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PUBLIC SAFETY 2003

CREATING A SAFER CALIFORNIA

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BACKGROUND CHECKS

Criminal Background Checks

The Department of Justice (DOJ) maintains state summary criminal history information and may release that information to specified persons and entities. Existing law allows criminal background checks for various employment, licensing and certification purposes. The criteria for what criminal history information DOJ may release depends on the type of employment, license or certification being sought.

SB 873 (McPherson), Chapter 124, provides that requests made to the DOJ for federal-level criminal offender record information will be forwarded to the Federal Bureau of Investigation (FBI). Specifically, this new law:

- Provides that requests for federal-level criminal record information received by DOJ will be forwarded to the FBI so the agency may search for any record of arrests or convictions.

- Provides that the provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

- Includes the DOJ in the list of those law enforcement agencies that may disclose any information that they gather related to the taking of a minor in custody to another law enforcement agency, including a school district police or security department or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case. This new law repeals other code sections inconsistent with these provisions.

Background Checks: Live Scan Fingerprints

In fulfilling the role of California's criminal record repository, the Department of Justice (DOJ) is responsible for providing a secure and efficient transmission method for criminal offender record information (CORI) throughout California. CORI is one of the most important resources utilized by the law enforcement community, and applicant regulatory entities depend on CORI to make informed suitability determinations. Establishing a distinct communication network is anticipated to result in the expansion of the Applicant Live Scan Network.

SB 970 (Ortiz), Chapter 470, requires the Attorney General (AG) to establish an electronic communication network to facilitate the transmission of requests for criminal record information for background checks, and requires the Department of Justice (DOJ) to only accept electronically transmitted fingerprint images for this purpose. Specifically, this new law:

- Requires the AG to establish a communication network that allows the transmission of requests from private service providers in California to the DOJ for criminal record information for purposes of employment, licensure, certification, and custodial child placement or adoption. This network shall allow private service providers approved by the DOJ to connect directly to the DOJ.

- Requires as of July 1, 2005, the DOJ to accept electronically transmitted fingerprint images and related information for the purpose of processing criminal record offender information for employment, licensure, certification, custodial child placement or adoption only if those images and related information are electronically submitted.

- Allows the DOJ to continue, based on regional unavailability of electronic transmission sites or when DOJ processing procedures show a need, to accept hard fingerprint cards in order to process criminal offender record information requests.

- Requires the DOJ to continually monitor the statewide availability of electronic transmission sites and work with public and private entities to ensure reasonable availability.

- Requires users of the communications network to undergo training as determined by the DOJ. Failure to comply with the training requirement shall terminate the connection to the communications network until the training is completed.

- Requires users of the communications network to comply with any policy, practice or procedure, or requirement deemed necessary by the DOJ to maintain network stability and security. Failure to comply shall result in termination of the connection to the communications network until the DOJ determines that there is satisfactory compliance.

- Requires users of the communications network to only use hardware and software in connecting to the communications network currently approved and certified by the DOJ, the National Institute of Standards and Technology, and the Federal Bureau of Investigation.

- States that users of the communications network shall be responsible for securing all hardware, software, and telecommunication service or linkage necessary to accomplish connection to the communications network, once authorized by the DOJ.

- Requires the communications network to be implemented by July 1, 2004.

- States that nothing in this section shall be intended to authorize any entity to access or receive criminal record information from the DOJ.

CHILD ABUSE

Child Sexual Abuse: Tolling of the Statute of Limitations

Current law provides an exception to the general six-year statute of limitations on reporting sex abuse cases by allowing a victim who was a minor when the abuse occurred to report at any time within or beyond the general six-year limit. However, once a child sex abuse case is reported, authorities have one year to assemble relevant evidence and determine if the case should go to trial. To corroborate statements of a child victim, prosecutors must seek independent evidence through grand jury subpoenas of relevant documents and other methods of investigation.

In almost every case involving child sexual abuse allegations against priests and employees of the Archdiocese of Los Angeles, the general statute of limitations had expired. Documents kept by the Archdiocese could lead to evidence or independent corroboration. During June and July 2002, grand jury subpoenas were issued ordering the Archdiocese to produce documents involving 17 priests and employees. An attorney representing several of the priests filed a number of legal motions and subsequently appealed adverse rulings by the trial court. While the parties were litigating the validity of the subpoenas the statute of limitation continued in effect.

AB 949 (Pavley), Chapter 2, tolls the statute of limitations in certain child sexual abuse prosecutions where the defense initiates litigation challenging a grand jury subpoena duces tecum. Specifically, this new law:

- Tolls the statute of limitation where the limitation period has not expired in criminal cases involving child sexual abuse from the time a party initiates litigation challenging a grand jury subpoena until the end of that litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

- Provides that it does not affect the definition or applicability of any evidentiary privilege.

- Provides that it shall not apply where a court finds that the grand jury subpoena was issued, or caused to be issued, in bad faith.

Abandoned Children

SB 1368 (Brulte), Chapter 824, Statutes of 2000, established a procedure whereby a parent or person with lawful custody of a child 72 hours or younger may surrender

custody of the child anonymously to a hospital emergency room or other facility designated by a county. The person surrendering custody would also be immune from prosecution under the child abandonment or neglect statutes. SB 1368 also provided a procedure for the person to reclaim the abandoned newborn within 14 days of the voluntary surrender. Now commonly known as the "Safe Haven Law," SB 1368 was a response to reports of babies being abandoned in places such as trash bins, restrooms, and highways, and being discovered dead or in a life-threatening medical condition. Rather than prosecuting the parent, SB 1368 focused on saving the life of the newborn by encouraging the person with custody to anonymously surrender the child so he or she could receive immediate medical attention.

It is not clear how many newborn babies are abandoned annually in the United States. In 1998, an informal nationwide survey of media reports conducted by the United States Department of Health Services found 105 newborns were abandoned in public places, including 33 who were found dead.

SB 139 (Brulte), Chapter 150, makes a number of changes to the existing Safe Haven statute. Specifically, this new law:

- Revises the definition of the location where the voluntary surrender of physical custody of a child may occur from a public or private hospital emergency room or additional designated location to a "safe surrender site".

- Requires any hospital or safe surrender site designated by the county board of supervisors to post a sign utilizing a statewide logo adopted by the Department of Social Services notifying the public of the location where a child may be safely surrendered.

- Defines a "safe surrender site" as either of the following:

  - A location designated by a county board of supervisors to be responsible for the voluntary surrender of physical custody of a child who is 72 hours old or younger from a parent or individual who has lawful custody; or,

  - A location within a public or private hospital designated by the hospital to be responsible for the voluntary surrender of physical custody of a child who is 72 hours old or younger from a parent or individual who has lawful custody.

- Makes a number of technical changes by providing that:

  - Possession of an ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child;

  - Any medical information including, but not limited to, information obtained from the specified questionnaire shall be provided to the child

protective services or county agency. Personal identifying information pertaining to the person who surrenders the child shall be redacted from the records provided to the agency. Any personal identifying information relating to a parent or individual who surrenders a child obtained from the questionnaire is confidential and shall be exempt from disclosure by the agency under the California Public Records Act.

- As soon as possible, but no later than 24 hours after temporary custody is assumed, the child protective services or county agency shall report all known identifying information to the California Missing Children Clearinghouse and the National Crime Information Center.

Child Abuse and Neglect Reporting Law

A mandated reporter who has knowledge of, or observes, a child he or she knows or reasonably suspects has been the victim of child abuse is required to report it immediately to specified child protection agencies.

SB 316 (McPherson), Chapter 122, makes custodial officers, as defined, mandated reporters for the purpose of the Child Abuse and Neglect Reporting Act (CANRA).

Drug Endangered Child Response Teams

Clandestine manufacture and distribution of methamphetamine and other controlled substances in home laboratories has created a public health crisis in California. In California, 85 percent of clandestine laboratories seized by law enforcement are located in residences. Increasingly, children are present in these home laboratories and are exposed TO highly explosive, deadly chemicals. For example, in Los Angeles County in 1999, children were present in 40 percent of the laboratories subject to seizure. More than 300 children were placed in protective custody as a result of drug laboratory investigations.

To help protect children who live in homes where clandestine drug laboratories are located, seven counties established multi-agency Drug-Endangered Child Response teams consisting of law enforcement, district attorney's offices, and children's services agencies representatives. These teams were funded by California's Byrne Grant Anti-Drug Abuse Fund. The team approach ensures that children living in such homes receive immediate care and referrals to specialized programs and that specially trained prosecutors prosecute these cases to conclusion.

SB 496 (Alpert), Chapter 75, encourages every law enforcement and social services agency in California by January 1, 2005 to develop, adopt, and implement written policies and standards for its response to narcotics crime scenes where a child is either immediately present or where there is evidence that a child lives resides in that home. This new law also encourages communities to

form multi-agency groups to develop standards and protocols that address specified issues with respect to law enforcement response to drug endangered children.

Sex Offender Registration: Child Pornography

The list of offenses that require a person to register as a sex offender is comprehensive. Currently, four separate child pornography offenses require registration: sending, bringing, or possessing with the intent to distribute for commercial consideration; sexual exploitation of a child; employing a minor to produce obscene matter advertising for sale; and possession of child pornography.

SB 879 (Margett), Chapter 540, adds a specified child pornography offense to the list of persons who are required to register as sex offenders. Specifically, this new law adds the offense of sending, bringing, possessing, preparing, publishing, producing, duplicating or printing any obscene matter depicting a person under the age of l8 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material to the list of offenses that require registration as a sex offender.

CONTROLLED SUBSTANCES

Methamphetamine Manufacturing

One of the most common techniques for manufacturing methamphetamine involves using hydriodic acid in conjunction with ephedrine, red phosphorous and iodine. Iodine is used to create hydriodic acid, which is a reducing agent. While iodine crystals are used legitimately as a household disinfectant or in the manufacturing process for certain germicides and industrial chemicals, the amounts used in clandestine laboratories greatly exceeds the amounts typically consumed during legitimate activities.

Health and Safety Code (HSC) Section 11383(f) provides that possession of essential chemicals sufficient to manufacture hydriodic acid, with intent to manufacture methamphetamine, shall be deemed to be possession of hydriodic acid. A recent Court of Appeals case reversed a conviction for possession of hydriodic acid holding that HSC Section 11383(f) creates an impermissible mandatory presumption that possession of iodine and red phosphorus is sufficient to prove possession of hydriodic acid. As drafted, the statute equates possession of the essential chemicals with possession of the synthesized substance.

AB 158 (Runner), Chapter 619, redrafts provisions concerning possession of precursors and other specified chemicals with intent to manufacture methamphetamine or PCP. Specifically, this new law:

- Provides that any person who, with intent to manufacture methamphetamine or specified analogs, possesses hydriodic acid or a reducing agent, or any product containing hydriodic acid or a reducing agent, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

- Defines a "reducing agent" for the purposes of manufacturing methamphetamine as an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

- Provides that any person who possesses an isomer of any of the specified compounds, with intent to manufacture any of those compounds, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

- Provides that any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

Manufacture of Methamphetamine: Aggravating Factor

Existing law provides for a sentence enhancement of an additional two years in the state prison for any person convicted of the manufacture of methamphetamine or PCP where the commission of the offense occurs in a structure where a child under 16 years of age is present. However, if a child resides in the structure, but is not present when the methamphetamine is manufactured, the court may not impose an increased penalty.

AB 233 (Cogdill), Chapter 620, makes the fact that a person under 16 years of age resides in a structure where methamphetamine was manufactured an aggravating factor at the sentencing of a person convicted of the offense if it is not alleged and proved as an enhancement.

Criminal Offenses: School Employees

Upon the arrest of a teacher or school employee for specific offenses including possession of a controlled substance or an offense requiring a person to register as a sex offender, existing law requires local law enforcement to immediately notify the school district's superintendent. These provisions do not include the California Highway Patrol.

AB 608 (Daucher), Chapter 536, adds the Commissioner of the California Highway Patrol to the list of law enforcement officials required to report the arrest of a school employee for specified offenses to the superintendent of the school district or to the private school authority that employs the person.

Specifically, this new law:

- Requires the Commissioner of the Highway Patrol to report the arrest of a teacher or school employee for specified controlled substance violations, which upon conviction requires a person to register as a convicted drug offender to the superintendent of schools or the entity employing the person.

- Requires the Commissioner of the Highway Patrol to report the arrest of a teacher or school employee for specified sex offenses which upon conviction requires a person to register as a convicted sex offender to the superintendent of schools or the entity employing the person.

- Provides that notice may only be given if the law enforcement officer knows the arrestee is an employee of a school district or private school.

Restricted Chemicals Permits

Manufacturers who produce chemicals for such uses as industrial solvents and consumer goods must obtain licenses to produce or use precursor chemicals under the licensure provisions for pharmaceutical producers. Existing law provides that producers and users of chemicals listed in Health and Safety Code Section 11100 must obtain a permit from the Department of Justice (DOJ). Applications for permits must include documentation of legitimate uses for regulated chemicals. Existing law further provides that "[s]elling, transferring, or otherwise furnishing or obtaining any [restricted] substance specified in subdivision (a) of [Health and Safety Code] Section 11100 without a permit is a misdemeanor or a felony." While a violation of those requirements is a crime, criminal prosecution is not always warranted for lesser violations.

AB 709 (Correa), Chapter 142, enacts a "cite and fine" system for violations of controlled substance precursor laws to provide law enforcement and violators with a less burdensome alternative to criminal prosecutions while increasing the incentive for compliance with these laws. Permit holders that violate reporting requirements can be issued intermediate sanctions of citations and fines, with a maximum possible penalty of $2,500 for those violations that do not warrant criminal prosecution. Informal hearings can be held regarding those same citations at the request of the permit holder, as specified.

Prescription Drugs: Electronic Monitoring

All prescription drugs in California are monitored and regulated in a schedule system similar to federal law. The schedules identify the legality and abuse potential of individual drugs. Schedule II controlled substances are the strongest, highest abuse potential drugs available by prescription yet have substantial medical value. Existing law requires that any person prescribing a Schedule II controlled substance issue the prescription on a triplicate prescription form provided by the Department of Justice (DOJ). Since the mid-1940's, California has administered the existing system for the

monitoring of Schedule II controlled substances through the use of DOJ-issued, serialized triplicate prescription forms. Existing law also requires the pharmacist to forward the original of the prescription form to the DOJ each month.

AB 3042 (Takasugi), Chapter 738, Statutes of 1996, established the Controlled Substances Utilization Review and Evaluation System (CURES) - a technologically sophisticated data monitoring system to collect as much data as is needed and provide easy access to the data collected for educational, law enforcement, regulatory, and research purposes.

SB 151 (Burton), Chapter 406, eliminates the July 1, 2008 sunset date on the CURES system administered by the DOJ and the requirement that Schedule II controlled substances prescriptions be written on triplicate forms. Specifically, this new law:

- Eliminates the triplicate prescription requirement for Schedule II controlled substances after July 1, 2004. Thereafter, prescribers of Schedule II controlled

  substances shall meet the same prescription requirements imposed with respect to Schedule III - V controlled substances.

- Provides that on January 1, 2005 prescriptions for Schedule II – V controlled substances shall be written on secure, forgery-resistant forms.

- Establishes a number of different requirements for printing prescription forms for controlled substances by "security printers" approved by the Board of Pharmacy, as specified. Provides that it is a misdemeanor to obtain or attempt to obtain by false pretenses, counterfeit, or possess a counterfeit controlled substance prescription form.

- Creates a procedure whereby a law enforcement agency may petition a court to require that a practitioner surrender all triplicate prescription blanks or controlled substance prescription forms in his or her possession.

- Eliminates the July 1, 2008 sunset date on the CURES program.

- Provides that contingent upon the availability of adequate funds from the DOJ, the prescription of Schedule III controlled substances may be reported to CURES. The DOJ may seek and use grant funds to pay the costs incurred from additional reporting. Funds shall not be appropriated from the contingent fund of the Medical Board of California, the Pharmacy Board, the State Dentistry Fund, the Registered Nursing Fund, or the Osteopathic Medical Board of California to pay the costs of reporting Schedule III

controlled substances to CURES.

- Revises provisions relating to prescribing Schedule II controlled substances to terminally ill patients.

- Makes a number of conforming changes to statutes relating to the prescribing and dispensing of Schedule II controlled substances.

Reporting Requirements: Chemicals Used to Manufacture Controlled Substances

Federal law imposes a number of different reporting requirements for California companies that engage in the business of distributing products containing ephedrine or pseudoephedrine as well as for precursor chemicals, solvents or reagents that can be used to manufacture illegal controlled substances.

SB 276 (Vasconcellos), Chapter 369, clarifies statutes concerning reporting and tracking requirements for specified chemicals that can be used to make controlled substances. Specifically, this new law:

- Adds red phosphorous, as defined, to the list of chemical substances for which a report to the Department of Justice (DOJ) is required.

- Requires that information regarding the letter of authorization and identification, as well as the manifest of any common carrier used, must be retained/maintained in a readily available manner for three years.

- Revises the definition of "proper identification" for purchasers as two or more of the following: federal tax identification number, seller's permit number, city or county business license number, California Department of Health Services (DHS) issue license, Federal Drug Enforcement Administration (DEA) registration number, California DOJ precursor business permit number, or driver's license or other state identification.

- Creates a misdemeanor penalty of up to one year in the county jail; a fine of up to $10,000; or both for a second or subsequent conviction for violating specified retail sales limitations for ephedrine based products.

- Upon changes in ownership, management or employment of an entity that manufactures or transfers restricted chemicals, the entity need only provide one set of fingerprint cards rather than the two required in existing law.

- Revises provisions relating to the sales of any laboratory glassware or apparatus or any chemical reagent or solvent. In any face-to-face or will-call sale, the seller shall, in addition to other specified requirements, prepare a bill of sale that identifies the date of sale, cost of product, and method of payment. This new law extends the time required for the seller to retain sales records

from three to five years.

- Provides that in all other sales, the seller shall maintain specified records for a period of five years and shall produce records upon request of a law enforcement agency.

- Revises provisions relating to the sales of specified chemical compounds in a similar manner as with the sales of any laboratory glassware or apparatus or any chemical reagent or solvent. This new law creates a misdemeanor penalty of up to one year in the county jail; a fine of up to $100,000; or both for a second or subsequent conviction for violating specified chemical sales provisions.

- Eliminates references to licensing of specified entities by the DHS, retaining references to the California Board of Pharmacy.

- Provides that any manufacturer, wholesaler, retailer, or other person or entity that exports certain chemicals to a foreign country shall submit to the DOJ a notification of the transaction to the DOJ, as specified.

- Exempts analytical research facilities registered with the federal DEA from specified reporting and licensing requirements.

Medical Marijuana

The Compassionate Use Act of 1996 was approved by California voters as Proposition 215. Proposition 215 allows a patient with a serious medical condition, or the patient's primary caregiver, to possess or cultivate marijuana, for the personal, medical use of the patient upon the written or oral recommendation or approval of a physician. Proposition 215 also prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

SB 420 (Vasconcellos), Chapter 875, establishes a statewide, voluntary program for the issuance of identification cards to identify persons authorized to engage in the medical use of marijuana under the Compassionate Use Act of 1996. Specifically, this new law:

- Clarifies the scope of the Compassionate Use Act, and facilitates the identification of qualified patients and their primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers.

- Requires the Department of Health Services (DHS) to establish and maintain a voluntary program for the issuance of identification cards to qualified patients.

- Provides that, with respect to individuals, the identification system must be wholly voluntary. A patient entitled to the protections of the act need not possess an identification card in order to claim the protections of the act.

- Authorizes the Attorney General to set forth and clarify details concerning the possession and cultivation limits established in the law, and to recommend modifications to the possession and cultivation limits.

- Requires the Attorney General to develop and adopt guidelines to ensure the security and non-diversion of marijuana grown for medicinal use.

- Defines "attending physician", "qualified patient", "primary caregiver", and "serious medical condition".

- Provides that DHS shall establish application and renewal fees for the medical marijuana identification cards, as specified.

- Specifies the information that must be provided in order to obtain an identification card. This information includes:

  - Written documentation by the attending physician that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

  - Other required information is the name, address, telephone number, and California medical license number of the attending physician.

  - The name and the duties of the primary caregiver.

  - A government-issued photo identification card of the person and of the primary caregiver, if any.

- Provides that qualified patients, designated primary caregivers, and persons providing assistance to them in the administration of medical marijuana or in acquiring the skills necessary to cultivate or administer marijuana shall not, on that sole basis, be subject to criminal liability for the following:

  - Possessing marijuana;

  - Cultivating, processing, or harvesting of marijuana;

  - Possessing marijuana for sale;

  - Transporting, selling, importing, or giving away marijuana;

- Opening or maintaining a place for the purpose of selling, giving away or using marijuana;

- Renting, leasing or making available for use a building, room or space; and,

- Maintaining a building for the purpose of manufacturing, serving, storing, or using marijuana that is otherwise a nuisance subject to abatement, injunction, and damages.

Drug Endangered Child Response Teams

Clandestine manufacture and distribution of methamphetamine and other controlled substances in home laboratories has created a public health crisis in California. In California, 85 percent of clandestine laboratories seized by law enforcement are located in residences. Increasingly, children are present in these home laboratories and are exposed TO highly explosive, deadly chemicals. For example, in Los Angeles County in 1999, children were present in 40 percent of the laboratories subject to seizure. More than 300 children were placed in protective custody as a result of drug laboratory investigations.

To help protect children who live in homes where clandestine drug laboratories are located, seven counties established multi-agency Drug-Endangered Child Response teams consisting of law enforcement, district attorney's offices, and children's services agencies representatives. These teams were funded by California's Byrne Grant Anti-Drug Abuse Fund. The team approach ensures that children living in such homes receive immediate care and referrals to specialized programs and that specially trained prosecutors prosecute these cases to conclusion.

> **SB 496 (Alpert), Chapter 75,** encourages every law enforcement and social services agency in California by January 1, 2005 to develop, adopt, and implement written policies and standards for its response to narcotics crime scenes where a child is either immediately present or where there is evidence that a child lives resides in that home. This new law also encourages communities to form multi-agency groups to develop standards and protocols that address specified issues with respect to law enforcement response to drug endangered children.

Drug Diversion: Record Sealing

Under existing law, defendants successfully completing diversion under Penal Code Section 1000 are informed that the arrest upon which the judgement was deferred is deemed to have never occurred, and the fact of the arrest or entry into the program is not to be used in any way that could result in a denial of employment, benefit, license or certificate. Nevertheless, employers performing background checks are able to view the information contained in court files to deny employment opportunities. Specifically,

companies hire private investigators who routinely perform court records searches in order to view defendants files, including the police reports and the facts reported therein.

SB 599 (Perata), Chapter 792, provides for the sealing of arrest records of any person who successfully completes a statutorily authorized drug diversion program administered by the superior court or a deferred entry of judgment drug program, except as specified. Specifically, this new law:

- Provides that whenever any person successfully completes a statutorily authorized drug diversion program administered by the court or a deferred entry of judgment drug program and it appears to the court that the interests of justice would be served by the sealing of the records of the arresting agency and related court records, the court may order those records sealed, including any record of arrest or detention.

- Provides that a motion to seal an arrest record can be made orally or in writing by any party in the case, or upon the court's own motion, with notice to all of the parties in the case.

- States that if an order is made, the clerk of the court shall thereafter not allow access to any records of the case, including the court file, index, register of actions, or other similar records.

- Requires the court to give a copy of the order sealing the arrest record to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge, except as specified.

- Provides that, except as specified, a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion program or deferred entry of judgment shall not without the defendant's permission be used in any way that could result in the denial of employment, benefit, or certificate.

- Requires a defendant to be advised that regardless of the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based may be disclosed by the Department of Justice (DOJ) in response to any peace officer application request and that the defendant is obligated to disclose the arrest in response to any direct question on the application.

- Requires a defendant to be advised that regardless of the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program the arrest upon which the case was based may be disclosed by DOJ or the court in response to an inquiry by the district attorney, court, probation officer, or counsel for the defendant concerning the defendant's

eligibility for any program in the future.

- Provides that a sealing order shall not apply to DOJ records and that DOJ will continue to disseminate criminal history information to the extent authorized by law.

Proposition 36: Definition of Non-Violent Drug Possession Offense

The problem of sex criminals using relatively new forms of drugs to incapacitate or render victims unconscious so as to commit sex crimes has been widely described before the passage of Proposition 36. The existing statutory framework authorizes excluding defendants who possess controlled substances when there are indications of sexual assault or attempted sexual assault. Proposition 36 also excludes those individuals who are unamenable to treatment. Thus, a person who was evaluated as not having a drug problem and who only possessed a controlled substance to facilitate a sexual assault would most likely be deemed unamenable by a treatment provider.

SB 762 (Brulte), Chapter 155, clarifies Proposition 36 by further defining the term "non-violent drug possession offense" (NOVIDPO). Specifically, this new law provides that a NOVIDPO is the unlawful "personal use, possession for personal use, or transportation for personal use of any controlled substance."

CORRECTIONS

Detention of Minors in Jail Facilities for Adults

Existing law defines a "jail" as a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults charged with violations of criminal law and pending trial, or to hold convicted adult criminal offenders for less than one year. Existing law also provides that minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall receive care, treatment, and guidance consistent with their best interests, holds them accountable for their behavior, and is appropriate for their circumstances.

Under existing law, minors may be detained in jails for adults only under specified conditions. Such conditions include a court finding that the minor's further detention in juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall, restricted contact between the minor and adults in the facility, and adequate supervision of the minor. Upon specified findings, minors who have committed serious or violent offenses, or whose cases have been filed directly in or have been transferred to, a court of general jurisdiction may be delivered to the custody of the sheriff and detained in an adult facility.

AB 945 (Nuñez), Chapter 332, allows a minor to be detained in a jail for the confinement of adults only if the court makes certain findings on the record. Specifically, this new law:

- Requires the court to make its findings on the record

- Requires the court to find that the minor poses a danger to the staff, other minors in the juvenile facility, or to the public because of the minor's failure to respond to the disciplinary control of the juvenile facility or because the nature of the danger posed by the minor cannot safely be managed by the disciplinary procedures of the juvenile court.

Parole Placement: Child Molesters

Under existing law, inmates released on parole for child molestation or continuous sexual abuse of a child may not be placed within one-quarter mile of any school, including Kindergarten and Grades 1-6. The crime of child molestation involves lewd and lascivious acts upon a child under the age of 14. Current law provides protection from these predators for elementary school children, but not for middle-school children.

AB 1495 (Chavez), Chapter 51, prohibits an inmate released on parole for child molestation or continuous sexual abuse of a child from being placed or residing, for the duration of parole, within one-quarter mile of a public or private school including any or all of Kindergarten and Grades 1 through 8, inclusive.

