ASSEMBLY COMMITTEE ON PUBLIC SAFETY

PUBLIC SAFETY 2004

CREATING A SAFER CALIFORNIA

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ANIMAL ABUSE

Guide, Signal, and Service Dogs or Mobility Aids

A service animal is used as a mobility aid by a person with a disability and existing law generally defines a "guide dog", "signal dog", and "service dog". A "guide dog" is defined as a dog trained by a licensed person, as defined, and generally provides assistance to an individual with a visual impairment. Existing law defines a "signal dog" as a dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds. A "service dog" is defined in existing law as any dog individually trained to the requirements of an individual with a disability including minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

Existing law provides that it is an infraction for any person to permit any dog owned or controlled by him or her to cause injury to or the death of any guide, signal or service dog while that dog is in the discharge of its duties. Existing law also provides that it is a misdemeanor for any person to intentionally cause injury or death of any guide, signal, or service dog. Existing law provided that this violation was punishable by imprisonment in a county jail not exceeding one year; by a fine not exceeding $5,000; or by both a fine and imprisonment. A person convicted of such violation was required to make restitution to the owner of the guide, signal or service dog for veterinary bills and the cost of replacement of the animal if it is disabled or killed.

AB 1801 (Pavley), Chapter 322, changes the definition of guide, signal, or service dog to mean any dog trained to do work or perform tasks for the benefit of a person with a disability, including guiding a person with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair, or fetching dropped items. This new law also adds a fine not to exceed $250 to the infraction of allowing one's dog to injure or cause the death of any guide, signal, or service dog.

This new law creates a new misdemeanor if the injury or death of the guide, signal, or service dog was caused by the person's reckless disregard in the exercise of control over his or her dog, as defined. This new misdemeanor is punishable by imprisonment in a county jail not exceeding one year; by a fine of not less than $2,500 nor more than $5,000; or both that fine and imprisonment.

A person convicted of this violation shall be ordered to make restitution to the person with a disability for any veterinary bills and replacement costs of the dog if it is injured or killed. This new law adds to the restitution provisions "other reasonable costs deemed appropriate by the court," and states that restitution shall be paid prior to any fines.

This new law also increases the penalty for a person who intentionally causes injury or death to any guide, signal, or service dog to a fine not exceeding $10,000.

Animal Abuse

Existing law regulates the practice of veterinary medicine. Veterinary medicine includes the performance of surgery upon an animal. Existing law generally prohibits cruelty to animals, and certain surgical acts have been determined to be criminal, e.g., the cutting of the solid part of a horse's tail for the purpose of shortening it (known as "docking") is a misdemeanor.

Other acts of cruelty to animals also constitute crimes. For example, maiming, mutilating, torturing, wounding or killing a living animal is an alternate felony/misdemeanor, punishable by imprisonment in a county jail or a state prison; by a fine of $20,000; or by both such fine and imprisonment.

However, under existing law, the surgical procedure generally known as "declawing" is not a crime. Declawing constitutes amputation of a portion of a cat's paw in order to remove its claws. Such amputation is a surgical procedure known as "onychectomy" and is performed in order to remove a cat's claws. "Tendenectomy" is another surgical procedure in which the tendons to the animal's limbs, paws, or toes are cut so that the claws cannot be extended.

Many veterinarians view the practice of declawing cats as an act of cruelty as declawing literally involves amputating part of the cat's paws, including a portion of the bone, and causes pain and discomfort. Declawing is comparable to cutting off part of the human finger at the last joint. Complications from this surgery include damage to the radial nerve, hemorrhage, bone chips that prevent healing, and chronic back and joint pain as shoulder, leg, and back muscles weaken.

Many cats suffer a loss of balance since they can no longer achieve a secure foothold on their stumps. Some cats become lame and even paralyzed. A cat's first defense mechanisms are his or her claws. When the cat's claws are gone, cats bite. In reality, a declawed cat is actually a clubfooted animal that cannot walk normally and must move with his or her weight back on the rear of the pads.

AB 1857 (Koretz), Chapter 876, makes it a misdemeanor to perform or arrange for the performance of, surgical claw removal, onychectomy, or tendenectomy on an exotic or native wild cat species, as defined. This new misdemeanor is punishable by imprisonment in a county jail not to exceed one year; by a fine of $10,000; or by both that fine and imprisonment.

This new law contains an exception for procedures performed solely for a therapeutic purpose. "Therapeutic purpose" means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition that jeopardizes the cat's health and such condition is a medical necessity.

An exception is also provided for domestic cats (felis catus or felis domesticus) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat.

Exotic or native wild cat species are defined to include all members of the feline family, with specified exceptions for domestic cats. Exotic or native wild cats include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

BACKGROUND CHECKS

Remote Access Network: Board Membership

Existing law provides that the Department of Justice develop a master plan regarding the Remote Access Network (RAN), a uniform statewide network of equipment and procedures allowing local law enforcement agencies direct access to California Identification System (Cal-ID), and Cal-ID, an automated system for retaining fingerprint files and identifying latent fingerprints. Existing law provides for a RAN board composed of seven members, as specified.

AB 2126 (Dutton), Chapter 73, changes the membership of the RAN board. Specifically, this new law:

- Eliminates the board position for the chief of police of the department having the largest number of sworn personnel within the county.

- Adds a board position for the chief of police of the Cal-ID member department having the largest number of sworn personnel within the county.

Background Checks: Criminal History Dissemination

The Department of Justice (DOJ) maintains an automated process for checking the background of individuals using fingerprint submissions. Generally, an entity specifically authorized in statute to receive criminal history information submits a request to the DOJ for this information in relation to employment and volunteer hiring, licensing, and certification. The criminal history information provided by DOJ to requesting entities is determined by which dissemination criteria the authorizing statutes corresponds to Penal Code Section 11105. Over time, various statutes were enacted, resulting in what appeared to be inconsistent results due to the number of dissemination criteria. In 2001-

02, the Attorney General sponsored SB 900 (Ortiz), Chapter 627, Statutes of 2002, to consolidate the number and type of dissemination criteria.

SB 1314 (Ortiz), Chapter 184, clarifies and builds upon SB 900, providing for the dissemination of criminal history information pursuant to any statute that incorporates specified criteria by reference, explicitly providing for federal background checks in provisions dealing with criminal history dissemination, reinstates previously deleted employment disqualification cross-references, and makes numerous technical and conforming changes. Specifically, this new law:

- Provides that an agency, officer, or official of the state authorized to receive state summary criminal history information may also transmit fingerprint images and related information to the DOJ to be transmitted to the Federal Bureau of Investigation (FBI). Additionally, any city, county, city and county, district, or the office or official thereof may also transmit fingerprint images and related information to the DOJ to be transmitted to the FBI.

- Provides that for peace officer employment or certification purposes, the release of criminal history information shall include every arrest or detention for which the applicant was not exonerated, whether or not DOJ's records contain a disposition, provided where records do not contain a disposition for the arrest, that the DOJ first makes a genuine effort to determine the disposition of the arrest.

- Provides that for other criminal justice employment, licensing, or certification purposes, the release of criminal history information shall include every arrest for an offense for which DOJ records do not contain a disposition or did not result in a conviction provided that the DOJ first makes a genuine effort to determine the disposition of the arrest. This new law further provides that information concerning an arrest shall not be disclosed if the records indicate or reveal that the subject was exonerated, successfully completed diversion or deferred entry of judgment program, or the arrest was deemed a detention.

- Provides that for the other four dissemination criteria categories, the DOJ shall provide the criminal history information not only pursuant to the enumerated sections but also any section that incorporates by reference the criteria of those sections.

- Clarifies the list of authorized agencies or organizations that may receive criminal history information pursuant to the financial institution dissemination criteria.

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

- Replaces an out-of-date cross-reference with a list of sex offenses for which information may be released from DOJ's historic database of information relating to missing persons and adults within the violent crime information center.

- Replaces an out-of-date cross reference with a list of specific sections of which a person convicted of specified offenses may not be hired by a city, county, city and county, or special district for work in a park, playground, recreation center, or beach.

- Replaces an out-of-date cross-reference with a list of specific sections for which a tow truck driver, owner, or applicant's fingerprints shall be checked against to determine whether the individual has been convicted of specific offenses or, if such conviction exists, shall result in a tow truck driver certificate not being issued or renewed, or revoked.

- Includes intent language stating that nothing in this bill is intended to overrule the decisions, orders, or judgments of specific cases.

- Includes an uncodified statement that nothing in this act shall be construed as an implied amendment to Labor Code Section 432.7(a), which prohibits an employer from asking about or using information about an arrest or detention that did not result in a conviction or participation in diversion.

Background Checks: Cable Corporations

The Department of Justice (DOJ) maintains an automated process for checking the background of individuals using fingerprint submissions. Generally, an entity specifically authorized in statute to receive criminal history information submits a request to the DOJ for this information in relation to employment and volunteer hiring, licensing, and certification. Existing law includes public utilities among those entities authorized to receive criminal history information to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences.

SB 1388 (Ortiz), Chapter 570, authorizes a cable corporation, as defined, access to state and federal criminal history information for current and prospective employees, contract employees, and subcontract employees who may be seeking entrance to private residences and/or adjacent grounds. Correspondingly expands existing authority for public utilities. Specifically, this new law:

- Extends the existing authority of a public utility, as defined, to access criminal history information of a current or prospective employee for employment purposes to also include "any cable corporation."

- Authorizes both a public utility and a cable corporation to also access criminal history information of a contract employee or subcontract employee.

- Expands the current authorization to seek this information for persons who in the course of their employment may seek entrance to private residences to also include employees who may seek entrance to the grounds adjacent to private residences.

- Defines a "cable corporation" as any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

- Provides that requests for federal level criminal history information received by DOJ shall be forwarded to the Federal Bureau of Investigation by DOJ. This new law authorizes federal level criminal history information received or compiled by DOJ may be disseminated to the requesting public utility or cable corporation.

- Specifies that the authority for a cable corporation to request state or federal criminal history information or for a public utility to request federal criminal history information shall commence July 1, 2005.

BAIL

Solicitation of Bail Services

Existing law regulates the conduct of persons offering bail services as bail licensees. Generally, the laws regulating the conduct of bail licensees comes within the purview of the Insurance Commissioner, who regulates the bail industry to assure that the industry provides its services in a professional manner. Existing law and regulations provide for the licensure of both bail companies and bail agents, and sets guidelines for many of the everyday practices of the bail industry.

However, there was an alleged problem with the Department of Insurance enforcing laws and regulations designed to prevent the unfair and anti-competitive practice of some bail agents providing compensation to jail inmates for soliciting the business of detained persons. The problem with providing compensation to inmates to solicit business on behalf of the bail bond company effectively permitted unlicensed inmates to solicit bail services. Since inmates were unlicensed by the Department of Insurance, they were unaware of the laws and regulations relating to the solicitation of bail services. This created an anti-competitive situation in which one bail company compensated inmates in a particular jail to solicit business for one company to the competitive disadvantage of the other bail companies who abided by the laws and regulations requiring licensure in order to work as bail agents.

AB 1696 (Wiggins), Chapter 165, provides that it is a misdemeanor for any bail licensee to employ, solicit, pay, or promise any payment, compensation, consideration or thing of value to any person incarcerated in any prison, jail or other place of detention for the purpose of that person soliciting bail on behalf of the bail licensee. This new law adds this misdemeanor to the Penal Code. However, nothing in the new law shall prohibit prosecution under the Insurance Code or any other provision of law.

Bail Fugitive Recovery Persons: Extension of Program

AB 243 (Wildman), Chapter 426, Statutes of 1999, established the Bail Recovery Fugitive Act, which required bail fugitive recovery persons to meet specified training requirements and conform to specified regulations. AB 243 contained a January 1, 2005 sunset date.

AB 2238 (Spitzer), Chapter 166, extends the sunset on the Bail Fugitive Recovery Persons Act from January 1, 2005 to January 1, 2010. Recognizing that there was no evaluation of the Act prior to extension of the sunset, AB 2238provides that the California Research Bureau shall study the Act and submit its findings to the Legislature by January 1, 2009. The study shall evaluate the training requirements and regulatory status for persons subject to the Act and whether the provisions of the Act have improved the process for the recovery of fugitives from bail. In conducting the study, the Bureau shall survey a representative sampling of law enforcement agencies, bail associations, and the state departments or agencies that certify the training courses.

Bail Services

Existing law regulates the bail industry pursuant to law and regulations of the State Insurance Commissioner. Areas regulated include the licensing of bail agents, bail solicitors, and the requirements for documents related to bail undertakings. For example, an applicant for a license to act as a bail agent is required to file with the Department of Insurance a notice of appointment executed by a surety insurer, authorizing the applicant to solicit and execute bail undertakings on behalf of the surety.

A bail solicitor is defined as a person who acts on behalf of and as the employee of the holder of the bail license. Existing law requires that a written undertaking of bail include the name of the defendant, court, judge, charges, and the amount of bail, as well as the names and occupations of the sureties. The document must also include a notice that forfeiture of the bail bond can be enforced by summary judgment as provided by law.

Because of the practice of many bail agents of doing business under many different names, it is difficult under existing law to identify which bail licensee is actually the responsible party. The addition of the bail agent's license number to the bond undertaking will eliminate this problem.

SB 761 (McPherson), Chapter 104, requires that certain additional information be included on the written undertaking of bail, including the bail agent license number of the owner of the bail agency issuing the undertaking, along with the name, address, and telephone number of the agency. The bail agency name on the undertaking must be a business name approved by the Insurance Commissioner for use by the bail agency owner and be so reflected in the public records of the Insurance Commissioner. This new law also specifies that the license number of the bail agent shall be in the same type size as the name, address, and telephone number of the bail agency.

CHILD ABUSE

Statute of Limitations

The United States Supreme Court held that the statute of limitations reflects a legislative judgment that after a certain time no quantum of evidence is sufficient to convict. That judgment typically rests upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

As the issue of child sexual abuse came increasingly to the national attention, some state legislatures, including California, enacted legislation that revived otherwise expired child sexual abuse cases. The statutes of limitations were extended retroactively to these old cases in recognition of the repressed memories of some of the victims or because the victims had been afraid to come forward before the statute of limitations had expired.

However, the United States Supreme Court struck down these revival provisions as violative of the ex post facto clause of the Constitution. The Court stated that these laws deprived the defendant of the fair warning that might have led him or her to preserve exculpatory evidence. The Court also commented that laws such as the revival laws raised a risk of arbitrary and potentially vindictive legislation.

AB 1667 (Kehoe), Chapter 368, repeals provisions in the law relative to statutes of limitations on various sex offenses held unconstitutional by the United States Supreme Court. This new law also makes technical non-substantive changes to existing law.

Additionally, this new law provides a new Penal Code Section declarative of existing law that provides:

- If more than one time period applies, the time for commencing an action shall be governed by the period that expires the latest in time.

- Any change in the statutes of limitations in this new law applies to any crime if prosecution was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.

Child Abuse and Neglect Reporting Law

In-Home Supportive Services (IHSS) is a state-administered, county-operated program that provides an alternative to out-of-home care by providing funding that enables program recipients to hire caregivers. IHSS providers who work with adults are mandated reporters of elder and dependent adult abuse, yet those who work with children are not required to report child abuse.

> **AB 2531 (Bates), Chapter 762,** makes any person who provides in-home supportive services to a minor, as specified, a mandated reporter for the purpose of the Child Abuse and Neglect Reporting Act (CANRA) and exempts any in-home supportive service worker from the reporting requirement if he or she has not received training in the duties imposed under CANRA.

Child Abuse: Federal Funding

Among its many provisions, the federal Child Abuse Prevention and Treatment Act (CAPTA) includes a number of grant programs for states, as well as public and private organizations. CAPTA was amended in 2003 by the Keeping Children and Families Safe Act of 2003, which added additional funding eligibility requirements for states to qualify for assistance.

> **AB 2749 (Dutton), Chapter 292,** responds to the change in federal law, amending both state training and notice requirements in order to comply with CAPTA changes and ensure that California qualifies for federal dollars. Specifically, this new law:
>
> - Provides that a representative of a child protective service agency performing an investigation of a report of child abuse or neglect made pursuant to the Child Abuse and Neglect Reporting Act shall, at the time of the initial contact with the individual subject to the investigation, advise the individual of the complaints or allegations made against him or her in a manner consistent with laws protecting the identity of the reporter.
>
> - Requires the training provided pursuant to the Child Welfare Training Program to include instruction on the legal duties of child protective services social workers in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment.

Child Abuse and Neglect Reporting Act: Task Force Recommendations

The Child Abuse and Neglect Reporting Act (CANRA) was established to identify potential child abuse or neglect so that public authorities can protect the victim, as well as obtain information to identify and prosecute child abusers. Under CANRA, specified persons have a duty to report known or suspected child abuse or neglect to law enforcement or child protection agencies for investigation.

AB 2442 (Keeley), Chapter 1064, Statutes of 2002, established the CANRA Task Force comprised of stakeholders and charged it with reviewing CANRA and recommending needed changes. The Task Force met throughout 2003 and in March 2004 the Task Force issued a report containing 17 recommended areas for amendment.

SB 1313 (Kuehl), Chapter 842, makes numerous changes to the CANRA, implementing many of the recommendations of the CANRA Task Force. Specifically, this new law:

- Clarifies that while volunteers generally are not mandated reporters, court-appointed special advocate volunteers are mandated reporters.

- Clarifies that irrespective of whether an employer provides training, the employer shall be required to provide mandated reporter employees with the statement that the employee must sign acknowledging that he or she is a mandated reporter.

- Revises the evidentiary requirement for a "substantiated report" of child abuse or neglect by deleting the "some credible evidence" standard and replacing that phrase with the standard of "evidence that makes it more likely than not that child abuse or neglect . . . occurred."

- Clarifies a potential inconsistency in statutes whether a mandated reporter must report the infliction of mental suffering or endangered emotional well-being, maintaining one provision requiring notification of willful infliction of mental suffering and authorizing reporting when circumstances fall short of that standard.

- Expands the statement an employer is required to provide a mandated reporter employee to include information about his or her confidentiality rights, in addition to the existing notice that he or she is a mandated reporter and explaining reporting obligations.

- Relocates the local interagency child death review teams from CANRA and renumbers the affected sections into a new Article 2.6, under the heading "Child Death Review Teams."

- Clarifies that the limitation on disclosure is applicable to both the mandated reports and the reports prepared by investigative agencies after conducting an investigation.

- Combines two provisions authorizing a person who has been identified by DOJ as or has verified with DOJ that he or she is listed in the Child Abuse Central Index (CACI) to receive reports and clarifies this right vis-a-vis the Public Records Act.

- Explicitly provides that DOJ shall make relevant CACI information available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation consistent with practices authorized in regulation.

- Requires DOJ to make available information regarding a known or suspected child abuser maintained in CACI to a government agency conducting a background check on a person seeking employment as a peace officer.

- Prohibits a person or agency from requiring or requesting that a person provide a copy of a record that he or she is or is not listed in CACI.

- Provides that licensed adoption agencies, as other agencies with access to CACI information, are responsible for obtaining the original investigative report and drawing independent conclusions based on the investigative report before acting on the information.

- Specifies that the existing mandated reporter immunity shall also include those reports in which the reporter gained the knowledge or reasonable suspicion of child abuse outside his or her professional capacity or scope of employment.

COMPUTER CRIME

Internet Piracy

While Motion Picture Association members, as well as California-based music and video game companies, continue to experience losses due to counterfeit works being sold illegally on the street, the potential largest loss to movies, music, and video games could be illegally transmitted digitally over the Internet through 'peer-to-peer file sharing' (P2P) software and other similar technologies. With the increasing penetration of broadband and the development of compression technologies, P2P file sharing now threatens the economic viability of motion picture and video games.

SB 1506 (Murray), Chapter 617, requires that electronic disseminations of specified recordings and audiovisual works include an e-mail address. Specifically, this new law:

- Provides that any person, except a minor, who knowing that a particular recording or audiovisual work is commercial electronically disseminates all or substantially all of that recording or work to more than 10 other people without disclosing his or her e-mail address and the title of the recording or work is guilty of a misdemeanor.

- Makes the above offense punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $2,500; or by both the fine and imprisonment.

- Imposes a fine not to exceed $250 on minors for a first or second offense. A third or subsequent violation would be punishable by a fine not to exceed $1,000; imprisonment in the county jail for up to one year; or both the fine and imprisonment.

- Requires a court, upon conviction, to order the permanent deletion or destruction of electronic files that were the basis of the violation.

- Exempts the following electronic disseminations:

  - To a person who electronically disseminates a commercial recording or audiovisual work to his or her immediate family or within a personal network, defined as a "restricted access network controlled by and accessible to only that person or people in his or her immediate household."

  - If the copyright owner has explicitly given permission for all or substantially all of that recording or audiovisual work to be freely disseminated, or if the copyright owner disseminates the work.

  - To a person authorized by the copyright owner to disseminate electronically all or substantially all of a commercial audio or visual work or recording.

  - To the licensed electronic dissemination of a commercial audio or visual work or recording by means of cable television or satellite service.

- Exempts an Internet Service Provider (ISP) from criminal liability for enabling a user of its service to electronically disseminate an audiovisual work or sound recording if the ISP maintains a means of electronic notification on its Web site.

- Defines "audiovisual work" as an electronic or physical embodiment of motion pictures, television programs, video or computer games, or other audiovisual presentations that consist of related images intrinsically intended to be shown by the use of machines or devices.

- Defines "commercial recording or audiovisual work" as a recording or audiovisual work that the copyright owner has made or intends to make available for sale, rental, or for performance or exhibition to the public. A recording or audiovisual work may be commercial regardless of whether the disseminator seeks commercial advantage or private financial gain.

- Defines "electronic dissemination" as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network.

- Defines "e-mail address" as a valid e-mail address or the valid e-mail address of the holder of the account from which the dissemination took place.

- Sunsets on January 1, 2010.

CONTROLLED SUBSTANCES

Controlled Substances: Triplicate Prescriptions

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. California has long required that any person prescribing a Schedule II controlled substance issue the prescription on a Department of Justice (DOJ)-issued, serialized triplicate prescription form. Pharmacists would forward the original of the prescription form to the DOJ each month.

In 2003, SB 151 (Burton), Chapter 406, made permanent the pilot Controlled Substances Utilization Review and Evaluation System, an electronic monitoring program administered by DOJ to track the prescribing and dispensing of certain controlled substances and, effective July 1, 2004, eliminated the requirement that Schedule II controlled substances prescriptions be written on triplicate forms. Additionally, SB 151 provided that as of January 1, 2005, prescriptions for Schedule II – V controlled substances shall be written on secure, forgery-resistant forms and established a number of requirements for printing prescription forms for controlled substances by "security printers" approved by the Board of Pharmacy.

AB 30 (Richman), Chapter 573, temporarily extends the use of triplicate prescription forms for the dispensing of Schedule II narcotics until the alternative forgery resistant pads are more readily available. Specifically, this new law:

- Re-establishes the authority of the DOJ to print triplicate pads until November 1, 2004, thereby enabling physicians to continue to obtain the triplicate pads but retained the January 1, 2005 repeal date of the triplicate pad provision.

- Authorizes licensed health care facilities to print prescription forms by computerized prescription generation systems and exempts these forms from specified record keeping and check-off box requirements. These computer-generated forms may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

- Deletes the inclusion of a pharmacy prescription number, license number, and federal controlled substance registration number from the prescriber's duty to keep a record of Schedule II and as of January 1, 2005 Schedule II and Schedule III prescriptions dispensed by the prescriber.

- Takes effect immediately.

Alcoholic Beverages and Controlled Substances: Minors

Underage consumption of alcohol is a problem contributed to by businesses, the alcohol industry, and by certain members of the community who may give alcoholic beverages to persons under the age of 21 years.

Under existing law, it is a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or consume any alcoholic beverage on any on-sale premises. Selling, furnishing, giving, or causing to be sold, furnished or given away, any alcoholic beverages to any person under the age of 21 years is also a misdemeanor.

Additionally, any person who purchases an alcoholic beverage for a person under the age of 21 years and that person consumes the alcoholic beverage and proximately causes great bodily injury or death is guilty of a misdemeanor, punishable by imprisonment; a fine not exceeding $1,000; or both.

AB 2037 (La Suer), Chapter 291, expands existing law to include any person who furnishes, gives or gives away any alcoholic beverage to a person under the age of 21 years. AB 2037 also provides that the penalties specified by this new law do not preclude prosecution under any other provision of law including, but not limited to, contributing to the delinquency of persons under 18 years of age.

CORRECTIONS

Prisoners: Audio-Video Communication of Court Proceedings

Existing law allows the California Department of Corrections (CDC) to arrange for the initial court appearance and arraignment of a defendant incarcerated in the state prison to be conducted by a two-way electronic audio video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.

Expanding existing law to allow the majority of prison case court appearances to be conducted by audio-video conferencing technology between the institution and the courts will result in a reduction of CDC costs for transportation, security, and overtime during inmate transfer to the court; increased safety to staff due to a reduction in the opportunities for an inmate to engage in assaultive behavior; reduction of escape risks during transport; and savings as a result of reduction in bailiff expenses and other administrative costs.

AB 99 (Cox), Chapter 293, authorizes the CDC in any case in which a defendant charged with a felony or misdemeanor and is incarcerated in the state prison to arrange that all court appearances, except as specified, be conducted by two-way, audio-video communication between the defendant and the courtroom.

- Provides that in any case in which the defendant is charged with a felony or misdemeanor and is currently incarcerated in the state prison, the CDC may arrange for all court appearances, except for the preliminary hearing, trial, judgment and sentence, and motions to suppress, be conducted by two-way electronic audio-video communication.

- Requires the CDC, for those appearances the CDC determines to conduct, to arrange for two-way, electronic audio-video communication between the superior court and any state prison facility located in the county. The CDC shall provide properly maintained equipment and adequately trained staff at the prison to ensure consistently effective two-way communications between the prison facility and the courtroom.

State Prison: Tobacco Products

Reception centers and virtually all county and local jails have been tobacco free for some time - a prisoner can spend up to one- and one-half year in the local jail and the reception center before being sent to his or her final state prison. As such, prisoners are in a tobacco-free environment for quite some time before being transferred to a state prison, where smoking is allowed. Three state institutions - Wasco State Prison, the California Men's Colony in San Luis Obispo, and the California Medical Facility in Vacaville - have been tobacco free in recent years. No residual behavioral problems have been noted as a result of the ban.

