parent, guardian, or other person 18 years of age or older. (Item 2)

- Provides that no student possess a laser pointer on any elementary or secondary school premises unless such possession is for a valid instructional or other school-related purpose, including employment. (Item 3)

- Defines laser pointer as "any hand held laser beam device or demonstration product that emitted a single point of light amplified by the stimulated emission of radiation that was visible to the human eye." (Item 4)

- Prohibits any person from directing the beam from a laser pointer directly or indirectly into another person's eyes, or into a moving vehicle, with the intent to harass or annoy the person or occupants of the moving vehicle. (Item 5)

- Prohibits directing a laser pointer beam directly or indirectly into the eyes of a guide dog, signal dog, service dog, or dog being used by a peace officer with the intent to harass or annoy the animal. (Item 6)

- States that a violation of Items 2, 3, 5 or 6 above is an infraction punishable by a $50 fine or four hours of community service. A second or subsequent violation is an infraction punishable by a $100 fine or eight hours of service.

- States that a violation of Item 1 is a misdemeanor, punishable by up to 30 days in county jail.

Gun Shows

Gun shows have provided opportunities for some people to evade the requirements of the law regarding sale of firearms. A comprehensive regulatory scheme ensures that all persons – promoters, vendors, and customers – who participate in gun shows follow the law.

AB 295 (Corbett), Chapter 247, makes numerous changes to the laws regulating gun shows, gun show promoters and vendors via the Gun Show Enforcement and Security Act of 2000. Among those changes are obligating the promoter to notify law enforcement regarding specified details of a gun show, and each gun show must have a "security plan" and a minimum $1 million insurance policy. Specifically, this new law:

- Requires the Department of Justice (DOJ) to issue a certificate of eligibility (COE) to a gun show producer, unless DOJ's records indicate that the applicant is prohibited from possessing firearms if the applicant does all of the following:

- Certifies that he or she is familiar with the Penal Code sections governing gun shows;

- Ensures that at least $1 million of liability insurance covers the show; and,

- Provides an annual list of gun shows the applicant plans to promote, produce, sponsor, operate, or organize during the year for which the COE is issued, including the date, time and location of each event.

- Defines "licensed gun show producer" as a person who has been issued a COE by DOJ.

- Authorizes DOJ to assess a licensed gun show producer an $85 annual fee.

- Requires a gun show promoter, before the start of a gun show, to make available to local law enforcement a complete and accurate list of all persons, entities and organizations that have leased or rented any space to sell, lease or transfer firearms. The promoter must produce the data within 48 hours or at a later specified time.

- Requires the promoter, upon request, for every day the gun show operates to make available within 24 hours (or a later specified time) to the requesting law enforcement agency a complete and accurate list of all persons, entities, and organizations that have leased or rented any space to sell, lease or transfer firearms.

- Requires the producer to submit not later than 15 days before the start of the show to DOJ, local law enforcement and the facility manager a revised event and security plan if "significant changes" have been made since the annual plan was submitted, including a revised list of vendors.

- Requires the producer within seven calendar days of the start of a show, but not later than 12:00 noon Friday for a show held on a weekend, to submit to DOJ a list of prospective vendors and designated firearms transfer agents who are licensed dealers in order that DOJ may check whether the listed vendors and transfer agents possess valid licenses.

- Specifies the following information which local law enforcement may request, but is not limited to requesting, and which the promoter must provide: (1) driver's license or identification card number, (2) federal firearms license, (3) certificate of eligibility, (4) state sellers permit, (5) local firearm dealer permit, and, (6) business license.

- Requires each vendor and vendor's employee to provide photo identification, and each vendor and employee must display an official vendor badge indicating the person's first and last name.

- Requires a vendor to provide any additional information law enforcement requests, up to and including the day of the gun show.

- Provides that a licensed firearms dealer who fails to cooperate with a producer or fails to comply with the gun show requirements shall not be allowed to participate in that show.

- Requires the promoter, when applying for a gun show promoter license, to list the gun shows that the promoter plans to produce, sponsor, operate, or otherwise organize during the year for which the license will be issued, including the date, time and location of each gun show, and to notify the Bureau of Alcohol, Tobacco and Firearms. If, during these years the information changes or additional gun shows will be promoted, the promoter must notify the DOJ no later than 30 days before the gun show.

- Requires the producer to post signs in a "readily visible location" at each public entrance containing the following information:

  - The gun show follows all federal, state, and local firearms and weapons laws without exception.

  - All firearms carried onto the premises by members of the public will be checked, cleared of ammunition, secured so they cannot be fired, and an identification tag will be attached to each firearm.

  - No member of the public under 18 years of age will be admitted unless accompanied by a parent, grandparent or guardian.

  - All firearm transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal laws.

  - Those persons who possess firearms at the show must possess a government-issued photo identification, and display it upon request to any security or peace officer.

- Requires the promoter to prepare an annual event and security plan and schedule to be filed with local law enforcement and DOJ that shall include at a minimum the following:

  - Type of shows including antique or general firearms;

- Estimated number of vendors offering firearms for sale or display;
- Estimated number of attendees;
- Number of entrances and exists at the gun show site;
- Location, dates and times of the shows;
- Contact person and phone number for both the producer and the facility; and,
- Number of security personnel who will be present at the show, and whether they are sworn peace officers.