Corrections: Geriatric Facilities

The average life expectancy for Americans has increased from 45 years of age in the 1900's to 79 years of age in the 1990's. As America lives longer, so does a portion of the prison population. Additionally, inmates are serving longer prison sentences and more inmates are serving life sentences as a result of the "Three-Strikes" law.

The rising population of older prisoners contributes to hidden costs associated with increased medical, long-term care, and maintenance costs. The Legislative Analyst's Office (LAO) projects that the over-55 population will approach 30,000 twenty years from now, resulting in exponential increases in correctional costs.

SB 549 (Vasconcellos), Chapter 708, authorizes the California Department of Corrections (CDC) to establish geriatric facilities for aging inmates. Specifically, this new law:

- Allows the CDC to contract with public or private entities for the establishment and operation of skilled nursing care facilities for the incarceration and care of inmates limited in ability to perform activities of daily living and in need of skilled nursing services, as specified.

- Requires the CDC to ensure that these facilities meet certain security and licensing requirements, as specified, and authorizes CDC to revoke the agreement if the facility contractor is not in compliance. Requires CDC to enter into agreements to utilize these facilities.

- Defines "long-term care" as personal or supportive care services provided to people of all ages with physical or mental disabilities who need assistance with activities of daily living including bathing, eating, dressing, toileting, transferring, and ambulating.

- Requires the CDC ombudsman program to provide ombudsman services to prisoner residents of CDC-contracted skilled nursing facilities.

- Provides that, notwithstanding the provisions of Chapter 11 (commencing with Section 9700) of Division 8.5 of the Welfare and Institutions Code, the Office of the State Long-Term Care Ombudsman shall be exempt from advocating on behalf of, or investigating complaints on behalf of, residents of any skilled nursing facilities operated either directly or by contract by the CDC.

- Makes a number of related legislative findings and declarations.

Parole: Suitability Hearings: Electronic Submission of Information

Existing law provides that before the Board of Prison Terms (BPT) meets to consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the BPT shall send written notice to various persons involved in the trial. These persons include the superior court judge before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, and the law enforcement agency that investigated the case. Additionally, where the prisoner was convicted of the murder of a peace officer, notice must be given to the law enforcement agency that employed the peace officer at the time of the murder.

Penal Code Section 3043 also provides that, upon request, the BPT shall send notice of any parole hearing to any victim of the crime committed by the prisoner or to the next of kin of the victim if the victim has died. The victim, next of kin, or two members of the victim's immediate family may appear personally or by counsel at the hearing to express their views concerning the crime and the person responsible. Existing law also provides that in lieu of a personal appearance the victim or victim's family may file with the BPT a written, audiotaped, or videotaped statement expressing his or her views regarding the crime and the person responsible.

SB 781 (Margett), Chapter 302, allows any person authorized to forward information for consideration in a parole suitability hearing or the setting of a

parole date for a prisoner sentenced to a life sentence to forward that information either by facsimile or electronic mail. Specifically, this new law:

- Provides that any person who receives notice from the BPT of a parole suitability hearing or the setting of a parole date for a prisoner sentenced to a life sentence who is authorized to forward information for consideration in that hearing may forward that information either by facsimile or electronic mail.

- States that the Department of Corrections shall establish procedures for receiving the information by facsimile or electronic mail.

COURT HEARINGS AND PROCEDURES

Domestic Violence: Court Appearances

Generally, current law requires persons accused of felonies to be present at the arraignment, sentencing and other specified times in criminal proceedings. However, defendants accused of misdemeanor offenses are allowed to appear through counsel. A defendant charged with a misdemeanor offense involving domestic violence is required to be present in court for arraignment and sentencing.

AB 383 (Cohn), Chapter 29, requires a defendant charged with a misdemeanor domestic violence offense or a violation of a domestic violence protective order to be present at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a domestic violence protective order.

Peace Officers: Service on Juries

Existing law exempts certain peace officers from jury service in a civil or criminal case. Such officers include sheriffs, police officers, marshals of municipal courts, inspectors or investigators of a district attorney's office, California Highway Patrol officers, and Bay Area Rapid Transit police officers. Existing law also exempts peace officers from the University of California Police Department and the California State University police departments from jury service in criminal cases. The rationale for these jury service exemptions is that these particular peace officers perform critical public safety functions and are constantly needed on the job to protect the public.

AB 513 (Matthews), Chapter 353, requires the Judicial Council, on or before January 1, 2005, to adopt a rule of court to establish procedures for jury service to give scheduling accommodations, when necessary, to specified peace officers.

State Hospitals: Criminal Defendants and Mental Competence

Existing law provides for two general types of commitments to state mental hospitals: civil and forensic commitments. Under existing law, a person cannot be tried while he or she is mentally incompetent. Existing law sets forth procedures under which a criminal defendant adjudged mentally incompetent and has regained mental competence is returned to the committing court and subsequently returned to a hospital based on a need for continued treatment in order to maintain competence to stand trial.

Following the filing of a certificate of restoration of competency, the State of California shall pay only for 10 hospital days and existing law requires the Department of Mental Health (DMH) to report annually to the Legislature on the number of days that exceeded the 10-day limit.

Existing law establishes certain state hospitals for the care, treatment, and education of the mentally disordered, and provides that DMH has jurisdiction over these hospitals. These hospitals are Atascadero State Hospital, Metropolitan State Hospital, Napa State Hospital and Patton State Hospital. Existing law also imposes two caps on the number of forensic patients at Napa State Hospital, as follows: no more than 980 patients total and no more than 80 percent of the overall patient population shall be forensic commitments.

AB 941 (Yee), Chapter 356, makes a number of changes to the existing law. Specifically, this new law:

- Requires the annual report to the Legislature of patients exceeding the 10-day limit following restoration of competency to be made in February and include a data sheet that itemizes by county the number of days that exceed the 10-day limit.

- Revises the requirements concerning the patient population at Napa State Hospital and provides that at least 20 percent of the licensed beds at Napa State Hospital shall be available for use by counties for contracted services. Of the remaining beds, in no case shall the population of patients whose placement was required pursuant to the Penal Code exceed 980.

- Adds Coalinga State Hospital to the list of state hospitals for the treatment of the mentally ill under the jurisdiction of DMH.

- Requires that any alterations to the security perimeter structure or policies at Napa State Hospital will be made in conjunction with the City of Napa, Napa County, and local law enforcement agencies.

Identity Theft: Tolling of the Statute of Limitations

Identity theft is unique because it is a crime that often goes undetected by the victim for long periods of time. For example, a victim may be unaware that a person has unlawfully

misappropriated his or her personal identifying information until requesting a credit check or listing a home for sale. Generally, the statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. However, in certain cases, the limitations period does not begin to run until discovery of the offense. Existing law provides that the delayed discovery provision applies to any felony, "a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee." Courts have interpreted Penal Code Section 803(c) to require a showing of reasonable diligence in discovering the facts of a theft. In other words, discovery is not synonymous with actual knowledge. The statute commences after one has knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry.

AB 1105 (Jackson), Chapter 73, adds two offenses, identity theft and filing false documents, to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense. Specifically, this new law:

- Adds the offense of unlawfully obtaining and using personal identifying information to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

- Adds the offense of acquiring, transferring, or retaining possession of the personal identifying information of another with the intent to defraud to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

- Adds the offense of procuring or offering any false or forged instrument to be filed, registered or recorded in any public office to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

Continuance of a Criminal Action

Under existing law, a trial or court hearing may not be continued without two-days' advance written notice establishing good cause for the continuance. Courts have dismissed cases for the failure of a prosecutor to establish good cause for the continuance of a trial with the 60-day speedy trial limit. Regardless of the reason, California case law has held there is no justification for a court to dismiss a criminal case within the 60-day statutory speedy trial limit.

AB 1273 (Nakanishi), Chapter 133, clarifies that the provision of law governing the continuance of criminal proceedings is directory only and does not mandate dismissal of an action by its terms.

Identity Theft: Search Warrants

Identity theft is one of the fastest growing crimes in America and California leads all other states in the number of victims per capita. Under existing law, a victim of identity theft may initiate an investigation by a law enforcement agency in the jurisdiction where he or she resides. However, the local law enforcement agency does not have the ability to fully investigate cases occurring in other counties as they are unable to secure a warrant to search property located in another county.

> **AB 1773 (Committee on Banking and Finance), Chapter 137,** allows a magistrate to issue a warrant for the search and seizure of property located in another county if related to an identity theft investigation and if the victim of the identity theft lives in the same county as the issuing court.

Death Penalty: Execution of the Mentally Retarded

The United States Supreme Court previously held in Penry v. Lynaugh (1989) 492 US 302, 106 L Ed 256, 109 S Ct 2934, imposition of the death penalty on a mentally retarded defendant does not constitute cruel and unusual punishment as long as sentencers consider and give effect to mitigating evidence of the defendant's mental retardation as a basis for punishment other than death. At the time of the decision in Penry v. Lynaugh, two states had enacted statutes prohibiting execution of the mentally retarded. Even when added to the 14 states that rejected capital punishment completely, the Court found that "while a national consensus against execution of the mentally retarded may someday emerge . . . there is insufficient evidence of such a consensus today."

On June 20, 2002, the United States Supreme Court in a 6-3 decision held executing a mentally retarded defendant amounts to cruel and unusual punishment. The Court commented: "Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants." [Atkins v. Virginia (2002) 122 S. Ct. 2242.]

After stating their belief that a national consensus has developed against the execution of the mentally retarded the court stated:

> Clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

The Court stated that it would leave to the states the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences.

SB 3 (Burton), Chapter 700, establishes court procedures during death penalty cases regarding the issue of mental retardation. Specifically, this new law:

- Defines "mental retardation" as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

- Provides that at a reasonable time prior to the commencement of the trial the defendant may apply for an order that a mental retardation hearing be conducted. This new law provides that upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to make a determination whether the defendant is mentally retarded.

- Provides that at the request of the defendant, the court shall conduct the mental retardation hearing without a jury prior to the commencement of the trial. The defendant's request for such a hearing constitutes a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the jury shall determine the issue. The jury hearing shall occur at the conclusion of the guilt phase of the trial. The same jury shall make a finding relating to mental retardation. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is mentally retarded.

- Authorizes the court to make orders reasonably necessary to ensure the production of relevant evidence including, but not limited to, appointing qualified experts to examine the defendant. No statement made by the defendant during a court-ordered examination shall be admissible in the trial on the defendant's guilt.

- Requires the jury to return a unanimous verdict. In any case in which the jury has been unable to reach a verdict, the court shall dismiss the jury and order a new jury impaneled to try the issue of mental retardation. The issue of guilt shall not be tried by the new jury.

- Provides that if before the commencement of trial the court finds that the defendant is mentally retarded, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding of one or more special circumstance, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole (LWOP). The jury shall

not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

- Provides that if the court finds that the defendant is not mentally retarded, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of mental retardation.

- Provides that if the hearing regarding mental retardation is conducted before the jury after the defendant is found guilty with a finding of special circumstances, the following shall apply:

  - If the jury finds that the defendant is mentally retarded, the court shall preclude the death penalty and sentence the defendant to LWOP.

  - If the jury finds that the defendant is not mentally retarded, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

- Provides that in any case in which the defendant has not requested a court hearing and has entered a plea of not guilty by reason of insanity, the hearing on mental retardation shall occur at the conclusion of the sanity trial if the defendant is found sane.

Statute of Limitations: Unauthorized Practice of Law

Existing law provides that the statute of limitations for a number of specified crimes "does not commence to run until the offense has been discovered, or could reasonably have been discovered . . . ." Those crimes include hazardous waste violations, water quality offenses, pharmacy law violations, and illegal immigration consultation. Existing law also delays the operation of the statute of limitations in cases involving felonies where "a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee."

SB 337 (Romero), Chapter 152, adds the crime of the unauthorized practice of law to the list of offenses for which the statute of limitations does not commence until discovery of the offense. Specifically, this new law provides that the statute of limitation in cases involving the unauthorized practice of law does not commence to run until the offense has been discovered or could have reasonably been discovered.

Contracting Without a License: Repeat Offenders

Existing law provides that it is a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license unless the person is exempt. If a person has previously been convicted being an unlicensed contractor, the court shall impose a fine of 20% of the price of the contract or $4,500, whichever is greater; imprisonment in a county jail for not less than 10 days nor more than six months; or both.

Existing law also states the legislative intent that a victim of a crime 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. Existing law further provides that in addition to the criminal penalties for unlicensed contracting a person who utilizes the services of an unlicensed contractor may bring an action in any court to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

SB 443 (Figueroa), Chapter 706, requires a court to sentence repeat offenders of unlicensed contracting to the county jail for not less than 90 days unless the court finds unusual circumstances for imposing a lesser jail sentence or only a fine. Specifically, this new law:

- Increases the mandatory minimum sentence for a second offense of contracting without a license from not less than 10 days to not less than 90 days in a county jail except in unusual cases, as specified.

- Provides that if a court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions, the court shall state the reasons for its sentencing choice on the record.

Drug Diversion: Record Sealing

Under existing law, defendants successfully completing diversion under Penal Code Section 1000 are informed that the arrest upon which the judgement was deferred is deemed to have never occurred, and the fact of the arrest or entry into the program is not to be used in any way that could result in a denial of employment, benefit, license or certificate. Nevertheless, employers performing background checks are able to view the information contained in court files to deny employment opportunities. Specifically, companies hire private investigators who routinely perform court records searches in order to view defendants files, including the police reports and the facts reported therein.

SB 599 (Perata), Chapter 792, provides for the sealing of arrest records of any person who successfully completes a statutorily authorized drug diversion program administered by the superior court or a deferred entry of judgment drug program, except as specified. Specifically, this new law:

- Provides that whenever any person successfully completes a statutorily authorized drug diversion program administered by the court or a deferred

entry of judgment drug program and it appears to the court that the interests of justice would be served by the sealing of the records of the arresting agency and related court records, the court may order those records sealed, including any record of arrest or detention.

- Provides that a motion to seal an arrest record can be made orally or in writing by any party in the case, or upon the court's own motion, with notice to all of the parties in the case.

- States that if an order is made, the clerk of the court shall thereafter not allow access to any records of the case, including the court file, index, register of actions, or other similar records.

- Requires the court to give a copy of the order sealing the arrest record to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge, except as specified.

- Provides that, except as specified, a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion program or deferred entry of judgment shall not without the defendant's permission be used in any way that could result in the denial of employment, benefit, or certificate.

- Requires a defendant to be advised that regardless of the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based may be disclosed by the Department of Justice (DOJ) in response to any peace officer application request and that the defendant is obligated to disclose the arrest in response to any direct question on the application.

- Requires a defendant to be advised that regardless of the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program the arrest upon which the case was based may be disclosed by DOJ or the court in response to an inquiry by the district attorney, court, probation officer, or counsel for the defendant concerning the defendant's eligibility for any program in the future.

- Provides that a sealing order shall not apply to DOJ records and that DOJ will continue to disseminate criminal history information to the extent authorized by law.

Battered Women's Syndrome

The Legislature enacted AB 785 (Eaves), Chapter 812, Statutes of 1991, amending Evidence Code Section 1107 to allow evidence of Battered Women's Syndrome (BWS) to be introduced as evidence in cases where battered women are accused of killing or

assaulting their abusers. BWS evidence can explain to a jury how a battered woman could have an honest belief she was in imminent danger and viewed her action as self-defense.

Passage of AB 785 did not help those women convicted of killing or assaulting abusive husbands prior to the legal community recognizing the relevance of BWS evidence. In fact, prior to the passage of AB 785, many judges refused to allow this type of evidence to be admitted in court. Without the opportunity to offer such evidence, some women were denied an opportunity to present a full defense.

In response, the Legislature enacted SB 799 (Karnette), Chapter 858, Statutes of 2001, allowing a writ of habeas corpus to be prosecuted on the grounds that evidence relating to BWS was not introduced at the trial and had BWS been introduced, the results of the proceeding would have been different. SB 799 sunsets as of January 1, 2005.

The process created under SB 799 is more time-consuming than originally anticipated. Finding witnesses and medical records or searching for police reports from an era when domestic violence reports were not required is difficult and time-consuming. Absent funding, pro bono legal assistance is the only viable method providing eligible inmates with an opportunity at succeeding on their habeas petitions. Finding lawyers willing to absorb the time and cost to provide these services has been difficult.

> **SB 784 (Karnette), Chapter 136,** extends the sunset date from January 1, 2005 to January 1, 2010 on provisions allowing a writ of habeas corpus to be prosecuted on grounds that evidence relating to BWS was not introduced at the trial, thereby affecting the outcome of the trial.

Child Pornography Evidence

Existing law provides that a defendant is entitled to receive all relevant real evidence obtained during a criminal investigation. However, existing law also provides that law enforcement agencies may not disclose the address or telephone number of a victim or a witness to any arrested person or a defendant in a criminal action. Such information may be disclosed to an attorney, who has a statutory duty to keep such information confidential.

> **SB 877 (Hollingsworth), Chapter 238,** creates a similar discovery provision relating to child pornography evidence. Specifically, this new law:
>
> - Provides that no attorney may disclose, or permit to be disclosed, copies of child pornography evidence to a defendant, members of the defendant's family, or other person unless specifically permitted to do so by the court after a hearing and a showing of good cause.
>
> - Provides an exception to the above provision authorizing an attorney to disclose, or permit to be disclosed, copies of child pornography evidence to

persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section is prohibited.

CRIME PREVENTION

Responsibilities of Deputy Sheriffs in Specified Counties, and Clarification of Training Requirements for Custodial Officers

Penal Code Section 830.1 and 832 define peace officer's powers, duties and training requirements. Existing law provides that any deputy sheriff employed in that capacity by a county is a peace officer whose authority extends to any place in California with regard to:

1) Offenses committed within his or her jurisdiction;

2) Any offense committed in his or her presence where there is immediate danger to person or property;

3) Where there is immediate danger of escape of the perpetrator; or

4) Where this is probable cause to believe that these situations exist.

Additionally, counties employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments. However, in specified counties, these deputy sheriffs are peace officers whose authority extends to any place in California while engaged in the performance of his or her employment related to custodial assignments or when directed to perform other law enforcement duties during a local state of emergency.

AB 1254 (La Malfa), Chapter 70, adds Shasta and Solano Counties to the existing authority to employ deputy sheriffs who may perform general peace officer duties in specified circumstances. Specifically, this new law:

- Defines "deputy sheriffs in Shasta and Solano Counties," initially employed to perform custodial duties, as peace officers with authority that extends to any place in California when engaged in the performance of their assigned duties or when performing other law enforcement duties during a local state of emergency.

- Specifies that designated custodial officers who have completed the course of training prescribed by the Commission on Peace Officer Standards and Training are not subject to re-training and testing requirements for officers who have had a three-year break in service.

High Technology Crime Advisory Committee

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high technology crime throughout California and to advise the Department of Finance on the appropriate disbursement of funds to regional task forces.

AB 1277 (Cohn), Chapter 662, adds a representative of the Recording Industry to the HTCAC.

Rural Crime Prevention Program

The Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare are authorized to develop and implement a Central Valley Rural Crime Prevention Program until January 1, 2005. The program is administered by the district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office.

SB 44 (Denham), Chapter 18, encourages the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo to develop and implement a Central Coast Rural Crime Prevention Program (CCRCPP) for the purpose of preventing rural crime. Specifically, this bill:

- Provides that the CCRCPP shall be administered in San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo Counties by the county district attorney's office under a joint powers agreement with the county sheriff's office and in Monterey County by the county sheriff's office under a joint powers agreement with the county district attorney's office.

- Provides that the parties to each agreement shall form a regional task force, the "Central Coast Rural Crime Task Force", which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations.

- Requires the Central Coast Rural Crime Task Force to develop crime prevention and crime control techniques, to encourage the timely reporting of crimes, and to evaluate the results of these activities.

- Requires the Central Coast Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects.

- Requires the Central Coast Rural Crime Task Force to develop a uniform procedure for all participating counties to collect data on agricultural crimes,

establish a central database for the collection and maintenance of data on agricultural crimes, and designate one participating county to maintain the database.

- States that the staff for each program shall consist of the personnel designated by the district attorney and the sheriff of each county in accordance with the joint powers agreement.

- Provides that funding for the program may include, but shall not be limited to, appropriations from local government and private contributions.

- States that this act shall become inoperative on July 1, 2010 and repealed on January 1, 2011 unless a later statute extends or deletes those dates.

CRIMINAL JUSTICE PROGRAMS

High Technology Theft Apprehension and Prosecution Program

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high technology crime throughout California and to advise the Department of Finance on the appropriate disbursement of funds to regional task forces.

Existing law, also, establishes the High Technology Theft Apprehension and Prosecution Program (HTTAPP), a program of financial and technical assistance for law enforcement and district attorney's offices.

AB 49 (Simitian), Chapter 618, creates the High Technology Crimes Task Force (HTCTF) comprised of each regional task force participating in the HTTAP, and adds a representative of the Office of Privacy Protection and a designee of the Department of Finance to the HTCAC.

Domestic Violence: Probation Conditions

Existing law requires persons granted probation for a domestic violence offense to pay a fee of $200. One-third of the money is used to fund domestic violence centers, and the remainder is deposited in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

AB 352 (Goldberg), Chapter 431, increases the fees a person convicted of a domestic violence offense must pay which are used to support specified domestic violence programs. Specifically, this new law:

- Increases from $200 to $400 the fee which a person convicted of domestic violence must pay to support domestic violence centers, the Domestic

Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

- Increases from one-third to two-thirds the percentage of the fee collected which is to be distributed in support of domestic violence shelters, and reduces from two-thirds to one-third the percentage of the fee collected in support of the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

- Specifies that the fee increase shall only be effective until January 1, 2007.

Gang Prevention Programs

AB 853 (Hertzberg), Chapter 506, Statutes of 1997, created the Community Law Enforcement and Recovery (CLEAR) Anti-Gang Initiative demonstration project in Los Angeles County. CLEAR has proven to be an effective gang suppression, intervention, and prevention program for Los Angeles County and has demonstrated a dramatic effect on gang crime activity in its targeted areas. Initially, AB 853 provided state funds to Los Angeles to target the 18th Street Gang by authorizing the Los Angeles District Attorney to appoint a Gang Intervention Coordinator, who would have the authority to create a Mobile Response Team comprised of representatives from the Los Angeles Police Department, Sheriff's Department, Probation Department, District Attorney, and City Attorney. This team provided a flexible and coordinated response to gang crime by addressing neighborhood gang activity through the identification, arrest, prosecution, and conviction of gang members. The overall goals of the CLEAR project are to create an infrastructure within Los Angeles law enforcement agencies for suppressing gang activity, so that neighborhoods could be reclaimed and resident safety restored.

AB 568 (Goldberg), Chapter 621, extends the sunset date for the CLEAR demonstration project from January 1, 2004 to July 1, 2004.

Peace Officer Training: Guidelines for Special Weapons and Tactics (SWAT) Teams

Existing law requires the Commission on Peace Officer Standards and Training (POST) to adopt rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment and training of specified local law enforcement officers. POST establishes training standards for a number of specified peace officers including, but not limited to, city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a court, and criminal investigators for a district attorney's office. POST is also required to conduct research concerning job-related educational standards to include vision, hearing, physical ability, and emotional stability.

AB 991 (Negrete McLeod), Chapter 624, requires POST to establish training recommendations and guidelines for SWAT teams. These training guidelines and recommendations would be available for use by law enforcement agencies that conduct SWAT operations. Specifically, this new law:

- Requires POST to develop and disseminate guidelines for SWAT training on or before July 1, 2005.

- States that the guidelines shall be developed in consultation with law enforcement officers, the Attorney General's office, SWAT trainers, legal advisers, and others selected by POST.

- Provides that the standardized training recommendations shall, at a minimum, include training requirements for SWAT operations, refresher or advanced training for experienced SWAT members, and supervision and management of SWAT operations.

- States that the guidelines shall, at a minimum, address legal and practical issues of SWAT operations, personnel selection, fitness requirements, planning, hostage negotiation, tactical issues, safety, rescue methods, after-action evaluation of operations, logistical and resource needs, uniform and firearms requirements, risk assessment, policy considerations, and multi-jurisdictional SWAT operations.

- Provides that the guidelines shall provide procedures for approving the prior training of officers, supervisors, and managers that meet the standards and guidelines developed by POST, in order to avoid duplicative training.

Firearm Eligibility Checks

Generally, existing law requires that the sale, loan or transfer of a firearm in California must be conducted through a state-licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 population. The licensed firearms dealer is required to submit specified information to the Department of Justice (DOJ) in connection with the purchase of a firearm to enable DOJ to determine whether the prospective purchaser is prohibited from purchasing, or otherwise possessing, a firearm.

A 10-day waiting period, background check, and a handgun safety certificate for a handgun transfer are required prior to delivery of the firearm. If the background check reveals that a person is prohibited from obtaining or possessing a firearm, DOJ shall immediately notify the dealer and the chief of the police or sheriff in the city or county in which the sale was made.

Existing law also states that any person may apply to review his or her own local criminal history information, as specified, and states that the local agency "may require the submission of fingerprints." However, the summary criminal history is not as

comprehensive as the firearm purchaser's background check in that the summary criminal history does not provide information on restraining orders, admissions to metal health facilities, or convictions for crimes committed outside California. Therefore, many California residents may be prohibited from owning firearms but are unaware of that prohibition.

SB 255 (Ducheny), Chapter 298, establishes a procedure for an individual to request a determination of eligibility to carry a firearm from the DOJ. Specifically, this new law:

- Allows an individual to request that DOJ perform a firearms eligibility check when not making a firearms purchase after providing information currently required for firearms purchase background checks.

- Authorizes DOJ to charge a $20 fee, not to exceed the actual processing costs of DOJ, for performing the eligibility check .

- Requires DOJ to make the application available to licensed firearms dealers and on DOJ's web site.

- Provides that, upon application, DOJ shall examine its records and notify the applicant by mail.

- States that DOJ is not required to conduct an eligibility check if the person submits incomplete or inaccurate information.

- Provides that DOJ shall be immune from any liability as a result of performing the firearms eligibility check or any reliance on the firearm eligibility check.

Medical Marijuana

The Compassionate Use Act of 1996 was approved by California voters as Proposition 215. Proposition 215 allows a patient with a serious medical condition, or the patient's primary caregiver, to possess or cultivate marijuana, for the personal, medical use of the patient upon the written or oral recommendation or approval of a physician. Proposition 215 also prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

SB 420 (Vasconcellos), Chapter 875, establishes a statewide, voluntary program for the issuance of identification cards to identify persons authorized to engage in the medical use of marijuana under the Compassionate Use Act of 1996. Specifically, this new law:

- Clarifies the scope of the Compassionate Use Act, and facilitates the identification of qualified patients and their primary caregivers in order to

avoid unnecessary arrests and provide needed guidance to law enforcement officers.