AB 384 (Leslie), Chapter 780, prohibits the possession and use of tobacco products by any person at California Department of Corrections (CDC) and California Youth Authority (CYA) facilities. Specifically, this new law:

- Requires the Directors of the CDC and the CYA to adopt regulations prohibiting the possession of tobacco products by inmates in state prison and CYA facilities.

- Prohibits the use of tobacco products by any person not an inmate or ward while on the grounds of any facility under the jurisdiction of CDC or CYA except in residential staff housing where inmates are not present.

- Removes the provision that allows the CDC Director to sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his or her jurisdiction who has attained the age of 16 years.

- Removes tobacco from the list of items CDC is authorized to sell at inmate commissaries and canteens.

Work Furlough: Access to Personal Identifying Information

Existing law provides that a person confined in a county jail, industrial farm, road camp, or city jail or a person performing community service in lieu of a fine or custody shall not be employed or perform work that provides that person with access to personal information of private individuals if he or she has been convicted of specified crimes.

> **AB 2861 (Koretz), Chapter 949**, adds offenders assigned to work furlough programs within the classification of individuals prohibited from offender employment or work that provides access to a private individual's specified personal information, except that such a person may work in a situations that allow him or her to retain or look at a driver's license or credit card no longer than necessary to complete an immediate transaction. Nevertheless, no person assigned to work furlough may be placed in any position that may require the deposit of a credit card or driver's license as insurance or surety.

Prisoners: Medical Testing

California law does not require mandatory human immunodeficiency virus (HIV) testing for all prisoners, although incarcerated persons may be required to be tested under certain circumstances. In the case of a law enforcement employee who has come into contact with bodily fluids of a prisoner, the employee must report the incident to Department of Health Services (DHS) and may request an HIV test of the person who is the subject of the report. DHS directs the form to the chief medical officer (CMO). The CMO must then decide whether or not to require an HIV test of the inmate subject to the report within five calendar days of receipt of the report. The CMO's decision may be appealed by either the inmate or officer within three calendar days of receipt of the decision to a three-person panel.

The department which has jurisdiction over the person requesting or appealing the test then convenes the appeal panel and must ensure that the appeal is heard within 30 calendar days from the date an appeal request is filed. The panel shall consist of three members: the CMO making the original decision and two physicians, as specified. Within 10 calendar days of the notification, the panel must reach an agreement on a date for the hearing. The hearing shall render a decision within 10 days of the date upon which the appeal is filed. The decision of the panel may be appealed to the superior court, either by the officer or inmate. The court shall schedule a panel as expeditiously as possible to review the decision of the panel and shall uphold the decision being appealed if that decision is based upon substantial evidence. Under current law, the process may take up to 48 days, notwithstanding an appeal to the superior court.

> **AB 2897 (Bogh), Chapter 953**, abbreviates the process when a correctional peace officer requests an inmate be required to test for HIV.

- Makes several technical changes to existing legislative findings and declarations as they relate to the spread of HIV and AIDS.

- Authorizes the CMO to delegate his/her otherwise non-delegable duty to determine whether mandatory testing is required to another qualified physician designated to act as CMO in the CMO's absence.

- Provides that processing a form by the CMO containing a request for HIV testing of the subject person shall not be delayed by the processing of other reports or forms.

- Requires that the CMO decide whether to order an HIV test of an inmate who is the subject of a report within 24 hours of receipt of the report.

- Requires appeals filed by a law enforcement employee to be heard within seven calendar days.

- Requires that within two calendar days of the notification, a physician and surgeon, as specified, reach agreement with DOC, the county, the city, or the county and city, on a hearing date for appeals filed by a law enforcement employee.

- Requires a decision on an appeal to be rendered within two days of the hearing.

- Repeals the existing legislative sunset.

Department of Corrections: Inspector General Audits

The mission of the Office of Inspector General (IG) is to protect the integrity of California's youth and adult correctional systems. The IG promotes accountability though objective, independent investigations, reviews, and audits of the California correctional system. However, there is no accountability when the reports, audits and investigations are not available to the public.

SB 1352 (Romero), Chapter 734, recasts existing provisions regarding materials used for IG audits being public records except as specified, requires the IG to prepare written reports of its audits and investigations, and requires the IG to prepare annual summaries of its investigations and audits. Specifically, this new law:

- Recasts existing provisions regarding materials used for IG audits being public records, including by cross-reference various confidentiality acts and statutes; deleting current law that excluded papers and correspondence to the IG requested to be confidential; and deleting current law that excluded various documents not used in any report resulting from the audit or investigation, including various documents pertaining to internal discussions between the IG

and his or her staff and including various documents from any person requesting assistance from the IG, except as specified.

- Provides that no memorandum of understanding (MOU) and any agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure, as specified.

- Provides that the IG has discretion to redact identifying information of any person interviewed from any public report issued by the IG in specified situations.

- Provides that IG is subject to specified Government Code Sections regarding interrogations, lie detector tests, public safety officer photo identification, disclosure of financial status and locker searches, except that the IG shall not be subject to the provisions of any MOU or other agreements, as specified, when those provisions are in conflict with or add to the requirements of specified Government Code Sections.

- Deletes an existing provision of law that makes it is a misdemeanor for the IG, or any employee of the IG, to release any information received pursuant to this chapter except as provided by this chapter, or otherwise prohibited by law from being disclosed.

- Provides that upon the completion of any IG audit, the IG shall submit a report, with the underlying materials the IG deems appropriate, to specified persons. Copies of these reports shall be posted on the IG's Web site, as specified.

- Provides that the IG shall prepare and issue on a quarterly basis a written report on completed investigations and the report, along with the underlying materials the IG deems appropriate, to specified persons.

- Provides that the IG shall prepare a public investigative report for each completed investigation. The public report shall differ from the complete investigative report only in that the IG has the discretion to redact certain information, as specified.

- Provides for the procedures to be followed to make the public investigative report public.

- Provides that the IG shall report annually to the Governor and the Legislature a summary of his or her investigations and audits. This law new provides that the report shall be posted on the IG's Web site and made available to the public upon its release to the Governor and Legislature.

- The IG shall issue reports, no less than twice per year, to the Governor and Legislature summarizing its findings concerning its oversight of Youth and Adult Correctional Agency disciplinary cases and shall post the reports summarizing disciplinary costs on it Web site.

Department of Corrections: Bureau of Independent Review

Pelican Bay Special Master John Hagar found that California Department of Corrections (CDC) officials at the highest level are unwilling or unable to investigate and discipline serious abuses of force by correctional officers. Hagar also found systemic problems within the CDC's investigations, including an inaccurate and unreliable management reporting system, ineffective oversight of regional offices, inadequate staff training, an inadequate case tracking system, and no approved policy manual for Office of Investigative Services (OIS) agents. In response to Hagar's draft report, the CDC submitted to Federal Judge Thelton Henderson a remedial plan that addresses several issues, including the "Code of Silence", training for OIS agents, and "real time" oversight of OIS investigations.

SB 1400 (Romero), Chapter 736, creates a Bureau of Independent Review (BIR) to carry out specified duties related to oversight of investigations of the Youth and Adult Correctional Agency (YACA). Specifically, this new law:

- Creates within the Office of Inspector General a BIR, which is subject to the direction of the Inspector General.

- Provides that the BIR shall be responsible for public oversight of YACA investigations, as specified.

- Provides that the BIR shall advise the public regarding YACA investigations, as specified.

- Provides that the BIR shall have discretion to provide public oversight of other YACA personnel investigations as needed.

- Provides that the BIR shall issue regular reports to the Governor and the Legislature summarizing its recommendations concerning its oversight of YACA allegations of internal misconduct and use of force.

- Provides that the BIR shall issue regular reports summarizing its oversight of OIS and Internal Affairs investigations.

California Department of Corrections: Drug Utilization Protocol

The California Department of Corrections (CDC) does not have a formal system in place for the substitution of generic drugs for patient inmates prescribed higher-cost, 'name brand' pharmaceuticals. The CDC should be required to identify best management practices and protocols for medication and generic substitutes.

SB 1426 (Ducheny), Chapter 383, provides that the CDC shall adopt policies and procedures regarding medication utilization protocols. Specifically, this new law:

- Provides that the CDC shall adopt policies, procedures, and criteria to identify selected medication categories for the development of utilization protocols based on best practices and the use of generic and therapeutic substitutes, as appropriate.

- Provides that the CDC shall develop utilization and treatment protocols for select medication categories based on defined medical criteria.

- Provides that the CDC shall provide information, on or before April 1, 2006, as part of the fiscal committee budget hearings for the 2006-07 budget year on the impact of the adoption of these protocols.

- Provides that the CDC shall coordinate the implementation of this section with the Department of General Service's prescription drug bulk purchasing program.

- States legislative intent that the CDC shall complete the implementation of this section utilizing existing CDC resources.

California Department of Corrections: Code of Conduct

A sound, fair internal justice system at correctional facilities must allow employees to cooperate fully and freely with investigators examining employee misconduct. The "Code of Silence" where employees either refuse to discuss wrong doing or else engage in acts of reprisal against those who do report wrong doing cannot be tolerated. The California Department of Corrections (CDC) needs to be clear about employee behavior that will not be tolerated and its sanctions must include a prohibition against the Code of Silence. There should be consistent prohibitions for employee misconduct, the Code of Silence should be specifically prohibited, and the CDC should protect employees who fear for their lives because they broke the Code of Silence.

SB 1431 (Speier), Chapter 738, provides that the CDC and the California Youth Authority (CYA) directors shall develop and implement a disciplinary matrix and adopt a code of conduct. Specifically, this new law:

- Makes various legislative findings and declarations regarding the Code of Silence, wrongdoings within CDC and CYA, and a code of conduct.

- Provides that CDC and CYA directors shall provide for the development and implementation of a disciplinary matrix with offenses and associated punishments in order to ensure notice and consistency statewide.

- Provides that the disciplinary matrix shall take into account aggravating and mitigating factors for establishing a just and proper penalty for charged misconduct, and the presence of these factors may result in the imposition of a greater or lesser penalty.

- Provides that the disciplinary matrix shall take into account aggravating and mitigating factors for establishing a just and proper penalty for charged misconduct, and the presence of these factors may result in the imposition of a greater or lesser penalty.

- Provides that CDC and CYA directors shall adopt a code of conduct for all employees.

- Provides that CDC and CYA directors shall ensure that employees who have reported improper governmental activities and who request services from CDC or CYA are informed of services available to them.

- Provides that CDC or CYA shall post the code of conduct in locations where employee notices are maintained. SB 1431 provides that beginning July 1, 2005, and annually thereafter, CDC or CYA shall send specified information via e-mail to employees who have authorized access to e-mail.

Board of Prison Terms: Parole Hearings

Under current law, a victim, his or her next of kin, or two immediate family members have the right to appear at a Board of Prison Terms (BPT) parole hearing to express their views on how the crime has affected their lives. However, many victims are too ill, invalid, emotionally distraught, or have passed away and cannot attend parole hearings. Allowing a crime victim to designate a representative to appear at a BPT hearing would help a victim more accurately and effectively represent his or her feelings in the event that he or she cannot attend a particular hearing.

SB 1516 (Machado), Chapter 289, expands the current list of persons who may provide testimony or submit statements to the BPT. Specifically, this new law:

- Adds "two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin" to the list of persons who have the right to appear at BPT hearings.

- Provides that any statement submitted by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

- Provides that the victim's representative is not allowed to attend a particular hearing if the victim, next of kin, or a member of the victims immediate family is present at the hearing or has submitted a statement.

- Expands the lists of persons whose statements the BPT shall consider in deciding whether to release a person on parole to include designated representatives of the victim or next of kin.

- Expands the list of persons who may personally appear at any BPT hearing to review parole suitability or setting of a parole date to include "two representatives designated for a particular hearing by the victim or next of kin."

- Provides that a representative designated by the victim or the victim's next of kin must be a family or household member of the victim. SB 1516 defines a "household member of the victim" as "a person who lives, or was living, at the time of the crime in the victim's household or who has, or for a deceased victim had, at the time of the crime an intimate or close relationship with the victim."

- Expands the list of persons who have the right to appear by means of videoconferencing to include "representatives designated for a particular hearing by the victim or next of kin."

Corrections

Existing law requires the Board of Prison Terms (BPT) to notify each prisoner who is an undocumented alien subject to deportation that he or she may be eligible to serve his or her term of imprisonment in his or her country of origin. This notification must be given upon entry of the person into any facility operated by the California Department of Corrections (CDC), and at least annually thereafter.

Pursuant to treaties in force between the United States and various foreign countries, a foreign national convicted of a crime in the United States and a United States citizen convicted of a crime in a foreign country may apply for a prisoner transfer to his or her country of origin. The United States is a signatory to 12 multilateral and two bilateral prisoner transfer treaties.

A prisoner seeking a transfer to his or her country of origin must submit a written request to the BPT. As part of the request for transfer, the prisoner must request that the receiving nation submit a letter to BPT stating an intention to accept the prisoner, indicating the intended duration of the prisoner's sentence in that country, and the parole programs available for the prisoner upon his or her release. The BPT makes a recommendation based upon specified factors.

SB 1608 (Karnette), Chapter 924, expands these provisions to include all foreign nationals. Specifically, this new law:

- States that the CDC shall inform any person who is currently or was previously a foreign national, upon entry into a facility operated by CDC, that he or she may apply to be transferred to serve the remainder of his or her

prison term in his or her current or former nation of citizenship;

- Provides that the CDC shall inform the person that he or she may contact his or her consulate;

- States that CDC shall ensure, if notification is requested by the inmate, that the inmate's nearest consulate shall be notified without delay of the person's incarceration;

- Provides that upon the request of a foreign consulate representing a nation that requires mandatory notification under the Vienna Convention, the CDC shall provide the foreign consulate with a list of the names and locations of all inmates that have self-identified that nation as his or her place of birth;

- Requires the CDC to implement procedures to process applications for the transfer of prisoners to their current or former nations of citizenship, and to forward all applications to the Governor or his or her designee for appropriate action;

- Eliminates the annual notification requirement regarding the prisoner transfer program by CDC to inmates who are undocumented aliens subject to deportation.

Vehicles

Existing law prohibits driving a motor vehicle without a valid driver's license, and there are various potential penalties that include jail time. For example, upon a first conviction of driving with a suspended driver's license, the potential penalty is up to six months in the county jail and a fine of $300 to $1,000, or both such fine and imprisonment. If a person has a second conviction within five years, the penalty is five days to one year in jail and a fine of $500 to $2,000.

Driving on a driver's license which has been suspended or revoked for reckless driving and other specified offenses is punishable on a first conviction by imprisonment in the county jail for not less than five days nor more than six months and by a fine of $300 to $1,000. For a second offense within five years, the penalty is imprisonment in the county jail for not less than 10 days nor more than one year and by a fine of $500 to $2,000. If the person was granted probation, the court is mandated to impose as a condition of probation that he or she be imprisoned in the county jail for at least 10 days.

Prior to January 1, 2004, the law authorized the district attorneys of specified counties, with the approval of the board of supervisors, to establish a pilot program involving home electronic monitoring in lieu of jail time. A person who pleads guilty or no contest or convicted of specified provisions relative to driving with a suspended or revoked license could enter into a written agreement with the district attorney to participate in this pilot program.

Under the pilot program, in lieu of a jail sentence, the convicted person agreed to a home detention program utilizing an electronic monitoring system for not less than the minimum jail sentence and not more than the maximum jail sentence. In addition, the person who agreed to participate in this pilot program was required to attend a class or classes related to driving without a valid driver's license.

Because of current county jail overcrowding, the electronic monitoring program mitigated the problem of low-level offenders using jail space and resources needed for more serious offenders. The classes required in the pilot program assured that the offender was aware of the steps needed to be taken to have his or her license reinstated.

The law provided that the electronic monitoring program would be provided under the auspices of the district attorney or city attorney, as applicable. The electronic monitoring pilot program expired on January 1, 2004.

SB 1848 (Ashburn), Chapter 594, re-established the home electronic monitoring program in lieu of a jail sentence for persons who plead guilty or were convicted of driving with a suspended or revoked driver's license. This new law allows the district attorneys of the Counties of Alameda, Fresno, Kern, Los Angeles, Merced, Orange, Placer, Riverside, Sacramento, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara or Santa Cruz, and city attorneys within those counties authorized to prosecute misdemeanors, with the approval of the board of supervisors, to re-establish a home electronic monitoring system. The district attorney may conduct the program or may contract with a private entity to conduct the program. Participants in the program may be required to pay fees for the program, in addition to any fine imposed under the law. However, a person shall not be denied participation in the program due to that person's inability to pay for the program.

This new law also requires that on or before December 31, 2007, the district attorney or city attorney, as applicable, who elects to participate in the pilot program shall prepare and submit to the legislature a report concerning their participation.

This new law shall remain in effect only until January 1, 2008, and is repealed as of that date unless a statute enacted before January 1, 2008 deletes or extends that date. The new law was declared an urgency statute necessary for the preservation of the public peace, health or safety, and goes into effect immediately.

COURT HEARINGS AND PROCEDURES

Victims

Existing law provides certain exceptions to various evidentiary rules for children testifying in certain court proceedings in recognition that the age of the child and/or the nature of the crime suggest the necessity of different rules. For example, existing law

requires that every person who testifies before a court take an oath or affirmation, except that children under the age of 10 years may, in the court's discretion, only be required to promise to tell the truth. Similarly, leading questions may be asked of a child witness under the age of 10 years in specified cases involving prosecution of physical, mental, or sexual abuse.

Additionally, existing law requires that examination of witnesses shall be open to the public. However, the law provides an exception in a criminal case involving specified sexual crimes against a minor under 16 years of age. In such cases, the court shall, upon motion, conduct a hearing to determine whether the testimony of and related to the minor shall be closed to the public.

Certain persons working in specified occupations, such as doctors, teachers, and others, are mandated reporters of child abuse and neglect. A failure to report as required is a misdemeanor.

Although existing law has provided these accommodations for children, similar specific accommodations did not exist for persons who are dependent upon others for their care because of a developmental disability, traumatic brain injury, and other cognitive disabilities.

AB 20 (Lieber), Chapter 823, expands the protections offered to children and elders to include dependent persons. Specifically, this new law:

- Allows dependent persons with a substantive cognitive impairment to be required only to tell the truth when testifying in court;

- Allows leading questions to be asked of dependent persons with a substantial mental impairment in specified cases involving prosecution of physical, mental, or sexual abuse;

- Allows the court to close the courtroom for the testimony of, and relating to, dependent persons with a substantive cognitive impairment;

- Allows a magistrate to postpone a preliminary hearing to accommodate the needs of a dependent person;

- Allows the examination of a witness to be closed to the public during the testimony of a dependent person with a significant cognitive impairment who is complaining of a sex offense if testimony before the general public would be detrimental and there are no other alternatives;

- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;

- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;

- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;

- Expands the definition of physical abuse of an elder or dependent person to include lewd or lascivious acts; and,

- States legislative intent to ensure that people who cannot live independently are treated fairly by the criminal justice system, and that developmentally disabled and other dependent persons who are witnesses in criminal cases are given equal access to the criminal justice system.

Prisoners: Audio-Video Communication of Court Proceedings

Existing law allows the California Department of Corrections (CDC) to arrange for the initial court appearance and arraignment of a defendant incarcerated in the state prison to be conducted by a two-way electronic audio video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.

Expanding existing law to allow the majority of prison case court appearances to be conducted by audio-video conferencing technology between the institution and the courts will result in a reduction of CDC costs for transportation, security, and overtime during inmate transfer to the court; increased safety to staff due to a reduction in the opportunities for an inmate to engage in assaultive behavior; reduction of escape risks during transport; and savings as a result of reduction in bailiff expenses and other administrative costs.

AB 99 (Cox), Chapter 293, authorizes the CDC in any case in which a defendant charged with a felony or misdemeanor and is incarcerated in the state prison to arrange that all court appearances, except as specified, be conducted by two-way, audio-video communication between the defendant and the courtroom.

- Provides that in any case in which the defendant is charged with a felony or misdemeanor and is currently incarcerated in the state prison, the CDC may arrange for all court appearances, except for the preliminary hearing, trial, judgment and sentence, and motions to suppress, be conducted by two-way electronic audio-video communication.

- Requires the CDC, for those appearances the CDC determines to conduct, to arrange for two-way, electronic audio-video communication between the superior court and any state prison facility located in the county. The CDC shall provide properly maintained equipment and adequately trained staff at

the prison to ensure consistently effective two-way communications between the prison facility and the courtroom.

Criminal Procedure: Subpoenas

Some criminal law practitioners are using deposition subpoenas, which is a civil discovery tool, to gain access to private records from third parties without judicial oversight, infringing on consumer privacy. In addition, the law is being interpreted by some to not require notice be given to consumers when their personal information is subject to release.

AB 1249 (Pacheco), Chapter 162, prohibits attorneys in criminal matters from directing custodians of records to make the subpoenaed records available for inspection or copying at the custodian's business address and instead requires that subpoenaed records be delivered directly to the court for inspection by the court and the parties. Specifically, this new law:

- Provides that when a defendant has issued a subpoena for the production of documents the court may order an in-camera hearing to determine if the defense is entitled to the documents. The county may not order the documents released to the prosecution unless required by the rules of discovery.

- Requires a custodian of records who receives a subpoena duces tecum (SDT) in a criminal matter to deliver by mail or otherwise a copy of all documents the subject of a SDT to the court.

- Prohibits attorneys in a criminal matter or their representatives from issuing a SDT or requesting documents from a custodian of records in a manner inconsistent with the provisions of this law.

- Allows a party to obtain documents with the consent of the person to whom documents relate.

Former Jeopardy

Under previous law, a person who committed a crime in California and then flees to a foreign country where he or she is prosecuted for that crime cannot be tried in California if he or she returned to the state. The legal concept prohibiting prosecution in California is "statutory double jeopardy", and California was only one of six states that applied statutory double jeopardy to persons prosecuted in foreign countries for crimes committed in California.

Both the federal and state constitutions prohibit double jeopardy or twice putting a person in jeopardy for the same offense. However, the United States Supreme Court has stated a well-established principle that prosecutions under the laws of separate sovereigns do not subject to the defendant to double jeopardy. The rationale is that a person may owe allegiance to two sovereigns and may be punished for violating the laws of either; the fact

is that by committing one act, the person may have committed two offenses and he or she is punishable for each offense.

Although the constitutional protection against double jeopardy does not bar prosecution in California of a person tried for the same crime in a foreign country, there is nothing to preclude a state from granting greater protection than that afforded by the United States Constitution. Under this theory, California adopted statutes that provide some protection against successive prosecutions in different jurisdictions for offenses arising out of the same act.

There are a number of international treaties signed by the United States and numerous other countries which provide for extradition to the country where the crime was committed. However, one of these treaties was severely limited by a decision of one country's supreme court to deny extradition to California for crimes committed in California and punishable by life imprisonment or the death penalty.

Inasmuch as all murder cases are punishable by at least a life term in California, it became impossible to extradite accused murderers from that country back to California to face prosecution. (In order to obtain extradition, district attorneys were forced to agree that they would not seek the death penalty or life imprisonment.) Some accused murderers in California served as little as eight years in prison in that other country then returned to California. Under California's statutory double jeopardy laws, those people could not then be prosecuted for murders committed in California because of California's statutory double jeopardy law.

> **AB 1432 (Firebaugh), Chapter 511,** removes one of these statutorily provided protections by removing the bar to prosecution or indictment in California of persons acquitted or convicted of a public offense in another country. This new law provides that such a person shall be entitled to credit for any actual time served in custody in a penal institution in that other country for the crime and for any additional time credits that would actually have been awarded had the person been incarcerated in California.
>
> However, this new law leaves in place the California statute that bars prosecution in California for an act or omission charged as a public offense within the jurisdiction of the United States or another state or territory of the United States.
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> This new law provides that no international treaties or lands shall be violated to secure the return of a person convicted in another country of a crime committed in California in order to prosecute that person in California.

Release of Committed Persons: Notice

Existing law does not require that a victim or the next of kin of a victim be notified prior to a hearing to consider release on outpatient status of a person committed to a state hospital after the commission of specified felony offenses.

AB 1504 (Spitzer), Chapter 628, requires a prosecutor to notify the victim, or next of kin of the victim, before a person committed to the state hospital after the commission of specified felony offenses is placed on outpatient status. Further, AB 1504 requires that the victim keep the court apprised of his or her current mailing address.

Statute of Limitations

The United States Supreme Court held that the statute of limitations reflects a legislative judgment that after a certain time no quantum of evidence is sufficient to convict. That judgment typically rests upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

As the issue of child sexual abuse came increasingly to the national attention, some state legislatures, including California, enacted legislation that revived otherwise expired child sexual abuse cases. The statutes of limitations were extended retroactively to these old cases in recognition of the repressed memories of some of the victims or because the victims had been afraid to come forward before the statute of limitations had expired.

However, the United States Supreme Court struck down these revival provisions as violative of the ex post facto clause of the Constitution. The Court stated that these laws deprived the defendant of the fair warning that might have led him or her to preserve exculpatory evidence. The Court also commented that laws such as the revival laws raised a risk of arbitrary and potentially vindictive legislation.

AB 1667 (Kehoe), Chapter 368, repeals provisions in the law relative to statutes of limitations on various sex offenses held unconstitutional by the United States Supreme Court. This new law also makes technical non-substantive changes to existing law.

Additionally, this new law provides a new Penal Code Section declarative of existing law that provides:

- If more than one time period applies, the time for commencing an action shall be governed by the period that expires the latest in time.

- Any change in the statutes of limitations in this new law applies to any crime if prosecution was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.

Solicitation of Bail Services

Existing law regulates the conduct of persons offering bail services as bail licensees. Generally, the laws regulating the conduct of bail licensees comes within the purview of the Insurance Commissioner, who regulates the bail industry to assure that the industry provides its services in a professional manner. Existing law and regulations provide for

the licensure of both bail companies and bail agents, and sets guidelines for many of the everyday practices of the bail industry.

However, there was an alleged problem with the Department of Insurance enforcing laws and regulations designed to prevent the unfair and anti-competitive practice of some bail agents providing compensation to jail inmates for soliciting the business of detained persons. The problem with providing compensation to inmates to solicit business on behalf of the bail bond company effectively permitted unlicensed inmates to solicit bail services. Since inmates were unlicensed by the Department of Insurance, they were unaware of the laws and regulations relating to the solicitation of bail services. This created an anti-competitive situation in which one bail company compensated inmates in a particular jail to solicit business for one company to the competitive disadvantage of the other bail companies who abided by the laws and regulations requiring licensure in order to work as bail agents.

