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PUBLIC SAFETY 2006

CREATING A SAFER CALIFORNIA

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ANIMAL ABUSE

Animal Fighting Exhibitions

Cockfighting is an unacceptable form of animal cruelty that is widely practiced even though it is illegal in almost all jurisdictions. Cockfighting is illegal in 48 states; in 31 of those states and the District of Columbia, cockfighting is a felony crime.

In 2003, the Legislature passed legislation that increased the penalties for engaging in this cruel and inhumane activity; however California's anti-cockfighting law still lags behind neighboring states. Arizona, Nevada and Oregon have established felony-level penalties for cockfighting, making California with its simple misdemeanor-level cockfighting penalties a regional refuge for illegal cockfighting activity.

There is an undeniable connection between cockfighting and other significant issues such as illegal gambling; drug trafficking; violence toward people; and, as evidenced by the outbreak of Exotic Newcastle Disease in 2002, the spread of deadly and devastating diseases. Moreover, officials with the World Health Organization believe that cockfighting has contributed to the spread of the deadly H5N1 Avian Influenza throughout Southeast Asia.

SB 1349 (Soto), Chapter 430, increases the penalties for the fighting of animals. Specifically, this new law:

- Increases the penalty for causing any animal to fight with another animal, permitting the same to be done on any property under his or her control, or aiding or abetting the fighting of any animal from up to six months in the county jail, by a fine not to exceed $1,000, or both to up to one year in the county jail, by a fine not to exceed $5,000, or both.

- Increases the penalty for a second or subsequent offense of fighting animals or cocks from a misdemeanor, punishable by up to one year in the county jail; by a fine not to exceed $25,000; or both to an alternate felony/misdemeanor, punishable by up to one year in the county jail or by imprisonment in state prison for 16 months, 2 or 3 years; by a fine not to exceed $25,000; or both, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser penalty.

- Consolidates almost identical code sections relating to the training of birds or animals for the purpose of fighting into one code section.

- Re-organizes provisions of law relating to spectators at an exhibition of animal fighting without increasing the existing penalty.

- Make numerous legislative findings and declarations regarding cockfighting and the spread of disease.

Animal Abuse: Unattended Animals

Summer can be dangerous time for pets, especially those left inside of hot cars. Every year, countless dogs die after being locked in cars while their owners work, visit, shop, or run other errands. These deaths are entirely preventable.

Many pet owners are not aware that even moderately warm temperatures outside can quickly lead to deadly temperatures inside a closed car. For example, within one hour, an outside temperature of 72-degrees Fahrenheit can cause conditions inside a vehicle that adversely affects the health, safety, or well-being of an animal.

Even with the windows left slightly open, an 85-degree outside temperature can cause a temperature of 102 degrees inside a vehicle in 10 minutes and that temperature is reached in just one-half hour. A healthy dog, whose normal body temperature ranges from 101 to 102.5 degrees, can withstand a body temperature of 107 to 108 degrees for only a short time before suffering brain damage or death.

Numerous organizations, businesses and individuals have worked to educate pet owners of the dangers of leaving animals unattended in vehicles in the heat. However, animal control organizations found that educational approaches by themselves have not significantly improved behavior. To be truly effective, these educational approaches must be integrated with enforcement activities.

SB 1806 (Figueroa), Chapter 431, creates criminal penalties for leaving an animal in an unattended motor vehicle under conditions that endanger the health or well-being of the animal. Specifically, this new law:

- Provides that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat; cold; lack of adequate ventilation, food, or water; or other circumstances that could reasonably be expected to cause suffering, disability or death to the animal.

- Makes a first conviction, unless the animal suffers great bodily injury (GBI), punishable by a fine not to exceed $100 per animal. If the animal suffers GBI, the offense is punishable by up to six months in a county jail, a fine not to exceed $500, or by both a fine and imprisonment.

- Makes a subsequent violation, regardless of injury to the animal, punishable by up to six months in a county jail, a fine not to exceed $500, or by both a fine and imprisonment.

- Provides that nothing in this section shall prevent a peace officer, humane officer, or animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat; cold; lack of adequate ventilation, food, or water; or other circumstances that could reasonably be expected

to cause suffering, disability, or death to the animal.

- Requires a peace officer, humane officer, or animal control officer who removes an animal from a vehicle to take it to an animal shelter; other place of safekeeping; or, if the officer deems necessary, to a veterinary hospital for treatment.

- Authorizes a peace officer, humane officer, or animal control officer to take all steps reasonably necessary for the removal of an animal from a motor vehicle including, but not limited to, breaking into the motor vehicle after a reasonable effort to locate the owner or other person responsible.

- Requires a peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle to, in a secure and conspicuous location on or within the motor vehicle, leave the address of the location where the animal can be claimed. The animal can be claimed only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

- Provides that nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep, poultry or other such agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

- States that nothing in this new law shall affect existing liabilities or immunities in current law.

- Makes numerous legislative findings and declarations regarding the dangers of leaving an animal unattended in a motor vehicle.

BACKGROUND CHECKS

Fingerprinting: Certification

Existing law establishes a certification program for persons who roll fingerprint impressions for non-law-enforcement criminal history background checks. The program is administered by the Department of Justice (DOJ), which is the statutorily mandated repository for the state's criminal history records. By statute, the DOJ will not accept fingerprints from a person not certified by DOJ unless he or she is exempt from certification. Certification requires that the applicant undergo a criminal history background check and complete a training program.

A number of Indian gaming tribes have asserted that they are not required to comply with the requirement that any person who rolls fingerprints for employment, certification, or licensing purposes to be certified by DOL. These tribes maintain that as sovereign nations they are obligated only to meet the provisions the gaming compact as it pertains to fingerprint submission: ". . . the Tribal Gaming Agency shall transmit to the State Gaming Agency . . . an original set of fingerprint cards . . . ."

These tribes refused to use certified "rollers", and state law prohibits DOJ from accepting a fingerprint rolled by a non-certified roller unless he or she is exempt from the certification requirement. Tribes were not among the list of exempt rollers.

> **SB 1247 (Runner), Chapter 141,** permits an exemption for an employee of a tribal gaming agency or a tribal gaming operation if: (1) he or she has received training pertaining to applicant fingerprint rolling, (2) he or she has undergone a criminal history background check, and (3) the fingerprints he or she will be rolling are for tribal-state compact compliance purposes only. This new law also clarifies the circumstances under which the DOJ may deny or revoke certification.

Background Checks

The California Health and Human Services Agency (CHHS) convened a Licensing Reform Workgroup. The workgroup recommends that the background check processes of departments under CHHS' jurisdiction be consistent in requiring licensees, certificate holders, and employees in facilities licensed by CHHS departments to obtain clearance prior to contact with clients or residents. Individuals seeking licensure, certification, or employment in facilities licensed by CHHS departments would be required to disclose all convictions, arrests and administrative disciplinary actions. Having consistent background check processes for all departments within the CHHS would enhance protections provided to the vulnerable populations served by state-licensed health and care facilities. Allowing departments within the CHHS to share information on final administrative actions they have taken against licensees or employees will further protect vulnerable populations.

> **SB 1759 (Ashburn), Chapter 902,** makes a number of revisions to criminal clearance provisions for departments under CHHS' jurisdiction, including the Department of Health Services and the Department of Social Services, with regard to clearance requirements before work.

CHILD ABUSE

Child Abuse and Neglect Reporting Law

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 525 (Chu), Chapter 701,** amends several CANRA provisions the procedures for reporting of instances of child abuse or neglect, emotional damage, evidenced by states of being or behavior including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others. Specifically, this new law:

- Includes reports of suspected child abuse or neglect based on instances of actual, or risk of, serious emotional damage in the section providing that these reports may be made to specified law enforcement offices.

- Excludes reports of suspected child abuse or neglect based on instances of actual, or risk of, serious emotional damage from the requirement that a report be made to specified agencies.

- Includes reports of suspected child abuse or neglect based on instances of actual, or risk of, serious emotional damage in the section specifying information to be included in suspected child abuse or neglect reports.

- Includes reports of suspected child abuse or neglect based on instances of actual, or risk of, serious emotional damage in the section requiring that these reports be filed with the Department of Justice and be confidential.

- Includes reports of suspected child abuse or neglect based on instances of actual, or risk of, serious emotional damage in the section providing that when a child abuse report is made the investigating agency, upon completion of the investigation or after there has been a final disposition in the mater, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

- Corrects an obsolete cross-reference.

Child Death Review Teams

Currently, county child death review teams are not included in the confidentiality provisions provided for elder death review teams and domestic violence death review teams. As a result, individuals and groups with critical information to the process - particularly those from the private sector (i.e., hospitals) – are reluctant to attend meeting and speak openly because of potential liability concerns. A program designed to encourage free-flowing, open and honest dialogue has also resulted in child death review teams having to force (even subpoena) individuals to participate in the process.

The primary purpose of child death review teams is to prevent future child deaths. The statewide child death review council is responsible for collecting data and information from the counties and turning that data into reports to the public and Legislature. Some child death review teams create elaborate, comprehensive reports, while other child death review teams do not report anything at all. Because of the wide discrepancy of reporting, the statewide council cannot get a full picture of what is occurring statewide. While all child death review teams are coming to important conclusions about local child fatalities, not all of the review teams are communicating the information to the public, which contradicts the basic premise for having them.

> **SB 1668 (Bowen), Chapter 813,** clarifies provisions of law relating to the confidentiality of child death review team records and requires a report regarding child death review team findings be made at least once per year. Specifically, this new law:

- Provides that no record made available by a child death review team may include names or other personal information regarding any child who was the subject of a review or regarding that child's siblings and non-offending family members.
- Provides that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when in the possession of a child death review team.
- Provides that no less than once each year, each child death review team shall make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths.

CONTROLLED SUBSTANCES

Controlled Substances: Prescription Requirements

California was required by recently enacted federal law [the National All Schedules Prescription Electronic Reporting (NASPAR) Act of 2005] to conform California's current Controlled Substance Utilization Review and Evaluation System (CURES) program to federal law in order for California to qualify for federal grant funding.

The NASPER mandates necessitated certain changes to the CURES statutory structure as NASPER creates grant funding criteria which the Department of Justice (DOJ) must meet to

obtain federal funds to enhance California's prescription monitoring program - an important public safety tool. Compliance with NASPER will require pharmacies to submit the dispensing of controlled substances to CURES weekly, significantly improving the timeliness of the data received by DOJ. This change will also assist emergency room physicians with more updated information when responding to, and seeking background information regarding, patients suspected to be abusing controlled substances.

AB 2986 (Mullin), Chapter 286, provided for the changes mandated by the newly enacted federal law, NASPER. Specifically this new law:

- Requires prescription forms to include the name of the ultimate user and check boxes enabling the prescribing health care practitioner to indicate the number of refills ordered.

- Adds Schedule IV controlled substances to those monitored and reported on the CURES report.

- Requires any practitioner other than a pharmacist who prescribes or administers a Schedule II, III, or IV drug to make a record of the transaction and requires that the information be provided to the DOJ.

Possession of Precursors: Phencyclidine or Methamphetamine

A recent California Supreme Court decision held that although is illegal to possess certain chemicals with the intent to manufacture methamphetamine, it is legal to possess those chemicals with the knowledge that another person will use them to make methamphetamine.

SB 1299 (Speier), Chapter 646, makes it a felony, punishable by 16 months, 2 or 3 years in prison, to possess specified chemicals that are precursors to methamphetamine or PCP when the person in possession has the intent to sell, transfer, or otherwise furnish to another person with the knowledge that they will be used to manufacture methamphetamine or PCP.

Controlled Substances: Sales Near Drug Treatment Centers

Drug dealers target many homeless shelters and drug treatment centers when selling unlawful controlled substances as individuals there for treatment can easily relapse and buy drugs.

SB 1318 (Cedillo), Chapter 650, creates a sentence enhancement of imprisonment in the state prison for one additional year for persons convicted of trafficking in specified controlled substances on the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter. Specifically, this new law:

- Makes legislative findings and declarations relating to drug trafficking near drug treatment centers and homeless shelters, and states that a substantial drug abuse and drug trafficking problem exists among recovering drug addicts and homeless individuals adjacent to and around drug treatment centers, homeless shelters and other

service providers in California.

- States legislative intent to support increased efforts by local law enforcement agencies, working in conjunction with drug treatment centers, mental health centers and other homeless service providers; and to suppress drug trafficking adjacent to, and around, facilities and agencies dedicated to drug recovery and rehabilitation.

CORRECTIONS

Female Inmates and Wards

The State of California currently operates four prisons for women; recent data shows that 10 percent of women entering prison are pregnant. Reports issued by Amnesty International and the San Francisco National Organization for Women's Women in Prison Task Force describe neglect in the health care of women prisoners.

In October 2000, the California Joint Committee on Prison Construction and Operations conducted a hearing that disclosed the medical plight of women inmates at California facilities. For example, female inmates from the Central California Women's Facility reported being denied health care for serious conditions such as sickle cell anemia, Hepatitis C, and prenatal health care.

> **AB 478 (Lieber), Chapter 608,** requires the Department of Corrections and Rehabilitation (CDCR) to establish minimum standards for pregnant inmates, including necessary nutrition and vitamins, information and education, and a dental cleaning. This new law also provides that a pregnant inmate transported to a hospital outside the prison shall be transported in the least restrictive manner possible. Further, the inmate may not be shackled by the wrists, ankles, or both, during delivery, and while in recovery after giving birth. This new law accords the same rights to pregnant juvenile wards who give birth while under the CDCR's jurisdiction, the Division of Juvenile Facilities, or in a community treatment program.

Juvenile Facility Superintendents: Appointments

Under existing law, prior to filling a vacancy for warden by appointment, the Governor shall first submit to the Inspector General (IG) the names of candidates for review of their qualifications.

> **AB 971 (J. Horton), Chapter 709,** allows the IG to evaluate and determine the qualifications of juvenile facility superintendent candidates and advise the Governor accordingly.

Parole: Pre-Release Program

The recidivism rate for parolees in California is over 60%, costing the state and local governments hundreds of millions of dollars annually in increased incarceration and public safety costs. In addition, the high recidivism rate threatens the ability of law enforcement to effectively protect the public. Many parolees return to their local community with mental health, substance abuse, employability, and housing issues. Although there are some programs that provide support to help parolees overcome barriers to becoming productive members of the community, there is a need for an approach that can effectively reintegrate parolees back into the community, enhancing public safety and reducing the recidivism rate.

AB 1998 (Chan), Chapter 732, requires the California Department of Corrections and Rehabilitation (CDCR) to contract for the establishment and operation of a pre-release parole pilot program in Alameda County. Specifically, this new law:

- Provides that purpose of the program is to provide coordination between CDCR and community service providers to ensure that parolees transition smoothly from services during incarceration through re-entry programs.
- Requires the pre-release pilot program to prepare participants who will be entering a re-entry services program.
- States that up to one year prior to a state prison inmate's release on parole to Alameda County any male or female inmate committed for a non-violent offense may enroll in the program.
- Requires that the pilot program include, but not be limited to, a pre-release assessment screening for needed educational, employment-related, medical, substance abuse, and mental health services; housing assistance; and other social services.
- States that in awarding a contract, the CDCR Secretary may accept proposals from public and private not-for-profit entities located in the community.
- Requires the contractee with the assistance of an independent consultant with expertise in criminal justice programs to complete a report evaluating the cost effectiveness of the pre-release program with regard to the effect of the program on the recidivism rate of the participating offenders and submit the evaluation to the appropriate policy and fiscal committees of the Legislature and the Governor by no later than January 1, 2010.
- Limits the cost of the report to the Legislature to no more than five percent of the cost of the program.
- Contains a sunset date of January 1, 2011.

Parole Re-Entry: East Palo Alto Pilot Program

Under existing law, the California Department of Corrections and Rehabilitation is granted authority to establish three pilot programs for intensive training and counseling programs for female parolees to assist in the successful reintegration into the community upon release from custody following in-prison therapeutic community drug treatment.