- Requires the facility manager to approve the event and security plan after consultation with local law enforcement regarding the plan.

- Requires the security plan to provide a complete and accurate list of all persons, entities and organizations that have leased or rented space in order to sell, lease or transfer firearms.

- Provides that no minor may attend a gun show unless accompanied by a parent, grandparent or guardian.

- Provides that the only people allowed to carry a firearm and ammunition at a gun show are sworn peace officers and security personnel.

- Provides that the promoter post a sign at each parking lot entrance which states, "The transfer of firearms on the parking lot of this facility is a crime."

- Requires persons possessing firearms at a gun show to have in their immediate possession a government-issued photo identification and display it upon request to any security or peace officer.

- Requires all producers to have written contracts with all vendors selling firearms at the show.

- Sets the penalties for a gun show producer's willful failure to comply with the specified requirements – except for the posting of required signs – as a misdemeanor punishable by a fine not to exceed $2,000, and shall render the producer ineligible for a "gun show producer license" for one year from the date of the conviction.

- Sets the penalties for a gun show producer's willful failure to post required signs as a misdemeanor punishable as a fine not to exceed $1,000 for the first offense

and not to exceed $2,000 for the second or subsequent offense (which second or subsequent offense shall also make the producer ineligible for a gun show producer license for one year from the date of the conviction).

- Specifies that charged multiple violations against a producer arising from more than one gun show or event shall be grounds for suspension of a producer's COE pending adjudication.

- Exempts from the prohibition against bringing firearms or other specified weapons to any state or local public building, or any meeting required to be open to the public, a person who, for the purpose of sale or trade, brings any weapon that may otherwise be lawfully transferred into a gun show conducted pursuant to the Penal Code.

- Exempts from the prohibition against bringing firearms or other specified weapons to any state or local public building, or any meeting required to be open to the public, a person who, for purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed into a gun show conducted pursuant to the Penal Code.

- Requires all gun show vendors to certify in writing to the producer that they:

  - Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited;

  - Acknowledge that they are responsible for knowing and complying with all applicable, federal, state, and local laws dealing with the possession and transfer of firearms;

  - Will not engage in activities that incite or encourage hate crimes;

  - Will process all transfers of firearms through licensed firearms dealers as required by state law;

  - Will verify that all firearms in their possession at the show or event will be unloaded, and that the firearms will be secured in a manner that prevents them from being operated except for brief periods when the mechanical condition is being demonstrated to a prospective buyer;

  - Have given all the information required in Item 1 below; and,

  - Will not display or possess black powder, or offer it for sale.

- Requires all firearm transfers to meet applicable state and federal laws.

- Requires ammunition to be displayed in closed original factory boxes or other closed containers, except when showing ammunition to a prospective buyer.

- Requires each vendor, before the start of a show, to provide the producer with the following information about the vendor, the vendor's employees and other persons, compensated or not, who will be working or providing services to the public from the vendor's display space if firearms manufactured after December 31, 1898 will be offered for sale: (1) his or her complete name, (2) his or her driver's license or state-issued identification card number, and (3) his or her date of birth. (Item 1)

- Requires each producer to keep the information in the paragraph above at the show's on-site headquarters for the duration of a show and at the producer's regular place of business for two weeks after a show, and make the information available upon request to any sworn officer pursuant to his or her official duties.

- Requires all firearms carried onto the premises of a show by members of the public to be checked, cleared of ammunition, secured in a way that they cannot be operated, and an identification tag or sticker attached. The identification tag or sticker must state that all firearm transfers between private parties at a show must be conducted through a licensed dealer pursuant to state and federal laws. The person possessing the firearm must put the following information on the tag or sticker before it is attached:

  - The gun owner's signature,

  - The gun owner's printed name, and

  - The identification number from the gun owner's government-issued photo identification.

- Specifies that a first violation of this new law is an infraction. Any second or subsequent violation is a misdemeanor. Any person who knowingly violates this new law is guilty of a misdemeanor for a first offense.

Weapons

Existing law allows felony prosecution for carrying many concealed weapons such as pen knives, brass knuckles, dirks, daggers, and zip guns. AB 491 allows the possibility of felony prosecution at the district attorney's discretion for the possession of unregistered concealable firearms under specified circumstances.

AB 491 (Scott), Chapter 571, makes possession of a concealed or loaded firearm an alternate misdemeanor/felony under certain circumstances. This new law requires the Attorney General (AG) to keep an electronic record in the Department of Justice (DOJ) firearms registry of firearms owners indicated by a Dealers' Record

of Sale (DROS) prior to 1979 if the owner makes a written request that the AG do so. This new law requires the AG to make the record within three days of the request and to notify the owner that the request has been honored. Specifically, this new law:

- Requires the AG to keep an electronic record in the DOJ firearms registry (as well as in the record's existing photographic, photostatic or non-erasable, optically-stored form) of any person listed in the registry as the owner of a firearm through a DROS prior to 1979 if the owner requests by letter that the AG do so. This new law requires the AG to make the record within three days of the request, and to notify the owner that the request has been honored.

- Makes possession of a concealable firearm and unexpended ammunition an alternate misdemeanor/felony if both of the following conditions are met: (1) both the firearm and unexpended ammunition are in the person's immediate possession or readily accessible, and (2) the person is not listed with DOJ as the registered owner of the firearm.