> **AB 1696 (Wiggins), Chapter 165,** provides that it is a misdemeanor for any bail licensee to employ, solicit, pay, or promise any payment, compensation, consideration or thing of value to any person incarcerated in any prison, jail or other place of detention for the purpose of that person soliciting bail on behalf of the bail licensee. This new law adds this misdemeanor to the Penal Code. However, nothing in the new law shall prohibit prosecution under the Insurance Code or any other provision of law.

Driving Under the Influence: Court Advisory

In 2000, an estimated 2,163,210 crashes in the United States involved alcohol. These crashes killed 16,792 people and injured an estimated 513,000 people. In 2001, the number of alcohol-related fatalities increased to 17,400. Of these, 1,461 fatalities occurred in crashes involving intoxicated drivers who already had one previous driving under the influence (DUI) conviction. Having the court advise persons convicted of reckless driving or DUI of the dangers of their behavior could decrease the number of alcohol-related fatalities.

> **AB 2173 (Parra), Chapter 502,** requires the court to advice persons convicted of reckless driving or driving under the influence of the dangers of such behavior. Specifically, this new law:
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> - Provides that when a person is convicted of reckless driving or driving under the influence, the court shall advice that person of the dangers of driving under the influence, using specified text. Included in the text is a warning that if a person drives under the influence and causes a fatality, the driver can be charged with murder.
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> - Provides that the advisory statement may be included in a plea form or the fact that the advice was given may be specified on the record.

- Provides that the court shall include on the abstract of the conviction or violation the fact that the person has been advised of the dangers of driving under the influence.

Rape: Evidence of Sexual Conduct

Existing law permits the submission of an affidavit alleging facts relating to the prior sexual conduct of the complaining witness in a rape trial. These allegations are reviewed by the court to determine if they are sufficient to require a hearing to be conducted.

The allegations contained in the affidavit are not confidential and are available for inspection by a member of the public. If the court determines that the information contained in the affidavit is insufficient or irrelevant and denies the motion, the information contained in the affidavit is still available to the public.

AB 2829 (Bogh), Chapter 61, requires that an affidavit in support of a motion to introduce evidence of sexual conduct of the complaining witness be filed under seal. Specifically, this new law:

- Requires that an affidavit in support of a motion to introduce evidence of sexual conduct of the complaining witness be filed under seal, and shall only be unsealed by the court to determine if the offer of proof is sufficient to order a hearing and then shall be resealed.

- Provides that an affidavit reviewed by the court and resealed shall remain sealed unless the defendant raises an issue on appeal relating to the offer of proof contained in the sealed document.

- Provides that when the defendant raises an issue on appeal relating to the offer of proof contained in the sealed affidavit, the court shall allow the Attorney General and the appellate attorney access to the sealed affidavit. The information in the affidavit shall be limited to the pending proceeding.

Police Reports: Personal Confidential Information

Police reports are often attached to arrest warrants or criminal complaints in order to demonstrate that probable cause for the arrest or complaint exists. These documents become part of the court file and are available to the public. Further, the Office of the General Counsel of the Administrative Office of the Courts recently issued an opinion stating that when a court considers a police report in the adjudication of a case, the report must be made a part of the record and made available to the public. However, police reports contain personal identification information of victims and witnesses.

SB 58 (Johnson), Chapter 507, requires county district attorneys, the courts, and law enforcement to establish a mutually agreeable procedure to protect personal confidential information regarding a victim or witness contained in a police report submitted to a court. Specifically, this new law:

- Requires county district attorneys, the courts, and law enforcement to establish a mutually agreeable procedure to protect personal confidential information regarding a victim or witness contained in a police or investigative report if such a report has been submitted to a court by a prosecutor or law enforcement officer in support of specific actions.

- States that the prosecutor may not construe this section to impair or affect the disclosure of materials to the defendant or his or her attorney.

- States that this new law shall not be construed to impair or affect procedures regarding the disclosure of confidential informants or sealed search warrant affidavits, as specified.

- Provides that this new law shall not be construed to impair or affect criminal defense counsel's access to unredacted reports otherwise authorized by law or the submission of documents in support of a civil complaint.

- States that "confidential personal information" includes, but is not limited to, an address, telephone number, driver's license number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

Bail Services

Existing law regulates the bail industry pursuant to law and regulations of the State Insurance Commissioner. Areas regulated include the licensing of bail agents, bail solicitors, and the requirements for documents related to bail undertakings. For example, an applicant for a license to act as a bail agent is required to file with the Department of Insurance a notice of appointment executed by a surety insurer, authorizing the applicant to solicit and execute bail undertakings on behalf of the surety.

A bail solicitor is defined as a person who acts on behalf of and as the employee of the holder of the bail license. Existing law requires that a written undertaking of bail include the name of the defendant, court, judge, charges, and the amount of bail, as well as the names and occupations of the sureties. The document must also include a notice that forfeiture of the bail bond can be enforced by summary judgment as provided by law.

Because of the practice of many bail agents of doing business under many different names, it is difficult under existing law to identify which bail licensee is actually the responsible party. The addition of the bail agent's license number to the bond undertaking will eliminate this problem.

SB 761 (McPherson), Chapter 104, requires that certain additional information be included on the written undertaking of bail, including the bail agent license number of the owner of the bail agency issuing the undertaking, along with the name, address, and telephone number of the agency. The bail agency name on the undertaking must be a business name approved by the Insurance Commissioner for use by the bail agency owner and be so reflected in the public records of the Insurance Commissioner. This new law also specifies that the license number of the bail agent shall be in the same type size as the name, address, and telephone number of the bail agency.

CRIME PREVENTION

Sex Offenders: Megan's Law

The approval of the federal Megan's Law in 1996 allowed police authorities to release of information about violent sex offenders for the first time. As a result, many law enforcement agencies make the Megan's Law database available to members of the public. The database provides the offender's name and aliases, information on physical appearance, registered sex offenses, and location. However, Megan's Law is only as effective as the availability of the sex offender database. Regrettably, the database is not readily accessible for many Californians; generally, the database is only available at police stations in urban areas. In many rural communities, information on sex offenders is not available to the public or only available for a limited number of hours, which may pose difficulties for working parents.

AB 488 (Parra), Chapter 745, provides that on or before July 1, 2005, sex offender registration information shall be disseminated to the public through an Internet Web site operated by the Department of Justice (DOJ) based on a tiered classification system. Specifically, this new law:

- Provides that with respect to a person convicted of the commission or attempted commission of specified "violent" sex offenses and sexually violent predators (SVP), the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the address at which the person resides.

- Provides that with respect to a person convicted of the commission or attempted commission of specified serious sex offenses, the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the community of residence and ZIP code in which the person resides. However, the address of the person shall not be disclosed unless a determination is made that the person has a prior or subsequent conviction for specified sex offenses.

- Provides that with respect to a person convicted of the commission or attempted commission of specified less serious sex offenses, the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the community of residence and ZIP code in which the person resides.

- Provides that with respect to a person convicted of sexual battery, annoying a child under the age of 18, or child molestation where the defendant was

granted probation and there are no other prior convictions for a sex offense, the person may file an application for exclusion from the Internet Web site with the DOJ.

- Requires that the DOJ make available to the public through the Internet Web site the name of the offender, aliases, a photograph, a physical description, including gender and race, date of birth, the crime for which the person is required to register, community of residence, zip code, or address, as specified.

- Requires that the DOJ make reasonable efforts to notify convicted sex offenders that on or before July 1, 2005 the DOJ is required to make information about him or her available on the Internet Web site, as specified. Requires the DOJ to also notify convicted sex offenders eligible for exclusion of the fact that they are eligible for exclusion.

- Provides that any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty, a fine of not less than $10,000 and not more than $50,000.

- Provides that any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

- Provides that any person required to register as a convicted sex offender who enters the Internet Web site is punishable by imprisonment in a county jail for a period not to exceed six months; by a fine not exceeding $1,000; or by both.

- Prohibits the use of information disclosed on the Internet Web site for specified discriminatory purposes and clarifies that information disclosed may only be used to protect persons at risk.

- Requires the DOJ, on or before July 1, 2006 and every year thereafter, to make a report to the Legislature concerning the operation of the Web site.

- Appropriates $650,000 from the General Fund for implementation.

Local Emergency Telephone System

Existing law requires each local public agency to establish and have in operation within its jurisdiction a telephone service that automatically connects a person dialing "911" to an established public safety answering point through normal telephone service facilities. The improper use of the "911" emergency telephone system creates unnecessarily delays and obstructs public safety entities in the performance of their duties.

AB 911 (Longville), Chapter 295, creates a new infraction for using the "911" emergency telephone system for purposes other than an emergency. Specifically, this new law:

- Provides that any person who uses the "911" telephone system for any reason other than an emergency is guilty of an infraction.

- States that for a first or second violation, a written warning shall be issued to the violator by the public safety entity originally receiving the call describing the punishment for subsequent violations. AB 911 states that the law enforcement agency may provide educational materials regarding the appropriate use of the "911" telephone system.

- Provides that a citation may be issued for a third or subsequent violation, with the following penalties which may be reduced by a court upon consideration of the violator's ability to pay:

  - For a third violation, a fine of $50.

  - For a fourth violation, a fine of $100.

  - For a fifth or subsequent violation, a fine of $200.

- Defines "emergency" as any condition in which emergency services will result in saving a life; reducing destruction of property; apprehending criminals; or assisting potentially life-threatening medical problems, a fire, a need for rescue, an imminent potential crime or a similar situation in which immediate assistance is required.

- States that the parent or guardian having custody and control of an unemancipated minor who violates this law shall be jointly and severally liable with the minor for the fine imposed.

Illegal Dumping: Increased Penalties

Existing law provides that placing, depositing, or dumping or causing to be placed, deposited, or dumped waste matter in commercial quantities is a misdemeanor punishable by not more than six months in county jail and a mandatory fine of: (a) for a first conviction, not less than $500 and not more than $1,500; (b) for a second conviction, not less than $1,500 and not more than $3,000; or, (c) for a third or subsequent conviction, not less than $2,750 and not more than $4,000.

In 1998, in AB 1799 (Migden), Chapter 50, Statutes of 1998, increased the fines for dumping commercial quantities of waste. At that time, the penalties, which had been set in 1994, were raised from $300 to $500 for the first conviction minimum and from $1,000 to $1,500 for the first-conviction maximum fine. The fines for the third or

subsequent convictions were raised from $2,250 to $2,750 for the minimum and from $3,000 to $4,000 for the maximum.

AB 1802 (Bogh), Chapter 137, increases the mandatory fine for dumping commercial quantities of waste matter, rocks, or dirt as follows:

- For a first conviction, raises the minimum fine from $500 to $1,000 and the maximum fine from $1,500 to $3,000;

- For a second conviction, raises the minimum fine from $1,500 to $3,000 and the maximum fine from $3,000 to $6,000; and,

- For a third or subsequent conviction, raises the minimum fine from $2,750 to $6,000 and the maximum fine from $4,000 to $10,000.

This new law also specifically adds concrete and asphalt to the list of specified materials that may not be dumped.

Peace Officers: Responsibilities of Deputy Sheriffs in Specified Counties

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.

Additionally, counties may 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 their employment related to custodial assignments or when directed to perform other law enforcement duties during a local state of emergency.

AB 1931 (La Malfa), Chapter 516, adds Butte and Tuolumne Counties to the existing authority granted to Los Angeles, Riverside and San Diego Counties and 12 other counties to employ deputy sheriffs who are "employed to perform duties exclusively or initially relating to custodial assignments," but who are 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.

Judges and Public Safety Attorneys: Threats and Moving Expenses

Prompted by several incidents involving threats against and harm to judges, in 2002 the Legislature passed and the Governor signed AB 2238 (Dickerson), Chapter 621, Statutes of 2002, which prohibited the intentional posting of home addresses or telephone numbers of elected or appointed officials with the intent to cause imminent great bodily injury, as well as the publishing of the residence addresses of law enforcement officers in retaliation for the due administration of the law. AB 2238 also created the Public Safety Officials' Home Protection Act Advisory Task Force, chaired by the Attorney General

and comprised of representatives of public safety entities, the judiciary, state and local government, and the real estate and business community.

AB 2905 (Spitzer), Chapter 248, expands the class of individuals where a governmental authority shall pay the moving and relocation expenses of an employee or his or her immediate family when a move or relocation is the result of an employment-related credible threat against the employee. Specifically, this new law:

- Expands the existing moving and relocation reimbursement applicable to peace officers to also include judges, court commissioners and attorneys employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender.

- Provides that for purposes of this new law, judges shall be deemed to be employees of the state and a court commissioner an employee of the county in which the court where he or she is employed is located.

- Specifies that for purposes of the existing prior approval requirement, a court commissioner must receive prior approval from the presiding judge of the superior court in the county in which he or she is located and other judges must receive approval from the Chief Justice or his or her designee.

Violence Against Children: Federal Funding

The AMBER Alert System provides law enforcement agencies with the ability to alert media outlets following a child abduction through pre-emption of radio and television broadcasts with alert tones followed by information about the abducted person and abduction. California established a statewide AMBER Alert System in 2002, allowing law enforcement to activate the state's Emergency Alert System when notified of a confirmed and qualifying abduction where there is a imminent danger of injury or death and a public notification may assist in recovering the abducted child.

AJR 55 (Reyes), Resolution Chapter 136, urges the United States Congress to pass and the President of the United States to sign "The Violence Against Children Act" (VACA) of 2003 (S. 1123). Specifically, this resolution:

- Makes various legislative findings regarding the prevalence of violence against children, the effects of violence against children and families, the impact of child support non-payment, the lack of local agency resources to protect and serve the needs of children and families, and the success of the AMBER Alert System.

- Makes legislative findings that passage of VACA would:

  - Enhance federal criminal laws for crimes against children;

- Provide financial and personnel assistance to state, tribal, or local police and prosecutors to combat crimes against children;

- Authorize funding for state, tribal, or local governments, and nonprofit organizations for emergency medical treatment, counseling, hotlines, prevention programs, and comprehensive services to victims of child abuse and their families;

- Provide an incentive for states to establish a National AMBER Alert System toward the goal of a National AMBER Alert System;

- Provide an incentive for states to establish Safe Haven programs;

- Ensure that states receiving funding enhance statistic gathering on victims of crime;

- Require states receiving funds for child welfare services to report to the federal government on how they track children in the child protective services system; and,

- Encourage Congress to pass legislation to reduce the incidence of nonpayment of child support.

Background Checks: Criminal History Dissemination

The Department of Justice (DOJ) maintains an automated process for checking the background of individuals using fingerprint submissions. Generally, an entity specifically authorized in statute to receive criminal history information submits a request to the DOJ for this information in relation to employment and volunteer hiring, licensing, and certification. The criminal history information provided by DOJ to requesting entities is determined by which dissemination criteria the authorizing statutes corresponds to Penal Code Section 11105. Over time, various statutes were enacted, resulting in what appeared to be inconsistent results due to the number of dissemination criteria. In 2001-02, the Attorney General sponsored SB 900 (Ortiz), Chapter 627, Statutes of 2002, to consolidate the number and type of dissemination criteria.

SB 1314 (Ortiz), Chapter 184, clarifies and builds upon SB 900, providing for the dissemination of criminal history information pursuant to any statute that incorporates specified criteria by reference, explicitly providing for federal background checks in provisions dealing with criminal history dissemination, reinstates previously deleted employment disqualification cross-references, and makes numerous technical and conforming changes. Specifically, this new law:

- Provides that an agency, officer, or official of the state authorized to receive state summary criminal history information may also transmit fingerprint images and related information to the DOJ to be transmitted to the Federal Bureau of Investigation (FBI). Additionally, any city, county, city and

county, district, or the office or official thereof may also transmit fingerprint images and related information to the DOJ to be transmitted to the FBI.

- Provides that for peace officer employment or certification purposes, the release of criminal history information shall include every arrest or detention for which the applicant was not exonerated, whether or not DOJ's records contain a disposition, provided where records do not contain a disposition for the arrest, that the DOJ first makes a genuine effort to determine the disposition of the arrest.

- Provides that for other criminal justice employment, licensing, or certification purposes, the release of criminal history information shall include every arrest for an offense for which DOJ records do not contain a disposition or did not result in a conviction provided that the DOJ first makes a genuine effort to determine the disposition of the arrest. This new law further provides that information concerning an arrest shall not be disclosed if the records indicate or reveal that the subject was exonerated, successfully completed diversion or deferred entry of judgement program, or the arrest was deemed a detention.

- Provides that for the other four dissemination criteria categories, the DOJ shall provide the criminal history information not only pursuant to the enumerated sections but also any section that incorporates by reference the criteria of those sections.

- Clarifies the list of authorized agencies or organizations that may receive criminal history information pursuant to the financial institution dissemination criteria.

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

- Replaces an out-of-date cross-reference with a list of sex offenses for which information may be released from DOJ's historic database of information relating to missing persons and adults within the violent crime information center.

- Replaces an out-of-date cross reference with a list of specific sections of which a person convicted of specified offenses may not be hired by a city, county, city and county, or special district for work in a park, playground, recreation center, or beach.

- Replaces an out-of-date cross-reference with a list of specific sections for which a tow truck driver, owner, or applicant's fingerprints shall be checked against to determine whether the individual has been convicted of specific offenses or, if such conviction exists, shall result in a tow truck driver

certificate not being issued or renewed, or revoked.

- Includes intent language stating that nothing in this bill is intended to overrule the decisions, orders, or judgments of specific cases.

- Includes an uncodified statement that nothing in this act shall be construed as an implied amendment to Labor Code Section 432.7(a), which prohibits an employer from asking about or using information about an arrest or detention that did not result in a conviction or participation in diversion.

Railroad Police: California Law Enforcement Telecommunications System

Under existing law, railroad police are unable to obtain California Law Enforcement Telecommunications System (CLETS) information from their local law enforcement agency. In the past, railroad police worked with local law enforcement agencies which did have access to CLETS information; the local law enforcement agencies would share the information with the railroad police. Then, the Attorney General issued an opinion concluding that CLETS information may not be provided to persons or entities not authorized to access the information. Railroad police officers should be authorized to have access to CLETS information.

SB 1768 (Romero), Chapter 510, allows railroad police officers, as defined, as well as their employer, to apply for access to the California Law Enforcement Telecommunications System (CLETS). Specifically, this new law provides that notwithstanding any other provision of law, a railroad police officer commissioned by the Governor, and the officer's employing agency, may apply for access to CLETS through a local law enforcement agency granted direct access to CLETS. Before access is granted, in addition to other review standards and conditions of eligibility applied by the Department of Justice (DOJ), the CLETS Advisory Committee and the Attorney General, shall ensure that the following conditions are satisfied:

- The employing agency shall enter into a CLETS subscriber agreement as provided for in the CLETS policies, practices, and procedures.

- The required background check on the peace officer and other pertinent personnel must have been completed, together with all required training.

- The subscriber agreement shall be in substantially the same form as prescribed by the CLETS policies, practices, and procedures for public agencies of law enforcement who subscribe to CLETS services, and shall be subject to the provisions of Chapter 2.5 (commencing with Section 15150) of Title 2 of Division 3 of the Government Code and the CLETS policies, practices, and procedures.

- The employing agency shall expressly waive any objections to jurisdiction in the courts of the State of California for any liability arising from use, abuse, or

misuse of CLETS access or services or the information derived therefrom, or with respect to any legal actions to enforce provisions of California law relating to CLETS access, services, or information under this subdivision.

- The employing agency shall further agree to utilize CLETS access, services, or information only for law enforcement activities by peace officers commissioned as described herein operating within the State of California, where the activities are directly related to investigations or arrests arising from conduct occurring within the State of California.

- The employing agency shall further agree to pay to the DOJ and the providing local law enforcement agency all costs related to the provision of access or services and administrative costs.

CRIMINAL JUSTICE PROGRAMS

Ex-Offender Literacy Act

Existing law establishes an education pilot program that authorizes the court to require any adult convicted of a nonviolent or nonserious offense to participate in a program designed to assist the person in obtaining the equivalent of a twelfth-grade education as a condition of probation. The initial benchmark of success set by law was 10 percent of the persons participating in the program obtain the equivalent of a twelfth-grade education within three years.

AB 1901 (Ridley-Thomas), Chapter 74, adds an alternate benchmark for success to an existing probation education pilot program. Specifically, this new law:

- Entitles this act the "Ex-Offender Literacy Act."

- Allows the probation education pilot program to be deemed successful if either of the following goals are met:

  - At least 10 percent of the persons participating in the pilot projects obtain the equivalent of a twelfth-grade education within three years; or,

  - At least 10 percent of the persons participating in the pilot program improve their academic performance by three grade levels within three years.

Remote Access Network: Board Membership

Existing law provides that the Department of Justice develop a master plan regarding the Remote Access Network (RAN), a uniform statewide network of equipment and procedures allowing local law enforcement agencies direct access to California Identification System (Cal-ID), and Cal-ID, an automated system for retaining fingerprint

files and identifying latent fingerprints. Existing law provides for a RAN board composed of seven members, as specified.

AB 2126 (Dutton), Chapter 73, changes the membership of the RAN board. Specifically, this new law:

- Eliminates the board position for the chief of police of the department having the largest number of sworn personnel within the county.

- Adds a board position for the chief of police of the Cal-ID member department having the largest number of sworn personnel within the county.

Department of Justice: Foreign Prosecution Unit

The Department of Justice's (DOJ) Foreign Prosecution and Law Enforcement Unit (FPU) is located within the Division of Law Enforcement's California Bureau of Investigation. The FPU is designated as the lead agency for all interactions with foreign governments related to the prosecution of persons committing crimes in California who have fled abroad and for the coordination of the recovery of children from Mexico. However, current law does not codify the duties of the FPU. In a December 2002 report, the Legislative Analyst's Office stated that legislation was needed to ensure the most effective use of foreign prosecutions.

AB 2160 (Reyes), Chapter 517, creates within the DPJ the FPU, codifying the duties of the FPU. Specifically, this new law:

- Provides that the responsibilities of the FPU are to:

  - Assist local law enforcement agencies with foreign prosecutions, child abduction recoveries and returns under the Hague Convention on the Civil Aspects of International Child Abduction, and law enforcement investigative matters; and,

  - Be responsible for assisting local law enforcement in obtaining information from foreign officials on foreign prosecution matters.

- Provides that the FPU shall do all of the following:

  - Upon request, give informational and technical assistance to those countries having extraterritorial jurisdiction allowing for the prosecution of their citizens for crimes committed in California.

  - Provide information and assistance on the scope and uses of foreign prosecution to California prosecutors and law enforcement agencies.

- Be responsible for tracking foreign prosecution cases presented by California law enforcement agencies.

- Collect information on a statewide basis regarding foreign prosecution so that the information can be analyzed and the conclusions can be disseminated to local law enforcement agencies. Local law enforcement agencies shall retain the authority to prepare and present foreign prosecution cases without the assistance of the unit.

- Assist district attorneys in recovering children from Mexico and other countries in court-ordered or voluntary returns.

- Upon request, assist local and foreign law enforcement in formal requests under the Mutual Legal Assistance Treaty.

- Upon request, assist California law enforcement agencies and foreign officials in informal requests for mutual legal assistance.

- Under the direction of the Attorney General, provide information to local law enforcement on sensitive diplomatic issues.

Violence Against Children: Federal Funding

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- Makes legislative findings that passage of VACA would:

  - Enhance federal criminal laws for crimes against children;

- Provide financial and personnel assistance to state, tribal, or local police and prosecutors to combat crimes against children;

- Authorize funding for state, tribal, or local governments, and nonprofit organizations for emergency medical treatment, counseling, hotlines, prevention programs, and comprehensive services to victims of child abuse and their families;

- Provide an incentive for states to establish a National AMBER Alert System toward the goal of a National AMBER Alert System;

- Provide an incentive for states to establish Safe Haven programs;

- Ensure that states receiving funding enhance statistic gathering on victims of crime;

- Require states receiving funds for child welfare services to report to the federal government on how they track children in the child protective services system; and,

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- The employing agency shall enter into a CLETS subscriber agreement as provided for in the CLETS policies, practices, and procedures.

- The required background check on the peace officer and other pertinent personnel must have been completed, together with all required training.

- The subscriber agreement shall be in substantially the same form as prescribed by the CLETS policies, practices, and procedures for public agencies of law enforcement who subscribe to CLETS services, and shall be subject to the provisions of Chapter 2.5 (commencing with Section 15150) of Title 2 of Division 3 of the Government Code and the CLETS policies, practices, and procedures.

- The employing agency shall expressly waive any objections to jurisdiction in the courts of the State of California for any liability arising from use, abuse, or misuse of CLETS access or services or the information derived therefrom, or with respect to any legal actions to enforce provisions of California law relating to CLETS access, services, or information under this subdivision.

- The employing agency shall further agree to utilize CLETS access, services, or information only for law enforcement activities by peace officers commissioned as described herein operating within the State of California, where the activities are directly related to investigations or arrests arising from conduct occurring within the State of California.

- The employing agency shall further agree to pay to the DOJ and the providing local law enforcement agency all costs related to the provision of access or services and administrative costs.

CRIMINAL OFFENSES/PENALTIES

Victims

Existing law provides certain exceptions to various evidentiary rules for children testifying in certain court proceedings in recognition that the age of the child and/or the nature of the crime suggest the necessity of different rules. For example, existing law requires that every person who testifies before a court take an oath or affirmation, except that children under the age of 10 years may, in the court's discretion, only be required to promise to tell the truth. Similarly, leading questions may be asked of a child witness under the age of 10 years in specified cases involving prosecution of physical, mental, or sexual abuse.

Additionally, existing law requires that examination of witnesses shall be open to the public. However, the law provides an exception in a criminal case involving specified sexual crimes against a minor under 16 years of age. In such cases, the court shall, upon

motion, conduct a hearing to determine whether the testimony of and related to the minor shall be closed to the public.

Certain persons working in specified occupations, such as doctors, teachers, and others, are mandated reporters of child abuse and neglect. A failure to report as required is a misdemeanor.

Although existing law has provided these accommodations for children, similar specific accommodations did not exist for persons who are dependent upon others for their care because of a developmental disability, traumatic brain injury, and other cognitive disabilities.