> **AB 2436 (Ruskin), Chapter 799,** establishes a parole re-entry pilot program in East Palo Alto.

<u>Correctional Institutions: Communicable Disease</u>

Existing law provides for the confidential testing of inmates and other enumerated persons for HIV and AIDS under specified circumstances. The test is initiated by a request from a law enforcement officer or another inmate, to the chief medical officer of the facility, when the requesting person has come in contact with the bodily fluids of an inmate or other specified persons in a correctional facility or courtroom.

> **AB 2870 (De La Torre), Chapter 800,** expands existing provisions of law regarding medical testing of prisoners to include "other infectious, contagious, or communicable disease". Specifically, this new law:

- Expands existing legislative findings and declarations regarding HIV and AIDS in corrections to include "other infections, contagious, or communicable diseases."
- Expands existing legislative intent language regarding measures to take to address the public health crisis regarding HIV an AIDS in corrections to include "other infectious, contagious, or communicable diseases."
- Expands the existing definition of "correctional institution" for purposes of medical testing of prisoners to include a court facility.
- Expands the existing definition of "counseling" for purposes of medical testing of prisoners to include "infectious, contagious, or communicable diseases" as a topic for which counseling can be provided.
- Expands the existing definition of "law enforcement employee" for purposes of medical testing of prisoners to include "prosecutors and staff."
- Adds for purposes of medical testing of prisoners, a definition of "infectious, contagious, or communicable disease."
- Provide that inmates subject to Hepatitis B or C tests shall receive specified information relating to the right to appeal and the right to counseling from a medical professional.

- Expands existing law to include "a person charged with any crime, whether or not the person is in custody" as a category of persons that if a law enforcement employee comes into contact with the bodily fluids he or she can have that person tested for HIV.

- Provides that the law enforcement employee who reported an incident of contact with bodily fluids of inmates, as specified, shall be notified o the results of any test administered to any person as a result of the reporting of the incident.

- Provides that testing for other infectious contagious or communicable diseases may be conducted by any licensed medical laboratory approved by the chief medical officer.

Parole: Re-Entry Advisory Committee

The recidivism rate for parolees released from California's prisons is nearly twice the national average. A re-entry advisory panel within California Department of Corrections and Rehabilitation (CDCR) should be created so that the relevant stakeholders may discuss how parole is working the State of California and how best to implement policies and procedures designed to successfully re-integrate parolees into the community.

AB 3064 (Committee on Public Safety), Chapter 782, requires the CDCR Secretary to establish a Re-Entry Advisory Committee (RAC) to advise the Secretary on all matters related to the successful statewide planning, implementation and outcomes of all re-entry programs and services offered by CDCR. Specifically, this new law:

- Provides that the RAC shall be comprised of the following members appointed by the CDCR Secretary:

    - A representative of the California League of Cities;
    - A representative of the California State Association of Counties;
    - A representative of the California State Sheriffs' Association;
    - A representative of the California Police Chiefs' Association;
    - A representative of CDCR;
    - A representative of the Department of Mental Health;
    - A representative of the Department of Social Services;
    - A representative of the Department of Health Services;

- A representative of the Labor and Workforce Development Agency;
- A representative of the County Alcohol and Drug Program Administrators Association;
- A representative of the California Association of Alcohol and Drug Program Executives;
- An individual with experience in providing housing for low-income individuals;
- A recognized expert in restorative justice programs;
- An individual with experience in providing education and vocational training services; and,
- An independent consultant with expertise in community corrections and re-entry services.

- Requires the RAC to meet at least quarterly at a time and place determined by the Secretary. RAC members shall receive compensation for travel expenses, as specified in existing law, but no other compensation.
- Provides that the RAC shall advise the CDCR Secretary on all matters related to the successful statewide planning, implementation and outcomes of all re-entry programs and services offered by CDCR with the goal of reducing recidivism of all persons under the jurisdiction of CDCR.
- Requires the RAC to consider, and advise the CDCR Secretary of, the following issues:
  - Encouraging collaboration among key stakeholders at the state and local levels;
  - Developing a knowledge base of what people need to successfully return to their communities from prison and what resources communities need to successfully provide for these needs;
  - Incorporating re-entry outcomes into CDCR organizational missions and work plans as priorities;
  - Funding of re-entry programs;
  - Promoting systems of integration and coordination;
  - Measuring outcomes and evaluating the impact of re-entry programs; and,

- Educating the public about re-entry programs and their role in public safety.

- Contains a January 1, 2011 sunset date; implementation will be delayed until July 1, 2007.

Inmates: Health Care Services

SB 159 (Runner), Chapter 481, Statues of 2005, established a rate structure for emergency health care for local law enforcement patients, absent an existing contract between local law enforcement and health care providers. SB 159 also created a working group consisting of local law enforcement and health care providers to consider a variety of issues related to inmate health care. Technical changes need to be made to SB 159 which clarify that the provisions also apply to public agencies that contract for emergency health services.

> **SB 896 (Runner), Chapter 303,** is a technical cleanup measure to SB 159 and clarifies that public agencies can enter into contracts with hospitals for emergency health care.

Attempted Murder of a Custody Assistant

Under existing law, the attempted murder of a custodial officer is punishable by imprisonment in the state prison for life with the possibility of parole or by 15 years to life if it is also proven that the attempt was premeditated. The legislation that created that law inadvertently failed to include custody assistants (non-sworn, uniformed Los Angeles County Sheriff's Department employees) within the law's scope. A custody assistant's job is very similar to those of a "custodial officer", work in custody detention facilities, and are responsible for the care and handling of inmates.

> **SB 1184 (Cedillo), Chapter 468,** corrects the inadvertent omission of custody assistants from the crime of attempted murder of a police officer, firefighter or custodial officer by specifically providing that this law also applies to custody assistants. This new law also defines in statute a custody assistant as a person who is a full-time employee, not a peace officer, and employed by a sheriff's department who assists peace officer personnel in maintaining order and security in a custody detention, court detention or station jail facility of the sheriff's department. The new provisions relating to custody assistants apply only in Los Angeles County and do not become operative until those provisions are adopted by resolution of the board of supervisors.

Parole: Post-Release Drug Treatment

University of California, Los Angeles (UCLA), studies of California Department of Corrections and Rehabilitation (CDCR) drug treatment programs suggest short-term incentives must be provided in order to compel inmates to volunteer for in-prison treatment. In addition, in-prison treatment is rarely successful in decreasing recidivism unless coupled with a minimum of 90 to 150 days aftercare in the community.

The CDCR spends more than $100 million per year on drug treatment programs. Currently, only 28% of all the inmates who successfully complete in-prison drug treatment programs opt for aftercare placement and less than 15% of those entering aftercare actually complete the program. Some incentive must be provided for those inmates who volunteer for in-prison treatment and complete an aftercare program when released on parole.

SB 1453 (Speier), Chapter 875, requires specified inmates who have successfully completed an in-prison drug treatment program to be placed in a residential treatment program upon release from custody, and be discharged from parole upon successful completion of the treatment program. Specifically, this new law:

- Provides that any inmate in CDCR's custody who is not serving an indeterminate term, a sentence for a serious or violent felony, or a crime that requires registration as a convicted sex offender and who has completed an in-prison treatment program shall, whenever possible be placed in a 150-day residential aftercare treatment program upon release.

- Provides that if the inmate successfully completes the 150-day residential aftercare treatment program, as determined by CDCR and the aftercare provider, he or she shall be discharged from parole supervision at that time.

- States that commencing with 2008, CDCR shall report annually to the Joint Legislative Budget Committee and State Auditor on the effectiveness of these provision, including recidivism rates.

Mentally Disordered Offenders: Reimbursement

Under existing law, whenever a hearing is held pursuant to existing law relating to mentally disordered offenders, all transportation costs to and from a state hospital or a facility designated by the community program director during the hearing shall be paid by the State Controller.

SB 1562 (Maldonado), Chapter 812, reimburses local jurisdictions for the reasonable and necessary costs connected with any crime committed at a state hospital for the care, treatment, and education of mentally disordered offenders.

COURT HEARINGS AND PROCEDURES

Panic Strategy

The murder of Gwen Araujo in Newark, California, focused national attention on the increasing use of the "panic strategy" by defendants in murder trials. In 2004, the criminal trial of the three men accused of attacking Ms. Araujo ended in a mistrial, following several weeks of defense attorneys asserting that the defendants “panicked” upon learning that Ms. Araujo was a transgender individual. Their arguments, largely based on stereotypes about transgender women, were framed to play on societal bias against transgender people. If successful, using the panic

strategy could have resulted in a conviction for the lesser charge of voluntary manslaughter rather than first- or second-degree murder as sought by the prosecution.

AB 1160 (Lieber), Chapter 550, makes legislative findings and declarations expressing disapproval of the use of "panic strategies" by criminal defendants in order to appeal to the societal bias of a juror based on the victim's actual or perceived gender or sexual orientation, and requires the court to instruct the jury that their decision should not be influenced by bias against a victim, as specified.

Sexually Violent Predators: Out-Patient Release

The Department of Mental Health (DMH) has developed terms and conditions of outpatient release to ensure the safety of communities and the success of a sexually violent predator's (SVP) rehabilitation. DMH should not be allowed to unilaterally alter any of the terms and conditions of the out-patient release of a SVP without the approval of the court.

AB 1683 (Shirley Horton), Chapter 339, requires DMH to provide the court and law enforcement with copies of specified information relating to the monitoring and supervision of a SVP proposed for out-patient treatment in the community. Specifically, this new law:

- Requires DMH to provide the court with a copy of the written contract entered into with any entity responsible for monitoring and supervising the out-patient placement and treatment of a SVP proposed for out-patient treatment in the community.

- States that the court in its discretion may order DMH to provide a copy of the written terms and conditions of out-patient release to the sheriff, chief of police, or both, who have jurisdiction over the actual or proposed placement community.

- Provides that except in an emergency, DMH or its designee shall not alter the terms and conditions of conditional release without the approval of the court.

- Requires DMH to give notice to the committed person, the district attorney, or designated county counsel of any proposed change in the terms of out-patient release.

- Provides that the court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change as soon as practicable.

- States that if a hearing on the proposed change is held, the court shall state its findings on the record. If the court approves a change in the terms and conditions of conditional release without a hearing, the court shall issue a written order.

- Provides that in the case of an emergency, DMH or its designee may deviate from the terms and conditions of conditional release to protect the public safety or the safety of the person, and allows for a hearing on the emergency to be set as soon as practicable.

- Clarifies that matters concerning the residential placement, including any changes or proposed changes in residential placement, shall be considered and determined under existing statutory guidelines.

Evidence: Victim Testimony

Under existing law when determining the credibility of a witness, a court or jury may consider any matter that has any tendency in reason to prove or disprove the truthfulness of his or her testimony at the hearing.

> **AB 1996 (Bogh), Chapter 225,** extends procedures relating to sealed records of the sexual history of complaining witnesses to include certain sexual offenses pursuant to specified evidence provisions dealing with prior offenses.

Protective Orders: Firearm Relinquishment

In 2004, the Legislature amended the firearms relinquishment provisions that apply to Domestic Violence Prevention Act (DVPA) protective orders issued under the Family Code to provide that persons subject to DVPA orders must relinquish any firearms in their possession within 24 hours of being served with the order. Prior to this change, the restrained person was afforded 48 hours to relinquish the firearm if he or she had been present at a noticed hearing on the order request, but only 24 hours if he or she was not at the hearing. The changes made by SB 1391 (Romero), Chapter 250, Statutes of 2004, were to clarify and simplify the relinquishment standard, and to eliminate the need to have checkboxes to indicate which time applied in each situation on the order form. When the Legislature simplified the provision for DVPA orders, the Legislature did not change the provision applicable to other types of protective orders. That provision is found in the Code of Civil Procedure Section 527.9 and governs protective orders issued by a criminal court, as well as civil harassment, workplace violence, and elder and dependent adult abuse protective orders.

> **AB 2129 (Spitzer), Chapter 474,** requires a person who has been served with a protective order to relinquish any firearm within 24 hours regardless of whether the person was present in court when the order was served.

Criminal Procedure: Defendant's Appearance

Under current law, all persons charged with a misdemeanor (with the exception of persons charged with domestic violence) can appear through counsel. The court should have the discretion to require a defendant to personally appear at any time when charged with a misdemeanor driving under the influence (DUI) offense.

> **AB 2174 (Villines), Chapter 744,** provides that the court may order a person charged with a misdemeanor DUI offense to be personally present at arraignment, plea, or sentencing.

Habeas Corpus: Notice

Existing law requires a person who is held in custody and is applying for a writ of habeas corpus to give 24 hours notice to the district attorney in the county wherein the person is held in custody.

> **AB 2272 (Parra), Chapter 274,** requires that if a writ challenging a denial of parole is made returnable, a copy of the writ and the order to show cause be served by the superior court upon the Attorney General and the district attorney of the county in which the underlying judgment was returned.

Probation Reports: Sexual Assault Victims

Under current law, a probation department is mandated to contact a crime victim in order to conduct investigations, write pre-sentence reports, and make recommendations to the court when relating to an alleged sex offense. Current law does not technically specify probation departments as authorized recipients of sexual assault victims' names and addresses and must obtain contact information through at third party (telephone directory, district attorney's office, victim's advocacy group, etc.) inhibiting the probation officer's ability to provide thorough and accurate recommendations on sentencing to a court.

The probation officer's report is a permanent record of the victim's statement that can be referred to by the prosecutor in future criminal filings, can provide valuable information to the California Department of Corrections and Rehabilitation in parole hearings or for clemency consideration, and can allow a victim's voice in the court to resonate should the victim not be available at a future date.

> **AB 2615 (Tran), Chapter 92,** adds a county probation officer to the list of law enforcement officials who may obtain the name and address of a victim of a sex offense for the purpose of conducting official business.

Court Hearings: Mentally Incompetent Offenders

Under existing law at the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.

> **AB 2858 (Leno), Chapter 799,** states that where a defendant has bee found mentally incompetent to stand trial, the district attorney shall be notified if the offender is placed on an out-patient status.

Spousal Rape

Under existing law, commencement of the prosecution for spousal rape shall not begin unless the violation was reported to medical personnel, a member of the clergy, an attorney, a shelter

representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer, or a firefighter within one year after the date of the violation. This reporting requirement shall not apply if the victim's allegation of the offense is corroborated by independent evidence that would otherwise be admissible during trial.

SB 1402 (Kuehl), Chapter 45, deletes the requirement that spousal rape only be prosecuted where the victim reported the attack to a specified person within one year of the offense or where the offense is corroborated by independent evidence that would otherwise be admissible at trial.

Interception of Communications

Many courts are no longer accepting facsimile copies of a district attorney's signature on the application for an order authorizing a wiretap. While the law allows a district attorney to designate another individual in his/her absence, many district attorneys personally review each application. Due to the serious nature of these applications, district attorneys should be provided with the tools to fulfill their responsibilities.

SB 1714 (Margett), Chapter 146, requires a judge to accept a facsimile copy of the signature of the Attorney General, district attorney or specified designee in support of an application for an order authorizing interception of electronic communications. The original signed application is required to be filed and then sealed by the court consistent with existing law.

CRIME PREVENTION

Peace Officer Powers: Los Angeles Security Officers

Existing law provides that numerous types of publicly employed security officers are granted peace officer powers of arrest even though they are not peace officers. These persons may exercise the powers of arrest of a peace officer, as specified, during the course and within the scope of their employment if they successfully complete a course in the exercise of those powers, as specified, which has been certified by the Commission on Peace Officers Standards and Training.

The role of Los Angeles city security guards, often the first line of response to any disruption of the public order, has clearly evolved over the years into a more proactive approach. In recent years, there have been many situations where these officers have found it necessary to detain persons while awaiting a response from the Los Angeles Police Department or other sworn personnel. For example, there have been situations involving assaults, carrying concealed weapons, injecting illegal drugs and lewd conduct in front of minors.

AB 1980 (Bass), Chapter 271, clarifies the authority of Los Angeles City security officers whose duties include protecting the public at locations throughout Los Angeles. These sites include the airport, harbor, libraries, power plants, reservoirs, City Hall and other facilities.