- Requires the Department of Health Services (DHS) to establish and maintain a voluntary program for the issuance of identification cards to qualified patients.

- Provides that, with respect to individuals, the identification system must be wholly voluntary. A patient entitled to the protections of the act need not possess an identification card in order to claim the protections of the act.

- Authorizes the Attorney General to set forth and clarify details concerning the possession and cultivation limits established in the law, and to recommend modifications to the possession and cultivation limits.

- Requires the Attorney General to develop and adopt guidelines to ensure the security and non-diversion of marijuana grown for medicinal use.

- Defines "attending physician", "qualified patient", "primary caregiver", and "serious medical condition".

- Provides that DHS shall establish application and renewal fees for the medical marijuana identification cards, as specified.

- Specifies the information that must be provided in order to obtain an identification card. This information includes:

  - Written documentation by the attending physician that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

  - Other required information is the name, address, telephone number, and California medical license number of the attending physician.

  - The name and the duties of the primary caregiver.

  - A government-issued photo identification card of the person and of the primary caregiver, if any.

- Provides that qualified patients, designated primary caregivers, and persons providing assistance to them in the administration of medical marijuana or in acquiring the skills necessary to cultivate or administer marijuana shall not, on that sole basis, be subject to criminal liability for the following:

  - Possessing marijuana;

- Cultivating, processing, or harvesting of marijuana;
- Possessing marijuana for sale;
- Transporting, selling, importing, or giving away marijuana;
- Opening or maintaining a place for the purpose of selling, giving away or using marijuana;
- Renting, leasing or making available for use a building, room or space; and,
- Maintaining a building for the purpose of manufacturing, serving, storing, or using marijuana that is otherwise a nuisance subject to abatement, injunction, and damages.

Firearms: Dealers

Existing law regulates licensed firearms dealers and requires them to record specified information pertaining to firearms transfers in a register or record of electronic transfer. Existing law also states that parties to a firearms transaction who are licensed dealers must conduct the transaction through a licensed firearms dealer. The licensed firearms dealer may charge a fee not to exceed $10 and a fee due the Department of Justice for processing a sale, loan, or transfer of a firearm pursuant to the provisions authorizing parties who are not licensed firearms dealers to conduct the transaction through a firearms dealer.

SB 824 (Scott), Chapter 502, recasts provisions of the law pertaining to licensed firearms dealers. Specifically, this new law:

- Specifically authorizes firearms dealers to require any agent who handles, sells, or delivers firearms to obtain a Certificate of Eligibility which is issued following an approved background check
- Requires a firearms dealer's salesperson to record the salesperson's certificate of eligibility number in the register or record of electronic transfer.
- Requires the dealer to record on the register of record or electronic transfer, the date a handgun or other firearm is delivered by the dealer.
- Prohibits the firearms dealer from charging any fee in addition to those described in the law.

Sex Offenders: Statewide Sexual Predator Apprehension Team

Penal Code Section 13885.1 requires the Attorney General to establish and maintain, upon appropriation of funds by the Legislature, a statewide Sexual Habitual Offender Program special force**.** This special force is comprised of three special agent teams, one team each from southern, central, and northern California. The teams focus on repeat sex offenders and coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register under Penal Code Section 290 who violate the law or conditions of probation or parole. The teams also target and monitor chronic repeat violent sex offenders before the commission of additional sexual offenses and develop profiles in unsolved sexual assault cases.

SB 903 (Chesbro), Chapter 27, renames and reorganizes the above program as the "Statewide Sexual Predator Apprehension Team". This new law updates an existing statute to accurately describe the current status of the Attorney General's Sexual Predator Apprehension Teams. The original three-team concept has grown into seven teams throughout California. Presently, teams exist in California Bureau of Investigation offices in Fresno, Los Angeles, Sacramento, San Francisco, San Diego, Orange, and Riverside. This new law authorizes the Attorney General to establish additional teams and ensures that local law enforcement agencies are aware of the services available to them. Specifically, this new law:

- Provides that the Statewide Sexual Predator Apprehension Team shall be comprised of California Bureau of Investigation teams throughout California;
- States that the teams shall focus on repeat sex offenders;
- Provides that the teams shall coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register as sex offenders under Penal Code Section 290 who violate the law or conditions of probation or parole;
- Provides that the teams shall target and monitor repeat violent sex offenders before the commission of additional sexual offenses; and,
- States that the teams shall develop profiles in unsolved sexual assault cases.

CRIMINAL OFFENSES

Methamphetamine Manufacturing

One of the most common techniques for manufacturing methamphetamine involves using hydriodic acid in conjunction with ephedrine, red phosphorous and iodine. Iodine is used to create hydriodic acid, which is a reducing agent. While iodine crystals are used

legitimately as a household disinfectant or in the manufacturing process for certain germicides and industrial chemicals, the amounts used in clandestine laboratories greatly exceeds the amounts typically consumed during legitimate activities.

Health and Safety Code (HSC) Section 11383(f) provides that possession of essential chemicals sufficient to manufacture hydriodic acid, with intent to manufacture methamphetamine, shall be deemed to be possession of hydriodic acid. A recent Court of Appeals case reversed a conviction for possession of hydriodic acid holding that HSC Section 11383(f) creates an impermissible mandatory presumption that possession of iodine and red phosphorus is sufficient to prove possession of hydriodic acid. As drafted, the statute equates possession of the essential chemicals with possession of the synthesized substance.

AB 158 (Runner), Chapter 619, redrafts provisions concerning possession of precursors and other specified chemicals with intent to manufacture methamphetamine or PCP. Specifically, this new law:

- Provides that any person who, with intent to manufacture methamphetamine or specified analogs, possesses hydriodic acid or a reducing agent, or any product containing hydriodic acid or a reducing agent, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

- Defines a "reducing agent" for the purposes of manufacturing methamphetamine as an agent that causes reduction to occur by either donating a hydrogen atom to an organic compound or by removing an oxygen atom from an organic compound.

- Provides that any person who possesses an isomer of any of the specified compounds, with intent to manufacture any of those compounds, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

- Provides that any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with intent to manufacture methamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

Hate Crimes: Assault and Battery

Currently, California does not have a statute discouraging assault and battery on returning members of the armed forces.

AB 187 (Runner), Chapter 138, makes an assault or battery upon a member of the armed forces because of the victim's service in the armed forces a misdemeanor, as specified. Specifically, this new law:

- Provides that any person who commits an assault against a member of the armed forces of the United States because of the victim's service in the armed forces of the United States shall be punished by imprisonment in the county jail not exceeding one year; by a fine not to exceed $2,000; or by both the fine and imprisonment.

- Provides that any person who commits a battery against a member of the armed forces of the United States because of the victim's service in the armed forces of the United States shall be punished by imprisonment in the county jail not exceeding one year; by a fine not to exceed $2,000; or by both the fine and imprisonment.

- Defines "because of", meaning the bias motivation must be a cause in fact of the assault, whether or not other causes exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the assault.

Professional Sporting Events: Throwing of Objects

Incidents of hostile fan behavior and interference with players at professional athletic events are increasing. Although individuals are often ejected from games as a result of these acts, those individuals are seldom arrested. Society has a tendency to treat sports violence differently from violence and aggression that occurs elsewhere. A specific California statute to address hostile fan behavior may be helpful as a deterrent.

AB 245 (Cohn), Chapter 818, makes it an infraction for any person at a professional sporting event to throw any object on or across the field of play with the intent to interfere with or distract a player, or to enter upon the field of play without permission. Specifically, this new law:

- Makes it unlawful for any person attending a professional sporting event to do any of the following:

  - Intentionally throw any object on or across the court or field of play with the intent to interfere or distract a player; or,

  - Enter upon the court or field of play without permission from an authorized person.

- Requires the management of sporting facilities to prominently display at all controlled entries to the facility a notice to attendees specifying the activities prohibited by this section.

- Makes a violation of this new law an infraction punishable by a $250 fine.

- Excludes additional penalty assessments and surcharges normally levied by state and local governments from being added to the base fine.

- Defines "professional sporting event" as a scheduled sporting event involving a professional sports team, organization or athlete and for which an admission fee is charged.

- Defines "player" to include team members, referees and other personnel.

- States that nothing in this new law shall be construed as to prevent prosecution under any applicable provision of law.

Juveniles: Escape from Custody

Existing law provides that it is a misdemeanor to escape or attempt to escape while under the custody of a probation officer or any peace officer from a county juvenile hall; while committed to a county juvenile ranch, camp or forestry camp; or while being transported to or from such a facility. In a recent California case, a juvenile escaped from a field trip while away from a secured facility but still under the custody of a peace officer. Because the field trip was at a private facility and the juvenile escaped while at the private facility as opposed to during transportation to and from the juvenile facility, the court could not charge the defendant with an escape.

AB 355 (Pacheco), Chapter 263, revises the definition of "escape" or "attempting to escape" from juvenile facilities, to include private facilities outside these facilities while still under the custody of a probation officer or peace officer, adds regional facilities to the list of enumerated facilities, and defines "regional facility" as any facility used by one or more public entities for the confinement of juveniles for more than 24 hours.

Possession of Firearms: Persons Who Have Successfully Completed Probation

Existing law provides a procedure for eligible persons to have convictions dismissed and be released from all penalties and disabilities resulting from the offense of which they have been convicted, subject to certain exceptions. In any case where the defendant has fulfilled the conditions of probation for the entire period of probation, the defendant may withdraw his or her plea of guilty. If he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall dismiss the accusation against the defendant. However, existing law provides that dismissal pursuant to these procedures does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person. Such dismissal similarly does not prevent him or her from being convicted of the offense of being an ex-felon in possession of a firearm.

AB 580 (Nuñez), Chapter 49, further provides that dismissal of charges pursuant to the foregoing provisions does not permit a person to own, possess, or have in

his or her custody or control any firearm. Specifically, this new law extends the prohibition on the possession of firearms by persons with criminal convictions to include not only firearms capable of being concealed upon the person, but also firearms that cannot be concealed, such as long guns.

Cell Phones: Malicious Destruction

Existing law provides that any person who maliciously and unlawfully destroys a telephone or telephone line is guilty of an alternate felony/misdemeanor. However, today's homes may not have traditional hard-wired telephones. If a person damages or removes a wireless communication device it is not a crime.

AB 836 (La Suer), Chapter 143, provides that any person who unlawfully or maliciously destroys or damages any wireless communication device with the intent to prevent the use of the device to summon assistance or notify law enforcement or any public safety agency of a crime is guilty of a misdemeanor.

Criminal Offenses: Theft of Vessels

Existing law provides that it is unlawful to take any bicycle, motorboat, or vessel, without the permission of the owner, for the purpose of temporarily using it. Upon conviction of this misdemeanor, the person is punishable by a fine not exceeding $400, by imprisonment not exceeding three months, or by both that fine and imprisonment. On the other hand, the punishment is more severe for the taking of a vehicle. For example, driving or taking a vehicle without the consent of the owner, with the intent to permanently or temporarily deprive the owner of title or possession, is punishable by up to one year in county jail; by 16 months, 2 or 3 years in state prison; by a fine of up to $5,000; or by both imprisonment and fine.

Since the Penal Code does not specifically provide for the taking of a boat, when law enforcement is detaining an individual for stealing or attempting to steal a vessel joyriding is the only available charging option. The penalty is minimal and does not provide an adequate deterrent.

AB 928 (Pacheco), Chapter 391, increases the penalty for the theft of a vessel. Specifically, this new law:

- Increases the punishment for taking a motorboat or vessel, without the permission of the owner, for the purpose of temporarily using the vessel.

- Provides that any person who so takes a motorboat or vessel is guilty of a misdemeanor.

- States that this misdemeanor is punishable by a fine not exceeding $1,000; or by imprisonment in a county jail not exceeding one year; or by both that fine and imprisonment.

Trespass: Maternity Wards of Hospitals

Existing law makes it unlawful to engage in certain acts of trespass, and punishes most trespasses as misdemeanors. For example, it is a misdemeanor for any person to refuse, or fail, to leave a public building when it is closed after being asked to leave by specified employees of the public agency owning the building if the person has no apparent lawful business to pursue. Additionally, any person who loiters, prowls, or wanders on the private property of another person without visible or lawful business with the owner is guilty of a misdemeanor. "Loitering" is defined as delaying or lingering without a lawful purpose for being on the property or for the purpose of committing a crime. [Penal Code Section 647(h).]

AB 936 (Reyes), Chapter 355, makes it a trespass to enter or remain in a neonatal unit, maternity ward, or birthing center without lawful business if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein. Specifically, this new law:

- States that "reasonable notice" is that which would give actual notice to a reasonable person and is posted, at a minimum, at each entrance into the area.
- Provides that a person convicted of knowingly entering or remaining in a neonatal unit without lawful business shall be punished, as an infraction, by a fine not exceeding $100.
- Further provides that such a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding $1,000, or both if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.
- States that punishment for a second or subsequent offense shall be imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or both.
- Provides that if probation is granted or imposition of a sentence is suspended, it shall be a condition of probation that the person convicted participate in counseling, as designated by the court unless the court finds good cause not to impose this requirement.
- States that the court shall require the person convicted to pay for this counseling, if ordered, unless good cause not to pay is shown.

Identity Theft: Tolling of the Statute of Limitations

Identity theft is unique because it is a crime that often goes undetected by the victim for long periods of time. For example, a victim may be unaware that a person has unlawfully

misappropriated his or her personal identifying information until requesting a credit check or listing a home for sale. Generally, the statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. However, in certain cases, the limitations period does not begin to run until discovery of the offense. Existing law provides that the delayed discovery provision applies to any felony, "a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee." Courts have interpreted Penal Code Section 803(c) to require a showing of reasonable diligence in discovering the facts of a theft. In other words, discovery is not synonymous with actual knowledge. The statute commences after one has knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry.

AB 1105 (Jackson), Chapter 73, adds two offenses, identity theft and filing false documents, to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense. Specifically, this new law:

- Adds the offense of unlawfully obtaining and using personal identifying information to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

- Adds the offense of acquiring, transferring, or retaining possession of the personal identifying information of another with the intent to defraud to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

- Adds the offense of procuring or offering any false or forged instrument to be filed, registered or recorded in any public office to the category of offenses for which the statute of limitations does not begin to run until discovery of the offense.

Financial Abuse of an Elder: Expanded to Include Forgery, Fraud, or Identity Theft

Existing law makes it a crime to commit theft or embezzlement with respect to the property of an elder or dependent adult. An "elder" is defined as any person who is 65 years of age or older. A "dependent adult" is defined as any person who is between the ages of 18 and 64 and has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights. A dependant adult includes a person who has physical or developmental disabilities and persons whose physical or mental abilities have diminished because of age. A "caretaker" is defined as any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

AB 1131 (Jackson), Chapter 543, expands the provisions of the law protecting elders and dependent adults from financial abuse. The new law adds forgery, fraud, and identity theft, with respect to the property or personal identifying information of an elder or dependent adult, to the list of offenses under the elder abuse statute. Specifically, this new law:

- States that any caretaker of an elder or dependent adult who commits theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or dependent adult, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years when the value of that taken exceeds $400.

- Provides that a caretaker who commits the above crimes with regard to property of a value not exceeding $400, is punishable by a fine not exceeding $1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Provides the same punishment for persons who are not caretakers but knew or should reasonably have known that the victim is an elder or dependent adult.

Trespass: Airport Security

Recent changes in airport security requirements sometimes result in lengthy delays at airport security checkpoints. It has been reported that individuals have breached security barriers. Security breaches can result in terminal evacuations, flight delays, and flight cancellations. The impact of this can affect flight schedules throughout a region and/or the nation. The economic costs to airlines can be substantial and result in untold inconvenience and economic impact on the travelling public.

AB 1263 (Benoit), Chapter 361, makes it a misdemeanor trespass to intentionally avoid the screening and inspection of one's person or property when entering the sterile area of an airport. Specifically, this new law:

- Makes an intentional trespass into a sterile area of an airport a misdemeanor punishable by imprisonment in the county jail not to exceed six months; by a fine not to exceed $1,000; or by both.

- Provides that if the trespass results in the delay or cancellation of any scheduled flight and the evacuation of the airport, the offense is punishable by imprisonment in the county jail not to exceed one year.

- Requires that the sterile area be posted with a statement providing reasonable notice that prosecution may result from a trespass into the sterile area of an airport.

Minors: Alcoholic Beverages and Controlled Substances

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years. A violation of these laws is a misdemeanor. Every person who sells, furnishes, or gives or causes to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor punishable by a fine of $1,000 and not less than 24 hours of community service.

Existing law defines the offense of "contributing to the delinquency of a minor" as committing an act or omitting the performance of a duty which tends to cause, causes, or encourages any person under the age of 18 years to become a delinquent or dependent child. The law provides that certain acts of contributing to the delinquency of a minor are punishable by imprisonment in a county jail not exceeding one year.

AB 1301 (Simitian), Chapter 625, creates a new misdemeanor for any parent or guardian who knowingly permits his or her minor child and others, as specified, to drink alcohol or consume a controlled substance at his or her home by holding parents accountable for traffic accidents that occur as a result of this conduct.

Specifically, this new law provides that when all of the following occurs, a parent is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed one year, by a fine not exceeding $1,000, or both imprisonment and fine:

- As a result of the consumption of an alcoholic beverage or use of a controlled substance at the home of a parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.

- The parent knowingly permits that child or other underage person to drive a vehicle after leaving the parent's or legal guardian's home

- That child or underage person is found to have caused a traffic collision while driving the vehicle.

Clarification of Various Weapons Laws

Under existing law, the Attorney General has the general responsibility of maintaining records and other information pertaining to firearms, such as dealers' records of sales of firearms. This information is maintained to assist in the investigation of crime and the recovery of lost and stolen property.

Existing law also regulates various weapons, including machineguns, assault weapons, and destructive devices such as explosives, bombs, rockets, etc. Any person who lawfully possesses an assault weapon, as specified, must register the firearm with the

Department of Justice (DOJ). In addition, the DOJ is authorized to issue permits, upon a showing of good cause, for the manufacture of assault weapons to federally licensed manufacturers of firearms for the sale to, purchase by, or possession of assault weapons to specified law enforcement entities.

SB 238 (Perata), Chapter 499, is an omnibus bill sponsored by the Attorney General's Office which clarifies and reconciles conflicts in the Penal Code with respect to weapons. Specifically, this new law:

- Adds flame-throwers designed for use as weapons to the definition of a destructive device thereby generally prohibiting the possession, transport, or sale of such a weapon without a dangerous weapon permit.

- Requires that machine gun sales to specified law enforcement agencies be performed by a person who is licensed and has a DOJ permit for such guns.

- Deletes the exemption for retired peace officers from the ban on assault weapons pursuant to a recent Ninth Circuit Court of Appeal ruling.

- Authorizes law enforcement entities other than police and sheriffs to report information regarding recovered guns to the Federal Bureau of Alcohol, Tobacco, and Firearms.

- Creates a lifetime, rather than a 10-year, prohibition on possession of a gun for a person convicted of discharging a firearm at an inhabited dwelling house, occupied building, vehicle, aircraft, or inhabited camper.

- Requires gun dealers to record on the record of electronic transfer the date the gun is delivered, and requires the information to be submitted to DOJ electronically.

- Requires that assault weapons seized pursuant to a first-time violation of specified provisions be destroyed rather than returned to the owner.

Statute of Limitations: Unauthorized Practice of Law

Existing law provides that the statute of limitations for a number of specified crimes "does not commence to run until the offense has been discovered, or could reasonably have been discovered . . . ." Those crimes include hazardous waste violations, water quality offenses, pharmacy law violations, and illegal immigration consultation. Existing law also delays the operation of the statute of limitations in cases involving felonies where "a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee."

SB 337 (Romero), Chapter 152, adds the crime of the unauthorized practice of law to the list of offenses for which the statute of limitations does not commence until discovery of the offense. Specifically, this new law provides that the statute of limitation in cases involving the unauthorized practice of law does not commence to run until the offense has been discovered or could have reasonably been discovered.

Driving Under the Influence: Issuance of Restricted Driver's License following Conviction of a Person under the Age of 21

It is unlawful for a person under the age of 21 who has a blood alcohol level of 0.01% or greater, as measured by a preliminary alcohol screening test, to drive a vehicle. However, after the Department of Motor Vehicles (DMV) has issued an order suspending or delaying such person's driving privileges, the DMV may review its order and impose restrictions, rather than a complete suspension, based on a critical need to drive.

Existing law allows driving restrictions based upon a "critical need to drive" if: (1) school or other transportation facilities are inadequate for regular attendance at school and activities authorized by the school, (2) reasonable transportation facilities are inadequate and operation of a vehicle is necessary due to illness of a family member, or (3) transportation facilities are inadequate and the use of a motor vehicle is necessary in the transportation to and from the employment of the applicant and the applicant's income is essential in the support of the family.

SB 408 (Torlakson), Chapter 254, establishes additional requirements for obtaining a restricted driver's license for persons under the age of 21 convicted of specified driving under the influence (DUI) offenses. Specifically, this new law:

- Requires the DMV to determine that the person had no prior DUI convictions within seven years of the current offense.

- Requires the DMV to determine that the person's driving privilege has not been suspended or revoked under certain DUI provisions prior to imposing a restriction instead of a suspension on the driving privilege.

- States that a conviction of an offense in another state, territory, or possession of the United States, the District of Columbia, Puerto Rico, or Canada that if committed in California would constitute a DUI or reckless driving offense is considered a conviction for purposes of determining the eligibility of the person for a restricted license.

- States that electronically transmitted records related to a chemical test analysis, prepared and maintained in the governmental forensic laboratory computerized system are admissible as evidence in administrative proceedings before the DMV.

Driving Under the Influence: License Restriction

Existing law provides that it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of alcoholic beverage and drugs, to drive a vehicle. Existing law also provides that, under specified circumstances, the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles. (DMV.)

The court may require the convicted person to enroll and participate in either an 18-month or 30-month driving under the influence (DUI) program. The person's driving privilege shall not be restored until the person has provided proof of successful completion of a DUI program. However, the DMV may issue a restricted driver's license to a person granted probation if the person submits proof of enrollment in, or completion of, a DUI program. The restricted driving privilege is limited to the hours necessary for driving to and from work and driving to and from activities required in the DUI treatment program.

SB 416 (Alpert), Chapter 705, requires the DMV to grant a driver's license restriction instead of a suspension to specified defendants convicted of a DUI in order to enable them to complete a licensed DUI program. Specifically, this new law requires the DMV to issue a restricted license to a person who meets all of the following conditions:

- Was convicted of a DUI violation before July 1, 1999 that was punishable as a second offense;
- Was granted probation for the conviction;
- Is no longer subject to probation;
- Has not completed the licensed DUI program for reinstatement of the driving privilege; and,
- Has no violation in his or her driving record that would preclude the issuance of a restricted driver's license.

Medical Marijuana

The Compassionate Use Act of 1996 was approved by California voters as Proposition 215. Proposition 215 allows a patient with a serious medical condition, or the patient's primary caregiver, to possess or cultivate marijuana, for the personal, medical use of the patient upon the written or oral recommendation or approval of a physician. Proposition 215 also prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

SB 420 (Vasconcellos), Chapter 875, establishes a statewide, voluntary program for the issuance of identification cards to identify persons authorized to engage in the medical use of marijuana under the Compassionate Use Act of 1996. Specifically, this new law:

- Clarifies the scope of the Compassionate Use Act, and facilitates the identification of qualified patients and their primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers.

- Requires the Department of Health Services (DHS) to establish and maintain a voluntary program for the issuance of identification cards to qualified patients.

- Provides that, with respect to individuals, the identification system must be wholly voluntary. A patient entitled to the protections of the act need not possess an identification card in order to claim the protections of the act.

- Authorizes the Attorney General to set forth and clarify details concerning the possession and cultivation limits established in the law, and to recommend modifications to the possession and cultivation limits.

- Requires the Attorney General to develop and adopt guidelines to ensure the security and non-diversion of marijuana grown for medicinal use.

- Defines "attending physician", "qualified patient", "primary caregiver", and "serious medical condition".

- Provides that DHS shall establish application and renewal fees for the medical marijuana identification cards, as specified.

- Specifies the information that must be provided in order to obtain an identification card. This information includes:

    - Written documentation by the attending physician that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

    - Other required information is the name, address, telephone number, and California medical license number of the attending physician.

    - The name and the duties of the primary caregiver.

    - A government-issued photo identification card of the person and of the primary caregiver, if any.

- Provides that qualified patients, designated primary caregivers, and persons providing assistance to them in the administration of medical marijuana or in acquiring the skills necessary to cultivate or administer marijuana shall not, on that sole basis, be subject to criminal liability for the following:

  - Possessing marijuana;

  - Cultivating, processing, or harvesting of marijuana;

  - Possessing marijuana for sale;

  - Transporting, selling, importing, or giving away marijuana;

  - Opening or maintaining a place for the purpose of selling, giving away or using marijuana;

  - Renting, leasing or making available for use a building, room or space; and,

  - Maintaining a building for the purpose of manufacturing, serving, storing, or using marijuana that is otherwise a nuisance subject to abatement, injunction, and damages.

Investigations and Hearings on Corporate Misconduct

Existing law prohibits fraudulent securities and commodities transactions and grants the Corporations Commissioner with exclusive civil enforcement authority associated with such transactions. The Corporations Commissioner is authorized to conduct investigations into possible violations of California's securities and commodities law, and may gather evidence through subpoenas, depositions, and other methods.

SB 434 (Escutia), Chapter 876, expands the remedies available to the Attorney General's Office in corporate misconduct cases. This new law also clarifies that state agencies may cooperate on investigations with the agencies of other states and the Federal Government, and share information only if those agencies agree to the confidentiality standards under California law. Specifically, this new law:

- Provides the Attorney General with the same civil enforcement and investigative powers currently held by the Department of Corporations Commissioner.

- Creates a new misdemeanor for any person who falsifies, misrepresents, or conceals a material fact in the course of an investigation into a violation of California's securities and commodities laws or any other investigation into business activities.

- Increases the allowable civil penalty for commodities fraud violations from $2,500 to $25,000.

- Requires subpoenaed companies to produce the most knowledgeable person to provide information in reply to an agency subpoena.

- Makes various changes providing for greater specificity on where information sought by state agencies should be produced and when disputes over subpoenas should be resolved.