AB 20 (Lieber), Chapter 823, expands the protections offered to children and elders to include dependent persons. Specifically, this new law:

- Allows dependent persons with a substantive cognitive impairment to be required only to tell the truth when testifying in court;

- Allows leading questions to be asked of dependent persons with a substantial mental impairment in specified cases involving prosecution of physical, mental, or sexual abuse;

- Allows the court to close the courtroom for the testimony of, and relating to, dependent persons with a substantive cognitive impairment;

- Allows a magistrate to postpone a preliminary hearing to accommodate the needs of a dependent person;

- Allows the examination of a witness to be closed to the public during the testimony of a dependent person with a significant cognitive impairment who is complaining of a sex offense if testimony before the general public would be detrimental and there are no other alternatives;

- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;

- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;

- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;

- Expands the definition of physical abuse of an elder or dependent person to include lewd or lascivious acts; and,

- States legislative intent to ensure that people who cannot live independently are treated fairly by the criminal justice system, and that developmentally disabled and other dependent persons who are witnesses in criminal cases are given equal access to the criminal justice system.

Local Emergency Telephone System

Existing law requires each local public agency to establish and have in operation within its jurisdiction a telephone service that automatically connects a person dialing "911" to an established public safety answering point through normal telephone service facilities. The improper use of the "911" emergency telephone system creates unnecessarily delays and obstructs public safety entities in the performance of their duties.

AB 911 (Longville), Chapter 295, creates a new infraction for using the "911" emergency telephone system for purposes other than an emergency. Specifically, this new law:

- Provides that any person who uses the "911" telephone system for any reason other than an emergency is guilty of an infraction.

- States that for a first or second violation, a written warning shall be issued to the violator by the public safety entity originally receiving the call describing the punishment for subsequent violations. AB 911 states that the law enforcement agency may provide educational materials regarding the appropriate use of the "911" telephone system.

- Provides that a citation may be issued for a third or subsequent violation, with the following penalties which may be reduced by a court upon consideration of the violator's ability to pay:

  - For a third violation, a fine of $50.

  - For a fourth violation, a fine of $100.

  - For a fifth or subsequent violation, a fine of $200.

- Defines "emergency" as any condition in which emergency services will result in saving a life; reducing destruction of property; apprehending criminals; or assisting potentially life-threatening medical problems, a fire, a need for rescue, an imminent potential crime or a similar situation in which immediate assistance is required.

- States that the parent or guardian having custody and control of an unemancipated minor who violates this law shall be jointly and severally liable with the minor for the fine imposed.

Public Official: Criminal Threats

Existing law penalizes threats made against public officials, their immediate family and staff members. However, existing law does not currently allow prosecution when a threat is made against a staff member's immediate family.

AB 1443 (Spitzer), Chapter 512, adds the "immediate family of the staff" to the list of persons protected by the statute prohibiting threats against public officials.

Sexual Contact with Human Remains

Existing law failed to specify that sexual activity with a corpse is a crime. While there were existing laws dealing with the mutilation, disinterment, and removal of a body from its place of interment and making these acts felonies, existing law did not specifically include sexual acts with human remains.

Under existing law, rape and other sexual offenses must be committed against a person, not a human body. It was unclear if the laws prohibiting mutilation of human remains provided dead bodies with protection from sexual assaults. Although uncommon, some case law had interpreted mutilation of human remains to exclude actions such as removal of two gold crowns from the teeth of a dead body. Various dictionaries define "mutilation" as cutting off limbs and at least one law review commented that the sort of damage done to a corpse during intercourse typically will not result in the removal of a limb or other essential part of the body. Further, the laws against rape do not protect human remains as the California Supreme Court has commented that a female must be alive at the moment of penetration in order to support a conviction of rape under the Penal Code.

However, existing law does provide that with certain exceptions every person who willfully mutilates, disinters or removes from the place of interment any human remains, without the authority of law, is guilty of a felony. This new law expands the scope of this felony to include any person who commits an act of sexual penetration on, or has sexual contact with, any remains known to be human.

AB 1493 (Runner), Chapter 413, amends the Health and Safety Code to include sexual penetration or sexual contact with any remains known to be human to the existing law that makes it a felony to mutilate or disinter any human remains. Specifically, this new law:

- States that it is a felony to commit an act of sexual penetration on, or have sexual contact with, any remains known to be human without authority of law.

- Defines "sexual penetration" as the unlawful penetration of the vagina or anus, however slight, by any person's body or other object; any act of sexual contact between the sex organs of a person and the mouth or anus of a dead body; or any oral copulation of a dead human body for the purpose of sexual arousal, gratification, or abuse.

- Defines "sexual contact" as any willful touching by a person of an intimate part of a dead human body for the purpose of sexual arousal, ratification, or abuse.

Guide, Signal, and Service Dogs or Mobility Aids

A service animal is used as a mobility aid by a person with a disability and existing law generally defines a "guide dog", "signal dog", and "service dog". A "guide dog" is defined as a dog trained by a licensed person, as defined, and generally provides assistance to an individual with a visual impairment. Existing law defines a "signal dog" as a dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds. A "service dog" is defined in existing law as any dog individually trained to the requirements of an individual with a disability including minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

Existing law provides that it is an infraction for any person to permit any dog owned or controlled by him or her to cause injury to or the death of any guide, signal or service dog while that dog is in the discharge of its duties. Existing law also provides that it is a misdemeanor for any person to intentionally cause injury or death of any guide, signal, or service dog. Existing law provided that this violation was punishable by imprisonment in a county jail not exceeding one year; by a fine not exceeding $5,000; or by both a fine and imprisonment. A person convicted of such violation was required to make restitution to the owner of the guide, signal or service dog for veterinary bills and the cost of replacement of the animal if it is disabled or killed.

AB 1801 (Pavley), Chapter 322, changes the definition of guide, signal, or service dog to mean any dog trained to do work or perform tasks for the benefit of a person with a disability, including guiding a person with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair, or fetching dropped items. This new law also adds a fine not to exceed $250 to the infraction of allowing one's dog to injure or cause the death of any guide, signal, or service dog.

This new law creates a new misdemeanor if the injury or death of the guide, signal, or service dog was caused by the person's reckless disregard in the exercise of control over his or her dog, as defined. This new misdemeanor is punishable by imprisonment in a county jail not exceeding one year; by a fine of not less than $2,500 nor more than $5,000; or both that fine and imprisonment.

A person convicted of this violation shall be ordered to make restitution to the person with a disability for any veterinary bills and replacement costs of the dog if

it is injured or killed. This new law adds to the restitution provisions "other reasonable costs deemed appropriate by the court," and states that restitution shall be paid prior to any fines.

This new law also increases the penalty for a person who intentionally causes injury or death to any guide, signal, or service dog to a fine not exceeding $10,000.

Illegal Dumping: Increased Penalties

Existing law provides that placing, depositing, or dumping or causing to be placed, deposited, or dumped waste matter in commercial quantities is a misdemeanor punishable by not more than six months in county jail and a mandatory fine of: (a) for a first conviction, not less than $500 and not more than $1,500; (b) for a second conviction, not less than $1,500 and not more than $3,000; or, (c) for a third or subsequent conviction, not less than $2,750 and not more than $4,000.

In 1998, in AB 1799 (Migden), Chapter 50, Statutes of 1998, increased the fines for dumping commercial quantities of waste. At that time, the penalties, which had been set in 1994, were raised from $300 to $500 for the first conviction minimum and from $1,000 to $1,500 for the first-conviction maximum fine. The fines for the third or subsequent convictions were raised from $2,250 to $2,750 for the minimum and from $3,000 to $4,000 for the maximum.

AB 1802 (Bogh), Chapter 137, increases the mandatory fine for dumping commercial quantities of waste matter, rocks, or dirt as follows:

- For a first conviction, raises the minimum fine from $500 to $1,000 and the maximum fine from $1,500 to $3,000;

- For a second conviction, raises the minimum fine from $1,500 to $3,000 and the maximum fine from $3,000 to $6,000; and,

- For a third or subsequent conviction, raises the minimum fine from $2,750 to $6,000 and the maximum fine from $4,000 to $10,000.

AB 1802 also specifically adds concrete and asphalt to the list of specified materials that may not be dumped.

Cargo Theft

Ports have invested millions of dollars in port security since September 11, 2001, and the need to capture federal funds to help defray the escalating costs of those improvements is vital. Without the ability to properly track crimes committed on the ports, California will continue to struggle in capturing federal monies for port security. A specific code section for cargo theft, facilitating the tracking of crime committed on ports, should be enacted.

AB 1814 (Oropeza), Chapter 515, provides that the theft of cargo, as defined, valued at $400, except as specified, is grand theft. Specifically, this new law:

- Provides that a person who steals, takes, or carries away cargo of another, when cargo taken is valued over $400, except as specified, is guilty of grand theft.

- Defines "cargo" as any goods, wares, products, or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit.

- Sunsets as of January 1, 2010.

Animal Abuse

Existing law regulates the practice of veterinary medicine. Veterinary medicine includes the performance of surgery upon an animal. Existing law generally prohibits cruelty to animals, and certain surgical acts have been determined to be criminal, e.g., the cutting of the solid part of a horse's tail for the purpose of shortening it (known as "docking") is a misdemeanor.

Other acts of cruelty to animals also constitute crimes. For example, maiming, mutilating, torturing, wounding or killing a living animal is an alternate felony/misdemeanor, punishable by imprisonment in a county jail or a state prison; by a fine of $20,000; or by both such fine and imprisonment.

However, under existing law, the surgical procedure generally known as "declawing" is not a crime. Declawing constitutes amputation of a portion of a cat's paw in order to remove its claws. Such amputation is a surgical procedure known as "onychectomy" and is performed in order to remove a cat's claws. "Tendenectomy" is another surgical procedure in which the tendons to the animal's limbs, paws, or toes are cut so that the claws cannot be extended.

Many veterinarians view the practice of declawing cats as an act of cruelty as declawing literally involves amputating part of the cat's paws, including a portion of the bone, and causes pain and discomfort. Declawing is comparable to cutting off part of the human finger at the last joint. Complications from this surgery include damage to the radial nerve, hemorrhage, bone chips that prevent healing, and chronic back and joint pain as shoulder, leg, and back muscles weaken.

Many cats suffer a loss of balance since they can no longer achieve a secure foothold on their stumps. Some cats become lame and even paralyzed. A cat's first defense mechanisms are his or her claws. When the cat's claws are gone, cats bite. In reality, a declawed cat is actually a clubfooted animal that cannot walk normally and must move with his or her weight back on the rear of the pads.

AB 1857 (Koretz), Chapter 876, makes it a misdemeanor to perform or arrange for the performance of, surgical claw removal, onychectomy, or tendenectomy on an exotic or native wild cat species, as defined. This new misdemeanor is punishable by imprisonment in a county jail not to exceed one year; by a fine of $10,000; or by both that fine and imprisonment.

This new law contains an exception for procedures performed solely for a therapeutic purpose. "Therapeutic purpose" means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition that jeopardizes the cat's health and such condition is a medical necessity.

An exception is also provided for domestic cats (felis catus or felis domesticus) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat. Exotic or native wild cat species are defined to include all members of the feline family, with specified exceptions for domestic cats. Exotic or native wild cats include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

Seized Documents: Procedure for Access

Existing law provides that property taken under authority of a warrant must be retained by the officer in his or her custody subject to the order of the court. Law enforcement officers seizing property do so on behalf of the court that issued the warrant for use in a judicial proceeding. During and after the pendency of a criminal action, the court may entertain a motion for the release of property seized under a search warrant.

AB 1894 (Longville), Chapter 372, provides a procedure for an entity whose business records have been seized by a government agency to demand that the agency provide to that entity, within 10 court days, copies of the documents seized.

Specifically, this new law:

- Authorizes a business entity to file a demand on a government agency to produce copies of business records seized pursuant to a search warrant, and provides that the demand for production of copies of business records shall be supported by a declaration, made under penalty of perjury, that denial of access to the records in question will either unduly interfere with the entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under law.

- Provides that unless the government objects, the above declaration shall suffice if it makes a prima face case that specific business activities or specific legal obligations faced by the entity would be impaired or impeded by the

ongoing loss of records.

- Provides that when a government agency seizes business records from an entity and is subsequently served with a demand for copies of those business records, the government agency in possession of those records shall make copies of those available to the entity within 10 court days business days of the service of the demand to produce copies of the records. In the alternative, the agency in possession of the original records may, in its discretion, make the original records reasonably available to the entity within 10 court days following the service of the demand to produce records, and allow the entity reasonable access to copy the records. However, no agency shall be required to make records available at times other than normal business hours.

- Provides that if data is recorded in a tangible medium, copies of the data may be provided in that same medium or another reasonable medium. If the data is stored electronically, electromagnetically, or photo-optically, the entity may obtain either a copy made by the same process in which the data is stored or by another tangible medium.

- Allows the government agency granting the entity access to the original records for the purpose of making copies of the records may take reasonable steps to ensure the integrity and chain of custody of the records.

- Provides that if the seized records are too voluminous to be reviewed or copied in the time period required, the government agency that seized the records may file a written motion with the court for additional time to review the records or make copies.

- Provides that if a court finds that a declaration described establishes a prime face case for copies of the record, the governmental entity may only deny the request when the court determines by a preponderance of the evidence that:

    - Denial of access to the business records or copies of the business records will not unduly interfere with entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under the law; or,

    - Possession of the business records by the entity will pose a significant risk of criminal activity or that the business records are contraband, evidence of criminal conduct by the entity from which the records were seized, or depict a person under the age of 18 years personally engaging in or simulating sexual conduct.

- Provides a government agency that desires not to produce copies of, or grant access to, seized business records shall file a motion with the court requesting an order denying the entity copies of and access to the records. The motion must be in writing and filed and served upon the entity prior to the expiration

of 10 court days following the services of the demand to produce records or as soon as reasonably possible after the discovery of the risk of harm. A motion hearing shall be held within two court days of filing the motion.

- Authorizes a government agency to seek an in-camera hearing, including if the requesting entity is or is likely to become the target of an investigation. If the entity is not a target of the investigation, the court shall hold the hearing in open court unless there is a particular factual showing by the government agency in its pleadings that a hearing in open court would impede or interrupt an ongoing criminal investigation, as specified.

- Provides that the reasonable and necessary costs of producing copies of business records are to be borne by the entity requesting copies of the records. Either party may request the court to resolve any dispute regarding these costs.

Aggravated Arson: Sunset Date

California's aggravated arson statute is due to sunset on January 1, 2005. This statute provides law enforcement and prosecutors with a tool when dealing with the most dangerous arsonists in California. Aggravated arsons are those intended to cause great bodily injury to persons or damage to multiple structures, which caused more than $5 million in damage, or were committed by a recidivist arsonist.

AB 1907 (Pacheco), Chapter 135, extends the sunset date for the crime of aggravated arson to January 1, 2010 and increases the threshold amount of property damage for the crime of aggravated arson from $5 million to $5.65 million to account for inflation.

Fire Prevention: Penalties

Across California, fires from the illegal burning of trash often spread out of control causing extensive damage to life and property. Though the burning of trash is currently illegal, the fines are too low to serve as an adequate deterrent.

AB 1924 (Bogh), Chapter 90, increases the fines for Public Resources Code violations relating to fire and the danger associated with the spread of fire. Specifically, this new law:

- Increases the minimum fine from $50 to $100 and the maximum fine from $1,000 to $2,000 for any person convicted of entering upon any land closed to the public by Governor's proclamation due to conditions tending to cause or allow the rapid spread of fire.

- Increases the fine from a maximum of $200 to $500 for a first conviction for violating flammable waste restrictions relating to solid waste facilities.

- Increases the minimum fine from $250 to $500 and the maximum fine from $1,000 to $2,000 for a second or subsequent conviction of violating flammable waste restrictions relating to solid waste facilities.

Alcoholic Beverages and Controlled Substances: Minors

Underage consumption of alcohol is a problem contributed to by businesses, the alcohol industry, and by certain members of the community who may give alcoholic beverages to persons under the age of 21 years.

Under existing law, it is a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or consume any alcoholic beverage on any on-sale premises. Selling, furnishing, giving, or causing to be sold, furnished or given away, any alcoholic beverages to any person under the age of 21 years is also a misdemeanor.

Additionally, any person who purchases an alcoholic beverage for a person under the age of 21 years and that person consumes the alcoholic beverage and proximately causes great bodily injury or death is guilty of a misdemeanor, punishable by imprisonment; a fine not exceeding $1,000; or both.

AB 2037 (La Suer), Chapter 291, expands existing law to include any person who furnishes, gives or gives away any alcoholic beverage to a person under the age of 21 years. AB 2037 also provides that the penalties specified by this new law do not preclude prosecution under any other provision of law including, but not limited to, contributing to the delinquency of persons under 18 years of age.

Hate Crimes: Aggravating Factors

In 1998, legislation was enacted that allows a prosecutor to file either felony or misdemeanor charges against an individual who commits the crime of vandalism resulting in more than $400 in property damage. A corresponding reduction in the amount of damage necessary to charge a felony under California's hate crime vandalism statute should be similarly adopted.

AB 2288 (Pacheco), Chapter 780, lowers the threshold amount of damage in the commission of a "hate-motivated" crime against the property of another person from $500 to $400 which allows the offense to be charged as a felony.

Insurance Misrepresentation

The Federal Trade Commission estimates that Americans lose approximately $10 billion each year in fraudulent investments. The number of complaints and inquiries received by and responded to by the Securities and Exchange Commission has increased 88 percent since 1995. According to the California Department of Corporations, three of the top 10 investment "scams" in California involve the sale of insurance.

The fraudulent acquisition of a victim's money can be prosecuted a number of different ways: under general criminal statutes such as those prohibiting theft (Penal Code Sections 484, 487, or 666); the practice of law without a license (Business and Professions Code Sections 6125, et seq.); theft by false pretenses (Penal Code Section 532); or even first-degree residential burglary (Penal Code Section 459). If insurance polices are involved, the crimes could also be prosecuted under Insurance Code 780, et seq.

Insurance Code Sections 780 makes it illegal for insurers, insurance agents, brokers and "solicitors" to misrepresent the terms or conditions of an insurance policy. Insurance Code Section 781 makes it illegal for any person - whether an insurance agent or not - to misrepresent an insurance policy with the intent to induce a person to take out a policy of insurance; choose one policy over another; or lapse, forfeit, or surrender a policy (also called "twisting" or "churning".) Under Insurance Code Section 782, these offenses are punishable by up to six months in jail or a fine up to $1,500.

SB 1273 (Scott), Chapter 730, increases the maximum fine and jail time for an Insurance Code Sections 780 or 781 violations regarding misrepresentation of insurance policies and terms. Specifically, this new law:

- Adds a knowledge requirement to the definition of "insurance fraud".
- Increases the maximum fine from $1,500 to $25,000.
- Provides that when the loss of the victim exceeds $10,000, the maximum fine is three times the amount of the loss suffered by the victim.
- Increases the possible county jail time from six months to one year.
- Provides that the punishment can include both a fine and county jail time.
- Provides that restitution to the victim ordered by the court shall be satisfied before any fine imposed by this section is collected.

Secret Videotaping

Existing law makes it a misdemeanor for any person to secretly view or video another person inside a room where the occupant has an expected right to privacy, such as a bathroom, dressing room, changing room, fitting room, or tanning booth. However, it is not a crime to photograph or videotape an unknowing person in his or her own bedroom.

SB 1484 (Ackerman), Chapter 666, creates a misdemeanor offense of secretly filming an identifiable person who may be in a state of full or partial undress in specified areas. Specifically, this new law:

- Adds "bedroom" to the list of places where it is prohibited to look through a hole or opening into, or otherwise view, by means of any instrumentality

including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, or camcorder.

- Provides that it is a misdemeanor for any person to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means another identifiable person who may be in a state of full or partial undress.

- Provides that for the above conduct to be punishable as a misdemeanor, the following must apply:

  - The offense must be committed for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person;

  - The secret filming occurs in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy; and,

  - The secret filming be done with the intent to invade the privacy of that other person.

- States that it is not a defense that the defendant was a cohabitant, landlord, tenant, co-tenant, employer, employee, or business partner or associate of the victim, or an agent of any of the foregoing persons. Additionally, it is not a defense that the victim was not in a state of full or partial undress.

- Increases the fine for a second or subsequent offense of loitering or peeping from $1,000 to $5,000.

Internet Piracy

While Motion Picture Association members, as well as California-based music and video game companies, continue to experience losses due to counterfeit works being sold illegally on the street, the potential largest loss to movies, music, and video games could be illegally transmitted digitally over the Internet through 'peer-to-peer file sharing' (P2P) software and other similar technologies. With the increasing penetration of broadband and the development of compression technologies, P2P file sharing now threatens the economic viability of motion picture and video games.

SB 1506 (Murray), Chapter 617, requires that electronic disseminations of specified recordings and audiovisual works include an e-mail address. Specifically, this new law:

- Provides that any person, except a minor, who knowing that a particular recording or audiovisual work is commercial electronically disseminates all or

substantially all of that recording or work to more than 10 other people without disclosing his or her e-mail address and the title of the recording or work is guilty of a misdemeanor.

- Makes the above offense punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $2,500; or by both the fine and imprisonment.

- Imposes a fine not to exceed $250 on minors for a first or second offense. A third or subsequent violation would be punishable by a fine not to exceed $1,000; imprisonment in the county jail for up to one year; or both the fine and imprisonment.

- Requires a court, upon conviction, to order the permanent deletion or destruction of electronic files that were the basis of the violation.

- Exempts the following electronic disseminations:

  - To a person who electronically disseminates a commercial recording or audiovisual work to his or her immediate family or within a personal network, defined as a "restricted access network controlled by and accessible to only that person or people in his or her immediate household."

  - If the copyright owner has explicitly given permission for all or substantially all of that recording or audiovisual work to be freely disseminated, or if the copyright owner disseminates the work.

  - To a person authorized by the copyright owner to disseminate electronically all or substantially all of a commercial audio or visual work or recording.

  - To the licensed electronic dissemination of a commercial audio or visual work or recording by means of cable television or satellite service.

- Exempts an Internet Service Provider (ISP) from criminal liability for enabling a user of its service to electronically disseminate an audiovisual work or sound recording if the ISP maintains a means of electronic notification on its Web site.

- Defines "audiovisual work" as an electronic or physical embodiment of motion pictures, television programs, video or computer games, or other audiovisual presentations that consist of related images intrinsically intended to be shown by the use of machines or devices.

- Defines "commercial recording or audiovisual work" as a recording or audiovisual work that the copyright owner has made or intends to make

available for sale, rental, or for performance or exhibition to the public. A recording or audiovisual work may be commercial regardless of whether the disseminator seeks commercial advantage or private financial gain.

- Defines "electronic dissemination" as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network.

- Defines "e-mail address" as a valid e-mail address or the valid e-mail address of the holder of the account from which the dissemination took place.

- Sunsets on January 1, 2010.

Speed Contests

Existing law provides that a person convicted of engaging in a speed contest shall be punished by imprisonment in the county jail for not less than 24 hours nor more than 90 days; by a fine of not less than $355 nor more than $1,000; or by both that fine and imprisonment. In addition, the person's privilege to operate a motor vehicle shall be subject to suspension or may be restricted for 90 days to six months. A second offense within five years is punishable by four days to six months in jail; by a fine of not less than $500 nor more than $1,000; or by both that fine and imprisonment. The person's privilege to operate a motor vehicle shall either be suspended or restricted for six months.

SB 1541 (Margett), Chapter 595, adds additional penalty and financial responsibility provisions to first-offense speed contest laws, as well as generally clarifies existing penalty provisions for speed contests. Specifically, this new law:

- Adds 40 hours of community service to the penalty for a first conviction for engaging in a speed contest.

- Adds the requirement that for a person whose license was suspended for a first conviction for engaging in a speed contest, the privilege may not be reinstated until the person provides the Department of Motor Vehicles with proof of financial responsibility.

- Clarifies the existing law procedures for suspension or restriction of driving privileges for persons convicted of engaging in a speed contest, as well as a court's authority to order suspension.

Driving Under the Influence: Prior Convictions

Driving under the influence (DUI) of alcohol and drugs continues to be a significant threat to public health and safety. Despite significant progress in reducing incidents of DUI, repeat offenders who refuse to stop driving after sanctions by the courts threaten the public with reckless behavior. DUI driving fatalities have increased for four years in a row after a decade of declining rates. A total of 344 more people died on the road in California in 2002 than did in 1998. Felony DUI arrests have increased for three years

after a similar decline. DUI drivers kill one person every eight hours in California. Nearly 180,000 people were arrested for DUI of drugs or alcohol in 2002, including 25 percent who were repeat offenders.

SB 1694 (Torlakson), Chapter 550, increases from seven to ten years the "washout" period in which a person convicted of DUI would no longer be subject to increased penalties for having suffered one or more prior convictions for DUI or other related offenses. Specifically, this new law:

- Increases from seven to ten years the time period in which a repeat DUI offender is subject to increased penalties for conviction of DUI and other related offenses.

- Requires a person convicted of DUI or DUI resulting in bodily injury who more than 10 years ago was convicted of DUI or has previously been convicted of DUI in a public place to attend and complete an alcohol and drug problem assessment program. This new law allows the court to rely on state summary criminal history information, local summary history information or records made available through the district attorney to determine if a violation more than 10 years old exists.

- Expands the Alcohol and Drug Problem Assessment Program to any person who has a second or subsequent conviction for DUI.

- Makes numerous conforming cross-references increasing the "washout" from seven to ten years in other DUI-related offenses and driver's license suspension provisions.

Vehicles: Driving Under the Influence and Driver's License Sanctions

Existing law imposes a number of requirements on persons convicted of driving under the influence (DUI) of alcohol or controlled substances and on the Department of Motor Vehicles (DMV) relative to driver's license sanctions. These requirements include the suspension, revocation, or restriction of the person's driving privilege, that the person attend a driving under the influence program, and that the court issue an order of satisfaction regarding the person's attendance at the DUI program.

SB 1697 (Torlakson), Chapter 551, consolidates the driver's license suspension, restriction, and revocation functions for DUI arrests and convictions under the DMV. This new law removes the requirement that the court notify the DMV to grant a restricted license to a person convicted of a second DUI, and allows the DMV to grant a restricted license if the person is participating in a DUI program. Similarly, this new law deletes the requirement that an order of satisfaction must be obtained from the court and instead provides that the DUI program may issue its certificate of successful completion to the DMV.