Parole: Prerelease Program

The recidivism rate for parolees in California is over 60%, costing the state and local governments hundreds of millions of dollars annually in increased incarceration and public safety costs. In addition, the high recidivism rate threatens the ability of law enforcement to effectively protect the public. Many parolees return to their local community with mental health, substance abuse, employability, and housing issues. Although there are some programs that provide support to help parolees overcome barriers to becoming productive members of the community, there is a need for an approach that can effectively reintegrate parolees back into the community, enhancing public safety and reducing the recidivism rate.

AB 1998 (Chan), Chapter 732, requires the California Department of Corrections and Rehabilitation (CDCR) to contract for the establishment and operation of a pre-release parole pilot program in Alameda County. Specifically, this new law:

- Provides that purpose of the program is to provide coordination between CDCR and community service providers to ensure that parolees transition smoothly from services during incarceration through re-entry programs.

- Requires the pre-release pilot program to prepare participants who will be entering a re-entry services program.

- States that up to one year prior to a state prison inmate's release on parole to Alameda County any male or female inmate committed for a non-violent offense may enroll in the program.

- Requires that the pilot program include, but not be limited to, a pre-release assessment screening for needed educational, employment-related, medical, substance abuse, and mental health services; housing assistance; and other social services.

- States that in awarding a contract, the CDCR Secretary may accept proposals from public and private not-for-profit entities located in the community.

- Requires the contractee with the assistance of an independent consultant with expertise in criminal justice programs to complete a report evaluating the cost effectiveness of the pre-release program with regard to the effect of the program on the recidivism rate of the participating offenders and submit the evaluation to the appropriate policy and fiscal committees of the Legislature and the Governor by no later than January 1, 2010.

- Limits the cost of the report to the Legislature to no more than five percent of the cost of the program.

- Contains a sunset date of January 1, 2011.

Confidentiality: Victim Advocates and Crime Scene Investigators

Existing law provides protection to certain groups in society that come into contact with criminals, including according confidential status to their home addresses and telephone numbers, including active or retired police officers, district attorneys, public defenders, specified California Department of Corrections and Rehabilitation employees and others who work closely with convicts.

> **AB 2005 (Emmerson), Chapter 472**, expands existing Department of Motor Vehicle confidentiality provisions to include specified employees who routinely have contact with individuals involved in criminal activity to the list of public safety officials whose personal information is protected from disclosure on the Internet. This new law adds specified employees of the Attorney General, as well as the United States Attorney and Federal Public Defender, to the definition of "public safety official". This new law also adds state and federal judges and court commissioners, probation officers, and specified employees who supervise inmates in a city police department to the list of public safety officials whose information is protected from disclosure.

Domestic Violence

In April 2005, the Department of Health Services (DHS) surveyed the current capacity of California shelters to provide culturally competent care and identified the lesbian, gay, bisexual and transgender (LGBT) community as a population not served in the intimate partner abuse area. Although DHS has clear evidence of the LGBT community's need of services in this area and has dedicated funding for this purpose, DHS' programs are still designed primarily to serve battered women and their children.

Additionally, from the LGBT community's perspective, many LGBT victims are afraid to access shelter services for fear of "outing" themselves or being further harmed by service providers who lack the understanding and sensitivity to meet their needs. Homosexual male and transgender victims may feel particularly uncomfortable at women's shelters.

LGBT domestic violence victims are much more likely to seek safe havens at community centers and organizations that cater directly to the LGBT community. In addition, law enforcement, domestic violence shelters and other providers require better training to serve LGBT victims, particularly in parts of the state that do not have LGBT-specific organizations.

> **AB 2051 (Cohn), Chapter 856,** establishes the Equality in Prevention and Services for Domestic Abuse Act in order to provide culturally appropriate education and services for LGBT victims of domestic violence. Specifically, this new law:

- Establishes a $23 fee for those registering as domestic partners, which will support the following initiatives to combat domestic violence in the LGBT community:
  - An educational brochure specific to LGBT abuse;

- LGBT-specific domestic violence training for law enforcement officers and domestic violence service providers; and,

- Grants administered by DHS to support organizations that serve the LGBT community.

- Requires the fee to be deposited in the Equality in Prevention and Services for Domestic Abuse Fund to be administered by DHS.

- Requires the Secretary of State to provide couples with a LGBT domestic abuse brochure, along with their Certificate of Registered Domestic Partnership.

- Requires the Maternal and Child Health Branch of DHS, which issues grants to battered women's shelters to provide emergency shelter for women and their children escaping family violence, to include grants to underserved communities, including the LGBT community. This new law requires the advisory council established to consult with DHS regarding the Maternal and Child Health Branch grants to battered women's shelters to include individuals with an interest and expertise in LGBT domestic violence.

- Requires that the training program required for law enforcement officers on the handling of domestic violence complaints to include adequate instruction on the nature and extent of domestic violence in the LGBT community.

- Requires the Commission on Peace Officer Standards and Training, charged with developing the course of instruction for the training program, to consult with, among others, individuals with an interest and expertise in LGBT domestic violence.

- Requires that statewide training workshops on domestic violence conducted by the Office of Emergency Services include a curriculum on LGBT domestic abuse.

- Requires DHS, using funds from the Equality in Prevention and Services for Domestic Abuse Fund, to develop and disseminate an LGBT-specific domestic abuse brochure and administer a program of grants that support LGBT victims of domestic violence, as specified.

Anti-Reproductive Rights Crimes

Under existing law, "anti-reproductive-rights crime" is defined as a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant. "Anti-reproductive-rights crime" includes, but is not limited to, a violation of existing law related to free access to clinics.

SB 603 (Romero), Chapter 481, makes specified changes to the list of organizations within the statutory definition of "subject matter experts" on the issue of "anti-reproductive rights crime" and requires the Commission on the Status of Women to convene an advisory committee consisting of one person appointed by the Attorney General and one person appointed by each of the organizations listed as subject matter experts, as specified, who choose to appoint a member or any other subject matter experts the Commission may appoint.

Sex Offender Punishment, Control and Containment Act of 2006: Risk Assessment

Under existing law, persons placed on probation by a court shall be under the supervision of a county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

SB 1128 (Alquist), Chapter 337, requires that every sex offender be assessed and evaluated using the "State-Authorized Risk Assessment Tool for Sex Offenders" (SARATSO) by January 1, 2013, as directed by the SARATSO Review Committee.

Continuous Electronic Monitoring

California has more registered sex offenders than any other state in the country. More than 9,000 sex offenders are supervised on parole caseloads, and may be living and working in the same areas where children congregate. According to the California Department of Corrections and Rehabilitation (CDCR), at least 2,000 of these sex offenders are classified as "high risk." Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

Currently, another 11,000 sex offenders are on county probation; thousands more are incarcerated in county jails and will be released back into local communities within one year. While California has some of the toughest laws in the nation as it relates to punishing sex offenders, there is a concern that the state does not do enough to ensure that when these offenders are released from prison or jail they are monitored to the fullest extent possible.

Global position satellite monitoring technology is a method of tracking the whereabouts of offenders who pose a threat to society. These devices allow a parole agent to be aware of every move the offender makes at all times.

SB 1178 (Speier), Chapter 336, commencing July 1, 2008, requires every adult male convicted of an offense that requires him or her to register as a sex offender to be assessed for risk of re-offending using the state-authorized Risk Assessment Tool for Sex Offenders (SARATSO). Specifically, this new law:

- States that on or before January 1, 2008, the SARATSO Review Committee, in consultation with parole officers and other law enforcement officers, shall develop a training program for probation officers, parole officers, and any other persons authorized to administer the SARATSO.

- Requires probation and parole regional parole departments to designate persons within their organizations to attend yearly training, and shall train others within their organizations who are designated to perform risk assessments.

- States that the SARATSO Review Committee shall establish a plan for assessing eligible persons not assessed pursuant to this law. The plan shall provide for adult males to be assessed before January 1, 2012 and for females and juveniles to be assessed on or before January 1, 2013. This new law requires that on or before January 15, 2008, the Committee shall introduce legislation to implement the plan.

- States that commencing on January 1, 2008, every adult male sex offender registrant shall be assessed for the risk of re-offending using the SARATSO assessment and every adult male who has a risk assessment of "high" shall be continuously electronically monitored while on parole unless CDCR determines that such monitoring is unnecessary for a particular person.

- States that beginning January 1, 2009 and every two years thereafter, the CDCR shall report to the Legislature and the Governor on the effectiveness of continuous electronic monitoring, including the costs of the monitoring and the recidivism rates of those persons who have been monitored.

Criminal Justice Statistics

The Office of the Attorney General, through the Department of Justice's (DOJ) Criminal Justice Statistics Center, collects, analyzes, and develops reports and data sets that provide valid measures of crime and the criminal justice process in California. The statistics are aggregated by state, county, city and jurisdictions with populations of 100,000 or more. Though the statistics provided are fairly comprehensive, not all statistical information collected is available on the Internet.

One set of information which is currently unavailable on DOJ's Criminal Justice Statistics Center Web site is the comparison of crimes reported, crimes cleared, and clearance rates by individual law enforcement agencies. Generally, crimes are 'cleared' when at least one person is arrested, charged for the crime, and turned over to the court for prosecution. The availability of this information would allow Californians to easily compare the number of crimes reported, number of crimes cleared, and clearance rates of these crimes by individual law enforcement agencies.

SB 1261 (McClintock), Chapter 306, requires the DOJ to create an additional on-line report containing specified criminal justice information as reported by individual law enforcement agencies. Specifically, this new law:

- Requires the DOJ to maintain data, updated annually, that contains the number of crimes reported, number of clearances and clearance rates as reported by individual California law enforcement agencies.

- States that the data shall be made available through a prominently displayed hypertext link on the home page of the DOJ's Criminal Justice Statistic Center Web site.

- States that this section shall not be construed to require reporting of any crimes other than those required under existing law.

Controlled Substances: Sales Near Drug Treatment Centers

Drug dealers target many homeless shelters and drug treatment centers when selling unlawful controlled substances as individuals there for treatment can easily relapse and buy drugs.

SB 1318 (Cedillo), Chapter 650, creates a sentence enhancement of imprisonment in the state prison for one additional year for persons convicted of trafficking in specified controlled substances on the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter. Specifically, this new law:

- Makes legislative findings and declarations relating to drug trafficking near drug treatment centers and homeless shelters, and states that a substantial drug abuse and drug trafficking problem exists among recovering drug addicts and homeless individuals adjacent to and around drug treatment centers, homeless shelters and other service providers in California.

- States legislative intent to support increased efforts by local law enforcement agencies, working in conjunction with drug treatment centers, mental health centers and other homeless service providers; and to suppress drug trafficking adjacent to, and around, facilities and agencies dedicated to drug recovery and rehabilitation.

Criminal Justice Statistics

The California Attorney General has the duty to collect, analyze, and report statistical data to measure crime. While the Attorney General's report includes property crimes, the report does not separate identity theft from general theft and other related property crimes. Having accurate statistical data will help law enforcement and the Legislature in formulating future strategy and legislation to combat identity theft.

SB 1390 (Poochigian), Chapter 160, requires the Department of Justice (DOJ) to publish statistical data regarding identity theft arrests in DOJ's annual report on crime in California.

Parole: Post-Release Drug Treatment

University of California, Los Angeles (UCLA), studies of California Department of Corrections and Rehabilitation (CDCR) drug treatment programs suggest short-term incentives must be provided in order to compel inmates to volunteer for in-prison treatment. In addition, in-prison treatment is rarely successful in decreasing recidivism unless coupled with a minimum of 90 to 150 days aftercare in the community.

The CDCR spends more than $100 million per year on drug treatment programs. Currently, only 28% of all the inmates who successfully complete in-prison drug treatment programs opt for aftercare placement and less than 15% of those entering aftercare actually complete the program. Some incentive must be provided for those inmates who volunteer for in-prison treatment and complete an aftercare program when released on parole.

> **SB 1453 (Speier), Chapter 875,** requires specified inmates who have successfully completed an in-prison drug treatment program to be placed in a residential treatment program upon release from custody, and be discharged from parole upon successful completion of the treatment program. Specifically, this new law:

- Provides that any inmate in CDCR's custody who is not serving an indeterminate term, a sentence for a serious or violent felony, or a crime that requires registration as a convicted sex offender and who has completed an in-prison treatment program shall, whenever possible be placed in a 150-day residential aftercare treatment program upon release.

- Provides that if the inmate successfully completes the 150-day residential aftercare treatment program, as determined by CDCR and the aftercare provider, he or she shall be discharged from parole supervision at that time.

- States that commencing with 2008, CDCR shall report annually to the Joint Legislative Budget Committee and State Auditor on the effectiveness of these provision, including recidivism rates.

CRIMINAL JUSTICE PROGRAMS

Sex Offender Management Board

In California, sex offenders are currently managed through a complex system involving multiple state and local departments. Yet, there is no centralized infrastructure that coordinates communication, research or decision-making amongst the various agencies.

There are over 100,000 registered sex offenders living in California communities, an estimated 14,000 to 25,000 in California prisons, and an additional unknown number in California jails. Almost all convicted sex offenders will eventually return to the community within a short period of time under direct supervision, either on parole, probation or conditional release. During this

period of time when a sex offender is under direct supervision, it is integral that there is a comprehensive and cohesive network of interventions available to control the behavior of sex offenders and prevent recidivism.

AB 1015 (Chu), Chapter 338, creates a Sex Offender Management Board (SOMB), comprised of 17 members, to assess current management practices for adult sex offenders and report to the Legislature by January 1, 2008. Specifically, this new law:

- Establishes a 17-member SOMB, under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), with a representation from northern, central, and southern California as well as urban and rural areas. Establishes the following characteristics for each appointee to SOMB:
  - Substantial prior knowledge of issues related to sex offenders;
  - Decision-making authority for the agency or constituency represented; and,
  - A willingness to serve on SOMB and a commitment to contribute to SOMB's work.
- Establishes the membership of SOMB to consist of the following persons:
  - State government agencies:
    - One member who represents the Department of Justice (DOJ), appointed by the Speaker of the Assembly, with expertise in dealing with sex offender registration, notification, and enforcement;
    - One member who represents CDCR, appointed by the Governor, with an expertise in parole policies;
    - One member who represents the Board of Prison Terms, appointed by Governor;
    - One California state judge, appointed by the President pro Tempore of the Senate; and,
    - One member who represents the Department of Mental Health (DMH), appointed by the President pro Tempore of the Senate, who is a licensed mental health professional with recognizable expertise in the treatment of sex offenders.
  - Local government agencies:
    - Three members who represent law enforcement, appointed by the Governor. One member shall possess investigative expertise and one member shall have

law enforcement duties that include registration and notification responsibilities;

        - One member who represents prosecuting attorneys, appointed by the President pro Tempore of the Senate, with expertise in dealing with adult and juvenile sex offenders;

        - One member who represents probation officers, appointed by the Speaker of the Assembly; and,

        - One member who represents public defenders, appointed by the Speaker of the Assembly.

    - Non-governmental agencies:

        - Two members who are licensed mental health professionals with expertise in the treatment of sex offenders, appointed by President pro Tempore of the Senate.

        - Two members who represent sex abuse victims and rape crisis centers, appointed by the Speaker of the Assembly; and,

        - One member who is a clinical polygraph examiner with a specialization in the administration of post conviction polygraph testing for sex offenders, appointed by the Governor.

- Directs SOMB to appoint a presiding officer from among its members to serve in a capacity as SOMB sees fit.

Sex Offenders

Existing law requires the Department of Justice (DOJ) to make information concerning certain persons required to register as sex offenders available to the public via an Internet Web site, including the offender's criminal history. However, there are concerns that the database has not disclosed other important aspects of the offender's history. For example, the database fails to disclose the date of the offender's last offense of a sexual nature and when the offender was released from incarceration for that crime.