- Makes carrying a loaded firearm on one's person, or in a vehicle on any public street, where the person is not listed with DOJ as the registered owner an alternate misdemeanor/felony.

- Authorizes a peace officer to arrest a person if the officer has probable cause to believe the person is carrying a concealable firearm, the person is not listed with DOJ as the registered owner of that firearm, and either or both of the following:

  - Has a concealable firearm and unexpended ammunition in his or her immediate possession, or readily accessible; and/or,

  - Has a loaded concealable firearm in his or her immediate possession.

- Requires the district attorney of each county to submit an annual report to the (AG) detailing profiles by race, age, gender, and ethnicity of any person charged under this new law.

- Requires the AG to submit an annual report to the Legislature compiling all the reports described in the paragraph above.

- Provides that this new law's Penal Code sections will remain in effect until January 1, 2005.

Undetectable Knives

Knife manufacturers now produce bladed weapons made from polymers that are advertised and sold with the intent to evade detection by a metal detector. These

knives pose a unique danger to the public because they are specifically designed to evade the sensors of metal detectors commonly used at airports, courthouses, and other government buildings.

AB 1188 (Runner), Chapter 976, Prohibits commercial manufacturing, importing and offering for commercial sale knives and other "stabbing weapons" capable of evading detection by metal detectors, with specified exceptions. Specifically, this new law:

- Makes it a misdemeanor to commercially manufacture, import, keep for, or offer for commercial sale any undetectable knife.

- Defines "undetectable knife" as "any knife or other instrument with or without a handguard capable of ready use as a stabbing weapon that may inflict great bodily injury or death that is manufactured to be used as a weapon and is not detectable by a metal detector set at standard calibration".

- Exempts the manufacture or importation of undetectable knives for sale to a law enforcement or military entity, as well as the "subsequent sale of these knives to a law enforcement or military entity".

- Exempts the manufacture or importation of undetectable knives for sale to "federal, state, and local historical societies, museums, and institutional collections which are open to the public," so long as the knives are properly secured. This new law does not apply to the subsequent sale of such knives to these societies, museums, and collections.

- Requires all knives and stabbing weapons manufactured in California beginning January 1, 2000 with materials not detectable by a metal detector to "be manufactured to include materials that will ensure they are detectable by a metal detector set at standard calibration."

Custodial Officers: Concealed Firearm Licenses

A county sheriff and police chief may issue a license to carry a concealed weapon to a person of good moral character who demonstrates good cause for the issuance of the license and satisfies certain training requirements. A concealed firearm license is generally valid for up to two years. The license is valid up to three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer.

AB 1322 (Oller), Chapter 142, gives a sheriff or police chief the option of issuing a four-year license to carry a concealed firearm to a custodial officer who is an employee of a sheriff. A custodial officer is a public employee responsible for maintaining custody of prisoners and performing tasks related to the operation of

local detention facilities. This new law provides that such a license becomes invalid upon the conclusion of employment as a custodial officer if the four-year period has not otherwise expired or unless the license was limited to a shorter period of time by the issuing authority.

Possession of Firearms

In a 1997 decision, the Sacramento Superior Court in *Dayacmos v. Superior Court* invalidated a state statute which prohibited a person involuntarily detained in a mental health facility from owning or possessing a firearm for five years. The court ruled that the statute was a violation of procedural due process under both the state and federal constitutions. Specifically, the court ruled that the statute did not provide for any meaningful notice or hearing prior to the deprivation of the ability to possess, own, or purchase a firearm.

AB 1587 (Scott), Chapter 578, creates a judicial procedure to determine if a person who has been taken into custody and admitted for treatment because that person is a danger to himself, herself, or others may possess, own, control or purchase a firearm. Specifically, this new law:

- States that a person who has been taken into custody and admitted for treatment because that person is a danger to himself, herself, or others, may request, and shall be granted, a hearing in the superior court to determine if the person shall be subject to a five-year prohibition on the ownership, possession or purchase of a firearm. The district attorney must prove by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

- Mandates that at the hearing, if the court finds that the People have not met their burden, or the People fail to go forward at the hearing, the court must order that the person not be subject to a five-year prohibition, and the Department of Justice (DOJ) shall delete references to the prohibition against firearms from the person's state mental health firearms prohibition system information.

- Requires that upon discharge from a designated facility, the facility shall provide the person with a form to request a hearing in the superior court, and that a single request for hearing may be made any time during the five-year period.

- Prohibits a person who has been certified for intensive treatment related to a mental disorder or chronic alcoholism from possessing or purchasing a firearm for a period of five years, unless a court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner and the court may so order.

Unsafe Handguns

Under existing law, it is a misdemeanor or felony to manufacture or cause to be manufactured, import into California, keep for sale, offer or expose for sale, give, lend, or possess specified prohibited weapons. Existing law does not include an "unsafe handgun".

SB 15 (Polanco), Chapter 248, makes it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, sell, give, or lend any "unsafe handgun", as defined, with certain specific exceptions. Specifically, this new law:

- Makes it a misdemeanor, punishable by up to one year in the county jail, beginning January 1, 2001, for any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, offers or exposes for sale, gives or lends any unsafe handgun, except as specified.

- Defines "unsafe handgun" as any pistol, revolver or firearm capable of being concealed upon a person that does not have a specified safety device, does not meet specified firing requirements, or does not meet specified drop safety requirements.