Additionally, this new law authorizes the court to disallow the issuance of a restricted license if the court determines that the person would present a traffic safety or public safety risk if allowed to operate a motor vehicle during the suspension period. This new law also requires the court to advise a person convicted of a DUI offense at the time of sentencing that the driving privilege may not be restored until the person provides proof satisfactory to the DMV of successful completion of a DUI program of appropriate length. The length of the DUI program is based on the person's blood alcohol concentration and the number of prior DUI convictions.

Vehicles

Existing law prohibits driving a motor vehicle without a valid driver's license, and there are various potential penalties that include jail time. For example, upon a first conviction of driving with a suspended driver's license, the potential penalty is up to six months in the county jail and a fine of $300 to $1,000, or both such fine and imprisonment. If a person has a second conviction within five years, the penalty is five days to one year in jail and a fine of $500 to $2,000.

Driving on a driver's license which has been suspended or revoked for reckless driving and other specified offenses is punishable on a first conviction by imprisonment in the county jail for not less than five days nor more than six months and by a fine of $300 to $1,000. For a second offense within five years, the penalty is imprisonment in the county jail for not less than 10 days nor more than one year and by a fine of $500 to $2,000. If the person was granted probation, the court is mandated to impose as a condition of probation that he or she be imprisoned in the county jail for at least 10 days.

Prior to January 1, 2004, the law authorized the district attorneys of specified counties, with the approval of the board of supervisors, to establish a pilot program involving home electronic monitoring in lieu of jail time. A person who pleads guilty or no contest or convicted of specified provisions relative to driving with a suspended or revoked license could enter into a written agreement with the district attorney to participate in this pilot program.

Under the pilot program, in lieu of a jail sentence, the convicted person agreed to a home detention program utilizing an electronic monitoring system for not less than the minimum jail sentence and not more than the maximum jail sentence. In addition, the person who agreed to participate in this pilot program was required to attend a class or classes related to driving without a valid driver's license.

Because of current county jail overcrowding, the electronic monitoring program mitigated the problem of low-level offenders using jail space and resources needed for more serious offenders. The classes required in the pilot program assured that the offender was aware of the steps needed to be taken to have his or her license reinstated.

The law provided that the electronic monitoring program would be provided under the auspices of the district attorney or city attorney, as applicable. The electronic monitoring pilot program expired on January 1, 2004.

SB 1848 (Ashburn), Chapter 594, re-established the home electronic monitoring program in lieu of a jail sentence for persons who plead guilty or were convicted of driving with a suspended or revoked driver's license. This new law allows the district attorneys of the Counties of Alameda, Fresno, Kern, Los Angeles, Merced, Orange, Placer, Riverside, Sacramento, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara or Santa Cruz, and city attorneys within those counties authorized to prosecute misdemeanors, with the approval of the board of supervisors, to re-establish a home electronic monitoring system. The district attorney may conduct the program or may contract with a private entity to conduct the program. Participants in the program may be required to pay fees for the program, in addition to any fine imposed under the law. However, a person shall not be denied participation in the program due to that person's inability to pay for the program.

This new law also requires that on or before December 31, 2007, the district attorney or city attorney, as applicable, who elects to participate in the pilot program shall prepare and submit to the legislature a report concerning their participation.

This new law shall remain in effect only until January 1, 2008, and is repealed as of that date unless a statute enacted before January 1, 2008 deletes or extends that date. The new law was declared an urgency statute necessary for the preservation of the public peace, health or safety, and goes into effect immediately.

DOMESTIC VIOLENCE

Domestic Violence Rape Grant Programs

In October 2002, the State Auditor released a report concluding that the Office of Criminal Justice Planning's (OCJP) administration of its domestic violence grant program had several structural problems including failing to adopt guidelines to determine the extent OCJP weighs grant recipients' past performance when awarding funds, failing to always provide unsuccessful grant applicants with the necessary information or time to challenge OCJP's award decisions, missing opportunities to seek the guidance of an advisory committee, and inconsistently monitoring grant recipients or ensuring that identified problems are remedied. Following the abolishment of OCJP in the 2003-04 Budget, the Office of Emergency Services (OES) was made responsible for administering many OCJP programs, including the domestic violence grant program which provides funding for shelters and a grant program that funds rape crisis centers.

SB 914 (Bowen), Chapter 840, reforms the application, administration, and program monitoring process for grants awarded to domestic violence and sexual

assault/rape victim services providers. Specifically, this new law:

- Establishes, beginning in 2005, a funding and appeal process for OES to use in distributing grant awards to domestic violence shelters and rape crisis centers, as well as due process for grant applicants and grantees. The following provisions are applicable to both groups:

  - Provides that OES, in collaboration with its respective advisory committee, shall administer the statewide domestic violence program and the sexual assault/rape crisis center victim services program;

  - Provides that OES shall be responsible for establishing the process and standards for determining whether to grant, renew, or deny funding to providers applying or reapplying for funding, a system for grading applications, and an appeal process for applicants or providers denied funding or subject to a funding reduction. A description of both the grading system and appeal process shall be provided to all applicants/grantees;

  - Provides that grants shall be awarded for maintaining facilities or services previously funded, expanding existing services, or establishing new facilities in under served or unserved areas. Grants shall be awarded for a three-year term;

  - Provides that shelters and rape crisis centers not funded in the most recent cycle shall be subject to a competitive Request for Proposal process and, to the extent possible, the required response shall not exceed 25 pages, excluding attachments. Currently funded providers shall be subject to a "non-competitive" Request for Application (RFA) process that considers a review of past performance. To the extent possible, the RFA required response shall not exceed 10 pages, excluding attachments;

  - Provides that OES shall conduct a minimum of one performance assessment-based site visit, as specified, per three-year term for each agency receiving funding;

  - Provides that OES shall provide, within 60 days of the visit, a written report to the provider summarizing its performance, deficiencies, needed corrective action, and a deadline for completing the needed corrective action, as well as develop a plan for verifying completion of corrective action. This new law provides OES with discretion to require immediate corrective action where deficiencies present a significant health or safety risk;

  - Provides that OES shall not deny a RFP if the provider did not received a site visit during the previous three years unless OES is aware of criminal

violations related to the administration of grant funding;

- Provides that if corrective action is deemed necessary and a provider fails to comply or OES determines that the provider cannot reasonably comply, OES shall determine whether continued funding for the provider should be reduced or denied. Funding may be reduced or eliminated for failing to meet standards;

- Provides that if a provider applies or reapplies for funding and funding is denied or reduced, the denial or reduction decision shall be provided in writing to the provider, with a written explanation of the reasons for the reduction or denial;

- States legislative intent that additional funding shall be provided to expand services to underserved or unserved areas, and provides that OES, upon determining that expansion of services is needed, may reduce the base funding of all funded providers;

- Provides that notwithstanding any other provision, OES may reduce funding to a provider if federal funding is reduced, and that nothing in this new law shall be construed to supercede any functions or duties required under federal law; and,

- Requires that grant recipients demonstrate specified funding matching, fund raising, and staffing criteria consistent with existing law.

- Transfers the existing Domestic Violence Advisory Council to OES and provides that OES shall collaboratively administer domestic violence programs with the Council.

- Provides that rape crisis center grant recipients shall be required to provide eight specified services for which OES shall provide financial and technical assistance.

- States legislative intent that the domestic violence program within the Domestic Violence Branch and the sexual assault/rape crisis programs within the Sexual Assault Branch of OCJP, as well as the Battered Women's Shelter Program administered by the Department of Health Services, be consolidated.

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 1385 (Burton), Chapter 609, expands provisions of law allowing a writ of habeas corpus to be prosecuted on grounds that evidence relating to battering and its effects was not introduced at the trial court proceedings to now include conviction of a "violent" felony, as specified. Specifically, this new law:

- Replaces the term "battered women's syndrome" with the phrase "battering and its effects".

- States that any changes related to the expert witness testimony on BWS are not intended to impact decisional law; and decisional law should apply equally to references to "battering and its effects", which replaces the term "Battered Women's Syndrome".

- Limits the writ of habeas corpus to "violent" felonies committed before August 29, 1996 that resulted in judgments of conviction after a plea or trial where expert testimony regarding battering and its effects may be probative on the issue of culpability.

- States that any changes related to writs of habeas corpus based on battering and its effects are not intended to expand the applicability of expert testimony.

Domestic Violence: Interview Support

Existing law grants victims of sexual assault the right to have a victim advocate and support person present during interviews by law enforcement, district attorneys, and defense attorneys.

SB 1441 (Kuehl), Chapter 159, provides that victims of domestic violence or abuse the right to have a domestic violence counselor and a support person of the victim's choosing present at an interview by law enforcement authorities, district attorneys, or defense attorneys, except under specified circumstances. Specifically, this new law:

- Grants victims of domestic violence or abuse, as defined, the right to have a domestic violence counselor, as defined, and a support person of the victim's

choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys.

- Provides that the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview.

- Requires that, prior to the commencement of the initial interview by law enforcement or district attorney personnel pertaining to a criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse shall be notified orally or in writing by the law enforcement or district attorney personnel that he or she has the right to have a domestic violence counselor and a support person of his or her choosing present.

- Provides that at the time the victim is advised of his or her right to have a domestic violence counselor and support person, the attending law enforcement authority or district attorney is also required to advise the victim that this right applies to any interview by the defense attorney, or investigators or agents employed by the defense attorney.

- Provides that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

ELDER ABUSE

Victims

Existing law provides certain exceptions to various evidentiary rules for children testifying in certain court proceedings in recognition that the age of the child and/or the nature of the crime suggest the necessity of different rules. For example, existing law requires that every person who testifies before a court take an oath or affirmation, except that children under the age of 10 years may, in the court's discretion, only be required to promise to tell the truth. Similarly, leading questions may be asked of a child witness under the age of 10 years in specified cases involving prosecution of physical, mental, or sexual abuse.

Additionally, existing law requires that examination of witnesses shall be open to the public. However, the law provides an exception in a criminal case involving specified sexual crimes against a minor under 16 years of age. In such cases, the court shall, upon motion, conduct a hearing to determine whether the testimony of and related to the minor shall be closed to the public.

Certain persons working in specified occupations, such as doctors, teachers, and others, are mandated reporters of child abuse and neglect. A failure to report as required is a

misdemeanor.

Although existing law has provided these accommodations for children, similar specific accommodations did not exist for persons who are dependent upon others for their care because of a developmental disability, traumatic brain injury, and other cognitive disabilities.

AB 20 (Lieber), Chapter 823, expands the protections offered to children and elders to include dependent persons. Specifically, this new law:

- Allows dependent persons with a substantive cognitive impairment to be required only to tell the truth when testifying in court;
- Allows leading questions to be asked of dependent persons with a substantial mental impairment in specified cases involving prosecution of physical, mental, or sexual abuse;
- Allows the court to close the courtroom for the testimony of, and relating to, dependent persons with a substantive cognitive impairment;
- Allows a magistrate to postpone a preliminary hearing to accommodate the needs of a dependent person;
- Allows the examination of a witness to be closed to the public during the testimony of a dependent person with a significant cognitive impairment who is complaining of a sex offense if testimony before the general public would be detrimental and there are no other alternatives;
- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;
- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;
- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;
- Expands the definition of physical abuse of an elder or dependent person to include lewd or lascivious acts; and,
- States legislative intent to ensure that people who cannot live independently are treated fairly by the criminal justice system, and that developmentally disabled and other dependent persons who are witnesses in criminal cases are

given equal access to the criminal justice system.

Elder Abuse: Counseling as a Condition of Probation

Existing proscribes various acts committed against an elder or dependent adult related to physical and financial abuse, including causing or permitting an elder or dependent adult to suffer or inflicting thereon unjustifiable physical pain or mental suffering and violating any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the person or property of an elder or dependent adult. Existing law also confers courts with broad discretion to determine conditions of probation that will best promote rehabilitation and protect the public. In granting probation, a court may impose any "reasonable conditions" in the interests of justice for amends to society, redress of the victim's injuries, and "for the reformation and rehabilitation of the probationer."

AB 3095 (Committee on Aging and Long-Term Care), Chapter 893, explicitly authorizes the court to require a person to receive appropriate counseling as a condition of probation in an elder abuse case. This new law provides that any defendant ordered to receive counseling shall be required to pay the expense of his or her counseling. Notwithstanding this provision, this new law also provides that a court shall take into consideration the ability of the defendant to pay for counseling, and that no defendant shall be denied probation due to his or her inability to pay.

EVIDENCE

Victims

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Additionally, existing law requires that examination of witnesses shall be open to the public. However, the law provides an exception in a criminal case involving specified sexual crimes against a minor under 16 years of age. In such cases, the court shall, upon motion, conduct a hearing to determine whether the testimony of and related to the minor shall be closed to the public.

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- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;
- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;
- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;
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HATE CRIMES

Hate Crimes: Prosecutorial Guidance

Penal Code Section 422.6 provides that it is a misdemeanor to interfere with another person's exercise of civil rights. Penal Code Section 422.7 provides the option of a felony for the same conduct if certain specified circumstances exist. Several other provisions in existing law also address conduct similar to, or identical to, that which would be included under Penal Code Section 422.6, including Penal Code Section 11411(c) which provides that any person who burns, desecrates, or destroys a cross or other religious symbol knowing it to be a religious symbol on the private property of another without authorization and for the purpose of terrorizing the owner or occupant is guilty of an alternate felony-misdemeanor. There is no cross-reference in Penal Code Section 422.6 to Penal Code Section 11410, et seq.

> **AB 1920 (La Malfa), Chapter 115,** adds a reference in Penal Code Section 422.6 to Penal Code Section 11411, providing guidance on prosecutorial options for hate-related offenses. AB 1920 also provides, consistent with Penal Code Section 654, that if the act or omission is punishable in different ways, the act may only be punished under the one provision that provides the longest potential term of imprisonment.

Hate Crimes: Aggravating Factors

In 1998, legislation was enacted that allows a prosecutor to file either felony or misdemeanor charges against an individual who commits the crime of vandalism resulting in more than $400 in property damage. A corresponding reduction in the amount of damage necessary to charge a felony under California's hate crime vandalism statute should be similarly adopted.

> **AB 2288 (Pacheco), Chapter 780,** lowers the threshold amount of damage in the commission of a "hate-motivated" crime against the property of another person from $500 to $400 which allows the offense to be charged as a felony.

Hate Crimes: Conditions of Release

Clearer standards are needed in cases involving hate crimes when perpetrators are released on probation, parole, or conditional release. Courts have the discretion to issue a protective order to protect the hate crime victim from further threats, acts of violence, or harassment. Additionally, authorities have the ability to require the person released to participate in racial sensitivity counseling or training.

> **AB 2428 (Chu), Chapter 809,** imposes conditions of probation, parole, and outpatient release on persons convicted of specified hate crimes and for the commission of any other crime motivated by hate. Specifically, this new law:

- Requires the court, absent compelling circumstances, as a condition of probation for any person convicted of a specified hate crime or a hate-motivated crime to issue an order protecting the victim or next of kin of the victim.

- Allows the court or community program director to require a person found not guilty by reason of insanity (NGI) for the commission of specified hate crimes or a hate-motivated crime to complete a class or program in racial sensitivity or receive counseling as a condition of release on outpatient status.

- Requires the court, absent compelling circumstances, to issue an order protecting the victim or the next of kin of the victim before any person found NGI for the commission of a specified hate crime or hate-motivated crime is released on outpatient status.

- Allows the parole authority to require a person released on parole for the commission of a specified hate crime or a hate-motivated crime to complete a class or program in racial sensitivity or receive counseling.

- Requires the parole authority, absent compelling circumstances and as a condition of parole, for any person convicted of a specified hate crime or a hate-motivated crime to require that the parolee stay away or refrain from any further acts or threats of violence against the victim or next of kin of the victim.

Hate Crimes: Definition

Existing law includes several provisions proscribing acts and offenses based on a person's actual or perceived characteristics, as well as provides for training on bias-related crimes, and reporting on bias-related incidents.

SB 1234 (Kuehl), Chapter 700, establishes a uniform definition for what constitutes a hate crime and applies that definition to existing statutes. This new law reorganizes existing hate crime statutes, expands related Commission on Peace Officer Standards (POST) training course requirements, and makes a lengthy series of related and conforming changes. Specifically, this new law:

- Defines "hate crime" for the purposes of state law, unless an explicit provision of law or the context clearly requires a different meaning, as a criminal act committed, in whole or in part, because the victim is perceived to have one or more of the following actual or perceived characteristics: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

- Defines the terms "association with a person or group with these actual or perceived characteristics", "disability", "gender", "in whole or in part because of", "nationality", "race or ethnicity", "religion", "sexual orientation", and

"victim."

- Amends the bias-motivated, first-degree murder statute; the bias-motivated crime against a person or property statutes; the bias-motivated enhancement; the bias-motivated, sentencing aggravation; the use of explosives to terrorize; and Education Code non-discrimination statutes to incorporate the new hate crime definition. This new law provides that all state and local agencies shall use the new hate crime definition, except under specified circumstances.

- Lowers the threshold amount of damage in the commission of a bias-motivated vandalism from $500 to $400, consistent with other vandalism statutes.

- Provides that the revised definition of "gender" shall apply throughout the Penal Code unless an explicit provision of law or context requires a different meaning, and changes the cross-reference in the definition of "sex" within the Fair Employment and Housing Act to reflect the revised definition of "gender."

- States legislative intent regarding hate crime sentencing and directs Judicial Council to develop a rule of court guiding hate crime sentencing.

- Renumbers and make conforming changes to the existing provision establishing penalties for a willful and knowing violation of an order issued pursuant to specified Civil Code non-discrimination provisions and authorizes the court to order a person to perform a minimum of community service, as specified. This new law makes corresponding cross-reference changes to the Civil Code to reflect the relocation of the penalty provision in the Penal Code. This new law provides that the county prosecuting agency shall have primary responsibility for enforcement of orders issued pursuant to this Civil Code provision and the criminal Civil Rights title.

- Expands the list of offenses where a court may require the convicted person, as a condition of probation, to complete civil rights-related training, make payments to entities that provide services to victims of hate crimes, or reimburse the victim for counseling costs.

- Provides in a hate crime case or alleged hate crime case, the court "shall take all actions reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of the alleged victim, or of a person who is a victim of, or at risk of becoming a victim of, a hate crime."

- Provides that "whenever an individual who is a victim of or witness to a hate crime, or who otherwise can give evidence in a hate crime investigation, is not charged with or convicted of committing any crime under state law, a peace officer may not detain the individual exclusively for any actual or suspected immigration violation or report or turn the individual over to federal

immigration authorities."

- Provides that the Department of Corrections and the California Youth Authority, subject to available funding, shall cooperate fully and participate actively with specified groups concerning hate crimes and gangs, as well as "strive to provide inmates with safe environments in which they are not pressured to join gangs or hate groups and do not feel a need to join them in self-defense."

- Amends and renumbers the existing provision of law stating legislative intent that local governments, law enforcement, and school districts establish education and training programs to prevent civil rights violations and hate crimes to also add a victim assistance component.

- Amends existing law requiring local law enforcement to report information regarding bias-motivated crimes to the Attorney General (AG) by requiring use of the new hate crime definition. This information may include local department general orders or formal policies on hate crimes.

- Requires POST to revise courses on law enforcement interaction with developmentally disabled and mentally disabled persons, racial and cultural differences, and hate crimes, as specified. This new law also requires POST to develop a training course on crimes against homeless persons.

- Repeals a statute making legislative findings regarding racial, ethnic and religious crimes that occur in California and stating intent to establish a statewide center to receive information on these crimes, as well as a statute that previously required the AG to report on racial, ethnic, and religious crimes.

- Relocates and amends the existing statute requiring local law enforcement to provide hate crime-related brochures to direct the Department of Fair Employment and Housing to work with other specified departments in assisting with this requirement.

JUDGES, JURORS AND WITNESSES

Victims

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- Allows a magistrate to postpone a preliminary hearing to accommodate the needs of a dependent person;

- Allows the examination of a witness to be closed to the public during the testimony of a dependent person with a significant cognitive impairment who is complaining of a sex offense if testimony before the general public would be detrimental and there are no other alternatives;

- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;

- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;

- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;

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Driving Under the Influence: Court Advisory

In 2000, an estimated 2,163,210 crashes in the United States involved alcohol. These crashes killed 16,792 people and injured an estimated 513,000 people. In 2001, the number of alcohol-related fatalities increased to 17,400. Of these, 1,461 fatalities occurred in crashes involving intoxicated drivers who already had one previous DUI conviction. Having the court advise persons convicted of reckless driving or driving under the influence of the dangers of their behavior could decrease the number of alcohol-related fatalities.

AB 2173 (Parra), Chapter 502, requires the court to advice persons convicted of reckless driving or driving under the influence of the dangers of such behavior. Specifically, this new law:

- Provides that when a person is convicted of reckless driving or driving under the influence, the court shall advice that person of the dangers of driving under the influence, using specified text. Included in the text is a warning that if a person drives under the influence and causes a fatality, the driver can be charged with murder.

- Provides that the advisory statement may be included in a plea form or the fact that the advice was given may be specified on the record.

- Provides that the court shall include on the abstract of the conviction or violation the fact that the person has been advised of the dangers of driving under the influence.

Judges and Public Safety Attorneys: Threats and Moving Expenses

Prompted by several incidents involving threats against and harm to judges, in 2002 the Legislature passed and the Governor signed AB 2238 (Dickerson), Chapter 621, Statutes of 2002, which prohibited the intentional posting of home addresses or telephone numbers of elected or appointed officials with the intent to cause imminent great bodily

injury, as well as the publishing of the residence addresses of law enforcement officers in retaliation for the due administration of the law. AB 2238 also created the Public Safety Officials' Home Protection Act Advisory Task Force, chaired by the Attorney General and comprised of representatives of public safety entities, the judiciary, state and local government, and the real estate and business community.

AB 2905 (Spitzer), Chapter 248, expands the class of individuals where a governmental authority shall pay the moving and relocation expenses of an employee or his or her immediate family when a move or relocation is the result of an employment-related credible threat against the employee. Specifically, this new law:

- Expands the existing moving and relocation reimbursement applicable to peace officers to also include judges, court commissioners and attorneys employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender.

- Provides that for purposes of this new law, judges shall be deemed to be employees of the state and a court commissioner an employee of the county in which the court where he or she is employed is located.

- Specifies that for purposes of the existing prior approval requirement, a court commissioner must receive prior approval from the presiding judge of the superior court in the county in which he or she is located and other judges must receive approval from the Chief Justice or his or her designee.

JUVENILES

Group Home Placements: Sharing Information with Law Enforcement

Under current law, a delinquent ward of the juvenile court can be placed in an out-of-county group home or community care facility if: (a) the juvenile has identifiable needs requiring specialized care that cannot be provided in a local facility, or his or her needs dictate physical separation from his or her family; and, (b) the county of residence agrees to pay the placement county the costs of providing services to the minor.

Prior to an out-of-county placement, the probation officer of the supervising county must send written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the ward is being placed. Existing law also prohibits a group home from receiving a delinquent ward of the juvenile court until the above-described notice is received by the probation officer of the county in which the facility is located.

AB 1948 (Aghazarian), Chapter 375, provides that where a minor adjudicated of a felony is placed in a group home outside the juvenile's county of residence,

the probation department of the receiving county may disclose specified information to the sheriff of the receiving county or to the police department of the city in which the group home is located. Specifically, this new law:

- Provides that probation may share the name of the minor, the felony offense or offenses for which the minor has been adjudicated, and the address of the group home.

- Provides that the information provided to the sheriff or police department may only be used for law enforcement purposes and shall not be used in any manner inconsistent with the rehabilitative program in which the minor has been placed or with the progress the minor may be making in the placement program.

- Provides that this information may be provided to other law enforcement agencies consistent with the limitations above, but provides that the information is otherwise confidential.

Alcoholic Beverages and Controlled Substances: Minors

Underage consumption of alcohol is a problem contributed to by businesses, the alcohol industry, and by certain members of the community who may give alcoholic beverages to persons under the age of 21 years.

Under existing law, it is a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or consume any alcoholic beverage on any on-sale premises. Selling, furnishing, giving, or causing to be sold, furnished or given away, any alcoholic beverages to any person under the age of 21 years is also a misdemeanor.

Additionally, any person who purchases an alcoholic beverage for a person under the age of 21 years and that person consumes the alcoholic beverage and proximately causes great bodily injury or death is guilty of a misdemeanor, punishable by imprisonment; a fine not exceeding $1,000; or both.

AB 2037 (La Suer), Chapter 291, expands existing law to include any person who furnishes, gives or gives away any alcoholic beverage to a person under the age of 21 years. AB 2037 also provides that the penalties specified by this new law do not preclude prosecution under any other provision of law including, but not limited to, contributing to the delinquency of persons under 18 years of age.

Juvenile Court: Criminal History Reporting

Current law imposes a dual reporting requirement on county probation departments with regard to the juvenile justice system. While the same type of information is collected under each requirement, it is provided in different formats. Existing law should be clarified by eliminating the dual reporting requirement. While the county would still be required to provide the information, there would now only be one requirement and one

format. Therefore, the amount of paperwork that must be prepared and submitted by the county probation department would be reduced.

SB 1285 (Margett), Chapter 154, expands the data the Department of Justice can collect for statistical purposes regarding the juvenile justice system.

MURDER

Former Jeopardy

Under previous law, a person who committed a crime in California and then flees to a foreign country where he or she is prosecuted for that crime cannot be tried in California if he or she returned to the state. The legal concept prohibiting prosecution in California is "statutory double jeopardy", and California was only one of six states that applied statutory double jeopardy to persons prosecuted in foreign countries for crimes committed in California.

Both the federal and state constitutions prohibit double jeopardy or twice putting a person in jeopardy for the same offense. However, the United States Supreme Court has stated a well-established principle that prosecutions under the laws of separate sovereigns do not subject to the defendant to double jeopardy. The rationale is that a person may owe allegiance to two sovereigns and may be punished for violating the laws of either; the fact is that by committing one act, the person may have committed two offenses and he or she is punishable for each offense.

Although the constitutional protection against double jeopardy does not bar prosecution in California of a person tried for the same crime in a foreign country, there is nothing to preclude a state from granting greater protection than that afforded by the United States Constitution. Under this theory, California adopted statutes that provide some protection against successive prosecutions in different jurisdictions for offenses arising out of the same act.

There are a number of international treaties signed by the United States and numerous other countries which provide for extradition to the country where the crime was committed. However, one of these treaties was severely limited by a decision of one country's supreme court to deny extradition to California for crimes committed in California and punishable by life imprisonment or the death penalty.