> **AB 1849 (Leslie), Chapter 886,** requires that on or before July 1, 2010, the year of the conviction of the offender's last sexual offense, the year of release from incarceration for that offense, and whether he or she was subsequently incarcerated for any felony be posted on the Internet Web site. This new law also requires any state facility that releases a sex offender to provide the year of conviction and year of release for his or her most recent offense requiring registration as a sex offender to the DOJ. Additionally, any state facility that releases a person required to register as a sex offender from incarceration whose incarceration was for a felony committed subsequently to the offense for which he

or she is required to register to so advise the DOJ. This new law takes effect immediately.

Student Advisory Review Board: Sunset Date

Education Code Section 48293(c), relating to the failure of a parent to enroll his or her student in school, was originally due to sunset on January 1, 2005. The Legislative Analyst's Office and the State School Attendance Review Board were required to develop a report regarding the implementation of Compulsory Education Law provisions; the recommendation was for the sunset provision to be eliminated. However, the annual Education Omnibus Bill was not the proper vehicle for eliminating the sunset date and, subsequently, Education Code Section 48293(c) is to sunset on January 1, 2006. If Education Code 48293(c) is eliminated and not restored after January 1, 2006, the courts will lose one of the tools they need to deal with parents who are neglecting the education of their children.

AB 2181 (Salinas), Chapter 273, deletes the sunset date of January 1, 2006 from provisions related to mandatory education thereby extending indefinitely the authority of the court to order or punish a person for failing to comply with compulsory attendance laws.

Amber Alerts

Under current law, any person who reports an emergency, as defined, knowing the report is false is guilty of a misdemeanor punishable by up to $1,000 fine; up to one year in county jail; or both. However, current law is not clear that an Amber Alert constitutes an "emergency".

AB 2225 (Mountjoy), Chapter 227, adds activation of the Amber Alert System to the definition of an "emergency" thus making an individual who knowingly makes a false report guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not exceeding one year; by a fine not exceeding $1,000; or both imprisonment and fine. This new law also provides that an activation or possible activation of the Emergency Alert System is not an "emergency" if it occurs as the result of a report made, or caused to be made, by a parent, guardian, or lawful custodian of a child that is based on a good-faith belief that the child is missing.

Emergency Medical Services

In Santa Barbara County, local hospitals are reported to be losing an estimated $8 million annually due to uncompensated emergency and trauma care. Two hospitals have closed in Santa Barbara County in the past seven years, leaving five hospitals to serve the area. Santa Barbara County has the only level two trauma center between Los Angeles and San Jose (Cottage Hospital). Cottage Hospital has the only around-the-clock physician, on-call panel on the Central Coast; has the only pediatric intensive on the Central Coast; and supports facilities throughout the tri-county region.

In 2002, over 115,000 emergency room visits were made in Santa Barbara. Of those, 58 percent of the patients were uninsured or underinsured. Special legislation was passed, implementing an additional penalty assessment for Santa Barbara County only, to respond to this crisis. That legislation provided that the additional assessment terminated in 2006.

In February 2005, a local Maddy Committee formed and held numerous meetings to strategize about permanent funding sources. In April 2005, a public opinion survey was conducted. Voters were positive about Santa Barbara hospitals, and a majority supported a sales tax increase for trauma/emergency care/law enforcement system. However, the support was less than the 66 percent necessary to pass a local ballot initiative. Therefore, Santa Barbara County required an extension of the additional penalty assessment period.

> **AB 2265 (Nava), Chapter 768**, authorizes Santa Barbara County to collect the additional penalty revenues to pay for emergency medical services until January 1, 2009. This new law contains legislative findings that the Legislature, in extending the period of time during which the additional penalties may be collected, expects Santa Barbara County to place an appropriate proposed tax ordinance as a county measure on the ballot for, or before, the November 2008 election ensuring the collection of sufficient funds to fully support the trauma center.

<u>Parole Re-Entry: East Palo Alto Pilot Program</u>

Under existing law, the California Department of Corrections and Rehabilitation is granted authority to establish three pilot programs for intensive training and counseling programs for female parolees to assist in the successful reintegration into the community upon release from custody following in-prison therapeutic community drug treatment.

> **AB 2436 (Ruskin), Chapter 799,** establishes a parole re-entry pilot program in East Palo Alto.

<u>Sentencing: Veteran's Treatment Programs</u>

Under current law, in the case of any person convicted of a felony who would otherwise be sentenced to state prison, the court shall consider whether the defendant was a member of United States military forces who served combat in Vietnam and suffers from substance abuse or psychological problems resulting from that service. Current law does not extend this consideration to veterans who serviced in Iraq or Afghanistan.

> **AB 2586 (Parra), Chapter 788,** allows the court to consider a treatment program, in lieu of incarceration, as a condition of probation in cases involving military veterans who suffer from post traumatic stress disorder (PTSD), substance abuse, or psychological problems stemming from their military service. Specifically, this new law:

- Makes legislative findings and declarations regarding PTSD among veterans. This new law states legislative intent to extend the opportunity for alternative sentencing to all combat veterans regardless of where or when those veterans served the country

when those veterans are found by the court to be suffering from PTSD.

- Expands which convicted veterans who allege they committed offenses as a result of PTSD, substance abuse, or psychological problems stemming from combat and then receive a hearing prior to sentence to determine if this is true from Vietnam veterans convicted of felonies to all combat veterans convicted of any criminal offense.

- Provides that if the court concludes that a defendant convicted of a criminal offense is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service, and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local; state; federal; or private, non-profit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

- Provides what when determining the "needs of the defendant" for purposes of probation, the court shall consider the fact that the defendant is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service in assessing whether the defendant should be placed on probation, and by examining whether the defendant would be best served while on probation by being ordered into a private, nonprofit treatment service program with a demonstrated history of specializing in the treatment of military service related issues, such as post-traumatic stress disorder, substance abuse, or psychological problems.

- Provides that a defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant served in residential treatment.

- Provides that the court, in making an order under this section to commit a defendant to a treatment program, shall give preference to a treatment program that has a history of successfully treating combat veterans who suffer from PTSD, substance abuse, or psychological problems as a result of that service.

- Provides that if a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veteran's service officer. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant.

Domestic Violence

AB 352 (Goldberg), Chapter 431, Statutes of 2003, increased the fees to $400 that a person convicted of a domestic violence offense must pay in order to support specified domestic violence programs. This statute was scheduled to expire on January 1, 2007

> **AB 2695 (Goldberg), Chapter 476,** extends the sunset date to January 1, 2010 for the $400 fee imposed on a person convicted of domestic violence to support domestic violence centers, the Domestic Violence Restraining Order Reimbursement Fund, and the Domestic Violence Training and Education Fund. Specifically, this new law:

- Extends the sunset date to January 1, 2010 on provisions of law that imposed a $400 fee on a person convicted of domestic violence to support domestic violence centers, the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.
- Allows a judge, when issuing a temporary restraining order or injunction requested by an employer to include multiple employees or worksites within the protection of the order.
- Allows the court, upon a showing of good cause by the employer requesting the temporary restraining order or injunction, to issue a temporary restraining order or injunction which includes other persons employed at his or her workplace or workplaces.
- Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school district for those costs shall be made pursuant to specified sections of the Government Code.
- Extends indefinitely provisions of law that waive fees associated with the service of process of specified protective orders, restraining orders or injunctions.
- Extends indefinitely provisions of law that provides that there is no fee for a subpoena filed in connection with an application for a protective order, under specified circumstances.
- Extends indefinitely provisions of law that prohibit a sheriff from requiring a prepayment fee for protective orders relating to workplace violence.
- Expands the workplace violence exception to include elder abuse and domestic violence.

DNA

When implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69 passed by the voters in November 2004), it was discovered that technical,

clarifying changes were needed relating to laboratories authorized to upload DNA profiles and clarifying that state mental hospital peace officers are authorized to use reasonable force to collect DNA samples from persons who resist DNA collection. Additionally, it was also necessary to clarify that DNA samples may not be taken based solely upon an arrest without a conviction that occurred before the enactment of Proposition 69.

AB 2850 (Spitzer), Chapter 170, provides that only Department of Justice (DOJ) laboratories and designated public law enforcement crime laboratories may upload available DNA and forensic identification databank samples, as specified. The DOJ and designated public law enforcement crime laboratories allowed to upload DNA and other forensic identification samples must meet state and federal requirements, including those of the Federal Bureau of Investigation Quality Assurance Standards and must be accredited by an organization approved by the National DNA Index System Procedures Board. This new law also requires that a quality assessment must be conducted before DNA profiles generated by a private laboratory are uploaded. Additionally, this new law includes the officers of a state mental hospital among those peace officers who may collect biological samples, and may use reasonable force to collect samples from individuals who refuse to provide them as required.

This new law also clarifies that retroactive application of the requirement to provide DNA samples does not apply to persons arrested but not convicted prior to the implementation of Proposition 69.

Controlled Substances: Prescription Requirements

California was required by recently enacted federal law [the National All Schedules Prescription Electronic Reporting (NASPAR) Act of 2005] to conform California's current Controlled Substance Utilization Review and Evaluation System (CURES) program to federal law in order for California to qualify for federal grant funding.

The NASPER mandates necessitated certain changes to the CURES statutory structure as NASPER creates grant funding criteria which the Department of Justice (DOJ) must meet to obtain federal funds to enhance California's prescription monitoring program - an important public safety tool. Compliance with NASPER will require pharmacies to submit the dispensing of controlled substances to CURES weekly, significantly improving the timeliness of the data received by DOJ. This change will also assist emergency room physicians with more updated information when responding to, and seeking background information regarding, patients suspected to be abusing controlled substances.

AB 2986 (Mullin), Chapter 286, provided for the changes mandated by the newly enacted federal law, NASPER. Specifically this new law:

- Requires prescription forms to include the name of the ultimate user and check boxes enabling the prescribing health care practitioner to indicate the number of refills ordered.

- Adds Schedule IV controlled substances to those monitored and reported on the CURES report.

- Requires any practitioner other than a pharmacist who prescribes or administers a Schedule II, III, or IV drug to make a record of the transaction and requires that the information be provided to the DOJ.

Victims of Crime: Domestic Violence and Sexual Assault

California operates the California Confidential Address Program (also known as the "Safe at Home Project") for victims of domestic violence and stalking. This program enables state and local agencies to respond to requests for public records without disclosing a program participant's residence address contained in any public record.

Additionally, the Office of Emergency services administers a comprehensive statewide domestic violence program. This program provides financial and technical assistance to domestic violence service providers. Existing law also provides that the Department of Health Services' Maternal and Child Health Branch shall administer a comprehensive shelter-based grant program to battered women's shelters.

> **SB 1062 (Bowen), Chapter 639**, makes victims of sexual assault eligible for participation in the California Confidential Address Program. Eligibility was previously restricted to victims of domestic violence and stalking. This new law also requires that any agency which receives funding from both the Maternal and Child Health Branch administered by the Department of Health Services and the Comprehensive Statewide Domestic Violence Program administered by the Office of Emergency Services to coordinate site visits and share performance assessment data, with the goal of improving efficiency, eliminating duplication, and reducing administrative costs.

Sex Offender Punishment, Control and Containment Act of 2006: Risk Assessment

Under existing law, persons placed on probation by a court shall be under the supervision of a county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

> **SB 1128 (Alquist), Chapter 337,** requires that every sex offender be assessed and evaluated using the "State-Authorized Risk Assessment Tool for Sex Offenders" (SARATSO) by January 1, 2013, as directed by the SARATSO Review Committee.

Continuous Electronic Monitoring

California has more registered sex offenders than any other state in the country. More than 9,000 sex offenders are supervised on parole caseloads, and may be living and working in the same areas where children congregate. According to the California Department of Corrections and Rehabilitation (CDCR), at least 2,000 of these sex offenders are classified as "high risk." Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

Currently, another 11,000 sex offenders are on county probation; thousands more are incarcerated in county jails and will be released back into local communities within one year. While California has some of the toughest laws in the nation as it relates to punishing sex offenders, there is a concern that the state does not do enough to ensure that when these offenders are released from prison or jail they are monitored to the fullest extent possible.

Global position satellite monitoring technology is a method of tracking the whereabouts of offenders who pose a threat to society. These devices allow a parole agent to be aware of every move the offender makes at all times.

SB 1178 (Speier), Chapter 336, commencing July 1, 2008, requires every adult male convicted of an offense that requires him or her to register as a sex offender to be assessed for risk of re-offending using the state-authorized Risk Assessment Tool for Sex Offenders (SARATSO). Specifically, this new law:

- States that on or before January 1, 2008, the SARATSO Review Committee, in consultation with parole officers and other law enforcement officers, shall develop a training program for probation officers, parole officers, and any other persons authorized to administer the SARATSO.

- Requires probation and parole regional parole departments to designate persons within their organizations to attend yearly training, and shall train others within their organizations who are designated to perform risk assessments.

- States that the SARATSO Review Committee shall establish a plan for assessing eligible persons not assessed pursuant to this law. The plan shall provide for adult males to be assessed before January 1, 2012 and for females and juveniles to be assessed on or before January 1, 2013. This new law requires that on or before January 15, 2008, the Committee shall introduce legislation to implement the plan.

- States that commencing on January 1, 2008, every adult male sex offender registrant shall be assessed for the risk of re-offending using the SARATSO assessment and every adult male who has a risk assessment of "high" shall be continuously electronically monitored while on parole unless CDCR determines that such monitoring is unnecessary for a particular person.

- States that beginning January 1, 2009 and every two years thereafter, the CDCR shall report to the Legislature and the Governor on the effectiveness of continuous electronic monitoring, including the costs of the monitoring and the recidivism rates of those persons who have been monitored.

Criminal Justice Statistics

The Office of the Attorney General, through the Department of Justice's (DOJ) Criminal Justice Statistics Center, collects, analyzes, and develops reports and data sets that provide valid measures of crime and the criminal justice process in California. The statistics are aggregated by state, county, city and jurisdictions with populations of 100,000 or more. Though the statistics provided are fairly comprehensive, not all of the statistical information collected is available on the Internet; the public is generally unaware that they may make special requests for such statistics to the Statistics Center.

The availability of this information would allow Californians to easily compare the number of crimes reported, number of crimes cleared, and clearance rates of these crimes by individual law enforcement agencies, and make data readily available that is already collected by DOJ.

> **SB 1261 (McClintock), Chapter 306,** requires the DOJ to maintain a data set, updated annually, relating to crimes reported, the number of clearances and clearance rates reported by law enforcement agencies. This new law further requires that the report shall be accessible by a hypertext link on the DOJ Internet Web site.

Juvenile Crime

Existing juvenile law (Proposition 21 in 2000) provides that a court may, under specified conditions, summarily grant deferred entry of judgment if a minor admits the charges, waives time for the pronouncement of judgment, and meets other eligibility criteria. Existing law requires that the procedure for deferred entry of judgment may not commence without the agreement of the prosecutor, the public defender or the minor's private attorney, and the presiding judge of the juvenile court. Under existing law, if the parties do not agree, the minor's case must be heard according to procedures generally governing juvenile cases.

> **SB 1626 (Ashburn), Chapter 675,** deletes provisions requiring that there be an agreement between the attorneys and the judge; and states that upon a finding that the minor is suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. This new law requires a court to make findings on the record that a minor is appropriate for deferred entry of judgment in any case in which it is granted. Deferred entry of judgment is not available to minors who have committed specified serious or violent offenses.

Transit Fare Evasion

Under current law, transit fare evasion and other minor transit infractions (e.g. smoking, eating, expectorating or playing loud music on a bus) are charged as an infraction under Penal Code Section 640. San Francisco Municipal Transportation Agency and Los Angeles County Metropolitan Transportation Authority want to decriminalize that behavior and, instead, adjudicate any or all of the specified violations through administrative review, freeing up court dockets to handle more serious offenses. This change is consistent with the trend in other states to "decriminalize" minor traffic and parking offenses.

> **SB 1749 (Migden), Chapter 258,** allows for administrative enforcement of transit-related violations in the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority. Specifically, this new law:

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance providing that any acts prohibited on or in a facility or vehicle for which the City and County has jurisdiction shall be subject only to an administrative penalty imposed and

enforced in a civil proceeding.