Contracting Without a License: Repeat Offenders

Existing law provides that it is a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license unless the person is exempt. If a person has previously been convicted being an unlicensed contractor, the court shall impose a fine of 20% of the price of the contract or $4,500, whichever is greater; imprisonment in a county jail for not less than 10 days nor more than six months; or both.

Existing law also states the legislative intent that a victim of a crime 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. Existing law further provides that in addition to the criminal penalties for unlicensed contracting a person who utilizes the services of an unlicensed contractor may bring an action in any court to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

SB 443 (Figueroa), Chapter 706, requires a court to sentence repeat offenders of unlicensed contracting to the county jail for not less than 90 days unless the court finds unusual circumstances for imposing a lesser jail sentence or only a fine. Specifically, this new law:

- Increases the mandatory minimum sentence for a second offense of contracting without a license from not less than 10 days to not less than 90 days in a county jail except in unusual cases, as specified.

- Provides that if a court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions, the court shall state the reasons for its sentencing choice on the record.

Kidnapping: Evidence of Force Required for Kidnapping of an Unresisting Child or Infant

Penal Code Section 207 includes various definitions of kidnapping, some requiring that the victim be carried away forcibly. However, the Penal Code does not specify how "force" is defined in situations involving an unresisting infant or child. In a recent case, the California Supreme Court ruled that "the amount of force required to kidnap an

unresisting infant or child is simply the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent."

In reaching this conclusion, the Court reasoned that that "infants and young children are in a different position vis-à-vis the force requirement for kidnapping than those who can apprehend the force being used against them and resist it . . . . That said, it remains true that no California case has yet defined the quantum of force necessary to establish the force element of kidnapping in the case of an infant or small child. We formulate that standard as follows: 'the amount of force necessary to kidnap an unresisting infant or child is simply the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent'." [In Re Michelle D., 29 Cal. 4th 600 (2002).]

SB 450 (Poochigian), Chapter 23, codified the holding of the California Supreme Court in In Re Michelle D., but does not otherwise constitute a change in existing law. Specifically, this new law:

- Provides that, for purposes of those types of kidnapping requiring force, the amount of force required to kidnap an unresisting infant or child is the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent.

- States that the amendment to Penal Code Section 207codifies the holding in In Re Michelle D. and does not constitute a change in existing law.

Local Building and Safety Code: Penalties

Existing law provides that violation of a city or county ordinance is a misdemeanor unless otherwise specified as an infraction. A violation deemed an infraction is punishable by a fine not exceeding $100, by a fine not exceeding $200 for a second violation of the same ordinance within one year, and by a fine not exceeding $500 for each additional violation of the same ordinance within one year.

SB 567 (Torlakson), Chapter 60, makes a number of related legislative findings relating to code enforcement. Specifically, this new law provides that local building and safety code infraction violations are still punishable by a fine of up to $100 for a first violation, increases the penalty to up to $500 for a second violation of the same ordinance within one year, and increases the penalty to up to $1,000 for each additional violation of the same ordinance within one year of the first violation.

Identity Theft: Records of Applications and Accounts

Existing law provides that it is an alternate felony/misdemeanor for a person to obtain the personal identifying information of another person and to use such information to obtain, or attempt to obtain, credit, goods, or services in the name of the other person without

consent. Existing law further provides that any person who discovers that another, unauthorized person has made an application for certain services or accounts is entitled to receive the identifying information used by the unauthorized person.

Personal identifying information includes the name, address, telephone number, driver's license number, social security number, health insurance or taxpayer identification number, alien registration number, passport number, date of birth, fingerprint, place of employment, employee identification number, maiden name, demand deposit account number, savings account number, mother's maiden name or credit card number of an individual person.

SB 684 (Alpert), Chapter 534, adds applications and accounts regarding mail receiving or forwarding services and office or desk space rental services to the applications and accounts covered by the above provisions. Specifically, this new law:

- Clarifies that a person or entity to whom an application was filed or account was opened in the name of another person must provide the victim of the identity theft copies of paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations.

- Authorizes a consumer who suspects that he or she has been the victim of identity theft to receive information about unauthorized additions to, or renewals of, existing accounts in addition to new applications for credit or other specified goods and services.

- Defines "application" for the purposes of this new law as a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing account, or any other changes made to an existing account.

Cockfighting

The emergence of Exotic Newcastle Disease (END) in California has been particularly disastrous to eight counties in southern California. The California Office of Emergency Services and the United States Department of Agriculture have both reported that illegal cockfighting has spread END. END has already cost California taxpayers $102 million.

SB 732 (Soto), Chapter 256, increases the penalty for cockfighting from a maximum of six months in the county jail to one year in the county jail. Specifically, this new law:

- Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aids or abets the fighting of any cock, is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed one year; by a

fine not to exceed $5,000; or by both.

- States that aiding and abetting a violation of the prohibition against cockfighting requires more than merely being present or a spectator at a place where a violation is occurring.

- Provides that any person who owns, possesses, or trains a cock or other bird with the intent that the cock or other bird shall be engaged in an exhibition of fighting is guilty of a crime punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $5,000; or by both.

- Provides that any person who manufactures, buys, sells, or has in his or her possession gaffs, slashers, or any other sharp implement designed to be

  attached in place of the natural spurs of a game cock is guilty of a crime punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $5,000; or by both.

- Provides that any person who owns, possesses, or trains a cock, or other bird with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a crime punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $5,000; or by both.

- States that a second or subsequent conviction for fighting cocks, owning, training, or possessing a cock with the intent that it shall be engaged in an exhibition of fighting by him or herself or some other person shall be subject to a fine of not to exceed $25,000, except in unusual circumstances where the interests of justice would best be served by a lesser sentence.

Identification: Fingerprints

Existing law requires that a peace officer take before a magistrate any person who violates any section of the Vehicle Code if that person does not have a driver's license or other satisfactory evidence of identity. Existing law also authorizes a peace officer to obtain a thumbprint on a promise to appear from a person arrested for an infraction if that person does not provide satisfactory evidence of identity or when the person is arrested for a misdemeanor and does not have satisfactory identification. Existing law also provides that a victim of identity theft may petition the Court for a factual finding of innocence.

SB 752 (Alpert), Chapter 467, creates a procedure under which a person can contest a notice to appear on the basis that he or she was not the person who was issued the notice. Specifically, this new law:

- States that the Legislature intends to provide a method for a victim of identity theft to quickly clear his or her name when an arrestee uses his or her name falsely.

- Provides, in sections where it is not already specified, that the officer may require that the arrested person, if the officer has no satisfactory evidence of identification, place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the 10-day notice to appear.

- Provides that a person or entity may not use the thumbprint for inclusion in or to create a database; and a person or entity may not sell, give away or in any way allow the distribution of this print for any purpose other than for law enforcement purposes relating to the identity of the arrestee.

- Provides that a person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a thumbprint to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear.

- Authorizes a local law enforcement agency providing the service of comparing thumbprints to charge the requestor no more than the actual costs.

Proposition 36: Definition of Non-Violent Drug Possession Offense

The problem of sex criminals using relatively new forms of drugs to incapacitate or render victims unconscious so as to commit sex crimes has been widely described before the passage of Proposition 36. The existing statutory framework authorizes excluding defendants who possess controlled substances when there are indications of sexual assault or attempted sexual assault. Proposition 36 also excludes those individuals who are unamenable to treatment. Thus, a person who was evaluated as not having a drug problem and who only possessed a controlled substance to facilitate a sexual assault would most likely be deemed unamenable by a treatment provider.

SB 762 (Brulte), Chapter 155, clarifies Proposition 36 by further defining the term "non-violent drug possession offense" (NOVIDPO). Specifically, this new law provides that a NOVIDPO is the unlawful "personal use, possession for personal use, or transportation for personal use of any controlled substance."

Sex Offender Registration: Child Pornography

The list of offenses that require a person to register as a sex offender is comprehensive. Currently, four separate child pornography offenses require registration: sending, bringing, or possessing with the intent to distribute for commercial consideration; sexual

exploitation of a child; employing a minor to produce obscene matter advertising for sale; and possession of child pornography.

SB 879 (Margett), Chapter 540, adds a specified child pornography offense to the list of persons who are required to register as sex offenders. Specifically, this new law adds the offense of sending, bringing, possessing, preparing, publishing, producing, duplicating or printing any obscene matter depicting a person under the age of l8 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material to the list of offenses that require registration as a sex offender.

Code Enforcement Officers

Code enforcement officers are responsible for enforcing building, health, food, and other safety standards at the state and local government level. These officers are asked in the course of their duties to see that state and local codes are complied with and are asked to engage in a number of dangerous situations without being in uniform, without being armed, and without law enforcement assistance. Recently, there have been a number of violent incidents involving code enforcement officers throughout California.

SB 919 (Ortiz), Chapter 274, increases the punishment for an assault or battery upon a code enforcement officer from a six month to a one year in the county jail misdemeanor. Specifically, this new law:

- Provides that a misdemeanor assault upon a code enforcement officer that does not result in injury is punishable by up to one year in the county jail; a fine of up to $2,000; or both.

- Provides that a misdemeanor battery upon a code enforcement officer that does not result in injury is punishable by up to one year in the county jail; a fine of up to $2,000; or both.

- Defines a "code enforcement officer" as any person who is not a peace officer and who is employed by any governmental subdivision; public or quasi-public corporation; public agency; public service corporation; or any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements; whose duties include enforcement of any statute, rules, regulations, or standards; and who is authorized to issue citations, or file formal complaints.

- Defines "code enforcement officer" as also including any person employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act, State Housing Law, the Mobilehomes-Manufactured Housing Act, the Mobilehome Parks Act, and the Special Occupancy Parks Act.

Organized Crime: Fraud or Theft against California's Beverage Container Recycling Program

Existing law specifies various activities which constitute criminal profiteering activity, and provides for the forfeiture of specified assets of persons who engage in a pattern of criminal profiteering upon conviction of an underlying offense, as specified. "Criminal profiteering activity" is defined as any act committed for financial gain or advantage, which may be charged as a crime under specified code provisions. These crimes include, but are not limited to, arson, bribery, child pornography, kidnapping, mayhem, welfare fraud, and others.

Existing law defines "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. [Penal Code Section 186.2(b).]

Existing law requires beverage distributors to pay the State a "redemption payment of $0.02 for every beverage container" sold in California. A container with a capacity of at least 24 ounces is considered two containers redeemed and $0.03 for every single or unpaired beverage container redeemed in a single transaction." A single or unpaired container of at least 24 ounces has a refund value of $0.05.

SB 968 (Bowen), Chapter 125, adds to those specified offenses, offenses related to fraud or theft against California's beverage container recycling program. Specifically, this new law:

- Includes crimes related to fraud or theft against the State's beverage container recycling program within the definition of "criminal profiteering activity".

- Defines "fraud against the beverage container recycling program that is of a conspiratorial nature" as organized crime.

- Provides that the penalty proceeds be deposited into the Penalty Account of the California Beverage Container Recycling Fund pursuant to Public Resources Code 14580(d). However, a portion of the proceeds equivalent to the cost of prosecution shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

Trespass: Agricultural Areas

Existing law provides it is a misdemeanor to enter land where oysters or other shellfish are planted or growing or to injure, gather or carry those shellfish away without the license of the owner or legal occupant.

SB 993 (Poochigian) Chapter 805, expands the definition of a "misdemeanor trespass" to include trespassing on land where animals are grown for food for human consumption. Specifically, this new law makes it a trespass to:

- Enter upon lands or buildings owned by any other person without the license of the owner or legal occupant; where signs forbidding trespass are displayed; and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption.

- Injure, gather, or carry away any animal being housed on any of those lands, without the license of the owner or legal occupant.

- Damage, destroy, or remove or cause to be removed, damaged, or destroyed any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

- Requires the trespass signs to be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land in order for there to be a violation of this provision.

Motion Picture Theatres: Unauthorized Recordings

Existing law provides that a person admitted to a theater in which a motion picture is being exhibited and refuses to cease the operation of a video recording device upon the request of the theater owner is guilty of interfering with and obstructing the operation of a lawful business. This violation is a misdemeanor, punishable by up to 90 days in the county jail, a fine of up to $400, or both such fine and imprisonment. Existing law also provides that a theater owner may detain a patron for a reasonable time and in a reasonable manner to determine if the patron is operating a video-recording device.

SB 1032 (Murray), Chapter 670, creates a new misdemeanor for recording a motion picture in a theatre without appropriate consent. Specifically, this new law:

- Provides that every person who operates a recording device in a motion picture theater while a motion picture is being exhibited and without the express written consent of the owner of the motion picture theater is guilty of a public offense.

- Provides that a violation is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,500, or by both that fine and imprisonment.

- Defines a "recording device" as a photographic, digital or video camera, or other audio or video recording device capable of recording the sounds and images of a motion picture or any portion of a motion picture.

DOMESTIC VIOLENCE

Domestic Violence: Increased Punishment for Persons with Prior Convictions of Battery against a Person in Specified Domestic Relationships

Existing law provides that when a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, a former spouse, a fiancé, a fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding $2,000; by imprisonment in a county jail for a period of not more than one year; or by both that fine and imprisonment. Although existing law provides for increased punishment for subsequent convictions of other specified types of battery, there is no specific penalty enhancement for subsequent convictions of domestic battery.

AB 134 (Cohn), Chapter 262, increases the punishment for a second or subsequent conviction of domestic battery occurring within seven years of a prior conviction. Specifically, this new law provides that, upon a subsequent conviction, a person shall be punished by imprisonment in the state prison for two, three, or four years; by imprisonment in a county jail for not more than one year; by a fine of up to $10,000, or by both that imprisonment and fine.

Domestic Violence: Probation Conditions

Existing law requires persons granted probation for a domestic violence offense to pay a fee of $200. One-third of the money is used to fund domestic violence centers, and the remainder is deposited in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

AB 352 (Goldberg), Chapter 431, increases the fees a person convicted of a domestic violence offense must pay which are used to support specified domestic violence programs. Specifically, this new law:

- Increases from $200 to $400 the fee which a person convicted of domestic violence must pay to support domestic violence centers, the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

- Increases from one-third to two-thirds the percentage of the fee collected which is to be distributed in support of domestic violence shelters, and reduces from two-thirds to one-third the percentage of the fee collected in support of the Domestic Violence Restraining Order Reimbursement Fund

and the Domestic Violence Training and Education Fund.

- Specifies that the fee increase shall only be effective until January 1, 2007.

Domestic Violence: Court Appearances

Generally, current law requires persons accused of felonies to be present at the arraignment, sentencing and other specified times in criminal proceedings. However, defendants accused of misdemeanor offenses are allowed to appear through counsel. A defendant charged with a misdemeanor offense involving domestic violence is required to be present in court for arraignment and sentencing.

> **AB 383 (Cohn), Chapter 29**, requires a defendant charged with a misdemeanor domestic violence offense or a violation of a domestic violence protective order to be present at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a domestic violence protective order.

Domestic Violence Protective Orders

Existing law provides that a person arrested for serious or violent felonies, spousal rape, stalking, inflicting corporal injury on a spouse, battery on a spouse, dissuading a witness, or criminal threats to inflict death or great bodily injury 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 schedule without a hearing in open court.

> **AB 1488 (Bates), Chapter 30,** requires any person arrested for violation of a domestic violence protective order involving threats to kill or harm to appear for a hearing in open court before being released on his or her own recognizance or reduced bail.

Battered Women's Syndrome

The Legislature enacted AB 785 (Eaves), Chapter 812, Statutes of 1991, amending Evidence Code Section 1107 to allow evidence of Battered Women's Syndrome (BWS) to be introduced as evidence in cases where battered women are accused of killing or assaulting their abusers. BWS evidence can explain to a jury how a battered woman could have an honest belief she was in imminent danger and viewed her action as self-defense.

Passage of AB 785 did not help those women convicted of killing or assaulting abusive husbands prior to the legal community recognizing the relevance of BWS evidence. In fact, prior to the passage of AB 785, many judges refused to allow this type of evidence to be admitted in court. Without the opportunity to offer such evidence, some women were denied an opportunity to present a full defense.

In response, the Legislature enacted SB 799 (Karnette), Chapter 858, Statutes of 2001, allowing a writ of habeas corpus to be prosecuted on the grounds that evidence relating to BWS was not introduced at the trial and had BWS been introduced, the results of the proceeding would have been different. SB 799 sunsets as of January 1, 2005.

The process created under SB 799 is more time-consuming than originally anticipated. Finding witnesses and medical records or searching for police reports from an era when domestic violence reports were not required is difficult and time-consuming. Absent funding, pro bono legal assistance is the only viable method providing eligible inmates with an opportunity at succeeding on their habeas petitions. Finding lawyers willing to absorb the time and cost to provide these services has been difficult.

SB 784 (Karnette), Chapter 136, extends the sunset date from January 1, 2005 to January 1, 2010 on provisions allowing a writ of habeas corpus to be prosecuted on grounds that evidence relating to BWS was not introduced at the trial, thereby affecting the outcome of the trial.

DNA

DNA: Victim Rights

Currently, California has over 210,000 deoxyribonucleic acid (DNA) profiles from convicted felons in the State's data bank. DNA profiles obtained from rape kits can now be compared to those in the California and FBI data banks through the Combined DNA Index System (CODIS). The growth of these databases increases the likelihood that perpetrators of sexual assault can be identified and prosecuted.

Police departments across California have a backlog of biological evidence from sexual assault cases that should be analyzed, and sexual assault survivors should promptly be advised of the progress of DNA testing and analysis comparisons.

AB 898 (Chu), Chapter 537, establishes the "Sexual Assault Victim's" DNA Bill of Rights. Specifically, this new law:

- States that upon request of a sexual assault victim of specified violent sex offenses, a law enforcement agency may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. States that the law enforcement agency may, at its discretion, require that the victim's request for information be in writing.

- Provides that subject to the availability of sufficient resources to respond to requests for information, a sexual assault victim has the following rights:

- To be informed whether or not the DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence;

- To be informed whether or not the DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice (DOJ) data bank of case evidence; and,

- To be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ convicted offender DNA database.

- Requires, where the identity of the perpetrator is an issue, a victim of specified violent sex offenses be given notification by law enforcement if either of the following conditions occur:

  - The law enforcement agency elects not to analyze DNA evidence prior to the expiration of the statute of limitations; or,

  - The law enforcement agency intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations as specified.

- Requires that written notice of the intent to destroy or dispose of evidence be given 60 days prior to the disposal or destruction or the decision not to analyze rape kit evidence or other crime scene evidence from an unsolved sexual assault prior to the expiration of the statute of limitations.

- States that a sexual assault victim may designate a sexual assault victim advocate or other support person of the victim's choosing to act as a recipient of the information required under this act.

- Requires that the law enforcement agency responsible for providing information under this act shall do so in a timely manner and, upon request, shall advise the victim or victim's designee of any significant changes in the information. The victim or victim's designee shall keep the appropriate authorities informed of the current address, phone number, or electronic mail address of the person to whom such information should be provided.

- States that a defendant accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this act, nor may a defendant seek to have any conviction or sentence set aside as a result of a failure to provide information.

- Provides that a sexual assault victim's sole remedy for failure of a law enforcement agency's failure to fulfill its responsibilities under this act is

standing to a file a writ of mandamus to require compliance.

- Clarifies that it is the intent of this Act to encourage law enforcement to notify victims of information in their possession and is not intended to affect the DOJ procedures relating to information disclosure.

ELDER ABUSE

Financial Abuse of an Elder: Expanded to Include Forgery, Fraud, or Identity Theft

Existing law makes it a crime to commit theft or embezzlement with respect to the property of an elder or dependent adult. An "elder" is defined as any person who is 65 years of age or older. A "dependent adult" is defined as any person who is between the ages of 18 and 64 and has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights. A dependant adult includes a person who has physical or developmental disabilities and persons whose physical or mental abilities have diminished because of age. A "caretaker" is defined as any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

AB 1131 (Jackson), Chapter 543, expands the provisions of the law protecting elders and dependent adults from financial abuse. The new law adds forgery, fraud, and identity theft, with respect to the property or personal identifying information of an elder or dependent adult, to the list of offenses under the elder abuse statute. Specifically, this new law:

- States that any caretaker of an elder or dependent adult who commits theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or dependent adult, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years when the value of that taken exceeds $400.

- Provides that a caretaker who commits the above crimes with regard to property of a value not exceeding $400, is punishable by a fine not exceeding $1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Provides the same punishment for persons who are not caretakers but knew or should reasonably have known that the victim is an elder or dependent adult.

Stalking Protective Orders: Firearms

Persons subject to elder abuse restraining orders and stalking protective orders are not subject to the same firearms restrictions that attach to similar protective orders issued in domestic violence cases. Persons subject to stalking protective orders can present a danger to public safety and their access to firearms should be prohibited.

AB 1290 (Jackson), Chapter 495, prohibits a person subject to a stalking emergency protective order or an elder abuse restraining order from owning, purchasing, possessing, or receiving a firearm while that order is in effect. Specifically, this new law:

- Prohibits a person subject to a stalking emergency protective order from owning, possessing, purchasing, or receiving a firearm while that order is in effect.
- Prohibits a person subject to an elder abuse restraining order from owning, possessing, purchasing, or receiving a firearm.
- Exempts persons subject to an elder abuse retraining order whose conduct consisted solely of financial abuse.
- Allows a peace officer with reasonable cause to believe that a person has violated the terms of a stalking emergency protective order or elder abuse restraining order to make a lawful arrest of that person without a warrant whether or not the violation occurred in the presence of the arresting officer.
- Provides that any person who owns or possesses a firearm knowing he or she is prohibited from doing so by the terms of a stalking emergency protective order or elder abuse restraining order shall be punished by imprisonment in the county jail not to exceed one year; by fine not exceeding $1,000; or, by both.
- Clarifies that any person prohibited from owning or possessing a firearm may not also purchase or receive a firearm.

Elder Abuse Restraining Orders: Firearms

Currently, elder abusers are exempt from the firearms prohibitions required of domestic abusers subject to a domestic violence protective order. The same type of volatile relationship, which may cause a firearm death in a domestic violence relationship, can also be present when elder abuse perpetrators are permitted access to firearms.

SB 226 (Cedillo), Chapter 498, prohibits a person subject to an elder or dependent abuse protective order from owning, purchasing, possessing, or receiving a firearm while that order is in effect, and establishes a procedure for

persons restrained to relinquish prohibited firearms. Specifically, this new law:

- Prohibits a person subject to an elder or dependent abuse protective order who has been found to be violent, has a propensity for violence, or has threatened violence from owning, purchasing, possessing, or receiving a firearm while that order is in effect.

- Provides that a restrained person ordered to relinquish any firearm shall either surrender the firearm to local law enforcement, or sell the firearm to a licensed dealer; and requires that a person, within 72 hours, file with the court a receipt showing the firearm was relinquished, as specified.

- Provides that the restraining order requiring a person to relinquish a firearm shall state on its face that the respondent is prohibited from owning, possessing, purchasing or receiving a firearm while the protective order is in effect and that the firearm is to be relinquished, as specified.

- Provides that the restraining order requiring a person to relinquish a firearm shall prohibit a person from possessing a firearm for the duration of the order. At the expiration of the restraining order, the local law enforcement agency shall return possession of any firearm within five working days of the expiration date, except as specified.

- Allows a court, as part of a relinquishment order, to grant an exemption from the relinquishment requirements if the respondent can show that a particular firearm is necessary as a condition of continued employment and the employer is unable to reassign the employee to a another position where a firearm is unnecessary.

- Provides that if an exemption is granted, the order shall state that the firearm shall only be in the physical possession only in the course of employment and while travelling to and from employment.

- Allows the court to permit a peace officer to continue to carry a firearm if the officer's employment and personal safety requires the ability to carry a firearm and if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making a finding, the court shall order a mandatory psychological evaluation and may require the peace officer to enter counseling or other treatment program.

- Makes conforming cross-references to a variety of provisions of law relating to protective orders and firearm prohibitions.

EVIDENCE

Investigation of Police Misconduct

Existing law provides that peace officer personnel records of citizen complaints are confidential and shall not be disclosed by the department or agency that employs the peace officer in any criminal or civil proceeding, except by specified provisions of the Evidence Code. The confidentiality provisions do not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General.

When Penal Code Section 832.7 was drafted, the Legislature made the mistake of using the term "police officers" instead of "peace officers". The term "police officer" refers only to city or specialized police officers and does not include deputy sheriffs who work for the county. This distinction is clearly at odds with the intent of the statutory exemption for prosecutors investigating police misconduct. There is no meaningful distinction between investigating crimes allegedly committed by a police officer, deputy sheriff or custodial officer.

> **AB 1106 (J. Horton), Chapter 102,** broadens the current exemption from compliance with Evidence Code Section 1043 requirements so prosecutors will no longer be required to obtain a discovery order to investigate allegations of serious misconduct. Specifically, this new law changes the term "police officer" to "peace officer" in Penal Code Section 832.7.

Death Penalty: Execution of the Mentally Retarded

The United States Supreme Court previously held in Penry v. Lynaugh (1989) 492 US 302, 106 L Ed 256, 109 S Ct 2934, imposition of the death penalty on a mentally retarded defendant does not constitute cruel and unusual punishment as long as sentencers consider and give effect to mitigating evidence of the defendant's mental retardation as a basis for punishment other than death. At the time of the decision in Penry v. Lynaugh, two states had enacted statutes prohibiting execution of the mentally retarded. Even when added to the 14 states that rejected capital punishment completely, the Court found that "while a national consensus against execution of the mentally retarded may someday emerge . . . there is insufficient evidence of such a consensus today."

On June 20, 2002, the United States Supreme Court in a 6-3 decision held executing a mentally retarded defendant amounts to cruel and unusual punishment. The Court commented: "Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the

reliability and fairness of capital proceedings against mentally retarded defendants." [Atkins v. Virginia (2002) 122 S. Ct. 2242.]

After stating their belief that a national consensus has developed against the execution of the mentally retarded the court stated:

> Clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

The Court stated that it would leave to the states the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences.

SB 3 (Burton), Chapter 700, establishes court procedures during death penalty cases regarding the issue of mental retardation. Specifically, this new law:

- Defines "mental retardation" as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

- Provides that at a reasonable time prior to the commencement of the trial the defendant may apply for an order that a mental retardation hearing be conducted. This new law provides that upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to make a determination whether the defendant is mentally retarded.

- Provides that at the request of the defendant, the court shall conduct the mental retardation hearing without a jury prior to the commencement of the trial. The defendant's request for such a hearing constitutes a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the jury shall determine the issue. The jury hearing shall occur at the conclusion of the guilt phase of the trial. The same jury shall make a finding relating to mental retardation. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is mentally retarded.

- Authorizes the court to make orders reasonably necessary to ensure the production of relevant evidence including, but not limited to, appointing qualified experts to examine the defendant. No statement made by the

defendant during a court-ordered examination shall be admissible in the trial on the defendant's guilt.