Inasmuch as all murder cases are punishable by at least a life term in California, it became impossible to extradite accused murderers from that country back to California to face prosecution. (In order to obtain extradition, district attorneys were forced to agree that they would not seek the death penalty or life imprisonment.) Some accused murderers in California served as little as eight years in prison in that other country then returned to California. Under California's statutory double jeopardy laws, those people could not then be prosecuted for murders committed in California because of California's statutory double jeopardy law.

AB 1432 (Firebaugh), Chapter 511, removes one of these statutorily provided protections by removing the bar to prosecution or indictment in California of persons acquitted or convicted of a public offense in another country. This new law provides that such a person shall be entitled to credit for any actual time served in custody in a penal institution in that other country for the crime and for any additional time credits that would actually have been awarded had the person been incarcerated in California.

However, this new law leaves in place the California statute that bars prosecution in California for an act or omission charged as a public offense within the jurisdiction of the United States or another state or territory of the United States.

This new law provides that no international treaties or lands shall be violated to secure the return of a person convicted in another country of a crime committed in California in order to prosecute that person in California.

PEACE OFFICERS

Park Rangers Employed by Municipal Water Districts as Peace Officers

Existing law authorizes the formation of county and municipal water districts and grants to those water districts specified powers. These powers include the right to employ a suitable security force, including employees designated as security officers. Persons designated as security officers by a municipal utility district are granted limited peace officer authority if the primary duty of the officer is the protection of the properties of the utility district and the protection of persons thereon.

Existing law also grants limited peace officer status to a person designated by a local agency as a park ranger if the primary duty of the officer is the protection of the park and other property of the agency and the preservation of the peace therein.

Due to an unpublished Superior Court decision, it was unclear whether or not municipal water districts were considered local agencies that have the authority to hire park rangers who have limited peace officer authority.

AB 1119 (Nation), Chapter 799, authorizes a municipal water district to employ park rangers who are peace officers if the primary duty of the park ranger is the protection of the properties of the municipal water district and the protection of persons thereon. The authority of such peace officers extends to any place in California for the purpose of performing their primary duty, when making an arrest as to any public offense which presents an immediate danger to person or property, or an escape of the perpetrator. Those peace officers may carry firearms only if authorized by their employing agency.

This new law also states that every park ranger hired by a water district shall conform to the standards for peace officers adopted by the Commission on Peace Officer Standards and Training. Any park ranger who fails to conform to those standards shall not have the powers of a peace officer.

Peace Officers: Responsibilities of Deputy Sheriffs in Specified Counties

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.

Additionally, counties may 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 their employment related to custodial assignments or when directed to perform other law enforcement duties during a local state of emergency.

AB 1931 (La Malfa), Chapter 516, adds Butte and Tuolumne Counties to the existing authority granted to Los Angeles, Riverside and San Diego Counties and 12 other counties to employ deputy sheriffs who are "employed to perform duties exclusively or initially relating to custodial assignments," but who are 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.

Firearms: Prohibited Persons

Under existing law, a firearm seized during an investigation may be returned without checking if the person receiving the firearm is prohibited from owning or possessing a firearm. The Department of Justice (DOJ) has been training peace officers to conduct a background check before returning a firearm to its owner, enter the firearm into the Automated Firearms System (AFS), and establish procedures for disposal of firearms when the person is a prohibited person.

AB 2431 (Steinberg), Chapter 602, requires a person requesting the return of a firearm in the custody of a law enforcement to make an application to the DOJ to determine if that person is eligible to possess a firearm and provides for the disposal of firearms belonging to persons prohibited from possessing firearms. Specifically, this new law:

- Prohibits a law enforcement agency that has taken custody of a firearm from returning the weapon until the agency verifies that the person is not prohibited from possessing a firearm, the firearm has not been stolen, and the firearm has been recorded in the AFS.

- Requires that the applicant provide the DOJ with valid Department of Motor Vehicle identification, name, address, date of birth, citizenship status, and the

firearm's make model and serial number. This new law allows a non-resident to submit a valid driver's license or state-issued identification card from the state of residence as proof of identity.

- Makes it a misdemeanor to knowingly omit required information or to furnish fictional information on the application to determine eligibility.

- Requires the DOJ, if it denies an application, to notify the applicant and provide a form to enable the applicant to sell or transfer the firearm to a licensed dealer.

- Authorizes the DOJ to charge a fee sufficient to cover its costs for firearm clearance determinations and requires that the funds be deposited into the Dealer's Record of Sale (DROS) Special Account. This new law sets the DOJ fee for processing the firearm clearance request at $20 plus $3 for each additional handgun being processed as part of the request and allows for future increases based on the California Consumer Price Index.

- Exempts an individual seeking to retrieve a stolen firearm from the processing fee if the firearm was reported stolen to a law enforcement agency, as specified.

- Allows the imposition of a storage fee; however, the storage fee may be waived by the local or state agency upon proof that the firearm was stolen and limits the storage fee, as specified.

- Allows the DOJ 30 days to complete the background check except as specified.

- Deletes obsolete handgun waiting period requirements that have been replaced by newer requirements.

Railroad Police: California Law Enforcement Telecommunications System

Under existing law, railroad police are unable to obtain California Law Enforcement Telecommunications System (CLETS) information from their local law enforcement agency. In the past, railroad police worked with local law enforcement agencies which did have access to CLETS information; the local law enforcement agencies would share the information with the railroad police. Then, the Attorney General issued an opinion concluding that CLETS information may not be provided to persons or entities not authorized to access the information. Railroad police officers should be authorized to have access to CLETS information.

SB 1768 (Romero), Chapter 510, allows railroad police officers, as defined, as well as their employer, to apply for access to the California Law Enforcement Telecommunications System (CLETS). Specifically, this new law provides that notwithstanding any other provision of law, a railroad police officer

commissioned by the Governor, and the officer's employing agency, may apply for access to CLETS through a local law enforcement agency granted direct access to CLETS. Before access is granted, in addition to other review standards and conditions of eligibility applied by the Department of Justice (DOJ), the CLETS Advisory Committee and the Attorney General, shall ensure that the following conditions are satisfied:

- The employing agency shall enter into a CLETS subscriber agreement as provided for in the CLETS policies, practices, and procedures.

- The required background check on the peace officer and other pertinent personnel must have been completed, together with all required training.

- The subscriber agreement shall be in substantially the same form as prescribed by the CLETS policies, practices, and procedures for public agencies of law enforcement who subscribe to CLETS services, and shall be subject to the provisions of Chapter 2.5 (commencing with Section 15150) of Title 2 of Division 3 of the Government Code and the CLETS policies, practices, and procedures.

- The employing agency shall expressly waive any objections to jurisdiction in the courts of the State of California for any liability arising from use, abuse, or misuse of CLETS access or services or the information derived therefrom, or with respect to any legal actions to enforce provisions of California law relating to CLETS access, services, or information under this subdivision.

- The employing agency shall further agree to utilize CLETS access, services, or information only for law enforcement activities by peace officers commissioned as described herein operating within the State of California, where the activities are directly related to investigations or arrests arising from conduct occurring within the State of California.

- The employing agency shall further agree to pay to the DOJ and the providing local law enforcement agency all costs related to the provision of access or services and administrative costs.

RESTITUTION

Victims of Crime Program

In January 2003, it was predicted that the Restitution Fund might end Fiscal Year 2003-04 with a deficit of $80 million. The Victim Compensation and Government Claims Board implemented new policies to prevent the Fund from becoming insolvent. Now, the Restitution Fund no longer has a deficit and is expected to remain solvent in the future.

SB 631 (McPherson), Chapter 223, makes numerous changes to the Penal Code relative to the Victims of Crime Program (VCP) in order to enhance the collection of restitution fines and increase Restitution Fund revenue. Specifically, this new law:

- Requires a defendant who has an unpaid balance on a restitution order or fine 120 days prior to the time of his or her release from probation to complete a current financial statement at least 90 days before release, as specified.

- Makes it a misdemeanor punishable by up to six months in the county jail or a fine not to exceed $1,000 for willfully making false material statements on the required financial statement.

- Specifically allows a person to be prosecuted for the crime of perjury if applicable.

- Permits the victim and the Board to have access to both the initial financial disclosure statement and the current financial statement.

- Clarifies that the VCP can be reimbursed from restitution fines for payments, as specified.

- Requires the court clerk to notify the Board of a restitution order, as specified.

- Requires that a probation revocation restitution fine be assessed at the time the court imposes sentence and judgment, and provides that the probation revocation restitution fine shall only become effective at the time of probation revocation.

- Provides that probation revocation restitution fines shall only be waived or reduced when the court finds compelling and extraordinary reasons, as specified.

- Adds specific references to fines ordered to the existing provision of law that states that judgments may be enforced in the manner, as specified.

- Permits the Director of the California Department of Corrections (CDC) to deduct moneys from a ward transferred from the California Youth Authority to the CDC and who had a fine assessed against him or her pursuant to Welfare and Institutions Code Sections 730 et seq., as specified.

- Makes the Secretary of the State and Consumer Services Agency the chair of the Board.

SEX OFFENSES

Sex Offenders: Megan's Law

The approval of the federal Megan's Law in 1996 allowed police authorities to release of information about violent sex offenders for the first time. As a result, many law enforcement agencies make the Megan's Law database available to members of the public. The database provides the offender's name and aliases, information on physical appearance, registered sex offenses, and location. However, Megan's Law is only as effective as the availability of the sex offender database. Regrettably, the database is not readily accessible for many Californians; generally, the database is only available at police stations in urban areas. In many rural communities, information on sex offenders is not available to the public or only available for a limited number of hours, which may pose difficulties for working parents.

AB 488 (Parra), Chapter 745, provides that on or before July 1, 2005, sex offender registration information shall be disseminated to the public through an Internet Web site operated by the Department of Justice (DOJ) based on a tiered classification system. Specifically, this new law:

- Provides that with respect to a person convicted of the commission or attempted commission of specified "violent" sex offenses and sexually violent predators (SVP), the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the address at which the person resides.

- Provides that with respect to a person convicted of the commission or attempted commission of specified serious sex offenses, the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the community of residence and ZIP code in which the person resides. However, the address of the person shall not be disclosed unless a determination is made that the person has a prior or subsequent conviction for specified sex offenses.

- Provides that with respect to a person convicted of the commission or attempted commission of specified less serious sex offenses, the DOJ shall make available to the public through and Internet Web site specified sex offender registration information, including the community of residence and

ZIP code in which the person resides.

- Provides that with respect to a person convicted of sexual battery, annoying a child under the age of 18, or child molestation where the defendant was granted probation and there are no other prior convictions for a sex offense, the person may file an application for exclusion from the Internet Web site with the DOJ.

- Requires that the DOJ make available to the public through the Internet Web site the name of the offender, aliases, a photograph, a physical description, including gender and race, date of birth, the crime for which the person is required to register, community of residence, zip code, or address, as specified.

- Requires that the DOJ make reasonable efforts to notify convicted sex offenders that on or before July 1, 2005 the DOJ is required to make information about him or her available on the Internet Web site, as specified. Requires the DOJ to also notify convicted sex offenders eligible for exclusion of the fact that they are eligible for exclusion.

- Provides that any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty, a fine of not less than $10,000 and not more than $50,000.

- Provides that any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

- Provides that any person required to register as a convicted sex offender who enters the Internet Web site is punishable by imprisonment in a county jail for a period not to exceed six months; by a fine not exceeding $1,000; or by both.

- Prohibits the use of information disclosed on the Internet Web site for specified discriminatory purposes and clarifies that information disclosed may only be used to protect persons at risk.

- Requires the DOJ, on or before July 1, 2006 and every year thereafter, to make a report to the Legislature concerning the operation of the Web site.

- Appropriates $650,000 from the General Fund for implementation.

Sex Offender Registration

Existing law requires the Department of Justice (DOJ), a court, or law enforcement agency to obtain a warrant to access another agency's computer records for information that could lead to the whereabouts of an unregistered sex offender. The DOJ should be allowed to compare the last available contact information of a sex offender in the Megan's Law database with computer records from other states or local agencies to obtain current information on the location of an unregistered sex offender.

> **AB 1937 (Corbett), Chapter 127,** requires any state or local governmental agency, upon written request, to provide the DOJ with the address of any person represented by DOJ to be a person in violation of his or her duty to register under Penal Code Section 290.

Sex Offender Registration

Existing law requires registration for an out-of-state sex offense only if the offense would have been punishable as one or more of the offenses described in Penal Code Section 290(a)(2). Many out-of-state offenses for serious sex crimes are written slightly differently than similar California offenses, allowing the offender to avoid registration in California even though the offender is required to register in his or her home state.

> **AB 2395 (Correa), Chapter 761,** changes the standard for determining whether an out-of-state conviction requires registration as a sex offender in California. Specifically, this new law:
>
> - Provides that any person required to register while residing in the state of conviction for a sex offense committed in that state must register as a sex offender while residing in California.
>
> - Provides for a number of exemptions. A person need not register as a sex offender in California if the out-of-state conviction was for the equivalent of one of the following offenses, except as specified:
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> - Indecent exposure;
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> - Unlawful sexual intercourse;
>
> - Incest; or,
>
> - Sodomy or oral copulation, provided that the offender notifies the Department of Justice (DOJ) that the conviction was for conduct between consenting adults and the DOJ is able, upon the exercise of reasonable diligence, to verify that fact.

Sexually Violent Predators: Notice of Release

There are a number of public safety concerns surrounding the release of sexually violent predators (SVP) on outpatient status. These individuals have completed their prison

terms and have undergone comprehensive treatment in a state hospital prior to their recommended release. Public safety concerns or not, the law requires that these individuals eventually be released into the community. However, in the interest of public safety, state officials should be required to inform local authorities in advance of where these individuals plan to live and allow consideration of community input as to their placement.

AB 2450 (Cancimilla), Chapter 425, expands the scope of the existing statute requiring the Department of Mental Health (DMH) to give notice to local law enforcement officials, as specified, regarding the potential release of a SVP. Specifically, this new law:

- Requires the DMH notice to be given at least 15 days prior to, or at least within 48 hours of becoming aware that a community placement location is recommended or proposed.

- Requires the DMH notice to contain the name, proposed placement address, date and county of commitment, proposed date of release, photograph, and fingerprints of the SVP who is proposed or petitioning for release on outpatient status.

- Requires the DMH to give notice of the date, place, and time of the court hearing at which the location of placement is to be considered.

- Allows the agencies that receive notice to provide written consolidated and combined comment to the DMH and the court regarding the impending release, placement, location, and conditions of release. This new law allows DMH to respond in the form of a written comment.

- Requires the court to consider the agencies' comments and the DMH statement. The court shall approve, modify, or reject the DMH recommendation or proposal regarding the community or specific address to which the person who is to be released or the conditions of release if the court finds the recommendation appropriate.

- Allows, in addition to law enforcement agencies, a single agency in the community of the proposed or recommended placement to suggest appropriate, alternative locations for placement within that community.

Sex Offender Registration: Transient Sex Offenders

Under existing law, a person convicted of enumerated sex offenses is required to register for the rest of his or her life, within five working days of coming into a city or county, with law enforcement officials in the city, county, or city and county where he or she is domiciled and with the chief of police on any University of California or California State University, where applicable. If the person required to register does not have a residence address, existing law requires that person to update his or her registration no less than

once every 60 days with law enforcement in whose jurisdiction he or she is located at the time he or she is updating his or her registration. Recently, a California Court of Appeal ruled that the terms "located" or "location" as used in these provisions are unconstitutionally vague.

AB 2527 (Frommer), Chapter 429, revises and recasts the current transient sex offender registration requirements. Specifically, this new law:

- Requires a transient to register, and reregister, within five working days of release from incarceration, placement or commitment, or release on probation, and no less than once every 30 days, except as specified, regardless of the length of time he or she has been physically present in a particular jurisdiction, with the chief of police of a city, the sheriff of a county, or the chief of police of a campus unless he or she was required to register at an earlier date because he or she reregistered on his or her birthday.

- Requires a transient who moves to a residence to register at that address within five working days, and a person registered at a residence who becomes transient shall register within five working days.

- Provides that a transient shall register annually within five working days of his or her birthday.

- Provides that upon registration and re-registration, the transient shall be required to provide specified information, including places where he or she sleeps, eats, works, frequents, and engages in leisure activities.

- Provides that failure to comply with these registration requirements is a misdemeanor punishable by a minimum of 30 days and a maximum of six months in jail for the first two times a person willfully fails to comply.

- Requires a transient who moves out of state to inform the chief of police or the sheriff of the county, as specified, within five working days of his or her move out of state. The transient is also required to inform that registering agency of his or her planned destination, residence, and transient location out of California and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice (DOJ). The DOJ shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

- Clarifies that the potential penalty for the failure to provide information required on registration or re-registration forms or providing false information is in addition to any other penalty imposed under the related registration provisions.

- States legislative intent that AB 2527 is intended to address the court's holding in People v. North.

Sex Offender Registration

California's sex offender registration law requires a person convicted of specified sex offenses to register within five working days of coming into a city or county with law enforcement officials in the city, county, or city and county where he or she is domiciled and with the chief of police on any University of California or California State University where he or she is domiciled. Registration is for a lifetime, must be updated annually, and must be completed on a form provided by the Department of Justice (DOJ). From time to time, technical clarifying changes are necessary.

SB 1289 (Machado), Chapter 731, makes several clarifying changes to California's sex offender registration law. Specifically, this new law:

- Provides that a person required to register as a convicted sex offender who has more than one residence or location at which he or she regularly resides must register in each of the jurisdictions where the person regularly resides regardless of the number of days or nights spent in each residence or location.

- Requires that a person required to register as a convicted sex offender who changes residence, address, or location, but does not know the new residence, address, or location, to inform the last registering agency of the move within five working days, and shall later inform the agency of the new address within five working days of moving into the new residence or location.

- Clarifies that any person required to register who violates any provision of sex offender registration law is guilty of a continuing offense as to each requirement he or she violated.

- Clarifies that a person who has pre-registered prior to release on probation must re-register upon release.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Notice of Release

There are a number of public safety concerns surrounding the release of sexually violent predators (SVP) on outpatient status. These individuals have completed their prison terms and have undergone comprehensive treatment in a state hospital prior to their recommended release. Public safety concerns or not, the law requires that these individuals eventually be released into the community. However, in the interest of public safety, state officials should be required to inform local authorities in advance of where these individuals plan to live and allow consideration of community input as to their placement.

AB 2450 (Cancimilla), Chapter 425, expands the scope of the existing statute requiring the Department of Mental Health (DMH) to give notice to local law enforcement officials, as specified, regarding the potential release of a SVP. Specifically, this new law:

- Requires the DMH notice to be given at least 15 days prior to, or at least within 48 hours of becoming aware that a community placement location is recommended or proposed.

- Requires the DMH notice to contain the name, proposed placement address, date and county of commitment, proposed date of release, photograph, and fingerprints of the SVP who is proposed or petitioning for release on outpatient status.

- Requires the DMH to give notice of the date, place, and time of the court hearing at which the location of placement is to be considered.

- Allows the agencies that receive notice to provide written consolidated and combined comment to the DMH and the court regarding the impending release, placement, location, and conditions of release. This new law allows DMH to respond in the form of a written comment.

- Requires the court to consider the agencies' comments and the DMH statement. The court shall approve, modify, or reject the DMH recommendation or proposal regarding the community or specific address to which the person who is to be released or the conditions of release if the court finds the recommendation appropriate.

- Allows, in addition to law enforcement agencies, a single agency in the community of the proposed or recommended placement to suggest appropriate, alternative locations for placement within that community.

VEHICLES

Driving Under the Influence: Court Advisory

In 2000, an estimated 2,163,210 crashes in the United States involved alcohol. These crashes killed 16,792 people and injured an estimated 513,000 people. In 2001, the number of alcohol-related fatalities increased to 17,400. Of these, 1,461 fatalities occurred in crashes involving intoxicated drivers who already had one previous driving under the influence (DUI) conviction. Having the court advise persons convicted of reckless driving or DUI of the dangers of their behavior could decrease the number of alcohol-related fatalities.

AB 2173 (Parra), Chapter 502, requires the court to advice persons convicted of reckless driving or driving under the influence of the dangers of such behavior. Specifically, this new law:

- Provides that when a person is convicted of reckless driving or driving under the influence, the court shall advice that person of the dangers of driving under the influence, using specified text. Included in the text is a warning that if a person drives under the influence and causes a fatality, the driver can be charged with murder.

- Provides that the advisory statement may be included in a plea form or the fact that the advice was given may be specified on the record.

- Provides that the court shall include on the abstract of the conviction or violation the fact that the person has been advised of the dangers of driving under the influence.

Speed Contests

Existing law provides that a person convicted of engaging in a speed contest shall be punished by imprisonment in the county jail for not less than 24 hours nor more than 90 days; by a fine of not less than $355 nor more than $1,000; or by both that fine and imprisonment. In addition, the person's privilege to operate a motor vehicle shall be subject to suspension or may be restricted for 90 days to six months. A second offense within five years is punishable by four days to six months in jail; by a fine of not less than $500 nor more than $1,000; or by both that fine and imprisonment. The person's privilege to operate a motor vehicle shall either be suspended or restricted for six months.

SB 1541 (Margett), Chapter 595, adds additional penalty and financial responsibility provisions to first-offense speed contest laws, as well as generally clarifies existing penalty provisions for speed contests. Specifically, this new law:

- Adds 40 hours of community service to the penalty for a first conviction for engaging in a speed contest.

- Adds the requirement that for a person whose license was suspended for a first conviction for engaging in a speed contest, the privilege may not be reinstated until the person provides the Department of Motor Vehicles with proof of financial responsibility.

- Clarifies the existing law procedures for suspension or restriction of driving privileges for persons convicted of engaging in a speed contest, as well as a court's authority to order suspension.

Driving Under the Influence: Prior Convictions

Driving under the influence (DUI) of alcohol and drugs continues to be a significant threat to public health and safety. Despite significant progress in reducing incidents of DUI, repeat offenders who refuse to stop driving after sanctions by the courts threaten the public with reckless behavior. DUI driving fatalities have increased for four years in a row after a decade of declining rates. A total of 344 more people died on the road in California in 2002 than did in 1998. Felony DUI arrests have increased for three years after a similar decline. DUI drivers kill one person every eight hours in California. Nearly 180,000 people were arrested for DUI of drugs or alcohol in 2002, including 25 percent who were repeat offenders.

SB 1694 (Torlakson), Chapter 550, increases from seven to ten years the "washout" period in which a person convicted of DUI would no longer be subject to increased penalties for having suffered one or more prior convictions for DUI or other related offenses. Specifically, this new law:

- Increases from seven to ten years the time period in which a repeat DUI offender is subject to increased penalties for conviction of DUI and other related offenses.

- Requires a person convicted of DUI or DUI resulting in bodily injury who more than 10 years ago was convicted of DUI or has previously been convicted of DUI in a public place to attend and complete an alcohol and drug problem assessment program. This new law allows the court to rely on state summary criminal history information, local summary history information or records made available through the district attorney to determine if a violation more than 10 years old exists.

- Expands the Alcohol and Drug Problem Assessment Program to any person who has a second or subsequent conviction for DUI.

- Makes numerous conforming cross-references increasing the "washout" from seven to ten years in other DUI-related offenses and driver's license suspension provisions.

Vehicles: Driving under the Influence and Driver's License Sanctions

Existing law imposes a number of requirements on persons convicted of driving under the influence (DUI) of alcohol or controlled substances and on the Department of Motor Vehicles (DMV) relative to driver's license sanctions. These requirements include the suspension, revocation, or restriction of the person's driving privilege, that the person attend a driving under the influence program, and that the court issue an order of satisfaction regarding the person's attendance at the DUI program.

SB 1697 (Torlakson), Chapter 551, consolidates the driver's license suspension, restriction, and revocation functions for DUI arrests and convictions under the DMV. This new law removes the requirement that the court notify the DMV to grant a restricted license to a person convicted of a second DUI, and allows the DMV to grant a restricted license if the person is participating in a DUI program. Similarly, this new law deletes the requirement that an order of satisfaction must be obtained from the court and instead provides that the DUI program may issue its certificate of successful completion to the DMV.

Additionally, this new law authorizes the court to disallow the issuance of a restricted license if the court determines that the person would present a traffic safety or public safety risk if allowed to operate a motor vehicle during the suspension period. This new law also requires the court to advise a person convicted of a DUI offense at the time of sentencing that the driving privilege may not be restored until the person provides proof satisfactory to the DMV of successful completion of a DUI program of appropriate length. The length of the DUI program is based on the person's blood alcohol concentration and the number of prior DUI convictions.

Vehicles

Existing law prohibits driving a motor vehicle without a valid driver's license, and there are various potential penalties that include jail time. For example, upon a first conviction of driving with a suspended driver's license, the potential penalty is up to six months in the county jail and a fine of $300 to $1,000, or both such fine and imprisonment. If a person has a second conviction within five years, the penalty is five days to one year in jail and a fine of $500 to $2,000.

Driving on a driver's license which has been suspended or revoked for reckless driving and other specified offenses is punishable on a first conviction by imprisonment in the county jail for not less than five days nor more than six months and by a fine of $300 to

$1,000. For a second offense within five years, the penalty is imprisonment in the county jail for not less than 10 days nor more than one year and by a fine of $500 to $2,000. If the person was granted probation, the court is mandated to impose as a condition of probation that he or she be imprisoned in the county jail for at least 10 days.

Prior to January 1, 2004, the law authorized the district attorneys of specified counties, with the approval of the board of supervisors, to establish a pilot program involving home electronic monitoring in lieu of jail time. A person who pleads guilty or no contest or convicted of specified provisions relative to driving with a suspended or revoked license could enter into a written agreement with the district attorney to participate in this pilot program.

Under the pilot program, in lieu of a jail sentence, the convicted person agreed to a home detention program utilizing an electronic monitoring system for not less than the minimum jail sentence and not more than the maximum jail sentence. In addition, the person who agreed to participate in this pilot program was required to attend a class or classes related to driving without a valid driver's license.

Because of current county jail overcrowding, the electronic monitoring program mitigated the problem of low-level offenders using jail space and resources needed for more serious offenders. The classes required in the pilot program assured that the offender was aware of the steps needed to be taken to have his or her license reinstated.

The law provided that the electronic monitoring program would be provided under the auspices of the district attorney or city attorney, as applicable. The electronic monitoring pilot program expired on January 1, 2004.