- Provides that minors are exempt from these administrative penalties.

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance to impose and enforce an administrative penalty, excluding minors, for any of the following:

  - Evasion of the payment of a fare of the system;

  - Misuse of a transfer, pass, ticket or token with the intent to evade the payment of fare;

  - Playing sound equipment on or in a system facility or vehicle;

  - Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system;

  - Expectorating upon a system facility or vehicle;

  - Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior;

  - Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a system facility or vehicle;

  - Urinating or defecating in a system facility or vehicle, except in a lavatory;

  - Willfully blocking the free movement of another in a system facility or vehicle;

  - Skateboarding, roller skating, bicycle riding, or rollerblading in a system facility, including a parking structure, or in a system vehicle; and,

  - Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket.

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may contract with a private vendor for the processing of notices of fare evasion or passenger conduct violation, and notices of delinquent fare evasion or specified passenger conduct violations.

- Defines "processing agency" as the agency issuing the notice of fare evasion or passenger conduct violation and the notice of delinquent fare evasion or passenger conduct violation, or the party responsible for processing the notice of fare evasion or passenger conduct violation and the notice of delinquent violation.

- Defines "fare evasion or passenger conduct violation penalty" as including, but not limited to, a late payment penalty, administrative fee, fine, assessment, and costs of collection as provided for in the ordinance.

- Provides that if a fare evasion or passenger conduct violation is observed by a person authorized to enforce the ordinance, a notice of fare evasion or passenger conduct violation shall be issued. The notice shall set forth the violation including reference to the ordinance setting forth the administrative penalty, the date of violation, the approximate time, and the location where the violation occurred. The notice shall be served by personal service upon the violator. The notice, or copy of the notice, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency, and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of evidence.

- Provides that when a notice of fare evasion or passenger conduct violation has been served, the person issuing notice shall file the notice with the processing agency.

- Sets up a review process for a citation under this new law. This new law provides for a period of 21 calendar days from the issuance to a person of the notice of fare evasion or passenger conduct violation, where the person may request an initial review of the violation by the issuing agency. Following the initial review, the issuing agency may cancel the notice if it believes the violation did not occur or extenuating circumstances should result in its dismissal. After the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the results of the issuing agency's initial review. The person requesting the review shall deposit the amount due under the notice for which the hearing is requested, although there must be a process to request a hearing without payment upon a showing of an inability to pay. The administrative hearing shall be held within 90 calendar days following the request.

- Provides that the administrative hearing process shall include all of the following:

    - The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with a private vendor, hearings shall be held within the jurisdiction of the issuing agency;

    - The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested violations;

    - The administrative review shall be conducted before a hearing officer designated to conduct the review by the issuing agency's governing body or chief executive officer. In addition to any other requirements of employment, a hearing officer shall demonstrate those qualifications, training, and objectivity prescribed by the

issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this chapter. The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fare evasion or passenger conduct violation penalties imposed by the hearing officer;

  - The person who issued the notice of fare evasion or passenger conduct violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of fare evasion or passenger conduct violation. The documentation in proper form shall be prima facie evidence of the violation;

  - The hearing officer's decision following the administrative hearing may be personally delivered to the person by the hearing officer or sent by first-class mail; and,

  - Following a determination by the hearing officer that a person committed the violation, the hearing officer may allow payment of the fare evasion or passenger conduct penalty in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion or passenger conduct penalty in full. If authorized by the issuing agency, the hearing officer may permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty.

- Provides that within 30 calendar days after the mailing or personal delivery of the decision, the person may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of fare evasion or passenger conduct violation shall be admitted into evidence as prima facie evidence of the facts stated therein establishing a rebuttable presumption affecting the burden of producing evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the person filing the appeal.

- Provides that the fee for filing the notice of appeal shall be $25.

- Provides that an appeal under this section may be performed by a commissioner or other subordinate judicial officials at the direction of the presiding judge of the court.

Fines and Forfeitures

Existing law provides that counties shall levy a $2 penalty assessment out of every $10 base fine for criminal offenses (including traffic violations) to fund emergency medical services. As reported by the State Auditor, in 2002-2003 counties collected about $56 million. However, emergency services are reportedly severely under-funded and funds need to be raised to alleviate this problem. These additional funds would also be instrumental in maintaining the financial

stability of the emergency and trauma centers, decreasing diversion time and the time a patient must wait for services, and improving services overall.

SB 1773 (Alarcon), Chapter 841, provides that until January 1, 2009, a county board of supervisors may elect to levy an additional penalty in the amount of $2 for every $10, upon fines, penalties and forfeitures collected for criminal offenses. This new law requires that 15% of the funds collected pursuant to these provisions be expended for pediatric trauma centers and requires use of these funds, not to exceed 10 percent, for administrative costs.

CRIMINAL OFFENSES AND PENALTIES

Wireless Communication Devices

AB 836 (La Suer), Chapter 143, Statutes of 2003, made it a misdemeanor for any person to unlawfully or maliciously destroy or damage any wireless communication device with the intent to prevent the use of the device to summon the assistance or notify law enforcement or any public safety agency of a crime is guilty of a misdemeanor.

AB 44 (Cohn), Chapter 695, provides that the above provisions are also violated if any person obstructs the use of that equipment and such conduct is also a misdemeanor.

Reckless Driving and Speed Contests

Under existing law, reckless driving resulting in great bodily injury (GBI) can only be charges as a felony if the defendant has a prior conviction for reckless driving or driving under the influence. However, there many examples of dangerous first-offense reckless driving, such as driving on the wrong side of the road and results in GBI. In these instances, defendants may only be charged with misdemeanors.

Illegal street racing is dangerous for participants, passengers and other motorists. Existing law inadequately addresses this situation.

AB 2190 (Benoit), Chapter 432, makes reckless driving and engaging in a motor vehicle speed contest that proximately causes GBI to another person an alternate felony/misdemeanor. Specifically, this new law:

- Provided that any person convicted of reckless driving that proximately causes GBI to any person other than the driver shall be punished by imprisonment in the state prison or by imprisonment in the county jail for not less than 30 days nor more than one year; by a fine of not less than $220 nor more than $1,000; or both.

- Provided that a person convicted of a motor vehicle speed contest that proximately causes GBI to a person other than the driver is punishable by imprisonment in the state prison or in a county jail for not less than 30 days nor more than one year and by

a fine of not less than $500 nor more than $1,000.

Sex Offenders: Working With Minors

Current California law requires a sex offender to disclose his or her status as a registrant only if the registrant will be working directly with children in an unaccompanied setting. Additionally, if the offender is convicted of a crime in which the victim was under 16 years of age, that registrant cannot work with children in an unaccompanied setting. However, he or she is authorized to work with children if the job takes place in an accompanied setting.

> **AB 2263 (Spitzer), Chapter 341,** requires a sex offender registrant who applies for, or accepts, a position as an employee or volunteer where the applicant would be working directly, and in an accompanied setting, with minor children on more than an incidental and occasional basis to disclose his or her status as a registrant upon application or acceptance of any such position if the applicant's work would require him or her to touch minor children on more than an incidental and occasional basis.

Criminal Penalties

In 1976, California enacted its determinate sentencing law. Most criminal penalties were changed by SB 42, Chapter 1139, Statutes of 1976. However, close to two dozen non-life indeterminate sentences are currently in statute. Twenty-one of those indeterminate sentences should be changed to determinate sentences, which will conform those sentences to the current sentencing structure. Defendants will then know what the actual penalties are rather than having to appear before a paroling authority for review until they are finally released.

> **AB 2367 (La Suer), Chapter 347,** changes numerous indeterminate sentences to determinate sentences in various code sections.

Vehicles: Vehicular Manslaughter

Existing code sections relating to vehicle and vessel manslaughter are confusing and unorganized and in need of clarification.

> **AB 2559 (Benoit), Chapter 91,** recasts Penal Code provisions relating to vehicular and vessel manslaughter to organize the sections in a more logical fashion while making no changes to existing law in terms of penalties or elements of offenses.

Sentencing: Veteran's Treatment Programs

Under current law, in the case of any person convicted of a felony who would otherwise be sentenced to state prison, the court shall consider whether the defendant was a member of United States military forces who served combat in Vietnam and suffers from substance abuse or psychological problems resulting from that service. Current law does not extend this consideration to veterans who serviced in Iraq or Afghanistan.

AB 2586 (Parra), Chapter 788, allows the court to consider a treatment program, in lieu of incarceration, as a condition of probation in cases involving military veterans who suffer from post traumatic stress disorder (PTSD), substance abuse, or psychological problems stemming from their military service. Specifically, this new law:

- Makes legislative findings and declarations regarding PTSD among veterans. This new law states legislative intent to extend the opportunity for alternative sentencing to all combat veterans regardless of where or when those veterans served the country when those veterans are found by the court to be suffering from PTSD.

- Expands which convicted veterans who allege they committed offenses as a result of PTSD, substance abuse, or psychological problems stemming from combat and then receive a hearing prior to sentence to determine if this is true from Vietnam veterans convicted of felonies to all combat veterans convicted of any criminal offense.

- Provides that if the court concludes that a defendant convicted of a criminal offense is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service, and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local; state; federal; or private, non-profit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

- Provides what when determining the "needs of the defendant" for purposes of probation, the court shall consider the fact that the defendant is a combat veteran who committed the offense as a result of PTSD, substance abuse, or psychological problems stemming from that combat service in assessing whether the defendant should be placed on probation, and by examining whether the defendant would be best served while on probation by being ordered into a private, nonprofit treatment service program with a demonstrated history of specializing in the treatment of military service related issues, such as post-traumatic stress disorder, substance abuse, or psychological problems.

- Provides that a defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant served in residential treatment.

- Provides that the court, in making an order under this section to commit a defendant to a treatment program, shall give preference to a treatment program that has a history of successfully treating combat veterans who suffer from PTSD, substance abuse, or psychological problems as a result of that service.

- Provides that if a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose. If mental health treatment services are

ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veteran's service officer. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant.

Theft of Free or Complimentary Newspapers

The unauthorized taking of freely distributed newspapers has been a problem for many years.

Recently, an individual in Chula Vista removed entire bundles from news racks and transported them across the border where he sold them to recyclers in Mexico. On three different occasions, the entire press run was taken from all of the racks owned by the "Chula Vista Star"; roughly 8,000 to 10,000 copies were removed in each instance. "La Prensa" also lost approximately 1,000 copies. When the publishers urged local police agencies to halt the thefts, officials responded they were unable to prosecute the thefts because under existing law the newspapers were complimentary, had no fair market value and, therefore, could not be stolen.

Freely distributed newspapers are often taken based on an unpopular viewpoint expressed in an article, column, editorial or advertisement. In Los Angeles, the "Epoch Times" began to notice it was losing thousands of copies in the San Gabriel Valley after publishing stories on controversial issues such as Article 23 in Hong Kong, the spread of SARS, human rights violations, and the Falun Gong. Over the course of 11 days, "Epoch Times" employees followed and videotaped a suspect who had several thousand stolen newspapers in the back of his pick-up truck.

AB 2612 (Plescia), Chapter 228, makes it a crime to take more than 25 copies of the current issue of a free or complimentary newspaper if done to recycle, barter, or to deprive others of the opportunity to read the newspaper, or to harm a business competitor. An issue is current if no more than one half of the period of time has expired until the distribution of the next issue has passed. Specifically, this new law:

- Makes a first offense punishable by a fine not to exceed $250.
- Makes a second or subsequent violation an alternate infraction/misdemeanor. A misdemeanor conviction is punishable by a fine not exceeding $500, imprisonment of up to 10 days in the county jail, or by both that fine and imprisonment.
- Exempts owners, publishers, printers, deliverers, advertisers and others, as specified.

Identity Theft: Penalty Increases

According to the Federal Trade Commission’s data, California had a reported 45,175 victims of identity theft in 2005. California ranked third in the nation with 125 victims of identity theft per 100,000 people. The Cities of Los Angeles, San Diego, San Francisco, Sacramento and San Jose have the highest number of identity theft victims in California. Further, the data only includes

the number of complaints the Federal Trade Commission received from identity theft victims and actual numbers are likely to be significantly higher.

AB 2886 (Frommer), Chapter 522, creates new crimes related to identity theft for persons previously convicted and for persons who sell the personal identifying information of another person. Specifically, this new law:

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison for any person who, with intent to defraud, acquires or retains possession of the personal identifying information (PII) of another person, and who has been previously convicted of identity theft, as specified.

- States in any case in which a person willfully obtains PII of another person, uses that information to commit a crime, in addition to a violation of the identity theft statute, and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison, for any person who, with intent to defraud, acquires or retains possession of the PII of 10 or more other people.

- States that any person who with actual knowledge that the PII, as specified, of a specific person will be used to commit identity theft, as specified, who sells, transfers, or conveys that same PII, is guilty of a public offense and shall be punished by a fine, by imprisonment in state prison for a term of 16 months, two or three years, or by both imprisonment and fine.

- Exempts an interactive computer service or access software provider, as defined in federal law, from liability for identity theft unless the service or provider acquires, transfers, sells, conveys, or retains possession of PII with intent to defraud.

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison, for any person who, with the intent to defraud, sells, transfers, or conveys the PII of another.

- States that every person who commits mail theft, as defined by federal statute, shall be punished by up to one year in the county jail, a fine or by both imprisonment and fine. Prosecution under this section shall not limit prosecution under other related sections, as specified.

<u>Telephone Calling Records</u>

Telephone phone records are readily available to any person who is willing to pay a nominal fee for the information. Although many of the methods used for acquiring the records are illegal,

businesses are openly selling this information without the consumer's knowledge or consent.

SB 202 (Simitian), Chapter 626, prohibits the purchase or sale of any telephone calling pattern record or list without the written consent of the person making the calls. Specifically, this new law:

- Provides that any person who purchases, sells, offers to purchase or sell, or conspires to purchase or sell any telephone calling pattern record or list, without the written consent of the person making the calls shall be punished by a fine not exceeding $2,500; by imprisonment in the county jail not exceeding one year; or by both a fine and imprisonment.

- Provides that if the person has previously been convicted of a violation of this section, he or she is punishable by a fine not exceeding $10,000; by imprisonment in the county jail not exceeding one year; or by both a fine and imprisonment.

- Provides that any personal information contained in a telephone calling pattern record or list obtained in violation of this section shall be inadmissible as evidence in any judicial, administrative, legislative, or other proceeding except when that information is offered as proof in an action or prosecution for a violation of this section.

- Defines "person" as an individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity.

- Defines "telephone calling pattern record or list" as information retained by a telephone company that relates to the telephone numbers dialed by the customer or other person using the customer's telephone with permission; the incoming call number of calls directed to the customer or other data related to such calls typically contained on a customer telephone bill, such as the time the call started and ended; the duration of the call and any charges applied whether the call was made from or to a telephone connected to the public switched telephone network, a cordless telephone, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, or a cellular telephone.

- Provides that an employer of, or entity contract with, a person who purchases, sells, offers to purchase or sell, or conspires to purchase or sell any telephone calling pattern record or list without the written consent of the person making the call shall only be subject to prosecution pursuant to that section if the employer or contracting entity knowingly allowed the employee or contractor to engaged in unlawful conduct.

- Provides that this section shall not be construed to prevent any law enforcement or prosecutorial agency or any officer, employee, or agent thereof from obtaining telephone records in connection with the performance of the official duties of the agency consistent with any other applicable state and federal law.

<u>BB Devices</u>

If a person threatens or injures another person with a BB device, that person can be charged with a variety of crimes. However, each of those crimes involves some degree of "criminal intent" which becomes a necessary element for the prosecution and is often difficult to prove.

SB 532 (Torlakson), Chapter 180, creates a new crime for the willful discharge of a BB device in a grossly negligent manner. Specifically, this new law:

- Provides that any person who willfully discharges a BB device in a grossly negligent manner which could result in injury or death to another person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year.

- Defines "BB device" as any instrument that expels a projective, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.