- Requires any pistol, revolver, or other firearm capable of being concealed upon a person manufactured in California, imported into California for sale, kept for sale, or offered or exposed for sale to be tested by an independent laboratory certified by the Department of Justice (DOJ) and meet or exceed specified standards defining unsafe handguns.

- Requires DOJ to certify laboratories to verify compliance with the specified standards defining unsafe handguns on or before October 1, 2,000.

- Requires every person licensed to manufacture firearms and who manufactures firearms in California, and every person who imports firearms into California for sale, keeps for sale, or offers or exposes for sale any firearm, to certify under penalty of perjury that every model, kind, class, style, type of pistol, revolver, or other firearm capable of being concealed upon a person that he or she manufactures or imports, keeps or exposes for sale is not a prohibited unsafe handgun.

- Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all pistols, revolvers, and other firearms capable of being concealed upon a person that are not unsafe handguns by the manufacturer, model number and model name.

- Authorizes DOJ to charge every person who manufactures, imports into California for sale, offers or exposes for sale any pistol, revolver, or other firearm

capable of being concealed upon a person an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster, and the costs of research and development, report analysis, and other program infrastructure costs.

- Exempts from limitations: (1) prototypes which are to be tested by an independent laboratory to determine if the handgun is prohibited by this new law; (2) the handling of a handgun by a person authorized to determine if the weapon is prohibited; (3) firearms listed as curios or relics by federal law; and, (4) the sale, purchase, or possession of any handgun by specified law enforcement agencies and sworn members of these agencies.

- Exempts the sale, loan or transfer of any firearm between private parties through dealers or law enforcement agencies, between private parties exempt from the requirement that the transfer be through a dealer or law enforcement agency, firearms listed as curios or relics, the delivery or return of a firearm for the purposes of repair, and the return of a firearm by a licensed dealer when the firearm was delivered for the purposes of a consignment sale or as collateral for a pawnbroker loan.

- States legislative intent that DOJ pursue an internal loan from special fund revenues available to DOJ to cover start-up costs for the program established pursuant to this new law, and any loan shall be repaid with the proceeds of fees collected under that program within six months.

Assault Weapons

The Roberti-Roos Assault Weapons Control Act of 1989 restricts assault weapons in California. Restricted weapons continue to be manufactured, modified, named, and renamed. These "copycat" weapons circumvent the law, and there is a need to create an equitable definition that treats owners of identical weapons similarly.

SB 23 (Perata), Chapter 129, adds a "generic" definition of assault weapons to the Assault Weapons Control Act of 1989; makes manufacturing, importing, selling, lending, or giving of a large-capacity magazine, i.e., any ammunition feeding device with a capacity to accept more than 10 rounds, an alternate felony/misdemeanor with specified exceptions; and makes numerous related changes. Specifically, this new law:

- Makes it an alternate felony/misdemeanor, commencing January 1, 2000, for any person who manufactures or causes to be manufactured, imports into California, keeps for sale, offers or exposes for sale, gives away, or lends any large-capacity magazine with specified exceptions.

- Defines "large-capacity magazine" as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not include a feeding device

permanently altered so that it cannot accept more than 10 rounds, nor include any .22 caliber tube ammunition feeding device.

- Defines "assault weapon" as the following:

  - A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and has at least one of the following: (1) a pistol grip that protrudes conspicuously beneath the action of the weapon, (2) a thumbhole stock, (3) a vertical handgrip, (4) a folding or telescoping stock, (5) a grenade launcher or flare launcher, (6) a flash suppressor, or (7) a forward pistol grip.

  - A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

  - A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

  - A semiautomatic pistol that has the capacity to accept a detachable magazine and has at least one of the following: (1) a threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer; (2) a second handgrip; (3) a shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, excepting a slide that encloses the barrel; or, (4) the capacity to accept a detachable magazine at some location outside of the pistol grip.

  - A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

  - A semiautomatic shotgun that has both of the following: (1) a folding or telescoping stock; and (2) a pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

  - A semiautomatic shotgun that has the ability to accept a detachable magazine.

  - Any shotgun that has a revolving cylinder.

- Provides that any person who manufactures within California, imports into California, offers for sale, or who gives or lends any assault weapon with specified exceptions is guilty of a felony punishable by imprisonment in the state prison for four, six, or eight years.

- Provides that a first-time violation for the unlawful possession of an assault weapon is an infraction punishable by a fine of up to $500 if the person was

found with no more than two firearms in a specified location and the person meets all of the following conditions:

- The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon.
- The person is not found to be in possession of an assault weapon which was prohibited under the Roberti-Roos Assault Weapons Control Act of 1989.
- He or she has not previously been convicted of an "assault weapons violation."
- He or she was found to be in possession of the assault weapon within one year of the one-year established registration period.
- He or she has since registered or relinquished the firearms as prescribed.

- Provides that a second or subsequent violation for possession of an assault weapon shall be punishable as an alternate felony/misdemeanor.

- Allows specified sworn peace officers to possess or use assault weapons for law enforcement purposes, whether on or off duty; and allows the sale or transfer of an assault weapon by a law enforcement agency to a sworn officer upon retirement from specified law enforcement agencies.

- Makes conforming changes to provisions relating to the commission of an offense while armed with a firearm or where a firearm was used in the commission of the offense.