> **SB 1848 (Ashburn), Chapter 594,** re-established the home electronic monitoring program in lieu of a jail sentence for persons who plead guilty or were convicted of driving with a suspended or revoked driver's license. This new law allows the district attorneys of the Counties of Alameda, Fresno, Kern, Los Angeles, Merced, Orange, Placer, Riverside, Sacramento, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara or Santa Cruz, and city attorneys within those counties authorized to prosecute misdemeanors, with the approval of the board of supervisors, to re-establish a home electronic monitoring system. The district attorney may conduct the program or may contract with a private entity to conduct the program. Participants in the program may be required to pay fees for the program, in addition to any fine imposed under the law. However, a person shall not be denied participation in the program due to that person's inability to pay for the program.
>
> This new law also requires that on or before December 31, 2007, the district attorney or city attorney, as applicable, who elects to participate in the pilot program shall prepare and submit to the legislature a report concerning their participation.
>
> This new law shall remain in effect only until January 1, 2008, and is repealed as

of that date unless a statute enacted before January 1, 2008 deletes or extends that date. The new law was declared an urgency statute necessary for the preservation of the public peace, health or safety, and goes into effect immediately.

VICTIMS

Victims

Existing law provides certain exceptions to various evidentiary rules for children testifying in certain court proceedings in recognition that the age of the child and/or the nature of the crime suggest the necessity of different rules. For example, existing law requires that every person who testifies before a court take an oath or affirmation, except that children under the age of 10 years may, in the court's discretion, only be required to promise to tell the truth. Similarly, leading questions may be asked of a child witness under the age of 10 years in specified cases involving prosecution of physical, mental, or sexual abuse.

Additionally, existing law requires that examination of witnesses shall be open to the public. However, the law provides an exception in a criminal case involving specified sexual crimes against a minor under 16 years of age. In such cases, the court shall, upon motion, conduct a hearing to determine whether the testimony of and related to the minor shall be closed to the public.

Certain persons working in specified occupations, such as doctors, teachers, and others, are mandated reporters of child abuse and neglect. A failure to report as required is a misdemeanor.

Although existing law has provided these accommodations for children, similar specific accommodations did not exist for persons who are dependent upon others for their care because of a developmental disability, traumatic brain injury, and other cognitive disabilities.

AB 20 (Lieber), Chapter 823, expands the protections offered to children and elders to include dependent persons. Specifically, this new law:

- Allows dependent persons with a substantive cognitive impairment to be required only to tell the truth when testifying in court;

- Allows leading questions to be asked of dependent persons with a substantial mental impairment in specified cases involving prosecution of physical, mental, or sexual abuse;

- Allows the court to close the courtroom for the testimony of, and relating to, dependent persons with a substantive cognitive impairment;

- Allows a magistrate to postpone a preliminary hearing to accommodate the needs of a dependent person;

- Allows the examination of a witness to be closed to the public during the testimony of a dependent person with a significant cognitive impairment who is complaining of a sex offense if testimony before the general public would be detrimental and there are no other alternatives;

- Provides for a jury instruction concerning the evaluation of the testimony of a person with a developmental disability or cognitive, mental or communication impairment;

- Extends the accommodations extended to victims with a disability to victims of elder or dependent adult abuse;

- Provides that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until the failure is discovered by an agency designated to accept reports of abuse;

- Expands the definition of physical abuse of an elder or dependent person to include lewd or lascivious acts; and,

- States legislative intent to ensure that people who cannot live independently are treated fairly by the criminal justice system, and that developmentally disabled and other dependent persons who are witnesses in criminal cases are given equal access to the criminal justice system.

Rape: Evidence of Sexual Conduct

Existing law permits the submission of an affidavit alleging facts relating to the prior sexual conduct of the complaining witness in a rape trial. These allegations are reviewed by the court to determine if they are sufficient to require a hearing to be conducted.

The allegations contained in the affidavit are not confidential and are available for inspection by a member of the public. If the court determines that the information contained in the affidavit is insufficient or irrelevant and denies the motion, the information contained in the affidavit is still available to the public.

AB 2829 (Bogh), Chapter 61, requires that an affidavit in support of a motion to introduce evidence of sexual conduct of the complaining witness be filed under seal. Specifically, this new law:

- Requires that an affidavit in support of a motion to introduce evidence of sexual conduct of the complaining witness be filed under seal, and shall only be unsealed by the court to determine if the offer of proof is sufficient to order

a hearing and then shall be resealed.

- Provides that an affidavit reviewed by the court and resealed shall remain sealed unless the defendant raises an issue on appeal relating to the offer of proof contained in the sealed document.

- Provides that when the defendant raises an issue on appeal relating to the offer of proof contained in the sealed affidavit, the court shall allow the Attorney General and the appellate attorney access to the sealed affidavit. The information in the affidavit shall be limited to the pending proceeding.

Police Reports: Personal Confidential Information

Police reports are often attached to arrest warrants or criminal complaints in order to demonstrate that probable cause for the arrest or complaint exists. These documents become part of the court file and are available to the public. Further, the Office of the General Counsel of the Administrative Office of the Courts recently issued an opinion stating that when a court considers a police report in the adjudication of a case, the report must be made a part of the record and made available to the public. However, police reports contain personal identification information of victims and witnesses.

SB 58 (Johnson), Chapter 507, requires county district attorneys, the courts, and law enforcement to establish a mutually agreeable procedure to protect personal confidential information regarding a victim or witness contained in a police report submitted to a court. Specifically, this new law:

- Requires county district attorneys, the courts, and law enforcement to establish a mutually agreeable procedure to protect personal confidential information regarding a victim or witness contained in a police or investigative report if such a report has been submitted to a court by a prosecutor or law enforcement officer in support of specific actions.

- States that the prosecutor may not construe this section to impair or affect the disclosure of materials to the defendant or his or her attorney.

- States that this new law shall not be construed to impair or affect procedures regarding the disclosure of confidential informants or sealed search warrant affidavits, as specified.

- Provides that this new law shall not be construed to impair or affect criminal defense counsel's access to unredacted reports otherwise authorized by law or the submission of documents in support of a civil complaint.

- States that "confidential personal information" includes, but is not limited to, an address, telephone number, driver's license number, social security number, date of birth, place of employment, employee identification number, mother's

maiden name, demand deposit account number, savings or checking account number, or credit card number.

Victims of Crime Program

In January 2003, it was predicted that the Restitution Fund might end Fiscal Year 2003-04 with a deficit of $80 million. The Victim Compensation and Government Claims Board implemented new policies to prevent the Fund from becoming insolvent. Now, the Restitution Fund no longer has a deficit and is expected to remain solvent in the future.

SB 631 (McPherson), Chapter 223, makes numerous changes to the Penal Code relative to the Victims of Crime Program (VCP) in order to enhance the collection of restitution fines and increase Restitution Fund revenue. Specifically, this new law:

- Requires a defendant who has an unpaid balance on a restitution order or fine 120 days prior to the time of his or her release from probation to complete a current financial statement at least 90 days before release, as specified.

- Makes it a misdemeanor punishable by up to six months in the county jail or a fine not to exceed $1,000 for willfully making false material statements on the required financial statement.

- Specifically allows a person to be prosecuted for the crime of perjury if applicable.

- Permits the victim and the Board to have access to both the initial financial disclosure statement and the current financial statement.

- Clarifies that the VCP can be reimbursed from restitution fines for payments, as specified.

- Requires the court clerk to notify the Board of a restitution order, as specified.

- Requires that a probation revocation restitution fine be assessed at the time the court imposes sentence and judgment, and provides that the probation revocation restitution fine shall only become effective at the time of probation revocation.

- Provides that probation revocation restitution fines shall only be waived or reduced when the court finds compelling and extraordinary reasons, as specified.

- Adds specific references to fines ordered to the existing provision of law that states that judgments may be enforced in the manner, as specified.

- Permits the Director of the California Department of Corrections (CDC) to deduct moneys from a ward transferred from the California Youth Authority to the CDC and who had a fine assessed against him or her pursuant to Welfare and Institutions Code Sections 730 et seq., as specified.

- Makes the Secretary of the State and Consumer Services Agency the chair of the Board.

Domestic Violence Rape Grant Programs

In October 2002, the State Auditor released a report concluding that the Office of Criminal Justice Planning's (OCJP) administration of its domestic violence grant program had several structural problems including failing to adopt guidelines to determine the extent OCJP weighs grant recipients' past performance when awarding funds, failing to always provide unsuccessful grant applicants with the necessary information or time to challenge OCJP's award decisions, missing opportunities to seek the guidance of an advisory committee, and inconsistently monitoring grant recipients or ensuring that identified problems are remedied. Following the abolishment of OCJP in the 2003-04 Budget, the Office of Emergency Services (OES) was made responsible for administering many OCJP programs, including the domestic violence grant program which provides funding for shelters and a grant program that funds rape crisis centers.

SB 914 (Bowen), Chapter 840, reforms the application, administration, and program monitoring process for grants awarded to domestic violence and sexual assault/rape victim services providers. Specifically, this new law:

- Establishes, beginning in 2005, a funding and appeal process for OES to use in distributing grant awards to domestic violence shelters and rape crisis centers, as well as due process for grant applicants and grantees. The following provisions are applicable to both groups:

  - Provides that OES, in collaboration with its respective advisory committee, shall administer the statewide domestic violence program and the sexual assault/rape crisis center victim services program;

  - Provides that OES shall be responsible for establishing the process and standards for determining whether to grant, renew, or deny funding to providers applying or reapplying for funding, a system for grading applications, and an appeal process for applicants or providers denied funding or subject to a funding reduction. A description of both the grading system and appeal process shall be provided to all applicants/grantees;

- Provides that grants shall be awarded for maintaining facilities or services previously funded, expanding existing services, or establishing new facilities in under served or unserved areas. Grants shall be awarded for a three-year term;

- Provides that shelters and rape crisis centers not funded in the most recent cycle shall be subject to a competitive Request for Proposal process and, to the extent possible, the required response shall not exceed 25 pages, excluding attachments. Currently funded providers shall be subject to a "non-competitive" Request for Application (RFA) process that considers a review of past performance. To the extent possible, the RFA required response shall not exceed 10 pages, excluding attachments;

- Provides that OES shall conduct a minimum of one performance assessment-based site visit, as specified, per three-year term for each agency receiving funding;

- Provides that OES shall provide, within 60 days of the visit, a written report to the provider summarizing its performance, deficiencies, needed corrective action, and a deadline for completing the needed corrective action, as well as develop a plan for verifying completion of corrective action. This new law provides OES with discretion to require immediate corrective action where deficiencies present a significant health or safety risk;

- Provides that OES shall not deny a RFP if the provider did not received a site visit during the previous three years unless OES is aware of criminal violations related to the administration of grant funding;

- Provides that if corrective action is deemed necessary and a provider fails to comply or OES determines that the provider cannot reasonably comply, OES shall determine whether continued funding for the provider should be reduced or denied. Funding may be reduced or eliminated for failing to meet standards;

- Provides that if a provider applies or reapplies for funding and funding is denied or reduced, the denial or reduction decision shall be provided in writing to the provider, with a written explanation of the reasons for the reduction or denial;

- States legislative intent that additional funding shall be provided to expand services to underserved or unserved areas, and provides that OES, upon determining that expansion of services is needed, may reduce the base funding of all funded providers;

- Provides that notwithstanding any other provision, OES may reduce funding to a provider if federal funding is reduced, and that nothing in this new law shall be construed to supercede any functions or duties required under federal law; and,

- Requires that grant recipients demonstrate specified funding matching, fund raising, and staffing criteria consistent with existing law.

- Transfers the existing Domestic Violence Advisory Council to OES and provides that OES shall collaboratively administer domestic violence programs with the Council.

- Provides that rape crisis center grant recipients shall be required to provide eight specified services for which OES shall provide financial and technical assistance.

- States legislative intent that the domestic violence program within the Domestic Violence Branch and the sexual assault/rape crisis programs within the Sexual Assault Branch of OCJP, as well as the Battered Women's Shelter Program administered by the Department of Health Services, be consolidated.

Domestic Violence: Interview Support

Existing law grants victims of sexual assault the right to have a victim advocate and support person present during interviews by law enforcement, district attorneys, and defense attorneys.

SB 1441 (Kuehl), Chapter 159, provides that victims of domestic violence or abuse the right to have a domestic violence counselor and a support person of the victim's choosing present at an interview by law enforcement authorities, district attorneys, or defense attorneys, except under specified circumstances. Specifically, this new law:

- Grants victims of domestic violence or abuse, as defined, the right to have a domestic violence counselor, as defined, and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys.

- Provides that the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be

detrimental to the purpose of the interview.

- Requires that, prior to the commencement of the initial interview by law enforcement or district attorney personnel pertaining to a criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse shall be notified orally or in writing by the law enforcement or district attorney personnel that he or she has the right to have a domestic violence counselor and a support person of his or her choosing present.

- Provides that at the time the victim is advised of his or her right to have a domestic violence counselor and support person, the attending law enforcement authority or district attorney is also required to advise the victim that this right applies to any interview by the defense attorney, or investigators or agents employed by the defense attorney.

- Provides that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

WEAPONS

.50 Caliber Rifles

The .50 caliber rifle weighs between 28 to 60 pounds and comes in bolt action and semiautomatic versions. The term ".50 BMG" stands for Browning machine gun (one of the earliest firearms to use the ammunition) and is a technical designation for the round used in the weapon. The diameter of this type of round is one-half inch (or ".50") and the lengths vary from about three to six inches. Manufacturers of the rifles claim that the rifle is accurate up to 2,000 yards and effective up to 7,500 yards. The .50 BMG cartridge is similar to common hunting calibers. The larger safari hunting cartridges are also available to the public. The .50 caliber ammunition, as well as other rounds used to hunt deer or larger game or for competitive shooting of 600 yards or greater, are capable of piercing body armor.

The existing Roberti-Roos Assault Weapons Control Act of 1989 provides that any person who unlawfully manufactures an assault weapon is guilty of a felony, punishable by imprisonment in the state prison for four, six, or eight years. Further, any person who unlawfully possesses an assault weapon is guilty of a public offense, punishable by an alternate felony-misdemeanor. However, existing law allows a person who lawfully possessed and registered an assault weapon with the Department of Justice (DOJ) to keep the firearm.

AB 50 (Koretz), Chapter 494, adds the .50 caliber BMG rifle to the list of dangerous weapons and creates new felony for the manufacture, sale, or importation without a permit, except as specified. Possession of such a rifle

without registration would generally be a misdemeanor. Specifically, this new law:

- Re-titles the assault weapons law to the "Roberti-Roos Assault Weapons Control Act of 1989 and the .50 Caliber BMG Regulation Act of 2004."

- Expands existing provisions that make it an offense, punishable by four, eight, or twelve years in state prison, for any person to commit an assault upon the person of another with a machine gun or an assault weapon and six, nine, or twelve years in state prison for such an assault upon the person of a peace officer or firefighter to include an assault with a .50 BMG rifle.

- Includes tracking the possession and ownership of .50 BMG rifles in the Prohibited Armed Persons File database, but specifies that DOJ shall use the Consolidated Firearms Information System rather than the Automated Firearms System.

- Defines ".50 BMG cartridge" and ".50 BMG rifle," and provides that the rifle definition does not include a firearm already considered an assault weapon or machine gun under existing law.

- Adds .50 BMG rifles to the assault weapon-related section that provides, subject to certain exceptions, that any person who manufactures or causes to be manufactured, transports, or imports, keeps for sale, or offers for sale such a firearm shall be guilty of a felony punishable by four, six or eight years in state prison, as well as to the accompanying sentence enhancement provision for anyone who transfers, lends, sells, or gives such a firearm to a minor.

- Provides that the penalty for unlawfully possessing an unregistered .50 BMG rifle is imprisonment in the county jail not to exceed one year and/or a fine not to exceed $1,000, however, there would be a penalty step-down to an infraction punishable by a fine of up to $500 for a first-time violation of the prohibition on possession of a .50 BMG rifle if specified conditions are met.

- Requires any person who possesses a .50 BMG rifle to register the firearm no later than April 30, 2006.

- Authorizes the DOJ to register legally possessed BMG rifles until April 30, 2006; to assess a $25 registration fee; and to issue dangerous weapons permits for their possession, sale, manufacture and transportation.

- Provides that the fees collected for the registration of .50 BMG rifles and assault weapons shall be deposited in the Dealers' Record of Sale Special Account and provide that the DOJ's costs associated with modifying its data system to accommodate .50 BMG rifles shall not be paid from this Account.

- Adds .50 BMG rifles to the provision authorizing a person to relinquish specified firearms to a police or sheriff's department.

- Provides that the standard provisions relative to police or dispatcher broadcast guidelines for assault weapons also apply to .50 BMG rifles.

- Authorizes a licensed firearm dealer to transport, display at gun shows, sell and transfer for the purposes of servicing and repairing a .50 BMG rifle, as specified.

- Requires DOJ to conduct an education campaign regarding the .50 BMG rifle laws.

- Recasts the existing assault weapon penalty step-down provision that allows a first violation of possession of an assault weapon to be an infraction if specified conditions are met.

- Makes various updating and corresponding changes to reflect statutory changes from 2003 legislation, largely reflecting changes made by SB 238 (Perata), Chapter 499, Statutes of 2003.

Park Rangers Employed by Municipal Water Districts as Peace Officers

Existing law authorizes the formation of county and municipal water districts and grants to those water districts specified powers. These powers include the right to employ a suitable security force, including employees designated as security officers. Persons designated as security officers by a municipal utility district are granted limited peace officer authority if the primary duty of the officer is the protection of the properties of the utility district and the protection of persons thereon.

Existing law also grants limited peace officer status to a person designated by a local agency as a park ranger if the primary duty of the officer is the protection of the park and other property of the agency and the preservation of the peace therein.

Due to an unpublished Superior Court decision, it was unclear whether or not municipal water districts were considered local agencies that have the authority to hire park rangers who have limited peace officer authority.

AB 1119 (Nation), Chapter 799, authorizes a municipal water district to employ park rangers who are peace officers if the primary duty of the park ranger is the protection of the properties of the municipal water district and the protection of persons thereon. The authority of such peace officers extends to any place in California for the purpose of performing their primary duty, when making an arrest as to any public offense which presents an immediate danger to person or

property, or an escape of the perpetrator. Those peace officers may carry firearms only if authorized by their employing agency.

This new law also states that every park ranger hired by a water district shall conform to the standards for peace officers adopted by the Commission on Peace Officer Standards and Training. Any park ranger who fails to conform to those standards shall not have the powers of a peace officer.

Firearms

Existing law generally regulates firearms and contains cross-references to federal regulations for definitional and other purposes. Existing cross-references in state law should be conformed to reflect the recent renumbering of certain sections in the Federal Code of Regulations.

AB 1232 (Lowenthal), Chapter 247, conforms various existing cross-references to renumbered sections of the Federal Code of Regulations and takes effect immediately.

Firearms: Prohibited Persons

Under existing law, a firearm seized during an investigation may be returned without checking if the person receiving the firearm is prohibited from owning or possessing a firearm. The Department of Justice (DOJ) has been training peace officers to conduct a background check before returning a firearm to its owner, enter the firearm into the Automated Firearms System (AFS), and establish procedures for disposal of firearms when the person is a prohibited person.

AB 2431 (Steinberg), Chapter 602, requires a person requesting the return of a firearm in the custody of a law enforcement to make an application to the DOJ to determine if that person is eligible to possess a firearm and provides for the disposal of firearms belonging to persons prohibited from possessing firearms. Specifically, this new law:

- Prohibits a law enforcement agency that has taken custody of a firearm from returning the weapon until the agency verifies that the person is not prohibited from possessing a firearm, the firearm has not been stolen, and the firearm has been recorded in the AFS.

- Requires that the applicant provide the DOJ with valid Department of Motor Vehicle identification, name, address, date of birth, citizenship status, and the firearm's make model and serial number. This new law allows a non-resident to submit a valid driver's license or state-issued identification card from the state of residence as proof of identity.

- Makes it a misdemeanor to knowingly omit required information or to furnish fictional information on the application to determine eligibility.

- Requires the DOJ, if it denies an application, to notify the applicant and provide a form to enable the applicant to sell or transfer the firearm to a licensed dealer.

- Authorizes the DOJ to charge a fee sufficient to cover its costs for firearm clearance determinations and requires that the funds be deposited into the Dealer's Record of Sale (DROS) Special Account. This new law sets the DOJ fee for processing the firearm clearance request at $20 plus $3 for each additional handgun being processed as part of the request and allows for future increases based on the California Consumer Price Index.

- Exempts an individual seeking to retrieve a stolen firearm from the processing fee if the firearm was reported stolen to a law enforcement agency, as specified.

- Allows the imposition of a storage fee; however, the storage fee may be waived by the local or state agency upon proof that the firearm was stolen and limits the storage fee, as specified.

- Allows the DOJ 30 days to complete the background check except as specified.

- Deletes obsolete handgun waiting period requirements that have been replaced by newer requirements.

Entertainment Firearms Permits

Firearms are often loaned to the entertainment industry for use as a prop in a motion picture, television, video, theatrical, or other entertainment production or event. Earlier this year, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) informed the entertainment industry of its concern that some loans of firearms do not comply with federal law.

SB 231 (Scott), Chapter 606, responds to the ATF concerns, authorizing the Department of Justice (DOJ) to establish and issue entertainment firearms permits that designate a person who may possess firearms loaned to the entertainment industry for use as props in motion picture, television, video, theatrical, or other entertainment productions. Specifically, this new law:

- Authorizes the DOJ to issue an "entertainment firearms permit" to a person 21 years of age or older who is not prohibited from possessing or receiving firearms which would allow the permit holder to possess firearms loaned to him or her solely as a prop for use as a prop in a motion picture, television,

video, theatrical, or other entertainment production or event.

- Specifies information that shall be included in the application for a permit, the process for the background check, and authorizes DOJ to receive updated information regarding persons who become prohibited from possessing firearms during the term of the permit.

- Establishes a misdemeanor for an applicant to furnish a fictitious name, address, or knowingly incorrect or incomplete information.

- Specifies that the initial application fee shall be $104 and the annual renewal fee shall be $29, as well as directs the accounts to which the fees shall be deposited.

- Provides that the implementation of the entertainment firearms permit program by DOJ, except the annual review and potential adjustment of fees, shall be exempt from the Administrative Procedures Act.

- Directs DOJ to annually review the fees associated with the entertainment firearms permit and, if necessary, adjust the fees to ensure that the fees fully fund but not exceed the actual cost of the permit program.

- Specifies that the entertainment firearms permit shall be valid for one year and shall be invalid if at any time during the year the permit holder becomes prohibited from possessing or receiving firearms.

- Recasts the existing exemption from the licensed firearm dealer transfer and handgun safety certificate requirements for firearms used as theatrical props into three distinct provisions:

  - Largely retains the existing exemption for loans of unloaded firearms for theatrical prop purposes, but specifies that the exemption applies to a transfer by a person who is neither a state-licensed dealer nor a federal firearms licensee (FFL) and limits this exemption to infrequent transactions and unloaded firearms.

  - Applies the exemptions to loans of unloaded firearms for theatrical prop purposes from a FFL to a person who possesses a valid entertainment firearms permit, exempts the licensure verification requirements applicable to FFL to FFL transfers, and requires the loaning person to retain a photocopy of the entertainment firearms permit.

  - Applies the exemptions to loans of unloaded firearms for theatrical prop purposes from a state-licensed dealer to a person who possesses a valid entertainment firearms permit, exempts these loans from specified state license forfeiture laws and the licensure verification requirements applicable to FFL to FFL transfers, and requires the loaning person to

retain a photocopy of the entertainment firearms permit.

- Exempts the loan of an unloaded firearm for use as a theatrical prop, as specified, by a state-licensed dealer to a person who possesses a valid entertainment firearms permit from the record of transaction requirements.

- States legislative intent regarding the purpose of this new law and that the fees established may be adjusted to include only the costs of the entertainment firearms permit program.

Flame-Throwers: State Fire Marshal Regulation

Existing law defines "flame-throwers" as a destructive device; places a number of restrictions on the use, possession, manufacture, of destructive devices, with exceptions for law enforcement and military; and punishes violations by specified misdemeanor and felony penalties

SB 1781 (Knight), Chapter 496, simplifies the regulatory process for flame-throwing devices by requiring the State Fire Marshall (SFM) to adopt regulations governing the possession and use of a flame-thrower. Specifically, this new law:

- Provides that no person shall use or possess a flame-throwing device without a valid flame-throwing device permit issued by the SFM.

- Requires that the SFM adopt regulations related to the issuance of flame-throwing device permits. The SFM would be required to consult with the Department of Justice (DOJ) regarding the latter's regulations for the use and possession of destructive devices. At a minimum, the SFM regulations shall require a permit holder to possess a current, valid certificate of eligibility to own or possess firearms issued by the DOJ and shall address background investigations of an applicant or holder of a flame-throwing device permit and the secure storage and transportation of a flame-throwing device.

- Provides that the SFM may issue or renew a permit to use and possess a flame-throwing device only if the applicant or permit holders are not addicted to any controlled substance; possesses a current, valid certificate of eligibility; and meets any other standards specified in the required SFM regulations.

- Provides that if the SFM denies an application for, the renewal of, or revokes a flame-throwing device permit, the applicant for a flame-throwing device permit or permit holder shall be entitled to an administrative hearing, as specified.

- Provides that the SFM shall revoke a flame-throwing device permit if the permit holder does not comply with these statutes and the required SFM regulations.

- Directs the SFM to establish fees to administer and enforce these provisions and that the fees shall be deposited in the SFM Licensing and Certification Fund.

- Provides that the SFM shall seize any flame-throwing device in the possession of any person who does not have a valid flame-throwing device permit.

- Provides that any person who uses or possesses any flame-throwing device without a valid flame-throwing device permit is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the county jail for a term not to exceed one year or in the state prison; by a fine not to $10,000; or, by both imprisonment and fine.

- Deletes flame-throwing devices from the existing Penal Code definition of "destructive devices."

Annual Omnibus Code Revisions

The Senate Public Safety Committee's annual omnibus bill is introduced in order to make technical and minor changes or corrections to various code sections.

SB 1797 (Committee on Public Safety), Chapter 593, makes a number of technical changes and corrections to specified code sections relating to firearms.

- Adds custodial and transportation officers to provisions of law that require the Department of Justice (DOJ) to inform a state or local agency if a person applying for a position as a peace officer is prohibited from owning, possessing, or purchasing a firearm.