Attempted Murder of a Custody Assistant

Under existing law, the attempted murder of a custodial officer is punishable by imprisonment in the state prison for life with the possibility of parole or by 15 years to life if it is also proven that the attempt was premeditated. The legislation that created that law inadvertently failed to include custody assistants (non-sworn, uniformed Los Angeles County Sheriff's Department employees) within the law's scope. A custody assistant's

job is very similar to those of a “custodial officer”, work in custody detention facilities, and are responsible for the care and handling of inmates.

> **SB 1184 (Cedillo), Chapter 468,** corrects the inadvertent omission of custody assistants from the crime of attempted murder of a police officer, firefighter or custodial officer by specifically providing that this law also applies to custody assistants. This new law also defines in statute a custody assistant as a person who is a full-time employee, not a peace officer, and employed by a sheriff's department who assists peace officer personnel in maintaining order and security in a custody detention, court detention or station jail facility of the sheriff's department. The new provisions relating to custody assistants apply only in Los Angeles County and do not become operative until those provisions are adopted by resolution of the board of supervisors.

Crime: Criminal Gangs

The Street Terrorism Enforcement and Prevention (STEP) Act was passed in 1988. Legislative findings as to the purpose of the STEP Act stated, "[I]t is the right of every person . . . to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals." Amendments increasing the predicate crimes and penalties have been steadily added to this law. The original predicate offenses included assault, robbery, unlawful homicide or manslaughter, trafficking in controlled substances, shooting at an inhabited vehicle (added in 1991), arson and witness intimidation. Over time, the offenses of grand theft of a vehicle; grand theft exceeding $10,000; burglary; rape; looting; money laundering; kidnapping; mayhem; torture; felony extortion; felony vandalism and carjacking; firearm trafficking and handgun possession; criminal threats; and theft or taking of a vehicle have been added. Proposition 21 (March 2000 Primary Election) greatly increased the enhancement imposed where a defendant committed a felony for the benefit of a gang. The 1988 legislation creating the STEP Act authorized the use of nuisance abatement laws to combat gangs. Buildings used by gangs can be declared nuisances and civil penalties may be imposed.

> **SB 1222 (Ackerman), Chapter 303,** expands the list of crimes that may be used to establish a "pattern of criminal gang activity" to include possessing a firearm, carrying a concealed firearm, and carrying a loaded firearm, as specified.

Possession of Precursors: Phencyclidine or Methamphetamine

A recent California Supreme Court decision held that although is illegal to possess certain chemicals with the intent to manufacture methamphetamine, it is legal to possess those chemicals with the knowledge that another person will use them to make methamphetamine.

> **SB 1299 (Speier), Chapter 646,** makes it a felony, punishable by 16 months, 2 or 3 years in prison, to possess specified chemicals that are precursors to methamphetamine or PCP when the person in possession has the intent to sell, transfer, or otherwise furnish to another person with the knowledge that they will be used to manufacture methamphetamine or PCP.

Bribery

Existing law applies the state's bribery and extortion laws to state legislators; however, county supervisors, city council members, and all other elected local officials are not held to the same standards. Existing law prohibits any type of "quid pro quo" on legislation – it is illegal for one legislator to vote a certain way on legislation in exchange for another legislator's vote. This activity constitutes a felony, punishable by two to four years in prison. Similarly, it is against the law to threaten a legislator with retaliation in an attempt to "influence a member in giving or withholding his vote" on an issue.

> **SB 1308 (Battin), Chapter 435,** applies the same standards imposed on state legislators regarding receipt of bribes for the purpose of influencing how the legislator votes or for influencing his or her official action to any member of the legislative body of a city, county, city and county, school district, or other special district. Specifically, this new law subjects such local officials to imprisonment in the state prison for two, three, or four years, and permanent disqualification from ever holding office again.

Animal Fighting Exhibitions

Cockfighting is an unacceptable form of animal cruelty that is widely practiced even though it is illegal in almost all jurisdictions. Cockfighting is illegal in 48 states; in 31 of those states and the District of Columbia, cockfighting is a felony crime.

In 2003, the Legislature passed legislation that increased the penalties for engaging in this cruel and inhumane activity; however California's anti-cockfighting law still lags behind neighboring states. Arizona, Nevada and Oregon have established felony-level penalties for cockfighting, making California with its simple misdemeanor-level cockfighting penalties a regional refuge for illegal cockfighting activity.

There is an undeniable connection between cockfighting and other significant issues such as illegal gambling; drug trafficking; violence toward people; and, as evidenced by the outbreak of Exotic Newcastle Disease in 2002, the spread of deadly and devastating diseases. Moreover, officials with the World Health Organization believe that cockfighting has contributed to the spread of the deadly H5N1 Avian Influenza throughout Southeast Asia.

> **SB 1349 (Soto), Chapter 430,** increases the penalties for the fighting of animals. Specifically, this new law:

- Increases the penalty for causing any animal to fight with another animal, permitting the same to be done on any property under his or her control, or aiding or abetting the fighting of any animal from up to six months in the county jail, by a fine not to exceed $1,000, or both to up to one year in the county jail, by a fine not to exceed $5,000, or both.
- Increases the penalty for a second or subsequent offense of fighting animals or cocks from a misdemeanor, punishable by up to one year in the county jail; by a fine not to

exceed $25,000; or both to an alternate felony/misdemeanor, punishable by up to one year in the county jail or by imprisonment in state prison for 16 months, 2 or 3 years; by a fine not to exceed $25,000; or both, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser penalty.

- Consolidates almost identical code sections relating to the training of birds or animals for the purpose of fighting into one code section.

- Re-organizes provisions of law relating to spectators at an exhibition of animal fighting without increasing the existing penalty.

- Make numerous legislative findings and declarations regarding cockfighting and the spread of disease.

Crimes: Hazing

In 2005, Matthew Carrington, a 21-year-old student at California State University, Chico, died from injuries suffered in a fraternity initiation hazing ritual. Carrington died from cardiac dysrhythmia and cerebral edema (brain-swelling) due to hyponatremia (water intoxication). Hypothermia was brought on by the forced drinking of water, being doused with water, and having fans turned on Carrington in the 40-degree basement of a "rogue" fraternity. (The fraternity had no national affiliation and had been banned by Chico State in 2002 for alcohol violations.) In all, eight persons were charged shortly after Carrington's death. However, not all the fraternity members charged were students at the university. Defense attorneys argued that California's hazing law - currently in the Education Code - did not apply to the non-students involved in Carrington's death. In addition, California's hazing law provides only misdemeanor prosecution, with the maximum penalty of just one year in jail.

SB 1454 (Torlakson), Chapter 601, removes hazing provisions from the Education Code and adds those provisions to the Penal Code making hazing punishable as a misdemeanor if no serious bodily injury results or as an alternate felony-misdemeanor if great bodily injury or death result. Specifically, this new law:

- Provides that it is unlawful to engage in hazing. This new law defines "hazing" as any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury to any pupil or other person attending any school, community college, college, university, or other educational institution in California. The term "hazing" does not include customary athletic events or school-sanctioned events.

- Provides that hazing that does not result in serious bodily injury is a misdemeanor, punishable by a fine of not less than $100 nor more than $5,000; imprisonment in the county jail for not more than one year; or both.

- Provides that any person who personally engages in hazing that results in death or serious bodily injury is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in county jail not exceeding one year or by imprisonment in the state prison.

- Provides that the person against whom the hazing is directed may commence a civil action for injury or damages. The action may be brought against any participants in the hazing or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.

- Provides that prosecution under this section shall not prohibit prosecution under any other provision of law.

- Provides that this act shall be known and may be cited as "Matt's Law" in memory of Matthew William Carrington, who died on February 20, 2005 as a result of hazing.

Police Pursuits

An individual who attempts to elude police in a vehicle have learned that most law enforcement pursuit policies require officers to terminate the pursuit if a perpetrator starts to drive down a public highway or freeway in the wrong direction. This kind of action deserves a specific punishment.

SB 1735 (Cox), Chapter 688, makes it an alternate felony/misdemeanor to flee or attempt to elude a pursuing peace officer by driving a vehicle upon a highway in the wrong direction. Specifically, this new law:

- Provides that whenever a person willfully flees or attempts to elude a pursuing peace officer and the person operating the pursued vehicle willfully drives that vehicle on a highway in a direction opposite to that in which the traffic lawfully moves is guilty of a criminal offense.

- Makes the above offense punishable by imprisonment in the state prison for 16 months, 2 or 3 years; by imprisonment in a county jail for not less than six months nor more than one year; by a fine of not less than $1,000 nor more than $10,000; or by both imprisonment and a fine.

Excessive Blood Alcohol Level

Under existing law, a person convicted of a first-time driving under the influence (DUI) without injury offense is subject to a six-month license suspension. That person may seek a restricted license to travel to and from work and to and from the drinking driver treatment program if certain requirements are met, including enrollment in the drinking driver treatment program. The basic first-time offender drinking driver treatment program is three months long.

AB 1353 (Liu), Chapter 164, Statutes of 2005, created a nine-month program for a person convicted of a first-time DUI with a blood alcohol level of 0.20 percent or more. However, AB 1353 did not extend the time of the license suspension for a person sentenced to this longer program. Therefore, although technically a person would have his or her license suspended for only six months, his or her license could not be reinstated until he or she completes the nine-month drinking driver treatment program; that person could not get a restricted license beyond the six-month time frame.

> **SB 1756 (Migden), Chapter 692,** requires that a person convicted of a first time DUI without injury, with a blood alcohol level of 0.20 percent or higher, who is referred to a nine-month alcohol rehabilitation program, shall have his or her license suspended for 10 months rather than six months to conform the license suspension to the duration of the DUI program for first-time offenders and allow for the provision of a restricted license for the program period.

Animal Abuse: Unattended Animals

Summer can be dangerous time for pets, especially those left inside of hot cars. Every year, countless dogs die after being locked in cars while their owners work, visit, shop, or run other errands. These deaths are entirely preventable.

Many pet owners are not aware that even moderately warm temperatures outside can quickly lead to deadly temperatures inside a closed car. For example, within one hour, an outside temperature of 72-degrees Fahrenheit can cause conditions inside a vehicle that adversely affects the health, safety, or well-being of an animal.

Even with the windows left slightly open, an 85-degree outside temperature can cause a temperature of 102 degrees inside a vehicle in 10 minutes and that temperature is reached in just one-half hour. A healthy dog, whose normal body temperature ranges from 101 to 102.5 degrees, can withstand a body temperature of 107 to 108 degrees for only a short time before suffering brain damage or death.

Numerous organizations, businesses and individuals have worked to educate pet owners of the dangers of leaving animals unattended in vehicles in the heat. However, animal

control organizations found that educational approaches by themselves have not significantly improved behavior. To be truly effective, these educational approaches must be integrated with enforcement activities.

SB 1806 (Figueroa), Chapter 431, creates criminal penalties for leaving an animal in an unattended motor vehicle under conditions that endanger the health or well-being of the animal. Specifically, this new law:

- Provides that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat; cold; lack of adequate ventilation, food, or water; or other circumstances that could reasonably be expected to cause suffering, disability or death to the animal.

- Makes a first conviction, unless the animal suffers great bodily injury (GBI), punishable by a fine not to exceed $100 per animal. If the animal suffers GBI, the offense is punishable by up to six months in a county jail, a fine not to exceed $500, or by both a fine and imprisonment.

- Makes a subsequent violation, regardless of injury to the animal, punishable by up to six months in a county jail, a fine not to exceed $500, or by both a fine and imprisonment.

- Provides that nothing in this section shall prevent a peace officer, humane officer, or animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat; cold; lack of adequate ventilation, food, or water; or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

- Requires a peace officer, humane officer, or animal control officer who removes an animal from a vehicle to take it to an animal shelter; other place of safekeeping; or, if the officer deems necessary, to a veterinary hospital for treatment.

- Authorizes a peace officer, humane officer, or animal control officer to take all steps reasonably necessary for the removal of an animal from a motor vehicle including, but not limited to, breaking into the motor vehicle after a reasonable effort to locate the owner or other person responsible.

- Requires a peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle to, in a secure and conspicuous location on or within the motor vehicle, leave the address of the location where the animal can be claimed. The animal can be claimed only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

- Provides that nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep, poultry or other such agricultural animals in motor vehicles

designed to transport such animals for agricultural purposes.

- States that nothing in this new law shall affect existing liabilities or immunities in current law.

- Makes numerous legislative findings and declarations regarding the danger of leaving an animal unattended in a motor vehicle.

DNA

DNA

When implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69 passed by the voters in November 2004), it was discovered that technical, clarifying changes were needed relating to laboratories authorized to upload DNA profiles and clarifying that state mental hospital peace officers are authorized to use reasonable force to collect DNA samples from persons who resist DNA collection. Additionally, it was also necessary to clarify that DNA samples may not be taken based solely upon an arrest without a conviction that occurred before the enactment of Proposition 69.

AB 2850 (Spitzer), Chapter 170, provides that only Department of Justice (DOJ) laboratories and designated public law enforcement crime laboratories may upload available DNA and forensic identification databank samples, as specified. The DOJ and designated public law enforcement crime laboratories allowed to upload DNA and other forensic identification samples must meet state and federal requirements, including those of the Federal Bureau of Investigation Quality Assurance Standards and must be accredited by an organization approved by the National DNA Index System Procedures Board. This new law also requires that a quality assessment must be conducted before DNA profiles generated by a private laboratory are uploaded. Additionally, this new law includes the officers of a state mental hospital among those peace officers who may collect biological samples, and may use reasonable force to collect samples from individuals who refuse to provide them as required.

This new law also clarifies that retroactive application of the requirement to provide DNA samples does not apply to persons arrested but not convicted prior to the implementation of Proposition 69.

DOMESTIC VIOLENCE

Victims' Compensation

The Victim Compensation and Government Claims Board provides reimbursement to crime victims, including domestic violence victims. Studies have shown that one out of four women will experience domestic violence during her lifetime.

Under current law, a domestic violence or sexual assault victims is eligible for a one-time cash payment of $2,000 to cover expenses incurred in relocating if the relocation is determined to be necessary for the victim's safety. The only way for a victim to receive another payment is if the crime is more than three years after the date of the original crime and involves a different offender, thus precluding a victim who must relocate a second time because the offender has found the victim.

> **AB 105 (Cohn), Chapter 539,** provides that the Victim Compensation and Government Claims Board may authorize more than one reimbursement for relocation of one victim per crime if necessary for the personal safety or emotional well being of the victim. The total cash payment or reimbursement for all relocations due to the same crime shall not exceed the current $2,000.

Domestic Violence

In April 2005, the Department of Health Services (DHS) surveyed the current capacity of California shelters to provide culturally competent care and identified the lesbian, gay, bisexual and transgender (LGBT) community as a population not served in the intimate partner abuse area. Although DHS has clear evidence of the LGBT community's need of services in this area and has dedicated funding for this purpose, DHS' programs are still designed primarily to serve battered women and their children.

Additionally, from the LGBT community's perspective, many LGBT victims are afraid to access shelter services for fear of “outing” themselves or being further harmed by service providers who lack the understanding and sensitivity to meet their needs. Homosexual male and transgender victims may feel particularly uncomfortable at women’s shelters.

LGBT domestic violence victims are much more likely to seek safe havens at community centers and organizations that cater directly to the LGBT community. In addition, law enforcement, domestic violence shelters and other providers require better training to serve LGBT victims, particularly in parts of the state that do not have LGBT-specific organizations.

> **AB 2051 (Cohn), Chapter 856,** establishes the Equality in Prevention and Services for Domestic Abuse Act in order to provide culturally appropriate education and services for LGBT victims of domestic violence. Specifically, this new law:

- Establishes a $23 fee for those registering as domestic partners, which will support the following initiatives to combat domestic violence in the LGBT community:

  - An educational brochure specific to LGBT abuse;

  - LGBT-specific domestic violence training for law enforcement officers and domestic violence service providers; and,

  - Grants administered by DHS to support organizations that serve the LGBT community.

- Requires the fee to be deposited in the Equality in Prevention and Services for Domestic Abuse Fund to be administered by DHS.