- Requires the jury to return a unanimous verdict. In any case in which the jury has been unable to reach a verdict, the court shall dismiss the jury and order a new jury impaneled to try the issue of mental retardation. The issue of guilt shall not be tried by the new jury.

- Provides that if before the commencement of trial the court finds that the defendant is mentally retarded, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding of one or more special circumstance, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole (LWOP). The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

- Provides that if the court finds that the defendant is not mentally retarded, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of mental retardation.

- Provides that if the hearing regarding mental retardation is conducted before the jury after the defendant is found guilty with a finding of special circumstances, the following shall apply:

  - If the jury finds that the defendant is mentally retarded, the court shall preclude the death penalty and sentence the defendant to LWOP.

  - If the jury finds that the defendant is not mentally retarded, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

- Provides that in any case in which the defendant has not requested a court hearing and has entered a plea of not guilty by reason of insanity, the hearing on mental retardation shall occur at the conclusion of the sanity trial if the defendant is found sane.

Legislative Investigations

Existing law establishes procedures to be followed by both houses of the Legislature and their committees to compel the appearance and testimony of witnesses, and the production of documents, in connection with legislative investigations. Under current law, when a witness asserts his or her privilege against self-incrimination pursuant to the

Fifth Amendment to the United States Constitution at a legislative hearing, the person presiding over the hearing may instruct the witness to answer. If the witness is compelled to answer, notwithstanding the assertion of the privilege against self-incrimination, the witness receives immunity from criminal prosecution, other than for perjury or contempt, as to any matter touching upon his or her testimony.

SB 401 (Florez), Chapter 195, makes various changes to clarify the existing procedures by which a witness may be compelled to testify or produce documents in a legislative hearing, notwithstanding the assertion of the privilege against self-incrimination. Specifically, this new law:

- Clarifies that a witness must actively assert his or her Fifth Amendment privilege in refusing to testify.

- Specifies that it is only after that assertion that the Legislature can compel the witness to testify, thereby conferring immunity for the content of that testimony.

- Clarifies the procedures by which documents are subpoenaed.

- Provides for a specific procedure to be used by a person who objects, on the basis of the privilege against self-incrimination, to the production of subpoenaed documents.

Driving Under the Influence: Issuance of Restricted Driver's License following Conviction of a Person under the Age of 21

It is unlawful for a person under the age of 21 who has a blood alcohol level of 0.01% or greater, as measured by a preliminary alcohol screening test, to drive a vehicle. However, after the Department of Motor Vehicles (DMV) has issued an order suspending or delaying such person's driving privileges, the DMV may review its order and impose restrictions, rather than a complete suspension, based on a critical need to drive.

Existing law allows driving restrictions based upon a "critical need to drive" if: (1) school or other transportation facilities are inadequate for regular attendance at school and activities authorized by the school, (2) reasonable transportation facilities are inadequate and operation of a vehicle is necessary due to illness of a family member, or (3) transportation facilities are inadequate and the use of a motor vehicle is necessary in the transportation to and from the employment of the applicant and the applicant's income is essential in the support of the family.

SB 408 (Torlakson), Chapter 254, establishes additional requirements for obtaining a restricted driver's license for persons under the age of 21 convicted of specified driving under the influence (DUI) offenses. Specifically, this new law:

- Requires the DMV to determine that the person had no prior DUI convictions within seven years of the current offense.

- Requires the DMV to determine that the person's driving privilege has not been suspended or revoked under certain DUI provisions prior to imposing a restriction instead of a suspension on the driving privilege.

- States that a conviction of an offense in another state, territory, or possession of the United States, the District of Columbia, Puerto Rico, or Canada that if committed in California would constitute a DUI or reckless driving offense is considered a conviction for purposes of determining the eligibility of the person for a restricted license.

- States that electronically transmitted records related to a chemical test analysis, prepared and maintained in the governmental forensic laboratory computerized system are admissible as evidence in administrative proceedings before the DMV.

Investigations and Hearings on Corporate Misconduct

Existing law prohibits fraudulent securities and commodities transactions and grants the Corporations Commissioner with exclusive civil enforcement authority associated with such transactions. The Corporations Commissioner is authorized to conduct investigations into possible violations of California's securities and commodities law, and may gather evidence through subpoenas, depositions, and other methods.

SB 434 (Escutia), Chapter 876, expands the remedies available to the Attorney General's Office in corporate misconduct cases. This new law also clarifies that state agencies may cooperate on investigations with the agencies of other states and the Federal Government, and share information only if those agencies agree to the confidentiality standards under California law. Specifically, this new law:

- Provides the Attorney General with the same civil enforcement and investigative powers currently held by the Department of Corporations Commissioner.

- Creates a new misdemeanor for any person who falsifies, misrepresents, or conceals a material fact in the course of an investigation into a violation of California's securities and commodities laws or any other investigation into business activities.

- Increases the allowable civil penalty for commodities fraud violations from $2,500 to $25,000.

- Requires subpoenaed companies to produce the most knowledgeable person to provide information in reply to an agency subpoena.

- Makes various changes providing for greater specificity on where information sought by state agencies should be produced and when disputes over subpoenas should be resolved.

Kidnapping: Evidence of Force Required for Kidnapping of an Unresisting Child or Infant

Penal Code Section 207 includes various definitions of kidnapping, some requiring that the victim be carried away forcibly. However, the Penal Code does not specify how "force" is defined in situations involving an unresisting infant or child. In a recent case, the California Supreme Court ruled that "the amount of force required to kidnap an unresisting infant or child is simply the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent."

In reaching this conclusion, the Court reasoned that that "infants and young children are in a different position vis-à-vis the force requirement for kidnapping than those who can apprehend the force being used against them and resist it . . . . That said, it remains true that no California case has yet defined the quantum of force necessary to establish the force element of kidnapping in the case of an infant or small child. We formulate that standard as follows: 'the amount of force necessary to kidnap an unresisting infant or child is simply the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent'." [In Re Michelle D., 29 Cal. 4th 600 (2002).]

SB 450 (Poochigian), Chapter 23, codified the holding of the California Supreme Court in In Re Michelle D., but does not otherwise constitute a change in existing law. Specifically, this new law:

- Provides that, for purposes of those types of kidnapping requiring force, the amount of force required to kidnap an unresisting infant or child is the amount of physical force required to take and carry the child away a substantial distance for an illegal purpose or with an illegal intent.

- States that the amendment to Penal Code Section 207codifies the holding in In Re Michelle D. and does not constitute a change in existing law.

Parole: Suitability Hearings: Electronic Submission of Information

Existing law provides that before the Board of Prison Terms (BPT) meets to consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the BPT shall send written notice to various persons involved in the trial. These persons include the superior court judge before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, and the law enforcement agency that investigated the case. Additionally, where the prisoner was convicted of the murder of a peace officer, notice must be given to the law enforcement agency that employed the peace officer at the time of the murder.

Penal Code Section 3043 also provides that, upon request, the BPT shall send notice of any parole hearing to any victim of the crime committed by the prisoner or to the next of kin of the victim if the victim has died. The victim, next of kin, or two members of the victim's immediate family may appear personally or by counsel at the hearing to express their views concerning the crime and the person responsible. Existing law also provides that in lieu of a personal appearance the victim or victim's family may file with the BPT a written, audiotaped, or videotaped statement expressing his or her views regarding the crime and the person responsible.

SB 781 (Margett), Chapter 302, allows any person authorized to forward information for consideration in a parole suitability hearing or the setting of a parole date for a prisoner sentenced to a life sentence to forward that information either by facsimile or electronic mail. Specifically, this new law:

- Provides that any person who receives notice from the BPT of a parole suitability hearing or the setting of a parole date for a prisoner sentenced to a life sentence who is authorized to forward information for consideration in that hearing may forward that information either by facsimile or electronic mail.

- States that the Department of Corrections shall establish procedures for receiving the information by facsimile or electronic mail.

Child Pornography Evidence

Existing law provides that a defendant is entitled to receive all relevant real evidence obtained during a criminal investigation. However, existing law also provides that law enforcement agencies may not disclose the address or telephone number of a victim or a witness to any arrested person or a defendant in a criminal action. Such information may be disclosed to an attorney, who has a statutory duty to keep such information confidential.

SB 877 (Hollingsworth), Chapter 238, creates a similar discovery provision relating to child pornography evidence. Specifically, this new law:

- Provides that no attorney may disclose, or permit to be disclosed, copies of child pornography evidence to a defendant, members of the defendant's family, or other person unless specifically permitted to do so by the court after a hearing and a showing of good cause.

- Provides an exception to the above provision authorizing an attorney to disclose, or permit to be disclosed, copies of child pornography evidence to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section is prohibited.

GANG PROGRAMS

Gang Prevention Programs

AB 853 (Hertzberg), Chapter 506, Statutes of 1997, created the Community Law Enforcement and Recovery (CLEAR) Anti-Gang Initiative demonstration project in Los Angeles County. CLEAR has proven to be an effective gang suppression, intervention, and prevention program for Los Angeles County and has demonstrated a dramatic effect on gang crime activity in its targeted areas. Initially, AB 853 provided state funds to Los Angeles to target the 18th Street Gang by authorizing the Los Angeles District Attorney to appoint a Gang Intervention Coordinator, who would have the authority to create a Mobile Response Team comprised of representatives from the Los Angeles Police Department, Sheriff's Department, Probation Department, District Attorney, and City Attorney. This team provided a flexible and coordinated response to gang crime by addressing neighborhood gang activity through the identification, arrest, prosecution, and conviction of gang members. The overall goals of the CLEAR project are to create an infrastructure within Los Angeles law enforcement agencies for suppressing gang activity, so that neighborhoods could be reclaimed and resident safety restored.

AB 568 (Goldberg), Chapter 621, extends the sunset date for the CLEAR demonstration project from January 1, 2004 to July 1, 2004.

HATE CRIMES

Hate Crimes: Assault and Battery

Currently, California does not have a statute discouraging assault and battery on returning members of the armed forces.

AB 187 (Runner), Chapter 138, makes an assault or battery upon a member of the armed forces because of the victim's service in the armed forces a misdemeanor, as specified. Specifically, this new law:

- Provides that any person who commits an assault against a member of the armed forces of the United States because of the victim's service in the armed forces of the United States shall be punished by imprisonment in the county jail not exceeding one year; by a fine not to exceed $2,000; or by both the fine and imprisonment.

- Provides that any person who commits a battery against a member of the armed forces of the United States because of the victim's service in the armed forces of the United States shall be punished by imprisonment in the county jail not exceeding one year; by a fine not to exceed $2,000; or by both the fine and imprisonment.

- Defines "because of", meaning the bias motivation must be a cause in fact of the assault, whether or not other causes exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the assault.

Hate-Related Murder

Under California law, the intentional killing of a person because of his or her race, color, religion, nationality, or country of origin is punishable by the death penalty. Under California law, the penalty for first-degree murder because of the defendant's perception of the victim's actual or perceived disability, gender or sexual orientation is punishable by imprisonment in the state prison for life without the possibility of parole.

On May 1, 2003, Senators Edward Kennedy, Gordon Smith, and Arlen Specter, introduced S. 966, the Local Law Enforcement Enhancement Act (LLEEA), to provide federal assistance to states and local jurisdictions to prosecute hate crimes. LLEEA would add real or perceived sexual orientation, gender and disability to federal hate crimes laws, thus allowing the United States government greater leverage in providing assistance for the investigation and prosecution of those types of hate crimes. LLEEA would expand federal jurisdiction to hate crimes that cause death or bodily injury or were committed with a firearm or explosive device regardless of whether the victim was exercising a federally protected right. The intent of LLEEA is to give federal authorities jurisdiction to intervene and support local authorities in investigating and prosecuting these cases to the fullest extent of the law.

AJR 34 (Koretz), Resolution Chapter 110, urges the United States Congress to pass, and the President of the United States to sign, S. 966, LLEEA of 2003, and makes a number of related legislative findings. This resolution includes (as well as the above description of the federal bill) the following:

- The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious problem nationally and in California. This violence disrupts the tranquility and safety of communities and is divisive.

- State and local authorities are now, and will continue to be, responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias.

- The prominent characteristic of a violent crime motivated by bias is that it devastates not only the actual victim and the family and friends of the victim, but also the community sharing the traits that caused the victim to be selected.

- Since 1991, there have been over 9,500 hate crimes based on sexual orientation reported to the Federal Bureau of Investigation, an increase of 7.2 percent from 2000 to 2001, for a total of 1,393 incidents that year.

- In a one-month period, there were four separate incidents of hate crimes based on both the race and religion of the victims in the City of West Hollywood alone.

- In 1999, the number of hate crime incidents in California increased by 12.1 percent from one year earlier.

- There were nearly 2,500 victims of hate crimes reported in 1999, with over 60 percent of the offenses motivated by race.

- According to the Los Angeles Gay and Lesbian Center, 63 gay people reported that they were the victims of violence simply because of their sexual orientation in 2000.

- In 1998, the California Department of Justice received reports from local law enforcement agencies detailing more than 1,800 hate crime offenses of which 64.8 percent were motivated by race or ethnicity, 68.8 percent involved a violent crime, and 22.1 percent were motivated by the sexual orientation of the victim.

- After the terrorist attacks of September 11, an increase in hate crimes took place against Arabs and Muslims, with an exceptionally large number of those crimes occurring in Los Angeles.

JUVENILES

Firearm Prohibition: Juvenile Offenders

Juveniles adjudicated of certain felonies and specified misdemeanors are prohibited from possessing a firearm until the age of 30 years old. However, juveniles adjudicated for possessing a concealed or loaded weapon, or for permitting a person to bring a loaded firearm into a vehicle, are not prohibited from possessing a firearm in the future.

> **AB 319 (Frommer), Chapter 490,** adds the offenses of possession of a concealed or loaded firearm and permitting a loaded firearm to be brought into a vehicle to the list of convictions that prohibit a juvenile from having under his or her custody or control any firearm until the age of 30 years.

Juveniles: Escape from Custody

Existing law provides that it is a misdemeanor to escape or attempt to escape while under the custody of a probation officer or any peace officer from a county juvenile hall; while committed to a county juvenile ranch, camp or forestry camp; or while being transported to or from such a facility. In a recent California case, a juvenile escaped from a field trip while away from a secured facility but still under the custody of a peace officer. Because the field trip was at a private facility and the juvenile escaped while at the private facility as opposed to during transportation to and from the juvenile facility, the court could not charge the defendant with an escape.

> **AB 355 (Pacheco), Chapter 263,** revises the definition of "escape" or "attempting to escape" from juvenile facilities, to include private facilities outside these facilities while still under the custody of a probation officer or peace officer, adds regional facilities to the list of enumerated facilities, and defines "regional facility" as any facility used by one or more public entities for the confinement of juveniles for more than 24 hours.

Detention of Minors in Jail Facilities for Adults

Existing law defines a "jail" as a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults charged with violations of criminal law and pending trial, or to hold convicted adult criminal offenders for less than one year. Existing law also provides that minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall receive care, treatment, and guidance consistent with their best interests, holds them accountable for their behavior, and is appropriate for their circumstances.

Under existing law, minors may be detained in jails for adults only under specified conditions. Such conditions include a court finding that the minor's further detention in juvenile hall would endanger the safety of the public or would be detrimental to the other

minors in the juvenile hall, restricted contact between the minor and adults in the facility, and adequate supervision of the minor. Upon specified findings, minors who have committed serious or violent offenses, or whose cases have been filed directly in or have been transferred to, a court of general jurisdiction may be delivered to the custody of the sheriff and detained in an adult facility.

AB 945 (Nuñez), Chapter 332, allows a minor to be detained in a jail for the confinement of adults only if the court makes certain findings on the record. Specifically, this new law:

- Requires the court to make its findings on the record
- Requires the court to find that the minor poses a danger to the staff, other minors in the juvenile facility, or to the public because of the minor's failure to respond to the disciplinary control of the juvenile facility or because the nature of the danger posed by the minor cannot safely be managed by the disciplinary procedures of the juvenile court.

Minors: Alcoholic Beverages and Controlled Substances

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years. A violation of these laws is a misdemeanor. Every person who sells, furnishes, or gives or causes to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor punishable by a fine of $1,000 and not less than 24 hours of community service.

Existing law defines the offense of "contributing to the delinquency of a minor" as committing an act or omitting the performance of a duty which tends to cause, causes, or encourages any person under the age of 18 years to become a delinquent or dependent child. The law provides that certain acts of contributing to the delinquency of a minor are punishable by imprisonment in a county jail not exceeding one year.

AB 1301 (Simitian), Chapter 625, creates a new misdemeanor for any parent or guardian who knowingly permits his or her minor child and others, as specified, to drink alcohol or consume a controlled substance at his or her home by holding parents accountable for traffic accidents that occur as a result of this conduct.

Specifically, this new law provides that when all of the following occurs, a parent is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed one year, by a fine not exceeding $1,000, or both imprisonment and fine:

- As a result of the consumption of an alcoholic beverage or use of a controlled substance at the home of a parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled

substance.

- The parent knowingly permits that child or other underage person to drive a vehicle after leaving the parent's or legal guardian's home

- That child or underage person is found to have caused a traffic collision while driving the vehicle.

Abandoned Children

SB 1368 (Brulte), Chapter 824, Statutes of 2000, established a procedure whereby a parent or person with lawful custody of a child 72 hours or younger may surrender custody of the child anonymously to a hospital emergency room or other facility designated by a county. The person surrendering custody would also be immune from prosecution under the child abandonment or neglect statutes. SB 1368 also provided a procedure for the person to reclaim the abandoned newborn within 14 days of the voluntary surrender. Now commonly known as the "Safe Haven Law," SB 1368 was a response to reports of babies being abandoned in places such as trash bins, restrooms, and highways, and being discovered dead or in a life-threatening medical condition. Rather than prosecuting the parent, SB 1368 focused on saving the life of the newborn by encouraging the person with custody to anonymously surrender the child so he or she could receive immediate medical attention.

It is not clear how many newborn babies are abandoned annually in the United States. In 1998, an informal nationwide survey of media reports conducted by the United States Department of Health Services found 105 newborns were abandoned in public places, including 33 who were found dead.

SB 139 (Brulte), Chapter 150, makes a number of changes to the existing Safe Haven statute. Specifically, this new law:

- Revises the definition of the location where the voluntary surrender of physical custody of a child may occur from a public or private hospital emergency room or additional designated location to a "safe surrender site".

- Requires any hospital or safe surrender site designated by the county board of supervisors to post a sign utilizing a statewide logo adopted by the Department of Social Services notifying the public of the location where a child may be safely surrendered.

- Defines a "safe surrender site" as either of the following:

  - A location designated by a county board of supervisors to be responsible for the voluntary surrender of physical custody of a child who is 72 hours old or younger from a parent or individual who has lawful custody; or,

- A location within a public or private hospital designated by the hospital to be responsible for the voluntary surrender of physical custody of a child who is 72 hours old or younger from a parent or individual who has lawful custody.

- Makes a number of technical changes by providing that:

  - Possession of an ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child;

  - Any medical information including, but not limited to, information obtained from the specified questionnaire shall be provided to the child protective services or county agency. Personal identifying information pertaining to the person who surrenders the child shall be redacted from the records provided to the agency. Any personal identifying information relating to a parent or individual who surrenders a child obtained from the questionnaire is confidential and shall be exempt from disclosure by the agency under the California Public Records Act.

  - As soon as possible, but no later than 24 hours after temporary custody is assumed, the child protective services or county agency shall report all known identifying information to the California Missing Children Clearinghouse and the National Crime Information Center.

Youthful Offender Parole Board

Until 1980, the Youthful Offender Parole Board (YOPB) was under the jurisdiction of the California Youth Authority (CYA). Returning to this general framework will make the CYA more effective and efficient.

SB 459 (Burton), Chapter 4, consolidates the YOPB under the jurisdiction of the CYA effective January 1, 2004 and makes related changes. Specifically, this new law:

- Makes structural changes to the YOPB, as follows

  - Consolidates the YOPB under the jurisdiction of the CYA;

  - Reduces the number of YOPB members from seven to five appointees, in addition to the Chair;

  - Eliminates the positions of YOPB members whose terms expire March 15, 2006 and March 15, 2007;

  - Makes the Director of CYA the ex officio non-voting Chair of the YOPB;

- Provides for the transfer of YOPB staff to the CYA dependent on work force needs;

- Requires mandatory training for the YOPB and its designees;

- Limits the YOPB's function to release (discharges and parole), parole revocation, and disciplinary appeals;

- Authorizes the YOBP to use designees who have specified ward and staff experience and are subject to the same mandatory training requirements as YOPB members;

- Allows wards the right to appeal time adjustments to a panel of at least two YOPB members; and,

- Restores the YOPB's previous name of the "Youth Authority Board".

- Transfers functions and duties from the YOPB to the CYA, as follows:

  - Returning persons to the court of commitment for re-disposition by the court;

  - Determining offense category;

  - Setting parole consideration dates using existing guidelines;

  - Conducting annual reviews;

  - Ordering treatment programs;

  - Making institutional placements;

  - Making furlough placements;

  - Returning nonresident persons to the jurisdiction of the state of legal residence;

  - Making disciplinary decisions (with appeals to the YOPB); and,

  - Making referrals for the continued commitment of dangerous persons.

- Requires CYA to promulgate rules and regulations to implement a department-wide system of graduated sanctions for addressing ward disciplinary matters which distinguishes between minor, intermediate, and serious misconduct.

- Allows CYA to extend a ward's parole consideration date for not more than 12 months for sustained serious misconduct, and allows the CYA to establish regulations for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters.

- Requires CYA to provide specified ward treatment information to county probation and courts.

- Requires CYA to collect and make public specified aggregate data concerning its population.

- Provides that a minor committed to CYA may not be held in physical confinement for a period of time in excess of the maximum term of confinement set by the court based upon the facts and circumstances of the matter which brought or continued the minor before the juvenile court.

- Clarifies that the court has the authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the CYA is unable to, or failing to, provide treatment as required under other provisions of law.

- Makes an immediate appropriation for the usual current expenses of the YOPB for the current year budget in the amount of $1.55 million.

MURDER, DEATH PENALTY

Death Penalty: Execution of the Mentally Retarded

The United States Supreme Court previously held in Penry v. Lynaugh (1989) 492 US 302, 106 L Ed 256, 109 S Ct 2934, imposition of the death penalty on a mentally retarded defendant does not constitute cruel and unusual punishment as long as sentencers consider and give effect to mitigating evidence of the defendant's mental retardation as a basis for punishment other than death. At the time of the decision in Penry v. Lynaugh, two states had enacted statutes prohibiting execution of the mentally retarded. Even when added to the 14 states that rejected capital punishment completely, the Court found that "while a national consensus against execution of the mentally retarded may someday emerge . . . there is insufficient evidence of such a consensus today."

On June 20, 2002, the United States Supreme Court in a 6-3 decision held executing a mentally retarded defendant amounts to cruel and unusual punishment. The Court commented: "Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most

serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants." [Atkins v. Virginia (2002) 122 S. Ct. 2242.]

After stating their belief that a national consensus has developed against the execution of the mentally retarded the court stated:

> Clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

The Court stated that it would leave to the states the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences.

SB 3 (Burton), Chapter 700, establishes court procedures during death penalty cases regarding the issue of mental retardation. Specifically, this new law:

- Defines "mental retardation" as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

- Provides that at a reasonable time prior to the commencement of the trial the defendant may apply for an order that a mental retardation hearing be conducted. This new law provides that upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to make a determination whether the defendant is mentally retarded.

- Provides that at the request of the defendant, the court shall conduct the mental retardation hearing without a jury prior to the commencement of the trial. The defendant's request for such a hearing constitutes a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the jury shall determine the issue. The jury hearing shall occur at the conclusion of the guilt phase of the trial. The same jury shall make a finding relating to mental retardation. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is mentally retarded.

- Authorizes the court to make orders reasonably necessary to ensure the production of relevant evidence including, but not limited to, appointing

qualified experts to examine the defendant. No statement made by the defendant during a court-ordered examination shall be admissible in the trial on the defendant's guilt.

- Requires the jury to return a unanimous verdict. In any case in which the jury has been unable to reach a verdict, the court shall dismiss the jury and order a new jury impaneled to try the issue of mental retardation. The issue of guilt shall not be tried by the new jury.

- Provides that if before the commencement of trial the court finds that the defendant is mentally retarded, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding of one or more special circumstance, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole (LWOP). The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

- Provides that if the court finds that the defendant is not mentally retarded, the trial court shall proceed as in any other case in which a sentence of death is

sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of mental retardation.

- Provides that if the hearing regarding mental retardation is conducted before the jury after the defendant is found guilty with a finding of special circumstances, the following shall apply:

  - If the jury finds that the defendant is mentally retarded, the court shall preclude the death penalty and sentence the defendant to LWOP.

  - If the jury finds that the defendant is not mentally retarded, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

- Provides that in any case in which the defendant has not requested a court hearing and has entered a plea of not guilty by reason of insanity, the hearing on mental retardation shall occur at the conclusion of the sanity trial if the defendant is found sane.

PEACE OFFICERS

Peace Officers: Port Police Officers of the Harbor Department of the City of Los Angeles

Existing law grants full peace officer status to any sheriff, undersheriff, deputy sheriff, chief of police, city police officer, officer of special districts authorized to maintain police departments, marshal, deputy marshal, San Diego Unified Port District Harbor Police, Los Angeles Harbor Department port warden or special officer and inspector or investigator employed by a district attorney. (Penal Code Section 830.1.) Existing law also provides that, with limited exceptions, a peace officer may arrest a person when the officer has reasonable cause to believe the person has committed a public offense in the officer's presence, when the person arrested has committed a felony regardless of whether the felony was committed in the officer's presence, and when the officer has reasonable cause to believe the person to be arrested has committed a felony. (Penal Code Section 836.)

Under existing law, harbor or port police officers may carry firearms only if authorized under the terms and conditions specified by their employing agency. Penal Code Section 830.33 grants limited peace officer status to harbor or port police officers other than those in Los Angeles and San Diego. These officers have the authority to make arrests and may carry firearms. However, the Los Angeles City Harbor Department does not have any employees who have limited peace officer status under Penal Code Section 830.33.

> **AB 354 (Lowenthal), Chapter 47,** changes the category for the port police officers of the Harbor Department of the City of Los Angeles to a category that specifies that these persons are peace officers whose authority extends to any place in California and are not limited in the carrying of firearms.