Firearm Safety Devices

The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related deaths. A 1997 study by the federal Center for Disease Control and Prevention reports the rate of death in the United States was nine times higher than in 25 other industrialized nations for unintentional, firearms-related deaths of children under the age of 15.

SB 130 (Hayden), Chapter 245, requires the Attorney General (AG) to develop and implement minimum safety standards for firearms safety devices and gun safes, and mandates that all firearms manufactured in California or sold or transferred by a licensed firearms dealer be accompanied by an approved firearms safety device and be accompanied by a safety warning label or language, as specified. Specifically, this new law:

- Provides that effective January 1, 2002, all firearms sold or transferred in California, except as provided, by a licensed firearms dealer, including private transfers through dealers, and all firearms manufactured include or be accompanied by firearms safety devices approved by the AG.

- Requires the AG, not later than January 1, 2000, to commence development of regulations to implement a minimum safety standard for firearm safety devices and gun safes to reduce the risk of firearms-related injuries to children.

- Requires the AG adopt and issue regulations regarding a final safety standard for firearm safety devices and gun safes, and report these standards to the Legislature by January 1, 2001. These standards are effective January 1, 2002.

- Requires the Department of Justice (DOJ) to certify laboratories to test firearm safety devices in order to verify compliance with standards, and to compile and publish a roster of approved safety devices that have met the DOJ's standards.

- Authorizes the AG after January 1, 2002 to order recall and replacement of any gun safe or firearm safety device that did not conform to the standards required by the provisions of this new law, required that the licensed manufacturer bring the firearm or the firearm safety device into conformity, or provided a replacement.

- Requires that all firearms sold or transferred in California by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured be accompanied by a specific warning language or a label.

- Requires that each lead law enforcement investigating an incident must report to the Department of Health Services any incident in which a child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound in which the child suffered serious injury or was treated for an injury by a medical professional.

- Provides that a violation of this new law is punishable by a fine of $1,000; a second violation is punishable by a fine of $1,000 and a 30-day license suspension; and a third violation results in a permanent loss of a license.

- Provides that the DOJ may require a $1 charge on all firearms purchased or transferred to pay for the costs of the program.

Domestic Violence: Restraining Orders

Current law permits removing guns found at the scenes of domestic violence incidents, arresting restraining order violators, and prohibiting restrained persons from owning or possessing firearms.

SB 218 (Solis), Chapter 662, makes several changes to domestic violence laws, including: requiring, courts to seize firearms from persons subject to domestic violence protective orders, modifying existing mandatory minimum jail terms for repeat offenders, and authorizing translations of certain court orders. Specifically, this new law:

- Makes the following changes to conform state law to federal law regarding ownership or possession of firearms when subject to a domestic violence protective order (DVPO):

  - Enacts an automatic prohibition from owning or possessing a firearm by deleting the requirement of a separate court order;

  - Limits judicial discretion to order either a shorter or longer period of time to relinquish a firearm than the current requirement of 72 hours; and,

  - Limits judicial discretion to modify an order requiring that a person subject to a DVPO relinquish all firearms for the duration of the order or orders;

- Provides an exemption to the mandatory seizure of a firearm for a peace officer who is required to carry a firearm as a condition of employment and for personal safety. The exemption only applies if a court makes a finding that the officer does not pose a threat of harm. Prior to the making of any finding, the court shall require a psychological evaluation and may require the officer to enter into counseling or other treatment program as appropriate.

- Requires an officer to make an arrest, with or without a warrant, when responding to a call alleging a violation of a DVPO, whether or not the violation occurred in the presence of the officer. This law requires law enforcement to seize a firearm or other deadly weapon.

- Expands contempt of court punishable as a misdemeanor to include willful disobedience of out-of-state court orders related to domestic violence.

- Requires the Judicial Council to provide notice on all protective orders that a person is prohibited from owning or possessing a firearm.

MISCELLANEOUS

Compensating a Victim of a Miscarriage of Justice

In 1980, Kevin Lee Green was convicted of murdering his unborn child and attempting to murder his wife who was nine months pregnant at the time. Mr. Green's wife, Dianna, suffered brain damage and memory loss in the attack; she was the main witness for the prosecution. Mr. Green was sentenced to serve 15 years to life in prison, but he always maintained his innocence. DNA evidence combined with Gerald Parker's confession years later proved Mr. Green's innocence. Mr. Green served 17 years in prison for crimes he did not commit.

AB 110 (Baugh), Chapter 619, appropriates $620,000 from the General Fund to the Department of Justice to recompense a victim of a miscarriage of justice, and exempts the recipient from paying state income tax on the award.

Dangers in the Workplace

The vast majority of companies practice safety at the workplace, adhering to or exceeding Occupational Safety and Health Act (OSHA) standards. At the same time, some businesses "cut corners" and consequently risk the safety of employees. AB 1127 establishes a range of penalties when such conduct rises to a criminal level.