- Requires the Secretary of State to provide couples with a LGBT domestic abuse brochure, along with their Certificate of Registered Domestic Partnership.

- Requires the Maternal and Child Health Branch of DHS, which issues grants to battered women's shelters to provide emergency shelter for women and their children escaping family violence, to include grants to underserved communities, including the LGBT community. This new law requires the advisory council established to consult with DHS regarding the Maternal and Child Health Branch grants to battered women's shelters to include individuals with an interest and expertise in LGBT domestic violence.

- Requires that the training program required for law enforcement officers on the handling of domestic violence complaints to include adequate instruction on the nature and extent of domestic violence in the LGBT community.

- Requires the Commission on Peace Officer Standards and Training, charged with developing the course of instruction for the training program, to consult with, among others, individuals with an interest and expertise in LGBT domestic violence.

- Requires that statewide training workshops on domestic violence conducted by the Office of Emergency Services include a curriculum on LGBT domestic abuse.

- Requires DHS, using funds from the Equality in Prevention and Services for Domestic Abuse Fund, to develop and disseminate an LGBT-specific domestic abuse brochure and administer a program of grants that support LGBT victims of domestic violence, as specified.

<u>Domestic Violence</u>

AB 352 (Goldberg), Chapter 431, Statutes of 2003, increased the fees to $400 that a person convicted of a domestic violence offense must pay in order to support specified domestic

violence programs. This statute was scheduled to expire on January 1, 2007

AB 2695 (Goldberg), Chapter 476, extends the sunset date to January 1, 2010 for the $400 fee imposed on a person convicted of domestic violence to support domestic violence centers, the Domestic Violence Restraining Order Reimbursement Fund, and the Domestic Violence Training and Education Fund. Specifically, this new law:

- Extends the sunset date to January 1, 2010 on provisions of law that imposed a $400 fee on a person convicted of domestic violence to support domestic violence centers, the Domestic Violence Restraining Order Reimbursement Fund and the Domestic Violence Training and Education Fund.

- Allows a judge, when issuing a temporary restraining order or injunction requested by an employer to include multiple employees or worksites within the protection of the order.

- Allows the court, upon a showing of good cause by the employer requesting the temporary restraining order or injunction, to issue a temporary restraining order or injunction which includes other persons employed at his or her workplace or workplaces.

- Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school district for those costs shall be made pursuant to specified sections of the Government Code.

- Extends indefinitely provisions of law that waive fees associated with the service of process of specified protective orders, restraining orders or injunctions.

- Extends indefinitely provisions of law that provides that there is no fee for a subpoena filed in connection with an application for a protective order, under specified circumstances.

- Extends indefinitely provisions of law that prohibit a sheriff from requiring a prepayment fee for protective orders relating to workplace violence.

- Expands the workplace violence exception to include elder abuse and domestic violence.

Victims of Crime

Existing law requires a public notice of any proposed name change to be published in a daily newspaper once a week for four consecutive weeks. For a person petitioning for a name change in order to avoid domestic violence and who is also enrolled in the Safe At Home program, the proposed name can be kept confidential as part of the public notice requirement; however, the original name must still be published in the notice. In view of the need of domestic violence and stalking victims to keep their addresses confidential from their abusers and stalkers, the Office of the Secretary of State acts as the program participants' agent for official service of process and forwards mail received at the substitute address provided.

> **SB 1743 (Bowen), Chapter 689,** additionally applies the above provisions to a petitioner who is a victim of sexual assault or who is filing on behalf of a victim of sexual assault. This new law specifies that the action for change of name is exempt under the provisions requiring publication of the order to show cause which must be filed with the court and is otherwise subject to the publication requirements. Thus, this new law provides the same confidentiality regarding name changes to victims of sexual assault as provided to victims of domestic violence or stalking.

DRIVING UNDER THE INFLUENCE

Criminal Procedure: Defendant's Appearance

Under current law, all persons charged with a misdemeanor (with the exception of persons charged with domestic violence) can appear through counsel. The court should have the discretion to require a defendant to personally appear at any time when charged with a misdemeanor driving under the influence (DUI) offense.

> **AB 2174 (Villines), Chapter 744,** provides that the court may order a person charged with a misdemeanor DUI offense to be personally present at arraignment, plea, or sentencing.

Driving under the Influence

An American Automobile Association's Foundation for Traffic Safety's January 2006 study found that between 1995 and 2004, more than 31,000 people throughout the nation suffered fatal injuries which resulted from accidents in which the driver was 15, 16 or 17 years old. Nearly 2,000 of those deaths occurred in California. The California Highway Patrol reports that during the same time period, 1,540 people were fatally injured in accidents where the driver was under 21 years of age and had been drinking.

Currently, California has what is called a ‘Zero Tolerance Policy’ for drinking and driving when under the age of 21. Current law does not carry any penalty for underage driving under the influence drivers with blood alcohol concentrations (BACs) below 0.05 percent. California only provides for Department of Motor Vehicle administrative penalties if a driver under 21 years of age has a BAC of 0.01 percent to 0.04 percent.

AB 2752 (Spitzer), Chapter 899, makes it an infraction for a person under the age of 21 to drive with a measurable BAC. This new law makes a first offense punishable by a fine of $100; a second offense, within a year of the first offense, a fine of $200; and a third or subsequent offense, occurring within one year of two or more prior infractions, a fine of $250.

Law Enforcement Patrol Vehicles

Under current law, the Alameda County Sheriff cannot conduct increased driving under the influence (DUI) patrols during holiday periods as their patrol vehicles, though distinctively marked, are painted a single color and do not match the required patrol vehicle color schemes. Without an exemption, if an Alameda County sheriff makes a DUI arrest, it is possible that individual could not be punished.

AB 3004 (Houston), Chapter 832, states legislative intent that the that the Commissioner of the California Highway Patrol amend the California Code of Regulations (CCR) relating to distinctively painted patrol vehicles to ensure that all distinctively painted patrol vehicles and motorcycles used by police and traffic officers are authorized to enforce Vehicle Code provisions relating to DUI. This new law also states that there is an emergency in Alameda County because the dark blue painted patrol vehicles and motorcycles used by the Alameda County Sheriff's Department do not meet the required CCR paint specifications that would allow them to enforce DUI provisions of the Vehicle Code.

Driving under the Influence: Ignition Interlock Devices

Alcohol-impaired driving is among the most common contributors of motor vehicle crashes in the United States. The 17,013 alcohol-related fatalities represent 40 percent of the 42,643 motor vehicle fatalities that occurred in 2003. Alcohol-related crashes are estimated to cost the public more than $50 billion per year. California has long been recognized as a leader in traffic safety, and many of the demonstrably effective driving-under-the-influence countermeasures have already been enacted and implemented in California. The ignition interlock is a device consisting of an alcohol-breath testing unit connected to the ignition switch of a vehicle. The driver is required to provide a breath sample before starting the vehicle; if the sample contains more than a predetermined amount of alcohol, the interlock ignition device (IID) locks the vehicle’s ignition, preventing the vehicle from being driven.

AB 3045 (Koretz), Chapter 835, prohibits the Department of Motor Vehicles (DMV) from re-instating the privilege to operate a motor vehicle of a person required to install an IID until the DMV receives proof, as specified, that a certified IID has been installed as ordered.

Excessive Blood Alcohol Level

Under existing law, a person convicted of a first-time driving under the influence (DUI) without injury offense is subject to a six-month license suspension. That person may seek a restricted license to travel to and from work and to and from the drinking driver treatment program if certain requirements are met, including enrollment in the drinking driver treatment program. The basic first-time offender drinking driver treatment program is three months long.

AB 1353 (Liu), Chapter 164, Statutes of 2005, created a nine-month program for a person convicted of a first-time DUI with a blood alcohol level of 0.20 percent or more. However, AB 1353 did not extend the time of the license suspension for a person sentenced to this longer program. Therefore, although technically a person would have his or her license suspended for only six months, his or her license could not be reinstated until he or she completes the nine-month drinking driver treatment program; that person could not get a restricted license beyond the six-month time frame.

> **SB 1756 (Migden), Chapter 692,** requires that a person convicted of a first time DUI without injury, with a blood alcohol level of 0.20 percent or higher, who is referred to a nine-month alcohol rehabilitation program, shall have his or her license suspended for 10 months rather than six months to conform the license suspension to the duration of the DUI program for first-time offenders and allow for the provision of a restricted license for the program period.

EVIDENCE

<u>Evidence: Victim Testimony</u>

Under existing law when determining the credibility of a witness, a court or jury may consider any matter that has any tendency in reason to prove or disprove the truthfulness of his or her testimony at the hearing.

> **AB 1996 (Bogh), Chapter 225,** extends procedures relating to sealed records of the sexual history of complaining witnesses to include certain sexual offenses pursuant to specified evidence provisions dealing with prior offenses.

GANG PROGRAMS

<u>Crime: Criminal Gangs</u>

The Street Terrorism Enforcement and Prevention (STEP) Act was passed in 1988. Legislative findings as to the purpose of the STEP Act stated, "[I]t is the right of every person . . . to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals." Amendments increasing the predicate crimes and penalties have been steadily added to this law. The original predicate offenses included assault, robbery, unlawful homicide or manslaughter, trafficking in controlled substances, shooting at an inhabited vehicle (added in 1991), arson and witness intimidation. Over time, the offenses of grand theft of a vehicle; grand theft exceeding $10,000; burglary; rape; looting; money laundering;

kidnapping; mayhem; torture; felony extortion; felony vandalism and carjacking; firearm trafficking and handgun possession; criminal threats; and theft or taking of a vehicle have been added. Proposition 21 (March 2000 Primary Election) greatly increased the enhancement imposed where a defendant committed a felony for the benefit of a gang. The 1988 legislation creating the STEP Act authorized the use of nuisance abatement laws to combat gangs. Buildings used by gangs can be declared nuisances and civil penalties may be imposed.

> **SB 1222 (Ackerman), Chapter 303,** expands the list of crimes that may be used to establish a "pattern of criminal gang activity" to include possessing a firearm, carrying a concealed firearm, and carrying a loaded firearm, as specified.

IDENTITY THEFT

Surveillance Photographs

Currently, Government Code Section 7480 allows law enforcement officers to view highly personal and confidential banking materials with the consent of the bank and/or the account holder. Government Code Section 7480 lists several types of information that financial institutions must provide to the police when a crime report has been filed. The information includes the dates and amounts of deposits and debits and the account balance on specified dates and copies of the signature card, including the signature and any addresses appearing on a customer's signature card. This information aids police in their investigation and provides information to the police in an expedited fashion as there is no requirement for a search warrant. Similarly, providing a way for police to obtain surveillance photographs in an expedited fashion may well increase the rate at which types of identity theft crimes are solved.

> **AB 618 (Cogdill), Chapter 705,** expands the list of information a bank, credit union, or savings association shall furnish to the police, sheriff's department, or district attorney (DA) when a crime report alleging fraud has been filed by the police, sheriff's department, or district attorney to include surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution.

Identity Theft: Penalty Increases

According to the Federal Trade Commission’s data, California had a reported 45,175 victims of identity theft in 2005. California ranked third in the nation with 125 victims of identity theft per 100,000 people. The Cities of Los Angeles, San Diego, San Francisco, Sacramento and San Jose have the highest number of identity theft victims in California. Further, the data only includes the number of complaints the Federal Trade Commission received from identity theft victims and actual numbers are likely to be significantly higher.

> **AB 2886 (Frommer), Chapter 522,** creates new crimes related to identity theft for persons previously convicted and for persons who sell the personal identifying

information of another person. Specifically, this new law:

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison for any person who, with intent to defraud, acquires or retains possession of the personal identifying information (PII) of another person, and who has been previously convicted of identity theft, as specified.

- States in any case in which a person willfully obtains PII of another person, uses that information to commit a crime, in addition to a violation of the identity theft statute, and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison, for any person who, with intent to defraud, acquires or retains possession of the PII of 10 or more other people.

- States that any person who with actual knowledge that the PII, as specified, of a specific person will be used to commit identity theft, as specified, who sells, transfers, or conveys that same PII, is guilty of a public offense and shall be punished by a fine, by imprisonment in state prison for a term of 16 months, two or three years, or by both imprisonment and fine.

- Exempts an interactive computer service or access software provider, as defined in federal law, from liability for identity theft unless the service or provider acquires, transfers, sells, conveys, or retains possession of PII with intent to defraud.

- Creates an alternate misdemeanor-felony, punishable by up to one year in the county jail, or by a term of 16 months, two or three years in state prison, for any person who, with the intent to defraud, sells, transfers, or conveys the PII of another.

- States that every person who commits mail theft, as defined by federal statute, shall be punished by up to one year in the county jail, a fine or by both imprisonment and fine. Prosecution under this section shall not limit prosecution under other related sections, as specified.

Criminal Justice Statistics

The California Attorney General has the duty to collect, analyze, and report statistical data to measure crime. While the Attorney General's report includes property crimes, the report does not separate identity theft from general theft and other related property crimes. Having accurate statistical data will help law enforcement and the Legislature in formulating future strategy and legislation to combat identity theft.

SB 1390 (Poochigian), Chapter 160, requires the Department of Justice (DOJ) to publish statistical data regarding identity theft arrests in DOJ's annual report on crime in California.

JUVENILES

Female Inmates and Wards

The State of California currently operates four prisons for women; recent data shows that 10 percent of women entering prison are pregnant. Reports issued by Amnesty International and the San Francisco National Organization for Women's Women in Prison Task Force describe neglect in the health care of women prisoners.

In October 2000, the California Joint Committee on Prison Construction and Operations conducted a hearing that disclosed the medical plight of women inmates at California facilities. For example, female inmates from the Central California Women's Facility reported being denied health care for serious conditions such as sickle cell anemia, Hepatitis C, and prenatal health care.

AB 478 (Lieber), Chapter 608, requires the Department of Corrections and Rehabilitation (CDCR) to establish minimum standards for pregnant inmates, including necessary nutrition and vitamins, information and education, and a dental cleaning. This new law also provides that a pregnant inmate transported to a hospital outside the prison shall be transported in the least restrictive manner possible. Further, the inmate may not be shackled by the wrists, ankles, or both, during delivery, and while in recovery after giving birth. This new law accords the same rights to pregnant juvenile wards who give birth while under the CDCR's jurisdiction, the Division of Juvenile Facilities, or in a community treatment program.

Children of Incarcerated Parents

Children are deeply affected by the arrest or incarceration of their parents. Families, law enforcement, local governments, and community-based organizations must work together to ensure that a child is taken care of when a parent is arrested or incarcerated. California must have uniform procedures that consider the child's needs first. According to the California Research Bureau, approximately 850,000 children in California have parents in the criminal justice system.

AB 1942 (Nava), Chapter 729, requires the Peace Officers Standards and Training Commission to develop guidelines and training for use by state and local law enforcement officers to address issues related to child safety when a caretaker parent or guardian is arrested.

Juvenile Crime

Existing juvenile law (Proposition 21 in 2000) provides that a court may, under specified conditions, summarily grant deferred entry of judgment if a minor admits the charges, waives time for the pronouncement of judgment, and meets other eligibility criteria. Existing law requires that the procedure for deferred entry of judgment may not commence without the agreement of the prosecutor, the public defender or the minor's private attorney, and the presiding judge of the juvenile court. Under existing law, if the parties do not agree, the minor's case must be heard according to procedures generally governing juvenile cases.

> **SB 1626 (Ashburn), Chapter 675,** deletes provisions requiring that there be an agreement between the attorneys and the judge; and states that upon a finding that the minor is suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. This new law requires a court to make findings on the record that a minor is appropriate for deferred entry of judgment in any case in which it is granted. Deferred entry of judgment is not available to minors who have committed specified serious or violent offenses.

Juvenile Justice: Adequate Facilities and Programs

Welfare and Institutions Code (WIC) Section 736 requires the Division of Juvenile Justice (formerly know as the "California Youth Authority") to accept a person committed to the Division if it believes the person can be materially benefited by its reformatory and educational discipline and if the Division has adequate facilities. Additionally, the Department of Juvenile Justice (DJJ) must accept a person who is "borderline psychiatric" or "mentally deficient", a "sex deviate", or suffering from a "primary behavior disorder".