Peace Officers: Off-Duty Employment

Existing law authorizes a peace officer to work off-duty as a private security guard or patrolman for a private entity, as specified, or a public entity other than his or her primary employer. This is an exemption from the general prohibition on state, county, and city employees from receiving any gratuity or reward for doing an official act, except as may be authorized by law. Unless so authorized, the specified employee is guilty of a misdemeanor.

> **AB 359 (Koretz), Chapter 104,** exempts other employment by a peace officer while off duty in addition to employment as a security guard or patrolman. Specifically, this new law:

- Provides that a peace officer may be employed by a private employer in casual or part-time employment as a private security guard or patrolman while off duty from his or her principal employment and outside of his or her regular employment.

- States that the peace officer may exercise the powers of a peace officer concurrently with that part-time employment, subject to specified conditions.

- Provides that if an employer withholds consent to allow a peace officer to engage in other employment while off duty, the employer shall, at the time of the denial, provide the reasons for the denial in writing to the peace officer.

Peace Officers: Service on Juries

Existing law exempts certain peace officers from jury service in a civil or criminal case. Such officers include sheriffs, police officers, marshals of municipal courts, inspectors or investigators of a district attorney's office, California Highway Patrol officers, and Bay Area Rapid Transit police officers. Existing law also exempts peace officers from the University of California Police Department and the California State University police departments from jury service in criminal cases. The rationale for these jury service exemptions is that these particular peace officers perform critical public safety functions and are constantly needed on the job to protect the public.

AB 513 (Matthews), Chapter 353, requires the Judicial Council, on or before January 1, 2005, to adopt a rule of court to establish procedures for jury service to give scheduling accommodations, when necessary, to specified peace officers.

Peace Officer Training: Guidelines for Special Weapons and Tactics (SWAT) Teams

Existing law requires the Commission on Peace Officer Standards and Training (POST) to adopt rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment and training of specified local law enforcement officers. POST establishes training standards for a number of specified peace officers including, but not limited to, city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a court, and criminal investigators for a district attorney's office. POST is also required to conduct research concerning job-related educational standards to include vision, hearing, physical ability, and emotional stability.

AB 991 (Negrete McLeod), Chapter 624, requires POST to establish training recommendations and guidelines for SWAT teams. These training guidelines and recommendations would be available for use by law enforcement agencies that conduct SWAT operations. Specifically, this new law:

- Requires POST to develop and disseminate guidelines for SWAT training on or before July 1, 2005.

- States that the guidelines shall be developed in consultation with law enforcement officers, the Attorney General's office, SWAT trainers, legal advisers, and others selected by POST.

- Provides that the standardized training recommendations shall, at a minimum, include training requirements for SWAT operations, refresher or advanced training for experienced SWAT members, and supervision and management of SWAT operations.

- States that the guidelines shall, at a minimum, address legal and practical issues of SWAT operations, personnel selection, fitness requirements, planning, hostage negotiation, tactical issues, safety, rescue methods, after-action evaluation of operations, logistical and resource needs, uniform and firearms requirements, risk assessment, policy considerations, and multi-jurisdictional SWAT operations.

- Provides that the guidelines shall provide procedures for approving the prior training of officers, supervisors, and managers that meet the standards and guidelines developed by POST in order to avoid duplicative training.

Weapons: Licenses to Carry Firearms

Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms including, but not limited to, copies of applications for licenses to carry firearms. Existing law also provides procedures to obtain a license to carry a firearm, including requirements that the Attorney General (AG) keep and properly file a complete record of all copies of fingerprints and copies of applications for licenses to carry loaded firearms capable of being concealed on the person in public. Also required is information from the licensing agency, dealers' records of sales (DROS) of firearms and other information from licensed firearms dealers (and sheriffs who effect the lawful transfer of firearms in smaller counties) pertaining to handguns, and other specified firearms reports which are submitted pursuant to law. [Penal Code Section 11106(a).]

Existing law also provides that a sheriff or a police chief may issue a license to carry a firearm capable of being concealed on the person pursuant to specified requirements. These requirements include that the applicant is of good moral character, the applicant is not within certain prohibited categories, and "good cause" exists for the issuance. In counties with populations of 200,000 or less, a license may also be issued to carry a loaded and exposed pistol, revolver, or other firearm capable of being concealed upon the

person. Such permits are generally valid statewide, although the issuing authority may place restrictions or conditions on the license. Licenses are generally valid for any period of time not to exceed three years from the date of the issuance. (Penal Code Section 12050.)

Under existing law, a committee convened by the Attorney General may develop a standard application form for licenses to carry a firearm. The Attorney General is also authorized to adopt and enforce regulations relative to these licenses.

AB 1044 (Negrete McLeod), Chapter 541, recasts and makes technical changes to the requirements regarding the maintenance of documentation of licenses to carry firearms. Specifically, this new law:

- Recasts the provisions which require the registry maintained by the Attorney General, and requires the registry to include copies of the licenses to carry firearms rather than copies of the applications for licenses to carry firearms.

- Recasts the provisions relating to the committee, allowing the committee to review and revise the firearm application form.

- Deletes the provisions authorizing the Attorney General to adopt and enforce regulations relative to the firearm licenses.

- Provides that the firearm license application forms are deemed a local agency form exempt from the Administrative Procedures Act.

Continuing Education: Mental Illness and Developmental Disability

Under current law, peace officers are required to receive six hours during basic training on how to deal with persons with mental illnesses and developmental disabilities.

The Commission on Peace Officer Standards and Training (POST) and the Department of Justice is required to establish and update a continuing education classroom training course regarding persons with developmental disabilities, mental illness, or both. The training course was developed by POST in consultation with the appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability. POST is required to issue a report to the Legislature that contains a description of the process by which the course was established and information on the number of officers who attended the course or other courses certified by POST relating to this type training by October 1, 2003.

San Francisco has one of the highest rates of incidents in which mentally ill persons are involuntarily detained for 72 hours for psychiatric evaluation in California. In response, the San Francisco Police Department has incorporated a Police Crisis Intervention Training (CIT) Program into its delivery of mental health training to officers who have been in the field for a minimum of two years. The program includes training developed

in conjunction with local mental health providers and consumers; information relating to basic areas of mental illness including schizophrenia, personality disorders, cognitive disorders, suicide intervention, dual diagnosis and post traumatic stress disorder; and training to recognize signs and symptoms of mental illness.

> **AB 1102 (Yee), Chapter 269,** makes a number of legislative findings relating to mental illness. Specifically, this new law extends the report's due date to October 1, 2004 and requires the report include an analysis of the CIT Program used by the San Francisco and San Jose Police Departments to assess the training used in these programs and compare existing courses offered by POST in order to evaluate the adequacy of mental illness and developmental disability training available to local law enforcement officers.

Investigation of Police Misconduct

Existing law provides that peace officer personnel records of citizen complaints are confidential and shall not be disclosed by the department or agency that employs the peace officer in any criminal or civil proceeding, except by specified provisions of the Evidence Code. The confidentiality provisions do not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General.

When Penal Code Section 832.7 was drafted, the Legislature made the mistake of using the term "police officers" instead of "peace officers". The term "police officer" refers only to city or specialized police officers and does not include deputy sheriffs who work for the county. This distinction is clearly at odds with the intent of the statutory exemption for prosecutors investigating police misconduct. There is no meaningful distinction between investigating crimes allegedly committed by a police officer, deputy sheriff or custodial officer.

> **AB 1106 (J. Horton), Chapter 102,** broadens the current exemption from compliance with Evidence Code Section 1043 requirements so prosecutors will no longer be required to obtain a discovery order to investigate allegations of serious misconduct. Specifically, this new law changes the term "police officer" to "peace officer" in Penal Code Section 832.7.

Responsibilities of Deputy Sheriffs in Specified Counties, and Clarification of Training Requirements for Custodial Officers

Penal Code Section 830.1 and 832 define peace officer's powers, duties and training requirements. Existing law provides that any deputy sheriff employed in that capacity by a county is a peace officer whose authority extends to any place in California with regard to:

1) Offenses committed within his or her jurisdiction;

2) Any offense committed in his or her presence where there is immediate danger to person or property;

3) Where there is immediate danger of escape of the perpetrator; or

4) Where this is probable cause to believe that these situations exist.

Additionally, counties employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments. However, in specified counties, these deputy sheriffs are peace officers whose authority extends to any place in California while engaged in the performance of his or her employment related to custodial assignments or when directed to perform other law enforcement duties during a local state of emergency.

AB 1254 (La Malfa), Chapter 70, adds Shasta and Solano Counties to the existing authority to employ deputy sheriffs who may perform general peace officer duties in specified circumstances. Specifically, this new law:

- Defines "deputy sheriffs in Shasta and Solano Counties," initially employed to perform custodial duties, as peace officers with authority that extends to any place in California when engaged in the performance of their assigned duties or when performing other law enforcement duties during a local state of emergency.

- Specifies that designated custodial officers who have completed the course of training prescribed by the Commission on Peace Officer Standards and Training are not subject to re-training and testing requirements for officers who have had a three-year break in service.

Reserve Peace Officers and Community College Police Departments

Existing law provides that any person deputized or appointed as a reserve deputy sheriff or police officer and assigned specific police functions is a peace officer. There are three levels of reserve peace officers which are generally dependent upon their level of training, supervision, and duty assignments.

In addition, existing law authorizes school districts to establish an unpaid, volunteer school police reserve officer corps to supplement the school district police department. Similarly, community college districts are authorized to establish a community college police department, and to employ personnel as necessary to enforce the law on or near the campus of the community college or other properties owned and operated by the community college.

Existing law imposes various duties and grants various powers to peace officers with regard to vehicles and certain weapons. Generally, the law prohibits carrying a concealed weapon on the person or in a vehicle and prohibits carrying any type of loaded firearm.

Both offenses constitute misdemeanors. However, certain categories of persons are exempt from those prohibitions, including specified peace officers.

AB 1436 (Runner), Chapter 292, recasts the provisions regarding specified reserve police officers. Specifically, this new law:

- Deletes the requirement that school district reserve officers be an unpaid and volunteer corps, thereby allowing a school district board to pay its reserve officers.

- Authorizes a community college district board to establish a police reserve officer program to supplement an existing community college police department.

- Includes a community college reserve police officer as a peace officer pursuant to Penal Code Section 830.32.

- Authorizes specified reserve peace officers to obtain a permit to carry a concealed weapon, as specified.

- Authorizes reserve officers to issue a notice to appear when the officer has reasonable cause to believe that a person involved in a traffic accident violated a provision of the Vehicle Code, not amounting to a felony, or a local ordinance and the violation contributed to the traffic accident. The officer must have completed training in the investigation of traffic accidents.

Peace Officers: Mental Health Evaluations

Each class of public officers or employees declared by law to be peace officers is required to meet certain minimum requirements. The California Commission on Peace Officer Standards and Training (POST) is required to establish and amend minimum standards relating to physical, mental and moral fitness.

There are many challenges involved in evaluating a police officer's fitness for duty, including how to detect early warning signals of imminent behavioral problems. Evaluators also have to differentiate between a person generally unsuited to being a police officer versus a police officer who reacts badly in a stressful situation and whose responses could be improved with the proper training.

AB 1669 (Chu), Chapter 777, revises the qualifications for a mental health professional who evaluates a peace officer's mental and emotional fitness for duty, and provides that only physicians and psychologists meeting those qualifications can perform these evaluations. Specifically, this new law provides that the:

- Emotional and mental condition of a peace officer shall be evaluated by either of the following:

  - A physician and surgeon who holds a valid California license to practice medicine; has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education; and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

  - A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years, accrued post doctorate.

- The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by POST designed for the conduct of pre employment psychological screening of peace officers.

Peace Officer Training Certificates

The issue of what role, if any, the Commission on Peace Officer Standards and Training (POST) should assume relating to law enforcement licensing arose in 1992 when several police chiefs urged POST to adopt regulations to cancel a peace officer's certificate. In response, rank and file peace officer groups sponsored legislation to prohibit POST from adopting licensing regulations. That bill was eventually vetoed by Governor Wilson. The issue of whether POST should expand its role from being a professional training organization into that of a quasi-licensing authority remained dormant until the fall of 1999 when the issue of licensing was again brought before the POST board. POST created the Professional Certificate Review Committee to study the issue of cancellation of certificates. At the conclusion of its meetings in June 2000, the Committee unanimously agreed to recommend expanding the grounds for disqualifying a person from holding office as a peace officer.

SB 221 (Romero), Chapter 297, clarifies existing law defining the role of POST as a training and educational agency by limiting the authority to withdraw or revoke previously issued certificates. Specifically, this new law:

- Provides that peace officer certificates issued by POST will be known as "professional certificates."

- Expands the grounds for disqualification of a person from being a peace officer for the conviction of a felony to include any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact or upon the entry of a plea of guilty or nolo contendere to a

felony. This new law requires that this provision apply regardless of whether the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law.

- Provides that a person who pleads guilty or nolo contendere to, or is found guilty by a trier of fact of, an alternate felony/misdemeanor drug possession offense and successfully completes a deferred entry of judgement treatment program shall not be disqualified from being a peace officer solely on the basis of the plea or finding.

- Provides that a person who pleads guilty or nolo contendere to, or is found guilty by a trier of fact of, an alternate felony/misdemeanor drug possession offense and successfully completes a Proposition 36 treatment program shall not be disqualified from being a peace officer solely on the basis of the plea or finding if the court deems the offense to be a misdemeanor or reduces the offense to a misdemeanor.

- Provides that POST shall not have the authority to adopt or carry out a regulation that authorizes the withdrawal or revocation of a certificate previously issued to a peace officer.

- Deletes the provision of existing law that states certificates remain the property of POST and that POST has the power to cancel any certificate

- Provides that POST shall not have the authority to cancel a certificate previously issued to a peace officer. POST may cancel a certificate obtained through misrepresentation or fraud or that was issued as the result of an administrative error.

- Requires POST to do the following upon receiving notice that a person who holds a professional peace officer certificate has been convicted of a disqualifying offense: (1) enter the following admonition in the training record - "this person is ineligible to be a peace officer in California pursuant to Government Code Section 1029(a)", and (2) notify the agency that employs the person that he or she is ineligible to be a peace officer. POST is required to reinstate a person's basic certificate if the conviction requiring ineligibility is overturned or reversed by a court of competent jurisdiction.

- Provides that a POST certificate shall be declared null and void where the holder has been convicted of an offense that disqualifies the person from being a peace officer.

- Provides that upon request of a person who is eligible for reinstatement due to a successful completion of probation, the court having jurisdiction over the matter in which probation was ordered is required to notify POST of the successful completion and the misdemeanor nature of the person's eligibility. The reinstatement of eligibility in the person's training record does not create a mandate that the person be hired by any agency.

Access to Megan's Law: School District Police Departments

Megan's Law allows citizens to access information on the identities and whereabouts of the most serious registered sex offenders in California. The information is made available to the public in three ways: law enforcement agencies notifying citizens of high-risk or serious sex offenders, citizens calling a 900 telephone number, or citizens viewing computerized information at local law enforcement agencies.

Existing law authorizes the governing board of any school district to establish a security or police department. The governing board may employ personnel to ensure the safety of school district personnel and pupils. School district police departments are supplementary to city and county law enforcement agencies and are not vested with general police powers.

Providing school districts with easier access to the sex offender registration database will enhance school safety.

SB 356 (Alpert), Chapter 538, authorizes school district police departments to receive Megan's Law information from the Department of Justice (DOJ) and to make limited public notifications as to the presence of registered sex offenders. Specifically, this new law:

- Provides that the term "designated law enforcement entity" for purposes of notifying the public as to the presence of serious or high-risk sex offenders also includes the police department of any school district as defined in Penal Code Section 830.32(b).

- Provides that the police department of any school district is not authorized to make disclosures about registrants intended to reach persons beyond the school community.

- Defines "school community" as those persons present at, those persons regularly frequenting, and the parents of any student attending a school providing instruction in kindergarten or Grades 1 to 12 inclusive, or any place

associated with one of these schools. A place associated with a school includes campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the school for educational instruction, business, or school events; and public areas contiguous to any school or facility that are frequented by students, employees, or volunteers of the school.

- Provides that school district police departments, upon request, may receive Megan's Law sex-offender information on the CD-ROM or other electronic medium from the DOJ.

Peace Officers: Local Government

Existing law authorizes the board of supervisors of specified counties to provide, by ordinance, that the public administrator be appointed by the board. Existing law also authorizes the boards of supervisors of specified counties to appoint the same person to the offices of public administrator, veteran service officer, and public guardian.

Existing law also states that any harbor or port police officer regularly employed and paid in that capacity is a peace officer if the primary duty of the peace officer is the enforcement of the law in and about the properties owned or operated by the harbor or port. Under existing law, these peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

Existing law provides that any deputy sheriff of certain counties assigned to perform duties relating to specified custodial assignments is a peace officer whose authority extends to any place in California only while engaged in the performance of his or her duties or when directed to perform other law enforcement duties during a local state of emergency.

SB 570 (Chesbro), Chapter 710, adds specified counties to the above provisions, and changes the category for port peace officers of the Harbor Department of the City of Los Angeles. Specifically, this new law:

- Includes Napa County within the list of counties whose boards of supervisors are authorized to provide for the appointment of the public administrator by the board.

- Provides that port police officers of the Harbor Department of the City of Los Angeles are peace officers whose authority extends to any place in California, as specified, and that does not limit the carrying of firearms.

- Adds deputy sheriffs of Shasta and Solano Counties employed to perform duties relating to custodial assignments to the category of peace officers whose authority extends to any place within California while engaged in

the performance of his or her employment or when directed to perform other law enforcement duties during a local state of emergency.

Sex Offenders: Statewide Sexual Predator Apprehension Team

Penal Code Section 13885.1 requires the Attorney General to establish and maintain, upon appropriation of funds by the Legislature, a statewide Sexual Habitual Offender Program special force**.** This special force is comprised of three special agent teams, one team each from southern, central, and northern California. The teams focus on repeat sex offenders and coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register under Penal Code Section 290 who violate the law or conditions of probation or parole. The teams also target and monitor chronic repeat violent sex offenders before the commission of additional sexual offenses and develop profiles in unsolved sexual assault cases.

SB 903 (Chesbro), Chapter 27, renames and reorganizes the above program as the "Statewide Sexual Predator Apprehension Team". This new law updates an existing statute to accurately describe the current status of the Attorney General's Sexual Predator Apprehension Teams. The original three-team concept has grown into seven teams throughout California. Presently, teams exist in California Bureau of Investigation offices in Fresno, Los Angeles, Sacramento, San Francisco, San Diego, Orange, and Riverside. This new law authorizes the Attorney General to establish additional teams and ensures that local law enforcement agencies are aware of the services available to them. Specifically, this new law:

- Provides that the Statewide Sexual Predator Apprehension Team shall be comprised of California Bureau of Investigation teams throughout California;

- States that the teams shall focus on repeat sex offenders;

- Provides that the teams shall coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register as sex offenders under Penal Code Section 290 who violate the law or conditions of probation or parole;

- Provides that the teams shall target and monitor repeat violent sex offenders before the commission of additional sexual offenses; and,

- States that the teams shall develop profiles in unsolved sexual assault cases.

RESTITUTION

Victims of Crime: Authorized Representatives

Existing law does not address which persons the State Victim Compensation and Government Claims Board may accept as the authorized representative on a victim's application for the California Victim Compensation Program which unqualified individuals have represented victims and derivative victims in filing their Board applications. In some instances, victims were charged for expenses relating to the processing of their applications.

AB 976 (Montañez), Chapter 281, authorizes the California Victim Compensation and Government Claims Board to recognize an authorized representative of the victim or derivative victim who represents the victim or derivative victim. This new law is intended to ensure that victims and derivative victims of crime in California are provided with the highest quality of services, assistance and protection. Specifically, this new law:

- Provides a clear definition of persons the Board may accept as an authorized representative on a victim's application. This law establishes a minimum-standard qualification requirement thereby ensuring that victims and derivative victims are provided with the highest quality of services, assistance and protection.

- Defines "authorized representative" as any of the following:

  - An attorney;

  - The legal guardian of the victim or derivative victim;

  - A victim assistance advocate certified pursuant to Penal Code Section 13835.10;

  - An immediate family member of the victim or derivative victim who has written authorization by the victim or derivative victim and is not the perpetrator of the crime that gave rise to the claim; and,

  - Other persons who shall represent the victim or derivative victim pursuant to rules adopted by the board.

- Provides that, except for attorney's fees awarded under this law, no authorized representative shall charge, demand, receive, or collect any amount for the services rendered under this subdivision.

SEX OFFENSES

Sexual Assault: Toxicology Examination

Existing law establishes a protocol for the examination, treatment, and collection and preservation of evidence from the victims of sexual assault, attempted sexual assault, and child molestation. Sexual assault accomplished by the administration of a controlled substance is becoming increasingly more common. However, physical evidence of drugs and alcohol is difficult to obtain without getting a urine sample as soon as possible from a victim. Therefore, it is critical for the attending nurse, doctor, physician or responding officer to get a urine sample as soon as possible. California law does not require that a urine sample be taken as part of the uniform medical protocol used in the examination of victims of sexual assault.

AB 506 (Maze), Chapter 535, includes in the uniform protocol for the medical examination of sexual assault victims the taking of the victim's urine for toxicology purposes to determine if drugs or alcohol were used in the assault. Specifically, this new law:

- States that if the history of contact indicates, a sexual assault victim's urine shall be collected, except where the victim objects, for toxicology purposes to determine if drugs or alcohol were used in the sexual assault.

- Provides that the victim of the sexual assault shall not be responsible for any costs associated with the toxicology testing.

- States that the individual volunteering for the test shall not be subject to any sanctions and informed of that fact, based solely upon toxicology findings including, but not limited to, investigations regarding probation, parole, parental rights, or violations of controlled substance statutes, and that nothing in this paragraph shall alter any reporting duty under the Child Abuse and Neglect Reporting Act.

- Provides that toxicology results shall not be admissible in any civil or criminal action except to prosecute or defend the crime necessitating the examination. Results obtained shall be kept confidential, and the victim shall be informed of the immunity and confidentiality safeguards.

Criminal Offenses: School Employees

Upon the arrest of a teacher or school employee for specific offenses including possession of a controlled substance or an offense requiring a person to register as a sex offender,

existing law requires local law enforcement to immediately notify the school district's superintendent. These provisions do not include the California Highway Patrol.

AB 608 (Daucher), Chapter 536, adds the Commissioner of the California Highway Patrol to the list of law enforcement officials required to report the arrest of a school employee for specified offenses to the superintendent of the school district or to the private school authority that employs the person. Specifically, this new law:

- Requires the Commissioner of the Highway Patrol to report the arrest of a teacher or school employee for specified controlled substance violations, which upon conviction requires a person to register as a convicted drug offender to the superintendent of schools or the entity employing the person.

- Requires the Commissioner of the Highway Patrol to report the arrest of a teacher or school employee for specified sex offenses which upon conviction requires a person to register as a convicted sex offender to the superintendent of schools or the entity employing the person.

- Provides that notice may only be given if the law enforcement officer knows the arrestee is an employee of a school district or private school.

Sex Offender Registration: Probationers

Existing law provides that any person required to register as a convicted sex offender must register with the local law enforcement agency having jurisdiction over the area in which he or she resides. Convicted sex offenders on parole are required to provide their parole agents with proof of registration within six working days of parole. However, persons released on probation are not currently required to provide their probation officers with proof of registration.

AB 1098 (Garcia), Chapter 245, requires a person released on probation who is required to register as a convicted sex offender to provide proof of registration to his or her probation officer. Specifically, this new law:

- Requires a person released on probation who is required to register as a convicted sex offender to provide his or her probation officer with proof of registration within six working days of his or her release on probation.

- Requires a person released on probation who is required to register as a convicted sex offender to provide his or her probation officer with proof of any revision or annual update to registration information within five working days as long he or she is under the supervision of a probation officer.

- Defines "proof of registration" as a photocopy of the actual registration form.

- Requires a parole or probation officer to advise a registered sex offender of his or her duty to provide proof of registration or proof of any change in registration information within a specified period of time.

- Requires a law enforcement agency to provide proof of sex offender registration free of charge.

Sex Offender Registration on College Campuses

Before the enactment of AB 4 (Bates), Chapter 544, Statutes of 2001, only sex offenders who lived on a college campus were required to register with a campus police department. Beginning October 28, 2002, all registrants enrolled or employed by institutions of higher learning must register with campus police in addition to registering with the jurisdiction where they reside. Under existing law, a campus police department may choose to display the Department of Justice (DOJ) web-enabled Megan's Law information. However, Megan's Law does not disclose the fact of campus registration to the public. Only law enforcement personnel know if a particular person has registered on campus. Currently, a campus police department has the authority to publicize sex offender information if it determines that disclosure should be made regarding a serious or high-risk offender. According to the DOJ, recent regulations issued by the United States DOJ do not allow states to distinguish between different classes of sex offenders for purposes of notifying a campus community. Federal regulations state that sex offender information must be made available concerning the identities of all registered sex offenders enrolled or employed at an institution of higher education.

AB 1313 (Parra), Chapter 634, brings California into compliance with federal law so as to avoid forfeiting federal grant funding by authorizing campus police departments to release information about all sex offenders registered on campus. Specifically, this new law:

- Extends the sunset date on Megan's Law from January 1, 2004 to January 1, 2007.

- Provides that information regarding the presence of any registered sex offender on campus and sex offender registration information may be released to members of the campus community by any campus police department or, if there is no such entity, the police or sheriff's department with jurisdiction over the campus and any employees of those agencies, as specified.

- Defines "campus community" as those persons present at, and those persons regularly frequenting any, place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility regularly frequented by students,

employees, or volunteers of the campus.

- Provides that it shall not be construed to authorize campus law enforcement, or police or sheriff's departments with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

- Grants immunity from both civil and criminal liability to any specified law enforcement entity and its employees for the good-faith dissemination of sex offender information.

- Authorizes the DOJ to develop training for police, sheriffs, and campus police departments explaining how this information may be disclosed and who shall be considered members of the campus community.

- Requires that a person who requests campus sex offender information sign a statement indicating that he or she is not a registered sex offender and understands the proper usage of such information.

- Requires specified law enforcement agencies to maintain records of printed information disseminated to the campus community for a minimum of five years, as specified.

- Makes a technical cross-reference to clarify that specified statements, photographs, and fingerprints of sex offenders required to register with colleges and universities are not subject to inspection by the public or any person other than a regularly employed peace officer or other law enforcement officer.

Access to Megan's Law: School District Police Departments

Megan's Law allows citizens to access information on the identities and whereabouts of the most serious registered sex offenders in California. The information is made available to the public in three ways: law enforcement agencies notifying citizens of high-risk or serious sex offenders, citizens calling a 900 telephone number, or citizens viewing computerized information at local law enforcement agencies.