AB 1127 (Steinberg), Chapter 615, increases the penalties for an employer who knowingly creates a hazard for employees, or willfully, or repeatedly violates OSHA standards, causing serious harm or death. This new law:

- Makes it a misdemeanor for every employer, officer, management official or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee to do any of the following:

  - Knowingly or negligently violating any standard, order, or special order; the violation of which is deemed a serious violation pursuant to Labor Code Section 6432 [Item 1(a)];

  - Repeatedly violating any standard, order, or special order which creates a real and apparent hazard to employees [Item 1(b)];

  - Failing or refusing to comply, after notice and expiration of any abatement period, with any standard, order, or special order which creates a real and apparent hazard to employees (Item 1(c)]; and,

- Knowingly inducing, directly or indirectly, another person to violate the items above [Item 1(d)].

- Makes a violation of Item 1(a) punishable by imprisonment up to six months in the county jail, a $5,000 fine, or both.

- Makes a violation of Items 1(b), 1(c) or 1(d) punishable by imprisonment up to one year in county jail, a fine up to $15,000, or both. If the defendant is a corporation or a limited liability company, the fine may not exceed $150,000.

- Specifies that where the violation causes death or permanent or prolonged impairment of the body of any employee, the violation can be charged as a misdemeanor or a felony. A misdemeanor is punishable by up to one year in the county jail, a fine not exceeding $100,000, or both; a felony is punishable by 16 months, 2 or 3 years in state prison, a fine not exceeding $250,000, or both. If the defendant is a corporation or a limited liability company, the fine may not exceed $1.5 million. (Item 2)

- Specifies that if a violation of Item 2 occurs within seven years of: (1) a conviction for violating Items 1(b), 1(c) or 1(d); or, (2) a conviction for submitting a signed statement affirming compliance with abatement of a hazard when the hazard has not been abated, the defendant is guilty of a felony, punishable by 16 months, 2 or 3 years in state prison, a fine not to exceed $250,000, or both; however, if the defendant is a corporation or a limited liability company, the fine may not be less than $500,000 nor more than $2.5 million.

- Specifies that if a violation of Item 2 occurs within seven years of a conviction for violating Item 2, the defendant is guilty of a felony, punishable by two, three, or four years in state prison, a fine not to exceed $250,000, or both; however, if the defendant is a corporation or a limited liability company, the fine may not be less than $1 million nor more than $3.5 million.

- Makes it a misdemeanor for an employer to submit a signed statement affirming compliance with abatement of a hazard when the hazard in fact was not abated. A violation can be punished by up to one year in county jail, a $30,000 fine, or both. If the defendant is a corporation, the fine shall not exceed $300,000.

- Defines "serious violation" as either: (1) a substantial probability that death or serious physical harm could result from a violation, including circumstances where either of the following could lead to death or great bodily injury, an exposure exceeding an established permissible exposure limit, or the existence of one or more practices, means, methods, operations, or processes which have been adopted or are in use; and, (2) the violation results in an occupational injury or illness indicative of a condition that may result in serious physical harm.

Hit-and-Run Boating Offenses

While the Vehicle Code has established penalty enhancements for hit-and-run offenses that involve the death of a victim, the Harbors and Navigation Code does not address boating hit-and-run incidents.

AB 1151 (Leach), Chapter 500, enhances penalties for boat operators involved in hit-and-run boating accidents. This new law:

- Enhances the punishment for the following offenders with an additional, consecutive term of five years in state prison pursuant to the existing enhancement provisions of Vehicle Code Section 20001(c):
  - A person who operates a vessel and commits gross vehicular manslaughter while intoxicated.
  - A person who operates a vessel and commits vehicular manslaughter in the commission of an unlawful act not amounting to a felony but without gross negligence.
  - A person who operates a vessel and commits vehicular manslaughter in the commission of a lawful act which might produce death, in an unlawful manner but without gross negligence.
- Increases the minimum fine to $1,000 for a person convicted of operating a vessel involved in an accident who knows that personal injury resulted and fails to leave identifying information with the victim or other occupant of the other vessel or a peace officer at the scene and/or fails to render reasonable assistance to the injured person.
- Increases the minimum fine to $1,000 for a person convicted of operating a vessel involved in an accident who knows that the death or disappearance of any person resulted and fails to leave identifying information as described in the paragraph above, and fails without delay to report the incident to the appropriate law enforcement agency if there is no peace officer at the scene.
- Requires the sentencing court to take into account a defendant's ability to pay the fine and, in the interests of justice, the court may reduce or eliminate the minimum fine.

Home Detention, County Parole and Work Furlough Programs

The Legislature has authorized counties to conduct a variety of programs as alternatives to incarceration in jail. The statutory authorization for these programs

expired January 1, 1999. In order to continue these programs on a lawful basis after January 1, the Legislature authorized the re-enactment of these provisions and the Governor signed this bill into law.

AB 1469 (Committee on Public Safety), Chapter 113, re-enacts ability-to-pay and fee provisions relating to county home detention, county parole and work furlough programs that expired on January 1, 1999. This new law:

- Grants a county board of supervisors the authority to prescribe the fee for participating in a work furlough program, home detention program, or county parole program.

- States that the fee shall be charged to the applicant and may not exceed the cost of equipment, supervision and other operating costs of the program.

- Exempts privately operated home detention programs from the fee limitation described in the paragraph above.

- Prohibits the administrator of a program from having access to an applicant's financial data prior to granting or denying participation.

- Prohibits the administrator from considering an applicant's ability or inability to pay for purposes of granting or denying participation in a program.

- Defines "ability to pay" as the overall capability of a participant to reimburse the costs or a portion of the costs of supervision.