- Provides that, upon request of a state or local agency, the DOJ shall notify the state or local agency as to whether or not a custodial or transportation officer authorized to carry a firearm is prohibited or subsequently prohibited from owning, possessing, or purchasing a firearm.

- Adds a protective order issued under provisions of the Family Code to the list of circumstances that make it a crime to own, purchase, or possess a firearm.

- Deletes a duplicative code section relating to the Firearms Safety and Enforcement Special Fund.

- Precludes firearm dealers from charging additional unauthorized fees in connection with firearm transfers.

- Makes technical and cross-referencing changes to a number of firearms-related provisions.

Imitation Firearms: Prohibiting Public Display

Imitation firearms, such a BB and pellet guns, are being produced by some manufacturers to look so realistic that trained law enforcement personnel may not easily differentiate them from a real firearm. Several instances have occurred where this potential confusion has led to unfortunate circumstances, including shootings involving minors.

SB 1858 (Dunn), Chapter 607, establishes a new definition for imitation firearms, generally prohibits the open display or exposure of imitation firearms in public places, and make numerous other changes related to imitation firearms. Specifically, this new law:

- Defines "imitation firearm" as "any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm."

- Creates a misdemeanor for a person to alter or remove any required coloration or markings on an imitation firearm or another device, as specified, to make it look more like a firearm. This provision does not apply to manufacturers, importers, or distributors, or to use of imitation firearms in theatrical productions.

- Creates a misdemeanor for any manufacturer, importer, or distributor of imitation firearms who fails to comply with federal marking requirements.

- Provides that for any imitation firearm manufactured after July 1, 2005 and offered for sale in California shall, at the time of sale, be accompanied by a "conspicuous advisory" in writing, as specified, that explains the imitation firearm may be mistaken for a real firearm, that altering the coloration or markings is dangerous and may be a crime, and that brandishing or displaying the imitation firearm in public may cause confusion and may be a crime.

- Provides that any manufacturer, importer, or distributor who fails to comply with the advisory requirement shall be liable for a civil fine for each action brought by a city attorney or district attorney. The fine schedule would be a maximum of $1,000 for a first offense; a maximum $5,000 for a second offense; and a maximum of $10,000 for a third or subsequent offense.

- Relocates, renumbers, and makes largely conforming changes the existing statute regulating the purchase, sale, manufacture, transport, or receipt of an imitation firearm; adds "ceremonial activities" and replaces "athletic event" with "sporting event" as a permissible circumstances under which an imitation firearm may be purchased, sold, shipped, transported, distributed, or received; deletes the requirement that non-firing, historically significant collector replicas designed after 1898 may only be issued as a commemorative by a nonprofit organization; and expands the current coloration exception for

imitation firearms to include colors and patterns authorized by federal regulations governing imitation firearms.

- Creates the offense of openly displaying or exposing an imitation firearm in a public place, punishable as an infraction for the first two offenses and a fine of $100 and $300, respectively. A third or subsequent violation would be punishable as a misdemeanor.

- Provides that these penalties are not intended to preclude prosecution under specified provisions that prescribe a higher penalty for possessing or carrying a BB device or imitation firearm in specified locations such as public buildings, airports, or school grounds.

- Defines "public place" for purposes of the offense as "an area open to the public and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings."

- Provides that the "public place" prohibition shall not apply under 13 circumstances or classification of use.

- Amends the existing brandishing statute to incorporate the revised definition of "imitation firearm."

- Amends the existing statute that grants the Legislature exclusive authority to regulate the manufacture, sale, or possession of imitation firearms to cross-reference the revised definition.

MISCELLANEOUS

State Prison: Tobacco Products

Reception centers and virtually all county and local jails have been tobacco free for some time - a prisoner can spend up to one- and one-half year in the local jail and the reception center before being sent to his or her final state prison. As such, prisoners are in a tobacco-free environment for quite some time before being transferred to a state prison, where smoking is allowed. Three state institutions - Wasco State Prison, the California Men's Colony in San Luis Obispo, and the California Medical Facility in Vacaville - have been tobacco free in recent years. No residual behavioral problems have been noted as a result of the ban.

AB 384 (Leslie), Chapter 780, prohibits the possession and use of tobacco products by any person at California Department of Corrections (CDC) and

California Youth Authority (CYA) facilities. Specifically, this new law:

- Requires the Directors of the CDC and the CYA to adopt regulations prohibiting the possession of tobacco products by inmates in state prison and CYA facilities.

- Prohibits the use of tobacco products by any person not an inmate or ward while on the grounds of any facility under the jurisdiction of CDC or CYA except in residential staff housing where inmates are not present.

- Removes the provision that allows the CDC Director to sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his or her jurisdiction who has attained the age of 16 years.

- Removes tobacco from the list of items CDC is authorized to sell at inmate commissaries and canteens.

Park Rangers Employed by Municipal Water Districts as Peace Officers

Existing law authorizes the formation of county and municipal water districts and grants to those water districts specified powers. These powers include the right to employ a suitable security force, including employees designated as security officers. Persons designated as security officers by a municipal utility district are granted limited peace officer authority if the primary duty of the officer is the protection of the properties of the utility district and the protection of persons thereon.

Existing law also grants limited peace officer status to a person designated by a local agency as a park ranger if the primary duty of the officer is the protection of the park and other property of the agency and the preservation of the peace therein.

Due to an unpublished Superior Court decision, it was unclear whether or not municipal water districts were considered local agencies that have the authority to hire park rangers who have limited peace officer authority.

AB 1119 (Nation), Chapter 799, authorizes a municipal water district to employ park rangers who are peace officers if the primary duty of the park ranger is the protection of the properties of the municipal water district and the protection of persons thereon. The authority of such peace officers extends to any place in California for the purpose of performing their primary duty, when making an arrest as to any public offense which presents an immediate danger to person or property, or an escape of the perpetrator. Those peace officers may carry firearms only if authorized by their employing agency.

This new law also states that every park ranger hired by a water district shall conform to the standards for peace officers adopted by the Commission on Peace

Officer Standards and Training. Any park ranger who fails to conform to those standards shall not have the powers of a peace officer.

Sexual Contact with Human Remains

Existing law failed to specify that sexual activity with a corpse is a crime. While there were existing laws dealing with the mutilation, disinterment, and removal of a body from its place of interment and making these acts felonies, existing law did not specifically include sexual acts with human remains.

Under existing law, rape and other sexual offenses must be committed against a person, not a human body. It was unclear if the laws prohibiting mutilation of human remains provided dead bodies with protection from sexual assaults. Although uncommon, some case law had interpreted mutilation of human remains to exclude actions such as removal of two gold crowns from the teeth of a dead body. Various dictionaries define "mutilation" as cutting off limbs and at least one law review commented that the sort of damage done to a corpse during intercourse typically will not result in the removal of a limb or other essential part of the body. Further, the laws against rape do not protect human remains as the California Supreme Court has commented that a female must be alive at the moment of penetration in order to support a conviction of rape under the Penal Code.

However, existing law does provide that with certain exceptions every person who willfully mutilates, disinters or removes from the place of interment any human remains, without the authority of law, is guilty of a felony. This new law expands the scope of this felony to include any person who commits an act of sexual penetration on, or has sexual contact with, any remains known to be human.

AB 1493 (Runner), Chapter 413, amends the Health and Safety Code to include sexual penetration or sexual contact with any remains known to be human to the existing law that makes it a felony to mutilate or disinter any human remains. Specifically, this new law:

- States that it is a felony to commit an act of sexual penetration on, or have sexual contact with, any remains known to be human without authority of law.

- Defines "sexual penetration" as the unlawful penetration of the vagina or anus, however slight, by any person's body or other object; any act of sexual contact between the sex organs of a person and the mouth or anus of a dead body; or any oral copulation of a dead human body for the purpose of sexual arousal, gratification, or abuse.

- Defines "sexual contact" as any willful touching by a person of an intimate part of a dead human body for the purpose of sexual arousal, ratification, or abuse.

Animal Abuse

Existing law regulates the practice of veterinary medicine. Veterinary medicine includes the performance of surgery upon an animal. Existing law generally prohibits cruelty to animals, and certain surgical acts have been determined to be criminal, e.g., the cutting of the solid part of a horse's tail for the purpose of shortening it (known as "docking") is a misdemeanor.

Other acts of cruelty to animals also constitute crimes. For example, maiming, mutilating, torturing, wounding or killing a living animal is an alternate felony/misdemeanor, punishable by imprisonment in a county jail or a state prison; by a fine of $20,000; or by both such fine and imprisonment.

However, under existing law, the surgical procedure generally known as "declawing" is not a crime. Declawing constitutes amputation of a portion of a cat's paw in order to remove its claws. Such amputation is a surgical procedure known as "onychectomy" and is performed in order to remove a cat's claws. "Tendenectomy" is another surgical procedure in which the tendons to the animal's limbs, paws, or toes are cut so that the claws cannot be extended.

Many veterinarians view the practice of declawing cats as an act of cruelty as declawing literally involves amputating part of the cat's paws, including a portion of the bone, and causes pain and discomfort. Declawing is comparable to cutting off part of the human finger at the last joint. Complications from this surgery include damage to the radial nerve, hemorrhage, bone chips that prevent healing, and chronic back and joint pain as shoulder, leg, and back muscles weaken.

Many cats suffer a loss of balance since they can no longer achieve a secure foothold on their stumps. Some cats become lame and even paralyzed. A cat's first defense mechanisms are his or her claws. When the cat's claws are gone, cats bite. In reality, a declawed cat is actually a clubfooted animal that cannot walk normally and must move with his or her weight back on the rear of the pads.

> **AB 1857 (Koretz), Chapter 876,** makes it a misdemeanor to perform or arrange for the performance of, surgical claw removal, onychectomy, or tendenectomy on an exotic or native wild cat species, as defined. This new misdemeanor is punishable by imprisonment in a county jail not to exceed one year; by a fine of $10,000; or by both that fine and imprisonment.
>
> This new law contains an exception for procedures performed solely for a therapeutic purpose. "Therapeutic purpose" means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition that jeopardizes the cat's health and such condition is a medical necessity.
>
> An exception is also provided for domestic cats (felis catus or felis domesticus) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat.

Exotic or native wild cat species are defined to include all members of the feline family, with specified exceptions for domestic cats. Exotic or native wild cats include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

Seized Documents: Procedure for Access

Existing law provides that property taken under authority of a warrant must be retained by the officer in his or her custody subject to the order of the court. Law enforcement officers seizing property do so on behalf of the court that issued the warrant for use in a judicial proceeding. During and after the pendency of a criminal action, the court may entertain a motion for the release of property seized under a search warrant.

AB 1894 (Longville), Chapter 372, provides a procedure for an entity whose business records have been seized by a government agency to demand that the agency provide to that entity, within 10 court days, copies of the documents seized.

Specifically, this new law:

- Authorizes a business entity to file a demand on a government agency to produce copies of business records seized pursuant to a search warrant, and provides that the demand for production of copies of business records shall be supported by a declaration, made under penalty of perjury, that denial of access to the records in question will either unduly interfere with the entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under law.

- Provides that unless the government objects, the above declaration shall suffice if it makes a prima face case that specific business activities or specific legal obligations faced by the entity would be impaired or impeded by the ongoing loss of records.

- Provides that when a government agency seizes business records from an entity and is subsequently served with a demand for copies of those business records, the government agency in possession of those records shall make copies of those available to the entity within 10 court days business days of the service of the demand to produce copies of the records. In the alternative, the agency in possession of the original records may, in its discretion, make the original records reasonably available to the entity within 10 court days following the service of the demand to produce records, and allow the entity reasonable access to copy the records. However, no agency shall be required to make records available at times other than normal business hours.

- Provides that if data is recorded in a tangible medium, copies of the data may be provided in that same medium or another reasonable medium. If the data is stored electronically, electromagnetically, or photo-optically, the entity may obtain either a copy made by the same process in which the data is stored or by another tangible medium.

- Allows the government agency granting the entity access to the original records for the purpose of making copies of the records may take reasonable steps to ensure the integrity and chain of custody of the records.

- Provides that if the seized records are too voluminous to be reviewed or copied in the time period required, the government agency that seized the records may file a written motion with the court for additional time to review the records or make copies.

- Provides that if a court finds that a declaration described establishes a prime face case for copies of the record, the governmental entity may only deny the request when the court determines by a preponderance of the evidence that:

    - Denial of access to the business records or copies of the business records will not unduly interfere with entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under the law; or,

    - Possession of the business records by the entity will pose a significant risk of criminal activity or that the business records are contraband, evidence of criminal conduct by the entity from which the records were seized, or depict a person under the age of 18 years personally engaging in or simulating sexual conduct.

- Provides a government agency that desires not to produce copies of, or grant access to, seized business records shall file a motion with the court requesting an order denying the entity copies of and access to the records. The motion must be in writing and filed and served upon the entity prior to the expiration of 10 court days following the services of the demand to produce records or as soon as reasonably possible after the discovery of the risk of harm. A motion hearing shall be held within two court days of filing the motion.

- Authorizes a government agency to seek an in-camera hearing, including if the requesting entity is or is likely to become the target of an investigation. If the entity is not a target of the investigation, the court shall hold the hearing in open court unless there is a particular factual showing by the government agency in its pleadings that a hearing in open court would impede or interrupt an ongoing criminal investigation, as specified.

- Provides that the reasonable and necessary costs of producing copies of business records are to be borne by the entity requesting copies of the records.

Either party may request the court to resolve any dispute regarding these costs.

Ex-Offender Literacy Act

Existing law establishes an education pilot program that authorizes the court to require any adult convicted of a nonviolent or nonserious offense to participate in a program designed to assist the person in obtaining the equivalent of a twelfth-grade education as a condition of probation. The initial benchmark of success set by law was 10 percent of the persons participating in the program obtain the equivalent of a twelfth-grade education within three years.

AB 1901 (Ridley-Thomas), Chapter 74, adds an alternate benchmark for success to an existing probation education pilot program. Specifically, this new law:

- Entitles this act the "Ex-Offender Literacy Act."
- Allows the probation education pilot program to be deemed successful if either of the following goals are met:
  - At least 10 percent of the persons participating in the pilot projects obtain the equivalent of a twelfth-grade education within three years; or,
  - At least 10 percent of the persons participating in the pilot program improve their academic performance by three grade levels within three years.

Fire Prevention: Penalties

Across California, fires from the illegal burning of trash often spread out of control causing extensive damage to life and property. Though the burning of trash is currently illegal, the fines are too low to serve as an adequate deterrent.

AB 1924 (Bogh), Chapter 90, increases the fines for Public Resources Code violations relating to fire and the danger associated with the spread of fire. Specifically, this new law:

- Increases the minimum fine from $50 to $100 and the maximum fine from $1,000 to $2,000 for any person convicted of entering upon any land closed to the public by Governor's proclamation due to conditions tending to cause or allow the rapid spread of fire.
- Increases the fine from a maximum of $200 to $500 for a first conviction for violating flammable waste restrictions relating to solid waste facilities.

- Increases the minimum fine from $250 to $500 and the maximum fine from $1,000 to $2,000 for a second or subsequent conviction of violating flammable waste restrictions relating to solid waste facilities.

Group Home Placements: Sharing Information with Law Enforcement

Under current law, a delinquent ward of the juvenile court can be placed in an out-of-county group home or community care facility if: (a) the juvenile has identifiable needs requiring specialized care that cannot be provided in a local facility, or his or her needs dictate physical separation from his or her family; and, (b) the county of residence agrees to pay the placement county the costs of providing services to the minor.

Prior to an out-of-county placement, the probation officer of the supervising county must send written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the ward is being placed. Existing law also prohibits a group home from receiving a delinquent ward of the juvenile court until the above-described notice is received by the probation officer of the county in which the facility is located.

AB 1948 (Aghazarian), Chapter 375, provides that where a minor adjudicated of a felony is placed in a group home outside the juvenile's county of residence, the probation department of the receiving county may disclose specified information to the sheriff of the receiving county or to the police department of the city in which the group home is located. Specifically, this new law:

- Provides that probation may share the name of the minor, the felony offense or offenses for which the minor has been adjudicated, and the address of the group home.

- Provides that the information provided to the sheriff or police department may only be used for law enforcement purposes and shall not be used in any manner inconsistent with the rehabilitative program in which the minor has been placed or with the progress the minor may be making in the placement program.

- Provides that this information may be provided to other law enforcement agencies consistent with the limitations above, but provides that the information is otherwise confidential.

Disposition of Human Remains

Under current law, if the person with the power to dispose of a deceased's remains is not taking action either willfully or because of other extenuating circumstances, a body may remain in the possession of a funeral authority for a lengthy period of time as disposition may not occur unless the person designated by law with control agrees on the method of disposition.

AB 2811 (Runner), Chapter 307, provides that if the person authorized to control the disposition of a decedent's remains fails to act or cannot be found after a reasonable inquiry within seven days of death, except as specified, the right to control is passed automatically to the next relative on the list. Specifically, this new law:

- Allows a competent surviving spouse 10 days to act before relinquishing the right to control the disposition.

- Adds the sole surviving competent adult sibling of the decedent to the list of persons who may have the right and the duty to dispose of the decedent's remains.

- Provides that the sibling shall be vested with this duty and after the surviving spouse, children and parents, but before other surviving relatives and the public administrator.

- Provides that if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings will be vested with the right and duty of disposition.

- Provides that the holder of the right and duty to control the disposition of the remains shall relinquish control to the next person or persons in the order of succession if, within seven days, he or she fails to act or fails to delegate his or her authority to some other person or cannot be found after a reasonable inquiry.

- Provides that if the right and duty of disposition is held by a group of persons and they fail to agree on disposition within seven days of death, a cemetery authority having possession of the remains or a relative of the decedent may petition the superior court in which the decedent resided at the time of death or in which the remains are located for an order of the court determining, as appropriate, the succession of persons among the defendants who shall have the control of disposition.

Emergency Medical Services

Each county is authorized to establish an emergency medical services fund. Specified penalty revenues fund the emergency medical services fund. The money in the fund is available for the reimbursement of physicians, surgeons, and hospitals for losses incurred in the provision of emergency medical services when payment is not otherwise made for those services.

Although each county is authorized to establish an emergency medical services fund, counties are not required to do so. Revenue from the penalties assessed on criminal fines

could be used for other authorized purposes, such as courthouse construction and rehabilitation.

Santa Barbara County committed its share of the criminal penalty assessment fund to courthouse construction rather than an emergency medical services fund. The revenue was committed by a bond issuance to be repaid over a period of 20 years. Since the funds were committed well into the future, they cannot be reallocated.

Santa Barbara County faced a crisis in the lack of funding for their trauma center and payments to physicians for emergency medical services, and faced the potential loss of these services to their county.

SB 635 (Dunn), Chapter 524, authorizes Santa Barbara County to collect additional penalties and fines, until January 1, 2007, provided that the Santa Barbara County Board of Supervisors adopts a resolution stating that the implementation of these provisions is necessary to the county for the purposes of providing payment for emergency medical services. Specifically, this new law:

- Allows Santa Barbara County to impose an additional penalty of $5 for every $10, or fraction thereof, on every fine, penalty, or forfeiture collected for criminal offenses, including all violations of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses.

- Permits Santa Barbara County to impose an additional $2.50 penalty assessment on every parking ticket where a fine is imposed.

- Requires the Santa Barbara County Board of Supervisors to report to the Legislature whether, and to the extent that, actions are taken by the county to implement alternative local sources of funding.

- States that this new law is effective only until January 1, 2007, and as of that date is repealed unless a later statute enacted before January 1, 2007 deletes or extends that date.

California Department of Corrections: Drug Utilization Protocol

The California Department of Corrections (CDC) does not have a formal system in place for the substitution of generic drugs for patient inmates prescribed higher-cost, 'name brand' pharmaceuticals. The CDC should be required to identify best management practices and protocols for medication and generic substitutes.

SB 1426 (Ducheny), Chapter 383, provides that the CDC shall adopt policies and procedures regarding medication utilization protocols. Specifically, this new law:

- Provides that the CDC shall adopt policies, procedures, and criteria to identify selected medication categories for the development of utilization protocols

based on best practices and the use of generic and therapeutic substitutes, as appropriate.

- Provides that the CDC shall develop utilization and treatment protocols for select medication categories based on defined medical criteria.

- Provides that the CDC shall provide information, on or before April 1, 2006, as part of the fiscal committee budget hearings for the 2006-07 budget year on the impact of the adoption of these protocols.

- Provides that the CDC shall coordinate the implementation of this section with the Department of General Service's prescription drug bulk purchasing program.

- States legislative intent that the CDC shall complete the implementation of this section utilizing existing CDC resources.

Corrections

Existing law requires the Board of Prison Terms (BPT) to notify each prisoner who is an undocumented alien subject to deportation that he or she may be eligible to serve his or her term of imprisonment in his or her country of origin. This notification must be given upon entry of the person into any facility operated by the California Department of Corrections (CDC), and at least annually thereafter.

Pursuant to treaties in force between the United States and various foreign countries, a foreign national convicted of a crime in the United States and a United States citizen convicted of a crime in a foreign country may apply for a prisoner transfer to his or her country of origin. The United States is a signatory to 12 multilateral and two bilateral prisoner transfer treaties.

A prisoner seeking a transfer to his or her country of origin must submit a written request to the BPT. As part of the request for transfer, the prisoner must request that the receiving nation submit a letter to BPT stating an intention to accept the prisoner, indicating the intended duration of the prisoner's sentence in that country, and the parole programs available for the prisoner upon his or her release. The BPT makes a recommendation based upon specified factors.

SB 1608 (Karnette), Chapter 924, expands these provisions to include all foreign nationals. Specifically, this new law:

- States that the CDC shall inform any person who is currently or was previously a foreign national, upon entry into a facility operated by CDC, that he or she may apply to be transferred to serve the remainder of his or her prison term in his or her current or former nation of citizenship;

- Provides that the CDC shall inform the person that he or she may contact his or her consulate;

- States that CDC shall ensure, if notification is requested by the inmate, that the inmate's nearest consulate shall be notified without delay of the person's incarceration;

- Provides that upon the request of a foreign consulate representing a nation that requires mandatory notification under the Vienna Convention, the CDC shall provide the foreign consulate with a list of the names and locations of all inmates that have self-identified that nation as his or her place of birth;

- Requires the CDC to implement procedures to process applications for the transfer of prisoners to their current or former nations of citizenship, and to forward all applications to the Governor or his or her designee for appropriate action;

- Eliminates the annual notification requirement regarding the prisoner transfer program by CDC to inmates who are undocumented aliens subject to deportation.

Flame-Throwers: State Fire Marshal Regulation

Existing law defines "flame-throwers" as a destructive device; places a number of restrictions on the use, possession, manufacture, of destructive devices, with exceptions for law enforcement and military; and punishes violations by specified misdemeanor and felony penalties

SB 1781 (Knight), Chapter 496, simplifies the regulatory process for flame-throwing devices by requiring the State Fire Marshall (SFM) to adopt regulations governing the possession and use of a flame-thrower. Specifically, this new law:

- Provides that no person shall use or possess a flame-throwing device without a valid flame-throwing device permit issued by the SFM.

- Requires that the SFM adopt regulations related to the issuance of flame-throwing device permits. The SFM would be required to consult with the Department of Justice (DOJ) regarding the latter's regulations for the use and possession of destructive devices. At a minimum, the SFM regulations shall require a permit holder to possess a current, valid certificate of eligibility to own or possess firearms issued by the DOJ and shall address background investigations of an applicant or holder of a flame-throwing device permit and the secure storage and transportation of a flame-throwing device.

- Provides that the SFM may issue or renew a permit to use and possess a flame-throwing device only if the applicant or permit holders are not addicted to any controlled substance; possesses a current, valid certificate of eligibility;

and meets any other standards specified in the required SFM regulations.

- Provides that if the SFM denies an application for, the renewal of, or revokes a flame-throwing device permit, the applicant for a flame-throwing device permit or permit holder shall be entitled to an administrative hearing, as specified.

- Provides that the SFM shall revoke a flame-throwing device permit if the permit holder does not comply with these statutes and the required SFM regulations.

- Directs the SFM to establish fees to administer and enforce these provisions and that the fees shall be deposited in the SFM Licensing and Certification Fund.

- Provides that the SFM shall seize any flame-throwing device in the possession of any person who does not have a valid flame-throwing device permit.

- Provides that any person who uses or possesses any flame-throwing device without a valid flame-throwing device permit is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the county jail for a term not to exceed one year or in the state prison; by a fine not to $10,000; or, by both imprisonment and fine.

- Deletes flame-throwing devices from the existing Penal Code definition of "destructive devices."

Annual Omnibus Code Revisions

The Senate Public Safety Committee's annual omnibus bill makes technical changes and corrections to various provisions of code.

SB 1796 (Committee on Public Safety), Chapter 405, makes technical changes and corrections to specified Evidence, Government, Health and Safety, Penal, and Welfare and Institutions Code provisions. Specifically, this new law:

- Amends Penal Code Sections 266(h) and 266(I) to clarify the descriptions of the offenses for which sex offender registration is required.

- Amends existing law which requires that when an order authorizing interception of specified communications is entered, the order shall require a report to the Attorney General and shall be made "not less than 10 days after the order was issued" to "not more than 10 days."

- Amends Penal Code Sections 1337 and 1341 to include persons 70 years or older and dependent adults.

- Makes a number of changes to sections to correct cross-references, punctuation and spelling errors, and make other non-substantive changes

Annual Omnibus Code Revisions

The Senate Public Safety Committee's annual omnibus bill is introduced in order to make technical and minor changes or corrections to various code sections.

SB 1797 (Committee on Public Safety), Chapter 593, makes a number of technical changes and corrections to specified code sections relating to firearms.

- Adds custodial and transportation officers to provisions of law that require the Department of Justice (DOJ) to inform a state or local agency if a person applying for a position as a peace officer is prohibited from owning, possessing, or purchasing a firearm.

- Provides that, upon request of a state or local agency, the DOJ shall notify the state or local agency as to whether or not a custodial or transportation officer authorized to carry a firearm is prohibited or subsequently prohibited from owning, possessing, or purchasing a firearm.

- Adds a protective order issued under provisions of the Family Code to the list of circumstances that make it a crime to own, purchase, or possess a firearm.

- Deletes a duplicative code section relating to the Firearms Safety and Enforcement Special Fund.

- Precludes firearm dealers from charging additional unauthorized fees in connection with firearm transfers.

- Makes technical and cross-referencing changes to a number of firearms-related provisions.