Existing law authorizes the governing board of any school district to establish a security or police department. The governing board may employ personnel to ensure the safety of school district personnel and pupils. School district police departments are supplementary to city and county law enforcement agencies and are not vested with general police powers.

Providing school districts with easier access to the sex offender registration database will enhance school safety.

SB 356 (Alpert), Chapter 538, authorizes school district police departments to receive Megan's Law information from the Department of Justice (DOJ) and to make limited public notifications as to the presence of registered sex offenders. Specifically, this new law:

- Provides that the term "designated law enforcement entity" for purposes of notifying the public as to the presence of serious or high-risk sex offenders also includes the police department of any school district as defined in Penal Code Section 830.32(b).

- Provides that the police department of any school district is not authorized to make disclosures about registrants intended to reach persons beyond the school community.

- Defines "school community" as those persons present at, those persons regularly frequenting, and the parents of any student attending a school providing instruction in kindergarten or Grades 1 to 12 inclusive, or any place associated with one of these schools. A place associated with a school includes campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the school for educational instruction, business, or school events; and public areas contiguous to any school or facility that are frequented by students, employees, or volunteers of the school.

- Provides that school district police departments, upon request, may receive Megan's Law sex-offender information on the CD-ROM or other electronic medium from the DOJ.

Proposition 36: Definition of Non-Violent Drug Possession Offense

The problem of sex criminals using relatively new forms of drugs to incapacitate or render victims unconscious so as to commit sex crimes has been widely described before the passage of Proposition 36. The existing statutory framework authorizes excluding defendants who possess controlled substances when there are indications of sexual assault or attempted sexual assault. Proposition 36 also excludes those individuals who are unamenable to treatment. Thus, a person who was evaluated as not having a drug problem and who only possessed a controlled substance to facilitate a sexual assault would most likely be deemed unamenable by a treatment provider.

SB 762 (Brulte), Chapter 155, clarifies Proposition 36 by further defining the term "non-violent drug possession offense" (NOVIDPO). Specifically, this new law provides that a NOVIDPO is the unlawful "personal use, possession for personal use, or transportation for personal use of any controlled substance."

Child Pornography Evidence

Existing law provides that a defendant is entitled to receive all relevant real evidence obtained during a criminal investigation. However, existing law also provides that law enforcement agencies may not disclose the address or telephone number of a victim or a witness to any arrested person or a defendant in a criminal action. Such information may be disclosed to an attorney, who has a statutory duty to keep such information confidential.

SB 877 (Hollingsworth), Chapter 238, creates a similar discovery provision relating to child pornography evidence. Specifically, this new law:

- Provides that no attorney may disclose, or permit to be disclosed, copies of child pornography evidence to a defendant, members of the defendant's family, or other person unless specifically permitted to do so by the court after a hearing and a showing of good cause.

- Provides an exception to the above provision authorizing an attorney to disclose, or permit to be disclosed, copies of child pornography evidence to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section is prohibited.

Sex Offender Registration: Child Pornography

The list of offenses that require a person to register as a sex offender is comprehensive. Currently, four separate child pornography offenses require registration: sending, bringing, or possessing with the intent to distribute for commercial consideration; sexual exploitation of a child; employing a minor to produce obscene matter advertising for sale; and possession of child pornography.

SB 879 (Margett), Chapter 540, adds a specified child pornography offense to the list of persons who are required to register as sex offenders. Specifically, this new law adds the offense of sending, bringing, possessing, preparing, publishing, producing, duplicating or printing any obscene matter depicting a person under the age of l8 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material to the list of offenses that require registration as a sex offender.

Sex Offenders: Statewide Sexual Predator Apprehension Team

Penal Code Section 13885.1 requires the Attorney General to establish and maintain, upon appropriation of funds by the Legislature, a statewide Sexual Habitual Offender Program special force**.** This special force is comprised of three special agent teams, one team each from southern, central, and northern California. The teams focus on repeat sex offenders and coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register under Penal Code Section 290 who violate the law or conditions of probation or parole. The teams also target and monitor chronic repeat violent sex offenders before the commission of additional sexual offenses and develop profiles in unsolved sexual assault cases.

SB 903 (Chesbro), Chapter 27, renames and reorganizes the above program as the "Statewide Sexual Predator Apprehension Team". This new law updates an existing statute to accurately describe the current status of the Attorney General's Sexual Predator Apprehension Teams. The original three-team concept has grown into seven teams throughout California. Presently, teams exist in California Bureau of Investigation offices in Fresno, Los Angeles, Sacramento, San Francisco, San Diego, Orange, and Riverside. This new law authorizes the Attorney General to establish additional teams and ensures that local law enforcement agencies are aware of the services available to them. Specifically, this new law:

- Provides that the Statewide Sexual Predator Apprehension Team shall be comprised of California Bureau of Investigation teams throughout California;
- States that the teams shall focus on repeat sex offenders;
- Provides that the teams shall coordinate state and local investigative resources to apprehend sexual habitual offenders and persons required to register as sex offenders under Penal Code Section 290 who violate the law or conditions of probation or parole;
- Provides that the teams shall target and monitor repeat violent sex offenders before the commission of additional sexual offenses; and,
- States that the teams shall develop profiles in unsolved sexual assault cases.

SEXUALLY VIOLENT PREATORS

Sex Offender Registration on College Campuses

Before the enactment of AB 4 (Bates), Chapter 544, Statutes of 2001, only sex offenders who lived on a college campus were required to register with a campus police department. Beginning October 28, 2002, all registrants enrolled or employed by

institutions of higher learning must register with campus police in addition to registering with the jurisdiction where they reside. Under existing law, a campus police department may choose to display the Department of Justice (DOJ) web-enabled Megan's Law information. However, Megan's Law does not disclose the fact of campus registration to the public. Only law enforcement personnel know if a particular person has registered on campus. Currently, a campus police department has the authority to publicize sex offender information if it determines that disclosure should be made regarding a serious or high-risk offender. According to the DOJ, recent regulations issued by the United States DOJ do not allow states to distinguish between different classes of sex offenders for purposes of notifying a campus community. Federal regulations state that sex offender information must be made available concerning the identities of all registered sex offenders enrolled or employed at an institution of higher education.

AB 1313 (Parra), Chapter 634, brings California into compliance with federal law so as to avoid forfeiting federal grant funding by authorizing campus police departments to release information about all sex offenders registered on campus. Specifically, this new law:

- Extends the sunset date on Megan's Law from January 1, 2004 to January 1, 2007.

- Provides that information regarding the presence of any registered sex offender on campus and sex offender registration information may be released to members of the campus community by any campus police department or, if there is no such entity, the police or sheriff's department with jurisdiction over the campus and any employees of those agencies, as specified.

- Defines "campus community" as those persons present at, and those persons regularly frequenting any, place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility regularly frequented by students, employees, or volunteers of the campus.

- Provides that it shall not be construed to authorize campus law enforcement, or police or sheriff's departments with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

- Grants immunity from both civil and criminal liability to any specified law enforcement entity and its employees for the good-faith dissemination of sex offender information.

- Authorizes the DOJ to develop training for police, sheriffs, and campus police departments explaining how this information may be disclosed and who shall

be considered members of the campus community.

- Requires that a person who requests campus sex offender information sign a statement indicating that he or she is not a registered sex offender and understands the proper usage of such information.

- Requires specified law enforcement agencies to maintain records of printed information disseminated to the campus community for a minimum of five years, as specified.

- Makes a technical cross-reference to clarify that specified statements, photographs, and fingerprints of sex offenders required to register with colleges and universities are not subject to inspection by the public or any person other than a regularly employed peace officer or other law enforcement officer.

VEHICLES

Minors: Alcoholic Beverages and Controlled Substances

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years. A violation of these laws is a misdemeanor. Every person who sells, furnishes, or gives or causes to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor punishable by a fine of $1,000 and not less than 24 hours of community service.

Existing law defines the offense of "contributing to the delinquency of a minor" as committing an act or omitting the performance of a duty which tends to cause, causes, or encourages any person under the age of 18 years to become a delinquent or dependent child. The law provides that certain acts of contributing to the delinquency of a minor are punishable by imprisonment in a county jail not exceeding one year.

AB 1301 (Simitian), Chapter 625, creates a new misdemeanor for any parent or guardian who knowingly permits his or her minor child and others, as specified, to drink alcohol or consume a controlled substance at his or her home by holding parents accountable for traffic accidents that occur as a result of this conduct.

Specifically, this new law provides that when all of the following occurs, a parent is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed one year, by a fine not exceeding $1,000, or both imprisonment and fine:

- As a result of the consumption of an alcoholic beverage or use of a controlled substance at the home of a parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled

substance.

- The parent knowingly permits that child or other underage person to drive a vehicle after leaving the parent's or legal guardian's home

- That child or underage person is found to have caused a traffic collision while driving the vehicle.

Driving Under the Influence: License Restriction

Existing law provides that it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of alcoholic beverage and drugs, to drive a vehicle. Existing law also provides that, under specified circumstances, the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles (DMV).

The court may require the convicted person to enroll and participate in either an 18-month or 30-month driving under the influence (DUI) program. The person's driving privilege shall not be restored until the person has provided proof of successful completion of a DUI program. However, the DMV may issue a restricted driver's license to a person granted probation if the person submits proof of enrollment in, or completion of, a DUI program. The restricted driving privilege is limited to the hours necessary for driving to and from work and driving to and from activities required in the DUI treatment program.

SB 416 (Alpert), Chapter 705, requires the DMV to grant a driver's license restriction instead of a suspension to specified defendants convicted of a DUI in order to enable them to complete a licensed DUI program. Specifically, this new law requires the DMV to issue a restricted license to a person who meets all of the following conditions:

- Was convicted of a DUI violation before July 1, 1999 that was punishable as a second offense;

- Was granted probation for the conviction;

- Is no longer subject to probation;

- Has not completed the licensed DUI program for reinstatement of the driving privilege; and,

- Has no violation in his or her driving record that would preclude the issuance of a restricted driver's license.

VICTIMS

DNA: Victim Rights

Currently, California has over 210,000 deoxyribonucleic acid (DNA) profiles from convicted felons in the State's data bank. DNA profiles obtained from rape kits can now be compared to those in the California and FBI data banks through the Combined DNA Index System (CODIS). The growth of these data bases increases the likelihood that perpetrators of sexual assault can be identified and prosecuted.

Police departments across California have a backlog of biological evidence from sexual assault cases that should be analyzed, and sexual assault survivors should promptly be advised of the progress of DNA testing and analysis comparisons.

AB 898 (Chu), Chapter 537, establishes the "Sexual Assault Victim's" DNA Bill of Rights. Specifically, this new law:

- States that upon request of a sexual assault victim of specified violent sex offenses, a law enforcement agency may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. States that the law enforcement agency may, at its discretion, require that the victim's request for information be in writing.

- Provides that subject to the availability of sufficient resources to respond to requests for information, a sexual assault victim has the following rights:

  - To be informed whether or not the DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence;

  - To be informed whether or not the DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice (DOJ) data bank of case evidence; and,

  - To be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ convicted offender DNA database.

- Requires, where the identity of the perpetrator is an issue, a victim of specified violent sex offenses be given notification by law enforcement if either of the following conditions occur:

  - The law enforcement agency elects not to analyze DNA evidence prior to the expiration of the statute of limitations; or,

- The law enforcement agency intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations as specified.

- Requires that written notice of the intent to destroy or dispose of evidence be given 60 days prior to the disposal or destruction or the decision not to analyze rape kit evidence or other crime scene evidence from an unsolved sexual assault prior to the expiration of the statute of limitations.

- States that a sexual assault victim may designate a sexual assault victim advocate or other support person of the victim's choosing to act as a recipient of the information required under this act.

- Requires that the law enforcement agency responsible for providing information under this act shall do so in a timely manner and, upon request, shall advise the victim or victim's designee of any significant changes in the information. The victim or victim's designee shall keep the appropriate authorities informed of the current address, phone number, or electronic mail address of the person to whom such information should be provided.

- States that a defendant accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this act, nor may a defendant seek to have any conviction or sentence set aside as a result of a failure to provide information.

- Provides that a sexual assault victim's sole remedy for failure of a law enforcement agency's failure to fulfill its responsibilities under this act is standing to a file a writ of mandamus to require compliance.

- Clarifies that it is the intent of this Act to encourage law enforcement to notify victims of information in their possession and is not intended to affect the DOJ procedures relating to information disclosure.

Trespass: Maternity Wards of Hospitals

Existing law makes it unlawful to engage in certain acts of trespass, and punishes most trespasses as misdemeanors. For example, it is a misdemeanor for any person to refuse, or fail, to leave a public building when it is closed after being asked to leave by specified employees of the public agency owning the building if the person has no apparent lawful business to pursue. Additionally, any person who loiters, prowls, or wanders on the private property of another person without visible or lawful business with the owner is guilty of a misdemeanor. "Loitering" is defined as delaying or lingering without a lawful purpose for being on the property or for the purpose of committing a crime. [Penal Code Section 647(h).]

AB 936 (Reyes), Chapter 355, makes it a trespass to enter or remain in a neonatal unit, maternity ward, or birthing center without lawful business if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein. Specifically, this new law:

- States that "reasonable notice" is that which would give actual notice to a reasonable person and is posted, at a minimum, at each entrance into the area.

- Provides that a person convicted of knowingly entering or remaining in a neonatal unit without lawful business shall be punished, as an infraction, by a fine not exceeding $100.

- Further provides that such a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding $1,000, or both if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

- States that punishment for a second or subsequent offense shall be imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or both.

- Provides that if probation is granted or imposition of a sentence is suspended, it shall be a condition of probation that the person convicted participate in counseling, as designated by the court unless the court finds good cause not to impose this requirement.

- States that the court shall require the person convicted to pay for this counseling, if ordered, unless good cause not to pay is shown.

Victims of Crime: Authorized Representatives

Existing law does not address which persons the State Victim Compensation and Government Claims Board may accept as the authorized representative on a victim's application for the California Victim Compensation Program which unqualified individuals have represented victims and derivative victims in filing their Board applications. In some instances, victims were charged for expenses relating to the processing of their applications.

AB 976 (Montañez), Chapter 281, authorizes the California Victim Compensation and Government Claims Board to recognize an authorized representative of the victim or derivative victim who represents the victim or derivative victim. This new law is intended to ensure that victims and derivative victims of crime in California are provided with the highest quality of services, assistance and protection. Specifically, this new law:

- Provides a clear definition of persons the Board may accept as an authorized representative on a victim's application. This law establishes a minimum-standard qualification requirement thereby ensuring that victims and derivative victims are provided with the highest quality of services, assistance and protection.

- Defines "authorized representative" as any of the following:

  - An attorney;

  - The legal guardian of the victim or derivative victim;

  - A victim assistance advocate certified pursuant to Penal Code Section 13835.10;

  - An immediate family member of the victim or derivative victim who has written authorization by the victim or derivative victim and is not the perpetrator of the crime that gave rise to the claim; and,

  - Other persons who shall represent the victim or derivative victim pursuant to rules adopted by the board.

- Provides that, except for attorney's fees awarded under this law, no authorized representative shall charge, demand, receive, or collect any amount for the services rendered under this subdivision.

Financial Abuse of an Elder: Expanded to Include Forgery, Fraud, or Identity Theft

Existing law makes it a crime to commit theft or embezzlement with respect to the property of an elder or dependent adult. An "elder" is defined as any person who is 65 years of age or older. A "dependent adult" is defined as any person who is between the ages of 18 and 64 and has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights. A dependant adult includes a person who has physical or developmental disabilities and persons whose physical or mental abilities have diminished because of age. A "caretaker" is defined as any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

AB 1131 (Jackson), Chapter 543, expands the provisions of the law protecting elders and dependent adults from financial abuse. The new law adds forgery, fraud, and identity theft, with respect to the property or personal identifying information of an elder or dependent adult, to the list of offenses under the elder abuse statute. Specifically, this new law:

- States that any caretaker of an elder or dependent adult who commits theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or dependent adult, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years when the value of that taken exceeds $400.

- Provides that a caretaker who commits the above crimes with regard to property of a value not exceeding $400, is punishable by a fine not exceeding $1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- Provides the same punishment for persons who are not caretakers but knew or should reasonably have known that the victim is an elder or dependent adult.

Identity Theft: Records of Applications and Accounts

Existing law provides that it is an alternate felony/misdemeanor for a person to obtain the personal identifying information of another person and to use such information to obtain, or attempt to obtain, credit, goods, or services in the name of the other person without consent. Existing law further provides that any person who discovers that another, unauthorized person has made an application for certain services or accounts is entitled to receive the identifying information used by the unauthorized person.

Personal identifying information includes the name, address, telephone number, driver's license number, social security number, health insurance or taxpayer identification number, alien registration number, passport number, date of birth, fingerprint, place of employment, employee identification number, maiden name, demand deposit account number, savings account number, mother's maiden name or credit card number of an individual person.

SB 684 (Alpert), Chapter 534, adds applications and accounts regarding mail receiving or forwarding services and office or desk space rental services to the applications and accounts covered by the above provisions. Specifically, this new law:

- Clarifies that a person or entity to whom an application was filed or account was opened in the name of another person must provide the victim of the identity theft copies of paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations.

- Authorizes a consumer who suspects that he or she has been the victim of identity theft to receive information about unauthorized additions to, or renewals of, existing accounts in addition to new applications for credit or other specified goods and services.

- Defines "application" for the purposes of this new law as a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing account, or any other changes made to an existing account.

Identification: Fingerprints

Existing law requires that a peace officer take before a magistrate any person who violates any section of the Vehicle Code if that person does not have a driver's license or other satisfactory evidence of identity. Existing law also authorizes a peace officer to obtain a thumbprint on a promise to appear from a person arrested for an infraction if that person does not provide satisfactory evidence of identity or when the person is arrested for a misdemeanor and does not have satisfactory identification. Existing law also provides that a victim of identity theft may petition the Court for a factual finding of innocence.

SB 752 (Alpert), Chapter 467, creates a procedure under which a person can contest a notice to appear on the basis that he or she was not the person who was issued the notice. Specifically, this new law:

- States that the Legislature intends to provide a method for a victim of identity theft to quickly clear his or her name when an arrestee uses his or her name falsely.

- Provides, in sections where it is not already specified, that the officer may require that the arrested person, if the officer has no satisfactory evidence of identification, place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the 10-day notice to appear.

- Provides that a person or entity may not use the thumbprint for inclusion in or to create a database; and a person or entity may not sell, give away or in any way allow the distribution of this print for any purpose other than for law enforcement purposes relating to the identity of the arrestee.

- Provides that a person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a thumbprint to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear.

- Authorizes a local law enforcement agency providing the service of comparing thumbprints to charge the requestor no more than the actual costs.

Parole: Suitability Hearings: Electronic Submission of Information

Existing law provides that before the Board of Prison Terms (BPT) meets to consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the BPT shall send written notice to various persons involved in the trial. These persons include the superior court judge before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, and the law enforcement agency that investigated the case. Additionally, where the prisoner was convicted of the murder of a peace officer, notice must be given to the law enforcement agency that employed the peace officer at the time of the murder.

Penal Code Section 3043 also provides that, upon request, the BPT shall send notice of any parole hearing to any victim of the crime committed by the prisoner or to the next of kin of the victim if the victim has died. The victim, next of kin, or two members of the victim's immediate family may appear personally or by counsel at the hearing to express their views concerning the crime and the person responsible. Existing law also provides that in lieu of a personal appearance the victim or victim's family may file with the BPT a written, audiotaped, or videotaped statement expressing his or her views regarding the crime and the person responsible.

SB 781 (Margett), Chapter 302, allows any person authorized to forward information for consideration in a parole suitability hearing or the setting of a parole date for a prisoner sentenced to a life sentence to forward that information either by facsimile or electronic mail. Specifically, this new law:

- Provides that any person who receives notice from the BPT of a parole suitability hearing or the setting of a parole date for a prisoner sentenced to a life sentence who is authorized to forward information for consideration in that hearing may forward that information either by facsimile or electronic mail.

- States that the Department of Corrections shall establish procedures for receiving the information by facsimile or electronic mail.

WEAPONS

Firearms: Law Enforcement Funding

In the past several years, the Legislature has enacted a number of firearms laws, including prohibiting the sale of assault weapons and unsafe handguns and limiting the number of handguns that a person may purchase within a 30-day period. As a result, the Department of Justice (DOJ) has additional statutory enforcement responsibilities. As part of a firearm transaction, licensed dealers assess a fee that is submitted to the DOJ to defray the cost of the mandatory background check of the purchaser. Existing law places

a number of specific limitations on the use of funds derived from the purchase of firearms.

> **AB 161 (Steinberg), Chapter 754,** revises the existing specific limitations on the use of funds derived from the purchase of firearms by the DOJ. Specifically, this new law:
>
> - Provides that the Dealer's Record of Sale (DROS) Special Account funds may be used by the DOJ for costs associated with firearms-related regulatory and enforcement activities.
>
> - Appropriates $548,000 from the DROS special account to the DOJ to implement the Firearms Trafficking Prevention Act of 2002.

Firearm Prohibition: Juvenile Offenders

Juveniles adjudicated of certain felonies and specified misdemeanors are prohibited from possessing a firearm until the age of 30 years old. However, juveniles adjudicated for possessing a concealed or loaded weapon, or for permitting a person to bring a loaded firearm into a vehicle, are not prohibited from possessing a firearm in the future.

> **AB 319 (Frommer), Chapter 490,** adds the offenses of possession of a concealed or loaded firearm and permitting a loaded firearm to be brought into a vehicle to the list of convictions that prohibit a juvenile from having under his or her custody or control any firearm until the age of 30 years.

Possession of Firearms: Persons Who Have Successfully Completed Probation

Existing law provides a procedure for eligible persons to have convictions dismissed and be released from all penalties and disabilities resulting from the offense of which they have been convicted, subject to certain exceptions. In any case where the defendant has fulfilled the conditions of probation for the entire period of probation, the defendant may withdraw his or her plea of guilty. If he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall dismiss the accusation against the defendant. However, existing law provides that dismissal pursuant to these procedures does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person. Such dismissal similarly does not prevent him or her from being convicted of the offense of being an ex-felon in possession of a firearm.

> **AB 580 (Nuñez), Chapter 49,** further provides that dismissal of charges pursuant to the foregoing provisions does not permit a person to own, possess, or have in his or her custody or control any firearm. Specifically, this new law extends the prohibition on the possession of firearms by persons with criminal convictions to include not only firearms capable of being concealed upon the person, but also firearms that cannot be concealed, such as long guns.

Weapons: Licenses to Carry Firearms

Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms including, but not limited to, copies of applications for licenses to carry firearms. Existing law also provides procedures to obtain a license to carry a firearm, including requirements that the Attorney General (AG) keep and properly file a complete record of all copies of fingerprints and copies of applications for licenses to carry loaded firearms capable of being concealed on the person in public. Also required is information from the licensing agency, dealers' records of sales (DROS) of firearms and other information from licensed firearms dealers (and sheriffs who effect the lawful transfer of firearms in smaller counties) pertaining to handguns, and other specified firearms reports which are submitted pursuant to law. [Penal Code Section 11106(a).]

Existing law also provides that a sheriff or a police chief may issue a license to carry a firearm capable of being concealed on the person pursuant to specified requirements. These requirements include that the applicant is of good moral character, the applicant is not within certain prohibited categories, and "good cause" exists for the issuance. In counties with populations of 200,000 or less, a license may also be issued to carry a loaded and exposed pistol, revolver, or other firearm capable of being concealed upon the person. Such permits are generally valid statewide, although the issuing authority may place restrictions or conditions on the license. Licenses are generally valid for any period of time not to exceed three years from the date of the issuance. (Penal Code Section 12050.)

Under existing law, a committee convened by the Attorney General may develop a standard application form for licenses to carry a firearm. The Attorney General is also authorized to adopt and enforce regulations relative to these licenses.

AB 1044 (Negrete McLeod), Chapter 541, recasts and makes technical changes to the requirements regarding the maintenance of documentation of licenses to carry firearms. Specifically, this new law:

- Recasts the provisions which require the registry maintained by the Attorney General, and requires the registry to include copies of the licenses to carry firearms rather than copies of the applications for licenses to carry firearms.

- Recasts the provisions relating to the committee, allowing the committee to review and revise the firearm application form.

- Deletes the provisions authorizing the Attorney General to adopt and enforce regulations relative to the firearm licenses.

- Provides that the firearm license application forms are deemed a local agency form exempt from the Administrative Procedures Act.

Stalking Protective Orders: Firearms

Persons subject to elder abuse restraining orders and stalking protective orders are not subject to the same firearms restrictions that attach to similar protective orders issued in domestic violence cases. Persons subject to stalking protective orders can present a danger to public safety and their access to firearms should be prohibited.

AB 1290 (Jackson), Chapter 495, prohibits a person subject to a stalking emergency protective order or an elder abuse restraining order from owning, purchasing, possessing, or receiving a firearm while that order is in effect. Specifically, this new law:

- Prohibits a person subject to a stalking emergency protective order from owning, possessing, purchasing, or receiving a firearm while that order is in effect.

- Prohibits a person subject to an elder abuse restraining order from owning, possessing, purchasing, or receiving a firearm.

- Exempts persons subject to an elder abuse retraining order whose conduct consisted solely of financial abuse.

- Allows a peace officer with reasonable cause to believe that a person has violated the terms of a stalking emergency protective order or elder abuse restraining order to make a lawful arrest of that person without a warrant whether or not the violation occurred in the presence of the arresting officer.

- Provides that any person who owns or possesses a firearm knowing he or she is prohibited from doing so by the terms of a stalking emergency protective order or elder abuse restraining order shall be punished by imprisonment in the county jail not to exceed one year; by fine not exceeding $1,000; or, by both.

- Clarifies that any person prohibited from owning or possessing a firearm may not also purchase or receive a firearm.

Reserve Peace Officers and Community College Police Departments

Existing law provides that any person deputized or appointed as a reserve deputy sheriff or police officer and assigned specific police functions is a peace officer. There are three levels of reserve peace officers which are generally dependent upon their level of training, supervision, and duty assignments.

In addition, existing law authorizes school districts to establish an unpaid, volunteer school police reserve officer corps to supplement the school district police department. Similarly, community college districts are authorized to establish a community college police department, and to employ personnel as necessary to enforce the law on or near the campus of the community college or other properties owned and operated by the community college.

Existing law imposes various duties and grants various powers to peace officers with regard to vehicles and certain weapons. Generally, the law prohibits carrying a concealed weapon on the person or in a vehicle and prohibits carrying any type of loaded firearm. Both offenses constitute misdemeanors. However, certain categories of persons are exempt from those prohibitions, including specified peace officers.