- Authorizes the program administrator to determine the method and frequency of payment by a participant in one of the specified programs.

- Provides that the administrator may waive fees charged to the applicant in the interest of justice.

- Allows modification or waiver of the fees at any time on the grounds of a change in financial position.

- Specifies that disagreements regarding the amount of fees to be assessed or an applicant's ability to pay will be resolved by the appropriate court.

- States that the administrator is not prohibited from verifying a participant's employment information regarding wages, hours and insurance.

Missing Persons

Under existing law, law enforcement is required to put out an immediate "be-on-the-lookout" bulletin for children under the age of 12 reported missing and for any person

when there is evidence the person is at risk. These bulletins ensure law enforcement's rapid response to missing persons reports.

SB 6 (Rainey), Chapter 579, increases the age from under 12 to under 16 for a person for whom local police and sheriff's departments are required to broadcast a missing persons bulletin, and provides that missing persons bulletins shall not be required if the local governing body adopts a resolution making the requirement inoperative.

High Technology Theft Apprehension and Prosecution Program

In 1997, SB 438 (Johnston), Chapter 906, Statutes of 1997, created the High Technology Theft Apprehension and prosecution Program (HTTAPP). The Federal Bureau of Investigation (FBI) has stated that regional programs, such as the HTTAPP, are essential to the investigation and prosecution of high-tech crimes. By sharing information, regional task forces greatly improve the intelligence capability of each participating agency and allow smaller departments to benefit from the pooling of information on a statewide basis.

SB 157 (Johnston), Chapter 427, extends the HTTAPP until January 1, 2003.

Foreign Nationals

The 1963 Vienna Convention on Consular Relations Treaty was signed by 140 countries, including the United States which ratified the Treaty in 1969. This Treaty guarantees that a foreign national arrested or detained in a foreign country must be told by police "without delay" that he or she has the right to speak to a consular official, and law enforcement must notify the appropriate consulate if the individual so requests. Additionally, 56 countries that have signed the Treaty require mandatory notice to their local consulates, regardless of the arrestees'/detainees' desires. SB 287 requires California law enforcement agencies to incorporate information about Treaty obligations in policy and training manuals, and establishes procedures for complying with the Treaty.

SB 287 (Baca), Chapter 268, requires a peace officer who arrests and books, or detains for more than two hours, a suspected foreign national to advise the suspect that he or she has a right to communicate with a consular official from his or her country. Specifically, this new law:

- Requires every peace officer who arrests and books, or detains for more than two hours, a suspected foreign national to advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country.

- Requires the peace officer to notify the "pertinent official" in his or her agency that the foreign national wants the consulate notified if the foreign national

chooses to exercise that right.

- Requires the law enforcement official who receives the notification request pursuant to the paragraph above to follow agency procedures in conjunction with the Department of State Guidelines Regarding Foreign Nationals Arrested or Detained in the United States, and to notify the appropriate consular officers.

- Requires the law enforcement official in charge of the custodial facility where the foreign national is held to allow communication with, correspondence with, and visits by a consular officer.

- Requires notification of a consular official, despite the foreign national's request to the contrary, if the home country has called for mandatory notification pursuant to the Treaty.

- Requires state law enforcement agencies, before December 31, 2000, to include in policy, procedure and training manuals language from the 1963 Vienna Convention on Consular Relations Treaty.

Child Death Review Council

California has one of the highest child abuse fatality rates in the nation. Coordination of all entities involved in the protection of children should be encouraged. Currently, these entities are prevented by law from sharing information and do not have a proper integrated system to prevent child fatalities.

SB 525 (Polanco), Chapter 1012, expands the Child Death Review Council membership, and increases and makes mandatory the responsibilities of the Department of Justice (DOJ) related to child deaths suspected to be a result of abuse or neglect. Specifically, this new law:

- Expands the Child Death Review Council to include the following public and private agencies: (1) Office of Criminal Justice Planning (OCJP); (2) Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review; (3) California Conference of Local Health Officers; (4) California Conference of Local Directors of Maternal, Child and Adolescent Health; (5) California Conference of Local Health Department Nursing Directors; (6) California District Attorneys Association; and, (7) three regional representatives chosen by other members of the council.

- Provides that DOJ is authorized to carry out the purposes of this new law by coordinating council activities and working collaboratively with the agencies and organizations on the California State Child Death Review Council.

- Requires DOJ and the agencies and organizations involved to analyze and interpret state and local data on child death in an annual report to be submitted

to local child death review teams, with copies to the Governor and the Legislature. The state data shall include DOJ's Child Abuse Central Index and Supplemental Homicide File and the Department of Health Services' (DHS) Vital Statistics Child Welfare Services/Case Management System.

- Requires the DHS in collaboration with the California State Child Death Review Council to design and implement a statewide child abuse and neglect fatality tracking system, as specified, incorporating information collected by local child death review teams. This provision shall become operative July 1, 2000, and shall be implemented to the extent that funds are appropriated in the Budget Act.

- Requires DOJ and the State Child Death Review Council in conjunction with OCJP to coordinate specified statewide and local training for county child death review teams.

- Requires DOJ to create, maintain, update, and distribute electronically and by paper a directory containing the names of the members of the agencies, organizations, and local child death review teams participating in the project; to work in collaboration with members of the Child Death Review Council to develop a relevant directory of experts, resources and information; and to facilitate regional working relationships among teams.