AB 1436 (Runner), Chapter 292, recasts the provisions regarding specified reserve police officers. Specifically, this new law:

- Deletes the requirement that school district reserve officers be an unpaid and volunteer corps, thereby allowing a school district board to pay its reserve officers.

- Authorizes a community college district board to establish a police reserve officer program to supplement an existing community college police department.

- Includes a community college reserve police officer as a peace officer pursuant to Penal Code Section 830.32.

- Authorizes specified reserve peace officers to obtain a permit to carry a concealed weapon, as specified.

- Authorizes reserve officers to issue a notice to appear when the officer has reasonable cause to believe that a person involved in a traffic accident violated a provision of the Vehicle Code, not amounting to a felony, or a local ordinance and the violation contributed to the traffic accident. The officer must have completed training in the investigation of traffic accidents.

Imitation Firearms

Existing law provides that any person who, for commercial purposes, purchases, sells, or transports an imitation firearm, except as specifically allowed, may be fined $10,000 for each violation. It is a misdemeanor to sell or furnish any BB device to a minor without the express or implied permission of the parent or legal guardian of the minor.

An imitation firearm is a replica of a firearm so substantially similar in physical properties to an existing firearm which could lead a reasonable person to conclude that

the replica is a firearm. An imitation firearm does not include a BB device that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, carbon dioxide pressure, or spring action, or any spot marker gun. Additionally, an imitation firearm does not include firearms on which the coloration of the entire exterior surface of the device is bright orange or bright green.

AB 1455 (Negrete McLeod), Chapter 246, provides that BB's used in an air gun need not be metallic in order for the air gun to be exempt from the requirement that toy guns be colored either bright orange or green. Specifically, this new law:

- Provides that an imitation firearm does not include an instrument that expels a projectile not exceeding 6 mm caliber through the force of air pressure, gas pressure, or spring action, or a spot marker gun.

- Removes "metallic" from the definition of the type of projectile used in an air gun excluded from the definition of imitation firearm.

- States that for specified purposes, the term "BB device" is defined as any instrument that expels a projectile, such as a BB or pellet not exceeding 6 mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun.

Elder Abuse Restraining Orders: Firearms

Currently, elder abusers are exempt from the firearms prohibitions required of domestic abusers subject to a domestic violence protective order. The same type of volatile relationship, which may cause a firearm death in a domestic violence relationship, can also be present when elder abuse perpetrators are permitted access to firearms.

SB 226 (Cedillo), Chapter 498, prohibits a person subject to an elder or dependent abuse protective order from owning, purchasing, possessing, or receiving a firearm while that order is in effect, and establishes a procedure for persons restrained to relinquish prohibited firearms. Specifically, this new law:

- Prohibits a person subject to an elder or dependent abuse protective order who has been found to be violent, has a propensity for violence, or has threatened violence from owning, purchasing, possessing, or receiving a firearm while that order is in effect.

- Provides that a restrained person ordered to relinquish any firearm shall either surrender the firearm to local law enforcement, or sell the firearm to a licensed dealer; and requires that a person, within 72 hours, file with the court a receipt showing the firearm was relinquished, as specified.

- Provides that the restraining order requiring a person to relinquish a firearm shall state on its face that the respondent is prohibited from owning,

possessing, purchasing or receiving a firearm while the protective order is in effect and that the firearm is to be relinquished, as specified.

- Provides that the restraining order requiring a person to relinquish a firearm shall prohibit a person from possessing a firearm for the duration of the order. At the expiration of the restraining order, the local law enforcement agency shall return possession of any firearm within five working days of the expiration date, except as specified.

- Allows a court, as part of a relinquishment order, to grant an exemption from the relinquishment requirements if the respondent can show that a particular firearm is necessary as a condition of continued employment and the employer is unable to reassign the employee to a another position where a firearm is unnecessary.

- Provides that if an exemption is granted, the order shall state that the firearm shall only be in the physical possession only in the course of employment and while travelling to and from employment.

- Allows the court to permit a peace officer to continue to carry a firearm if the officer's employment and personal safety requires the ability to carry a firearm and if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making a finding, the court shall order a mandatory psychological evaluation and may require the peace officer to enter counseling or other treatment program.

- Makes conforming cross-references to a variety of provisions of law relating to protective orders and firearm prohibitions.

Clarification of Various Weapons Laws

Under existing law, the Attorney General has the general responsibility of maintaining records and other information pertaining to firearms, such as dealers' records of sales of firearms. This information is maintained to assist in the investigation of crime and the recovery of lost and stolen property.

Existing law also regulates various weapons, including machineguns, assault weapons, and destructive devices such as explosives, bombs, rockets, etc. Any person who lawfully possesses an assault weapon, as specified, must register the firearm with the Department of Justice (DOJ). In addition, the DOJ is authorized to issue permits, upon a showing of good cause, for the manufacture of assault weapons to federally licensed manufacturers of firearms for the sale to, purchase by, or possession of assault weapons to specified law enforcement entities.

SB 238 (Perata), Chapter 499, is an omnibus bill sponsored by the Attorney General's Office which clarifies and reconciles conflicts in the Penal Code with respect to weapons. Specifically, this new law:

- Adds flame-throwers designed for use as weapons to the definition of a destructive device thereby generally prohibiting the possession, transport, or sale of such a weapon without a dangerous weapon permit.

- Requires that machine gun sales to specified law enforcement agencies be performed by a person who is licensed and has a DOJ permit for such guns.

- Deletes the exemption for retired peace officers from the ban on assault weapons pursuant to a recent Ninth Circuit Court of Appeal ruling.

- Authorizes law enforcement entities other than police and sheriffs to report information regarding recovered guns to the Federal Bureau of Alcohol, Tobacco, and Firearms.

- Creates a lifetime, rather than a 10-year, prohibition on possession of a gun for a person convicted of discharging a firearm at an inhabited dwelling house, occupied building, vehicle, aircraft, or inhabited camper.

- Requires gun dealers to record on the record of electronic transfer the date the gun is delivered, and requires the information to be submitted to DOJ electronically.

- Requires that assault weapons seized pursuant to a first-time violation of specified provisions be destroyed rather than returned to the owner.

Firearm Eligibility Checks

Generally, existing law requires that the sale, loan or transfer of a firearm in California must be conducted through a state-licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 population. The licensed firearms dealer is required to submit specified information to the Department of Justice (DOJ) in connection with the purchase of a firearm to enable DOJ to determine whether the prospective purchaser is prohibited from purchasing, or otherwise possessing, a firearm.

A 10-day waiting period, background check, and a handgun safety certificate for a handgun transfer are required prior to delivery of the firearm. If the background check reveals that a person is prohibited from obtaining or possessing a firearm, DOJ shall immediately notify the dealer and the chief of the police or sheriff in the city or county in which the sale was made.

Existing law also states that any person may apply to review his or her own local criminal history information, as specified, and states that the local agency "may require the

submission of fingerprints." However, the summary criminal history is not as comprehensive as the firearm purchaser's background check in that the summary criminal history does not provide information on restraining orders, admissions to metal health facilities, or convictions for crimes committed outside California. Therefore, many California residents may be prohibited from owning firearms but are unaware of that prohibition.

SB 255 (Ducheny), Chapter 298, establishes a procedure for an individual to request a determination of eligibility to carry a firearm from the DOJ. Specifically, this new law:

- Allows an individual to request that DOJ perform a firearms eligibility check when not making a firearms purchase after providing information currently required for firearms purchase background checks.

- Authorizes DOJ to charge a $20 fee, not to exceed the actual processing costs of DOJ, for performing the eligibility check .

- Requires DOJ to make the application available to licensed firearms dealers and on DOJ's web site.

- Provides that, upon application, DOJ shall examine its records and notify the applicant by mail.

- States that DOJ is not required to conduct an eligibility check if the person submits incomplete or inaccurate information.

- Provides that DOJ shall be immune from any liability as a result of performing the firearms eligibility check or any reliance on the firearm eligibility check.

Firearms: Chamber Load Indicators

Many injuries and deaths are the result of unintentional shootings by users who thought the guns they fired were not loaded. Gun users are often unaware that semiautomatic weapons can be fired when their loading mechanisms - the magazines - are removed or emptied. A live round of ammunition may remain in the chamber of the firearm after the magazine is removed. When the trigger of a semiautomatic firearm with a live round in its chamber is pulled, it will fire even though it does not have a magazine inserted unless the gun has a magazine disconnect mechanism. Chamber load indicators and magazine disconnect mechanisms are two safety devices which will help avoid accidental discharges.

A chamber load indicator alerts the gun user when there is a bullet in the firing chamber of the gun. Currently, chamber load indicators are installed on about 11 percent all semiautomatic handguns. Chamber load indicators are effective safety devices. A 1991

General Accounting Office study of shootings in 10 randomly selected cities across the nation found that 23 percent of the accidental shootings could have been prevented by chamber load indicators.

A magazine disconnect mechanism prevents a semiautomatic weapon from being fired when its ammunition magazine is removed. Magazine disconnect mechanisms are passive safety devices which require no training on the part of the user and are particularly effective in preventing accidents involving children. Magazine disconnect devices are currently installed on only about 14 percent of the semiautomatic handguns sold.

SB 489 (Scott), Chapter 500, requires all center-fire semiautomatic pistols not already listed on the Department of Justice (DOJ) roster of approved "safe" firearms to have chamber load indicators and magazine disconnect mechanisms if the pistols have detachable magazines commencing January 1, 2007. Specifically, new law:

- Requires all center-fire semiautomatic pistols not already found to be "safe" to have either a chamber load indicator or a magazine disconnect mechanism if the pistols have detachable magazines in order to be added to the DOJ roster of approved "safe" firearms commencing January 1, 2006.

- Requires all center-fire semiautomatic pistols not already found to be "safe" to have both a chamber load indicator and a magazine disconnect mechanism if the pistols have detachable magazines in order to be added to the DOJ roster of approved "safe" firearms commencing January 1, 2007.

- Requires all rimfire semiautomatic pistols not already found to be "safe" to have a magazine disconnect mechanism if the pistols have detachable magazines in order to be added to the DOJ roster of approved "safe" firearms commencing January 1, 2006.

- Defines a "chamber load indicator" as a device that plainly indicates a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol without requiring the user to refer to a user's manual or any other resource other than the pistol itself whether a cartridge is in the firing chamber.

- Defines a "magazine disconnect mechanism" as a mechanism that prevents a semiautomatic pistol from operating to strike the primer of the ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

- Defines a "semiautomatic pistol" as a pistol, as defined, the operating mode of which uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with a single pull of the trigger.

- Prohibits semiautomatic pistols without chamber load indicators and magazine disconnect mechanisms, as specified, from being submitted to the DOJ for testing according to the above "phased-in" schedule.

- Exempts the sale, loan, or transfer of any firearm to be used as a prop during the course of a motion picture, television, or video production from specified safety requirements.

Firearms: Dealers

Existing law regulates licensed firearms dealers and requires them to record specified information pertaining to firearms transfers in a register or record of electronic transfer. Existing law also states that parties to a firearms transaction who are licensed dealers must conduct the transaction through a licensed firearms dealer. The licensed firearms dealer may charge a fee not to exceed $10 and a fee due the Department of Justice for processing a sale, loan, or transfer of a firearm pursuant to the provisions authorizing parties who are not licensed firearms dealers to conduct the transaction through a firearms dealer.

SB 824 (Scott), Chapter 502, recasts provisions of the law pertaining to licensed firearms dealers. Specifically, this new law:

- Specifically authorizes firearms dealers to require any agent who handles, sells, or delivers firearms to obtain a Certificate of Eligibility which is issued following an approved background check

- Requires a firearms dealer's salesperson to record the salesperson's certificate of eligibility number in the register or record of electronic transfer.

- Requires the dealer to record on the register of record or electronic transfer, the date a handgun or other firearm is delivered by the dealer.

- Prohibits the firearms dealer from charging any fee in addition to those described in the law.

MISCELLANEOUS

Professional Sporting Events: Throwing of Objects

Incidents of hostile fan behavior and interference with players at professional athletic events are increasing. Although individuals are often ejected from games as a result of

these acts, those individuals are seldom arrested. Society has a tendency to treat sports violence differently from violence and aggression that occurs elsewhere. A specific California statute to address hostile fan behavior may be helpful as a deterrent.

AB 245 (Cohn), Chapter 818, makes it an infraction for any person at a professional sporting event to throw any object on or across the field of play with the intent to interfere with or distract a player, or to enter upon the field of play without permission. Specifically, this new law:

- Makes it unlawful for any person attending a professional sporting event to do any of the following:
  - Intentionally throw any object on or across the court or field of play with the intent to interfere or distract a player; or,
  - Enter upon the court or field of play without permission from an authorized person.
- Requires the management of sporting facilities to prominently display at all controlled entries to the facility a notice to attendees specifying the activities prohibited by this section.
- Makes a violation of this new law an infraction punishable by a $250 fine.
- Excludes additional penalty assessments and surcharges normally levied by state and local governments from being added to the base fine.
- Defines "professional sporting event" as a scheduled sporting event involving a professional sports team, organization or athlete and for which an admission fee is charged.
- Defines "player" to include team members, referees and other personnel.
- States that nothing in this new law shall be construed as to prevent prosecution under any applicable provision of law.

Sexual Assault: Toxicology Examination

Existing law establishes a protocol for the examination, treatment, and collection and preservation of evidence from the victims of sexual assault, attempted sexual assault, and child molestation. Sexual assault accomplished by the administration of a controlled substance is becoming increasingly more common. However, physical evidence of drugs and alcohol is difficult to obtain without getting a urine sample as soon as possible from a victim. Therefore, it is critical for the attending nurse, doctor, physician or responding officer to get a urine sample as soon as possible. California law does not require that a urine sample be taken as part of the uniform medical protocol used in the examination of

victims of sexual assault.

AB 506 (Maze), Chapter 535, includes in the uniform protocol for the medical examination of sexual assault victims the taking of the victim's urine for toxicology purposes to determine if drugs or alcohol were used in the assault. Specifically, this new law:

- States that if the history of contact indicates, a sexual assault victim's urine shall be collected, except where the victim objects, for toxicology purposes to determine if drugs or alcohol were used in the sexual assault.

- Provides that the victim of the sexual assault shall not be responsible for any costs associated with the toxicology testing.

- States that the individual volunteering for the test shall not be subject to any sanctions and informed of that fact, based solely upon toxicology findings including, but not limited to, investigations regarding probation, parole, parental rights, or violations of controlled substance statutes, and that nothing in this paragraph shall alter any reporting duty under the Child Abuse and Neglect Reporting Act.

- Provides that toxicology results shall not be admissible in any civil or criminal action except to prosecute or defend the crime necessitating the examination. Results obtained shall be kept confidential, and the victim shall be informed of the immunity and confidentiality safeguards.

Cell Phones: Malicious Destruction

Existing law provides that any person who maliciously and unlawfully destroys a telephone or telephone line is guilty of an alternate felony/misdemeanor. However, today's homes may not have traditional hard-wired telephones. If a person damages or removes a wireless communication device it is not a crime.

AB 836 (La Suer), Chapter 143, provides that any person who unlawfully or maliciously destroys or damages any wireless communication device with the intent to prevent the use of the device to summon assistance or notify law enforcement or any public safety agency of a crime is guilty of a misdemeanor.

Trespass: Penalties for Repeat Offenders

Any person who willfully enters any lands under cultivation or enclosed by a fence, belonging to, or occupied by, another person without the written permission of the landowner, owner's agent, or person in lawful possession of the land, unless otherwise excluded, is guilty of trespassing. A first offense is punishable as an infraction by a fine of $10. A second offense is punishable by a fine of not less $100 nor more than $250. The $10 citation fee for a first offense is insufficient to cover court costs to process the

citation and there is little incentive to law enforcement to respond to a trespass complaint. As such, persons who repeatedly trespass on the same property are rarely ever prosecuted for the first $10 offense and almost never for the second, higher $100 offense. This provides little or no deterrent to repeated trespassing.

> **AB 924 (Maldonado), Chapter 101,** revises these penalty provisions to $75 for a first offense and $250 for a second offense for a trespass on the same land or any contiguous land of the same landowner. This new law also adds licensed land surveyors engaged in specified lawful and authorized work to the list of authorized exemptions from these provisions.

Weapons: Licenses to Carry Firearms

Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms including, but not limited to, copies of applications for licenses to carry firearms. Existing law also provides procedures to obtain a license to carry a firearm, including requirements that the Attorney General (AG) keep and properly file a complete record of all copies of fingerprints and copies of applications for licenses to carry loaded firearms capable of being concealed on the person in public. Also required is information from the licensing agency, dealers' records of sales (DROS) of firearms and other information from licensed firearms dealers (and sheriffs who effect the lawful transfer of firearms in smaller counties) pertaining to handguns, and other specified firearms reports which are submitted pursuant to law. [Penal Code Section 11106(a).]

Existing law also provides that a sheriff or a police chief may issue a license to carry a firearm capable of being concealed on the person pursuant to specified requirements. These requirements include that the applicant is of good moral character, the applicant is not within certain prohibited categories, and "good cause" exists for the issuance. In counties with populations of 200,000 or less, a license may also be issued to carry a loaded and exposed pistol, revolver, or other firearm capable of being concealed upon the person. Such permits are generally valid statewide, although the issuing authority may place restrictions or conditions on the license. Licenses are generally valid for any period of time not to exceed three years from the date of the issuance. (Penal Code Section 12050.)

Under existing law, a committee convened by the Attorney General may develop a standard application form for licenses to carry a firearm. The Attorney General is also authorized to adopt and enforce regulations relative to these licenses.

> **AB 1044 (Negrete McLeod), Chapter 541,** recasts and makes technical changes to the requirements regarding the maintenance of documentation of licenses to carry firearms. Specifically, this new law:
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> - Recasts the provisions which require the registry maintained by the Attorney General, and requires the registry to include copies of the licenses to carry

firearms rather than copies of the applications for licenses to carry firearms.

- Recasts the provisions relating to the committee, allowing the committee to review and revise the firearm application form.

- Deletes the provisions authorizing the Attorney General to adopt and enforce regulations relative to the firearm licenses.

- Provides that the firearm license application forms are deemed a local agency form exempt from the Administrative Procedures Act.

District Attorney: Special Appropriation Fund

Existing law requires the board of supervisors in counties having a population of 90,000 or more make available to the district attorney's special appropriation the sum of $5,000 and in all other counties the sum of $2,500 at the beginning of each fiscal year. Existing law authorizes the district attorney to use this special appropriation to pay for, among other things, expenses incurred in criminal cases arising in the county; expenses in civil actions, proceedings, or other matters in which the county is interested; and expenses necessarily incurred in the detection of crime, as specified.

In 2002, the Attorney General helped the Orange County Grand Jury investigate the actions of the Orange County Office of the District Attorney and found that the office used money from the special fund to buy meals and alcohol at meetings with law enforcement personnel, lobbyists, politicians, county and other government employees, campaign consultants, clergy and media personnel. The Chief Investigator, who directly oversees the special fund for the District Attorney, billed the fund on approximately 38 different occasions to pay for bills to the Santa Ana Elks Club, which included charges for alcohol, a violation of county policy. The Grand Jury found that the language of the District Attorney's policy, in addition to Government Code Section 29404, can be interpreted so broadly as to justify almost any expense.

AB 1055 (Spitzer), Chapter 38, revises these provisions to require that the district attorney shall *only* use the special appropriation for: (1) expenses lawfully incurred in criminal cases arising in the county, (2) expenses lawfully incurred in the detection of crime other than those declared to be misdemeanors by the Vehicle Code, or (3) expenses lawfully incurred in civil actions or proceedings.

Rural Crime Prevention Program

The Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare are authorized to develop and implement a Central Valley Rural Crime Prevention Program until January 1, 2005. The program is administered by the district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office.

SB 44 (Denham), Chapter 18, encourages the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo to develop and implement a Central Coast Rural Crime Prevention Program (CCRCPP) for the purpose of preventing rural crime. Specifically, this bill:

- Provides that the CCRCPP shall be administered in San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo Counties by the county district attorney's office under a joint powers agreement with the county sheriff's office and in Monterey County by the county sheriff's office under a joint powers agreement with the county district attorney's office.

- Provides that the parties to each agreement shall form a regional task force, the "Central Coast Rural Crime Task Force", which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations.

- Requires the Central Coast Rural Crime Task Force to develop crime prevention and crime control techniques, to encourage the timely reporting of crimes, and to evaluate the results of these activities.

- Requires the Central Coast Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects.

- Requires the Central Coast Rural Crime Task Force to develop a uniform procedure for all participating counties to collect data on agricultural crimes, establish a central database for the collection and maintenance of data on agricultural crimes, and designate one participating county to maintain the database.

- States that the staff for each program shall consist of the personnel designated by the district attorney and the sheriff of each county in accordance with the joint powers agreement.

- Provides that funding for the program may include, but shall not be limited to, appropriations from local government and private contributions.

- States that this act shall become inoperative on July 1, 2010 and repealed on January 1, 2011 unless a later statute extends or deletes those dates.

Local Building and Safety Code: Penalties

Existing law provides that violation of a city or county ordinance is a misdemeanor unless otherwise specified as an infraction. A violation deemed an infraction is punishable by a fine not exceeding $100, by a fine not exceeding $200 for a second

violation of the same ordinance within one year, and by a fine not exceeding $500 for each additional violation of the same ordinance within one year.

SB 567 (Torlakson), Chapter 60, makes a number of related legislative findings relating to code enforcement. Specifically, this new law provides that local building and safety code infraction violations are still punishable by a fine of up to $100 for a first violation, increases the penalty to up to $500 for a second violation of the same ordinance within one year, and increases the penalty to up to $1,000 for each additional violation of the same ordinance within one year of the first violation.

Annual Omnibus Code Revisions

The Senate Public Safety Committee's annual omnibus bill makes technical changes and corrections to various provisions of code.

SB 851 (Senate Committee on Public Safety), Chapter 468, makes a number of technical changes and corrections to specified Education, Evidence, Family, Government, Health and Safety, Penal, Vehicle and Welfare and Institutions Code sections. Specifically, this new law:

- Adds County of Los Angeles police officers to the list of law enforcement personnel allowed to overhear or record any communication they could lawfully hear prior to the enactment of unauthorized eavesdropping provisions.

- Deletes the word "safety" from a reference to County of Los Angeles police officers.

- Extends until January 1, 2008 a pilot program in the County of Los Angles that authorizes the court to require an adult convicted of an offense that is not a serious or violent felony to participate in a program designed to assist the person in obtaining the equivalent of a twelfth-grade education as a condition of probation.

- Clarifies that it is unlawful to possess a knife with a blade length in excess of four inches, the blade of which is fixed "or is capable of being fixed" in an unguarded position by the use of one or two hands.

- Substitutes the term "accusatory pleading" for indictment or information in provisions relating to the issuance of bench warrants.

- Makes a clarifying change to the statute of limitations as it relates to theft or embezzlement from an elder or dependent adult.

- Allows a county to not report or respond to a report of abuse of an elder or dependent adult residing in specified correctional facilities when the abuse reportedly occurred in that facility.

- Allows the California Department of Corrections to report on behavioral research on or before January 1 of each odd-numbered year rather than biannually.

- Corrects a sunset provision relating to a Department of Motor Vehicles report to the Legislature on the implementation and effectiveness of ignition interlock devices.

- Corrects several spelling, grammatical, numbering, chaptering, and cross-referencing errors.

Organized Crime: Fraud or Theft against California's Beverage Container Recycling Program

Existing law specifies various activities which constitute criminal profiteering activity, and provides for the forfeiture of specified assets of persons who engage in a pattern of criminal profiteering upon conviction of an underlying offense, as specified. "Criminal profiteering activity" is defined as any act committed for financial gain or advantage, which may be charged as a crime under specified code provisions. These crimes include, but are not limited to, arson, bribery, child pornography, kidnapping, mayhem, welfare fraud, and others.

Existing law defines "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements: (1) have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; (2) are not isolated events; and, (3) were committed as a criminal activity of organized crime. [Penal Code Section 186.2(b).]

Existing law requires beverage distributors to pay the State a "redemption payment of $0.02 for every beverage container" sold in California. A container with a capacity of at least 24 ounces is considered two containers redeemed and $0.03 for every single or unpaired beverage container redeemed in a single transaction." A single or unpaired container of at least 24 ounces has a refund value of $0.05.

SB 968 (Bowen), Chapter 125, adds to those specified offenses, offenses related to fraud or theft against California's beverage container recycling program. Specifically, this new law:

- Includes crimes related to fraud or theft against the State's beverage container recycling program within the definition of "criminal profiteering activity".

- Defines "fraud against the beverage container recycling program that is of a conspiratorial nature" as organized crime.

- Provides that the penalty proceeds be deposited into the Penalty Account of the California Beverage Container Recycling Fund pursuant to Public Resources Code 14580(d). However, a portion of the proceeds equivalent to the cost of prosecution shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

Trespass: Agricultural Areas

Existing law provides it is a misdemeanor to enter land where oysters or other shellfish are planted or growing or to injure, gather or carry those shellfish away without the license of the owner or legal occupant.

SB 993 (Poochigian) Chapter 805, expands the definition of a "misdemeanor trespass" to include trespassing on land where animals are grown for food for human consumption. Specifically, this new law makes it a trespass to:

- Enter upon lands or buildings owned by any other person without the license of the owner or legal occupant; where signs forbidding trespass are displayed; and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption.

- Injure, gather, or carry away any animal being housed on any of those lands, without the license of the owner or legal occupant.

- Damage, destroy, or remove or cause to be removed, damaged, or destroyed any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

- Requires the trespass signs to be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land in order for there to be a violation of this provision.

Motion Picture Theaters: Unauthorized Recordings

Existing law provides that a person admitted to a theater in which a motion picture is being exhibited and refuses to cease the operation of a video recording device upon the request of the theater owner is guilty of interfering with and obstructing the operation of a lawful business. This violation is a misdemeanor, punishable by up to 90 days in the county jail, a fine of up to $400, or both such fine and imprisonment. Existing law also provides that a theater owner may detain a patron for a reasonable time and in a reasonable manner to determine if the patron is operating a video-recording device.

SB 1032 (Murray), Chapter 670, creates a new misdemeanor for recording a motion picture in a theatre without appropriate consent. Specifically, this new law:

- Provides that every person who operates a recording device in a motion picture theater while a motion picture is being exhibited and without the express written consent of the owner of the motion picture theater is guilty of a public offense.

- Provides that a violation is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,500, or by both that fine and imprisonment.

- Defines a "recording device" as a photographic, digital or video camera, or other audio or video recording device capable of recording the sounds and images of a motion picture or any portion of a motion picture.