- Requires OCJP in coordination with the Department of Social Services, DOJ, and the California State Child Death Review Council to contract with state or nationally recognized child death review organizations to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standards and protocol for the investigation of fatal child abuse, and other related topics and programs. These provisions shall only be implemented to the extent OCJP can absorb the costs within its current funding.

- Requires county child welfare agencies to create a record in the Child Welfare Services/Case Management System on all cases of child death suspected to be related to child abuse or neglect; and if the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information in the system.

- Requires law enforcement and child welfare agencies to cross report all cases of child death suspected to be related to child abuse and neglect whether or not the deceased child has any known surviving siblings.

Arson Registration

In 1994, urgency legislation made arson registration a lifetime requirement for those persons convicted of certain arson offenses.

SB 555 (Karnette), Chapter 518, clarifies existing law regarding registration of arson offenders. Specifically, this new law:

- Clarifies existing law by requiring persons convicted of aggravated arson to register.

- Clarifies existing law by stating that registration as an arson offender is a life-long requirement for a person convicted after November 30, 1994, and a five-year duty for a person convicted between January 1, 1985 and November 29, 1994 and ordered to do so by the court.

- Reinstates for five years the factor in aggravation of $5 million damages for the offense of aggravated arson. This provision expired on January 1, 1999.

- Shortens the period of time from 30 to 14 days that a person convicted of arson must register with law enforcement after entering a city, county, or college campus.

- Simplifies existing law by stating that a juvenile committed to the California Youth Authority for arson must register until he or she is 25 years old or until the record is sealed, whichever occurs first.

- Provides that the probation department, rather than the court, has the duty to inform a defendant released on probation of his or her duty to register as an arson offender.

- Provides that a person convicted of a misdemeanor may be relieved of the duty to register if he or she successfully petitions the court to dismiss a complaint following the successful completion of probation.

Prior Convictions and Sentencing

Under existing law, a defendant who commits a new offense punishable by imprisonment in state prison, and has suffered one or more specified prior convictions can have his or her sentence enhanced under certain circumstances. This law addresses the situation where a defendant's prior convictions came under predecessor statutes with variations in the statutory language, or the convictions occurred in a foreign jurisdiction, but the prior nonetheless contained the elements needed to qualify as an enhancing prior conviction for the new offense.

SB 786 (Schiff), Chapter 350, clarifies that a prior felony conviction based on a predecessor statute can be used at the time of sentencing for a new offense to impose an enhancement or a term of imprisonment so long as the predecessor statute included all the elements of the current offense specified as a qualifying "prior felony conviction." Further, this new law conforms sentencing provisions of

the "sexually violent predator" (SVP) law as described above. Also, this new law expressly codifies the decision in People v. Butler, (1998) 68 Cal. App. 4th 421.

- Provides that an offense specified as a "prior felony conviction" that permits enhancing a criminal sentence or imposing a prison term due to a defendant's prior conviction or a prior prison term includes any prior felony conviction under any predecessor statute of the specified offense that includes all the elements of the specified offense. Further, this new law provides SB 786 applies to all statutes that allow an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

- Provides, for the purpose of determining who is a SVP, that a conviction for an offense under a predecessor statute that includes all the elements of an offense described statutorily as a "sexually violent offense" shall qualify as a "sexually violent offense" even if the offender did not receive a determinate sentence for that prior offense.

- Provides that this new law is intended "to be declaratory of existing law as contained in People v. Butler, (1998) 68 Cal. App. 4th 421, at pages 435-441."

Omnibus Penal Code Revisions

There are a number of obsolete, duplicative, or inconsistent Penal Code provisions.

SB 832 (Committee On Public Safety), Chapter 853, makes numerous, technical changes to the Penal Code. This new law:

- Describes the crime of unlawful sexual intercourse as cross-referenced in an Education Code provision.

- Reorganizes, without making any substantive changes, existing statutory language regarding the punishment and fines for unlawful sexual intercourse.

- Corrects a statutory reference to peace officers employed by water districts.

- Eliminates incorrect references to duties of the Commission on Peace Officer Standards and Training (POST) in provisions requiring training for security officers in the use of tear gas. This law correctly identifies the Department of Consumer Affairs, Bureau of Security and Investigative Services as the responsible agency.

- Clarifies provisions regarding qualifications for a Good Driver Discount Insurance policy by revising a cross-reference.

- Limits the intent requirement for the offense of obstructing justice by a judicial officer to actual knowledge by deleting the language "or should have known."

- Authorizes one superior court judge, instead of three, to hear appeals from traffic infractions convictions.

- Revises certain provisions regarding the California Habeas Resource Center to require that reimbursement payments be processed through the Federal Trust Fund.

- Adds commissioners, referees, or other subordinate judicial officers to the list of persons protected by the statute that provides for an alternate felony/misdemeanor for assault upon specified governmental officials.

Unlawful Practice of Dentistry

Any person who presents himself or herself as a practicing dentist without having a valid license as required by law creates a substantial risk to the public health and safety. Existing law make such an offense punishable by no more than six months in the county jail.

SB 1308 (Committee on Business and Professions), Chapter 655, increases the penalty up to one year in the county jail for practicing dentistry without a valid, unrevoked, or unsuspended certificate as required by law.