WIC Section 736 contains archaic language over 40 years old and is no longer used by mental health professionals or public policy makers in determining mental health treatment needs for youth committed to the state juvenile justice system. Additionally, by specifically delineating which type of mental health cases may be accepted by the DJJ, that old language may inadvertently restrict DJJ's ability to accept, or offer treatment to, youth with other mental health or treatment needs. Finally, certain individuals may have mental health needs beyond DJJ's ability; WIC Section 736 may hinder California's ability to appropriately place such an individual in another treatment program.

> **SB 1742 (Machado), Chapter 257,** requires the DJJ to only accept a person committed to it if DJJ has adequate staff and programs to provide care, and deletes provisions of law that require DJJ to accept a person who is borderline psychiatric, borderline mentally deficient, a specified sexual deviate, or suffering from a behavior disorder.

MURDER

Panic Strategy

The murder of Gwen Araujo in Newark, California, focused national attention on the increasing use of the "panic strategy" by defendants in murder trials. In 2004, the criminal trial of the three men accused of attacking Ms. Araujo ended in a mistrial, following several weeks of defense

attorneys asserting that the defendants "panicked" upon learning that Ms. Araujo was a transgender individual. Their arguments, largely based on stereotypes about transgender women, were framed to play on societal bias against transgender people. If successful, using the panic strategy could have resulted in a conviction for the lesser charge of voluntary manslaughter rather than first- or second-degree murder as sought by the prosecution.

> **AB 1160 (Lieber), Chapter 550,** makes legislative findings and declarations expressing disapproval of the use of "panic strategies" by criminal defendants in order to appeal to the societal bias of a juror based on the victim's actual or perceived gender or sexual orientation, and requires the court to instruct the jury that their decision should not be influenced by bias against a victim, as specified.

PEACE OFFICERS

Custodial Officers

Existing law allows cities and counties to employ custodial officers who are peace officers for the purpose of maintaining order in local detention facilities. A custodial officer under this section does not have the right to carry or possess a firearm in the performance of his or her duties. However, a custodial officer may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant.

> **AB 272 (Parra), Chapter 127**, adds Inyo, Kings, and Tulare Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to specified custodial assignments are defined as peace officers whose authority extends to any place in California while engaged in the performance of their employment.

Illegal Dumping Enforcement Officers

Current law limits the effectiveness of local code enforcement or other specialized, non-sworn enforcement/civilian officers to pro-actively combat illegal dumping. Under Penal Code Section 836.5, local agencies can designate certain employees to issue citations for infractions and misdemeanor violations of local ordinance. This limited authority is insufficient and contrasts with the effective environmental protection enforcement model used in other states.

> **AB 1688 (Niello), Chapter 267,** adds illegal dumping enforcement officers employed by a city, county, or city and county, to the extent necessary to enforce laws related to illegal waste dumping or littering, and authorized by a memorandum of understanding with the sheriff or chief of police within whose jurisdiction the person is employed, to the list of persons who are not peace officers but may exercise the powers of arrest of a peace officer if that person completes the required course.

Children of Incarcerated Parents

Children are deeply affected by the arrest or incarceration of their parents. Families, law enforcement, local governments, and community-based organizations must work together to ensure that a child is taken care of when a parent is arrested or incarcerated. California must have uniform procedures that consider the child's needs first. According to the California Research Bureau, approximately 850,000 children in California have parents in the criminal justice system.

> **AB 1942 (Nava), Chapter 729,** requires the Peace Officers Standards and Training Commission to develop guidelines and training for use by state and local law enforcement officers to address issues related to child safety when a caretaker parent or guardian is arrested.

Peace Officer Powers: Los Angeles Security Officers

Existing law provides that numerous types of publicly employed security officers are granted peace officer powers of arrest even though they are not peace officers. These persons may exercise the powers of arrest of a peace officer, as specified, during the course and within the scope of their employment if they successfully complete a course in the exercise of those powers, as specified, which has been certified by the Commission on Peace Officers Standards and Training.

The role of Los Angeles city security guards, often the first line of response to any disruption of the public order, has clearly evolved over the years into a more proactive approach. In recent years, there have been many situations where these officers have found it necessary to detain persons while awaiting a response from the Los Angeles Police Department or other sworn personnel. For example, there have been situations involving assaults, carrying concealed weapons, injecting illegal drugs and lewd conduct in front of minors.

> **AB 1980 (Bass), Chapter 271,** clarifies the authority of Los Angeles City security officers whose duties include protecting the public at locations throughout Los Angeles. These sites include the airport, harbor, libraries, power plants, reservoirs, City Hall and other facilities.

Correctional Institutions: Communicable Disease

Existing law provides for the confidential testing of inmates and other enumerated persons for HIV and AIDS under specified circumstances. The test is initiated by a request from a law enforcement officer or another inmate, to the chief medical officer of the facility, when the requesting person has come in contact with the bodily fluids of an inmate or other specified persons in a correctional facility or courtroom.

> **AB 2870 (De La Torre), Chapter 800,** expands existing provisions of law regarding medical testing of prisoners to include "other infectious, contagious, or communicable disease". Specifically, this new law:

- Expands existing legislative findings and declarations regarding HIV and AIDS in corrections to include "other infections, contagious, or communicable diseases."

- Expands existing legislative intent language regarding measures to take to address the public health crisis regarding HIV an AIDS in corrections to include "other infectious, contagious, or communicable diseases."

- Expands the existing definition of "correctional institution" for purposes of medical testing of prisoners to include a court facility.

- Expands the existing definition of "counseling" for purposes of medical testing of prisoners to include "infectious, contagious, or communicable diseases" as a topic for which counseling can be provided.

- Expands the existing definition of "law enforcement employee" for purposes of medical testing of prisoners to include "prosecutors and staff."

- Adds for purposes of medical testing of prisoners, a definition of "infectious, contagious, or communicable disease."

- Provide that inmates subject to Hepatitis B or C tests shall receive specified information relating to the right to appeal and the right to counseling from a medical professional.

- Expands existing law to include "a person charged with any crime, whether or not the person is in custody" as a category of persons that if a law enforcement employee comes into contact with the bodily fluids he or she can have that person tested for HIV.

- Provides that the law enforcement employee who reported an incident of contact with bodily fluids of inmates, as specified, shall be notified o the results of any test administered to any person as a result of the reporting of the incident.

- Provides that testing for other infectious contagious or communicable diseases may be conducted by any licensed medical laboratory approved by the chief medical officer.

Attempted Murder of a Custody Assistant

Under existing law, the attempted murder of a custodial officer is punishable by imprisonment in the state prison for life with the possibility of parole or by 15 years to life if it is also proven that the attempt was premeditated. The legislation that created that law inadvertently failed to include custody assistants (non-sworn, uniformed Los Angeles County Sheriff's Department employees) within the law's scope. A custody assistant's job is very similar to those of a "custodial officer", work in custody detention facilities, and are responsible for the care and

handling of inmates.

SB 1184 (Cedillo), Chapter 468, corrects the inadvertent omission of custody assistants from the crime of attempted murder of a police officer, firefighter or custodial officer by specifically providing that this law also applies to custody assistants. This new law also defines in statute a custody assistant as a person who is a full-time employee, not a peace officer, and employed by a sheriff's department who assists peace officer personnel in maintaining order and security in a custody detention, court detention or station jail facility of the sheriff's department. The new provisions relating to custody assistants apply only in Los Angeles County and do not become operative until those provisions are adopted by resolution of the board of supervisors.

Deputy Sheriffs: Residency and Citizenship

Existing law requires that deputy sheriffs or marshals shall not be appointed unless "he or she is a citizen of this state." In many of these counties, deputy sheriffs live in the neighboring state due to the affordability of housing in comparison to California. In Alpine County, all deputy sheriffs live in Nevada due to the cost of housing. In San Bernardino County, 30 deputies assigned to the Colorado River station live in Arizona. Housing is not available in Needles or Havasu Landing, but is plentiful in Havasu City, Arizona. Similar situations exist in almost every county along the border. Thus, all these deputy sheriffs are technically in violation of the law.

SB 1241 (Cox), Chapter 53, allows deputy sheriffs and deputy marshals to reside outside of the state of California.

RESTITUTION

Victim Compensation

Victims of crime have a constitutional right to receive restitution from their offenders (California Constitution, Article I, Section 28). Victim restitution is designed to increase offender accountability by holding offenders responsible for the actual costs of their crimes. Yet, currently, victim restitution orders are collected from offenders in state prison only upon request of the victims. Many victims are not aware that they must submit such a request. Only 19% of victims with restitution orders imposed against California Department of Corrections and Rehabilitation (CDCR) inmates request collection.

> **AB 1505 (La Suer), Chapter 555,** authorizes the CDCR to collect restitution from an inmate or parolee, but collection is not required, and allows a victim to receive a restitution order without filing a claim with the Victim Compensation and Government Claims Board.

Information Card for Victims of Crime

Under existing law, many cities and agencies offer programs and services to victims of certain violent crimes. However, some agencies are reluctant to participate because they believe a liability exists if the distribution of information regarding victim's rights already offered under current law does not result in services being received by the victim or if the peace officer does not distribute such information.

> **AB 2705 (Spitzer), Chapter 94,** encourages the distribution of information regarding victims' rights by giving the agencies the protection they need to encourage the dissemination of information to victims. This new law provides that a city or county may authorize a law enforcement officer to provide to a crime victim a "Victim's Rights Card." A "Victim's Rights Card" is a card or paper that provides a printed notice with a disclaimer, in at least 10-point type, to a victim of a crime regarding potential services that may be available under existing state law to assist the victim.
>
> This new law states that provision of the victim's rights card is a discretionary act and shall be operative only in a city or county in which the city council or board of supervisors has enacted a resolution regarding the victim's right card. This new law specifically states that it shall not be interpreted as replacing or prohibiting any services currently offered to victims of crime by any agency or person.

SEX OFFENDERS

Sex Offender Management Board

In California, sex offenders are currently managed through a complex system involving multiple state and local departments. Yet, there is no centralized infrastructure that coordinates communication, research or decision-making amongst the various agencies.

There are over 100,000 registered sex offenders living in California communities, an estimated 14,000 to 25,000 in California prisons, and an additional unknown number in California jails. Almost all convicted sex offenders will eventually return to the community within a short period of time under direct supervision, either on parole, probation or conditional release. During this period of time when a sex offender is under direct supervision, it is integral that there is a comprehensive and cohesive network of interventions available to control the behavior of sex offenders and prevent recidivism.

AB 1015 (Chu), Chapter 338, creates a Sex Offender Management Board (SOMB), comprised of 17 members, to assess current management practices for adult sex offenders and report to the Legislature by January 1, 2008. Specifically, this new law:

- Establishes a 17-member SOMB, under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), with a representation from northern, central, and southern California as well as urban and rural areas. Establishes the following characteristics for each appointee to SOMB:
  - Substantial prior knowledge of issues related to sex offenders;
  - Decision-making authority for the agency or constituency represented; and,
  - A willingness to serve on SOMB and a commitment to contribute to SOMB's work.
- Establishes the membership of SOMB to consist of the following persons:
  - State government agencies:
    - One member who represents the Department of Justice (DOJ), appointed by the Speaker of the Assembly, with expertise in dealing with sex offender registration, notification, and enforcement;
    - One member who represents CDCR, appointed by the Governor, with an expertise in parole policies;
    - One member who represents the Board of Prison Terms, appointed by Governor;

        - One California state judge, appointed by the President pro Tempore of the Senate; and,

        - One member who represents the Department of Mental Health (DMH), appointed by the President pro Tempore of the Senate, who is a licensed mental health professional with recognizable expertise in the treatment of sex offenders.

    - Local government agencies:

        - Three members who represent law enforcement, appointed by the Governor. One member shall possess investigative expertise and one member shall have law enforcement duties that include registration and notification responsibilities;

        - One member who represents prosecuting attorneys, appointed by the President pro Tempore of the Senate, with expertise in dealing with adult and juvenile sex offenders;

        - One member who represents probation officers, appointed by the Speaker of the Assembly; and,

        - One member who represents public defenders, appointed by the Speaker of the Assembly.

    - Non-governmental agencies:

        - Two members who are licensed mental health professionals with expertise in the treatment of sex offenders, appointed by President pro Tempore of the Senate.

        - Two members who represent sex abuse victims and rape crisis centers, appointed by the Speaker of the Assembly; and,

        - One member who is a clinical polygraph examiner with a specialization in the administration of post conviction polygraph testing for sex offenders, appointed by the Governor.

- Directs SOMB to appoint a presiding officer from among its members to serve in a capacity as SOMB sees fit.

Sex Offenders: Parole Conditions

Under existing law, a paroled inmate must be returned to the county of "last legal residence". An inmate may be returned to another county if it would be in the best interests of the public. If the Board of Parole Hearings (BPH) decides on a return to another county, the BPH shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police.

> **AB 2049 (Spitzer), Chapter 735,** prohibits a registered sex offender on parole, as specified, from having any contact or communication with the victim or the victim's immediate family.

Sex Offenders: Punishment, Control and Containment Act

California lacks a comprehensive, proactive approach to preventing the victimization of citizens by sex offenders. A comprehensive approach will make all of California's communities safer from sexual predators.

> **SB 1128 (Alquist), Chapter 337,** enacts the Sex Offender Punishment, Control and Containment Act of 2006. Specifically, this new law:

- States that any person who kidnaps or carries away any person with the intent commit a specified sex offense shall be punished by imprisonment in the state prison for life with the possibility of parole.

- Punishes any person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior by a fine not exceeding 5,000; by imprisonment in a county jail not exceeding one year; or by both the fine and imprisonment.

- Punishes any person who annoys or molests a child, as specified, after having entered a dwelling without consent, as specified, with not only a term of imprisonment up to one year in the county jail or in the state prison for a term of 16 months, 2 or 3 years and by a fine of $5,000.

- Provides that any person previously convicted of a registerable sex offense and who arranges a meeting with a minor, as specified, shall be sentenced to a term of 16 months, 2 or 3 years in state prison.

- States that a person who arranges a meeting with a minor, as specified, and who goes to the arranged meeting place on or about the arranged time shall be punished by a term of two, three or four years.

- Punishes any adult who engages in sexual intercourse or sodomy with a child under the age of 10 years of age or younger by sentencing the offender to a term of 25-years-to-life.

- States that a person required to register as a sex offender who loiters on school property where minors are present without lawful business purpose and without permission from the chief operating officer is punishable as a misdemeanor.

- States any person who is required to register as a sex offender where the victim was an elderly or dependant person, as defined, and who is present on any property where elderly or dependant persons reside or are regularly present without having registered with the facility administrator, except as to proceed expeditiously to the administrator's office, is guilty of a crime and shall be punished as a misdemeanor.

- Increases the period of parole from five to ten years for any inmate sentenced under the One-Strike Sex Law or sentenced as a "habitual sex offender" rather than just those offenders convicted of child molestation and the continuous sexual abuse of a child.

Continuous Electronic Monitoring

California has more registered sex offenders than any other state in the country. More than 9,000 sex offenders are supervised on parole caseloads, and may be living and working in the same areas where children congregate. According to the California Department of Corrections and Rehabilitation (CDCR), at least 2,000 of these sex offenders are classified as "high risk." Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

Currently, another 11,000 sex offenders are on county probation; thousands more are incarcerated in county jails and will be released back into local communities within one year. While California has some of the toughest laws in the nation as it relates to punishing sex offenders, there is a concern that the state does not do enough to ensure that when these offenders are released from prison or jail they are monitored to the fullest extent possible.

Global position satellite monitoring technology is a method of tracking the whereabouts of offenders who pose a threat to society. These devices allow a parole agent to be aware of every move the offender makes at all times.

SB 1178 (Speier), Chapter 336, commencing July 1, 2008, requires every adult male convicted of an offense that requires him or her to register as a sex offender to be assessed for risk of re-offending using the state-authorized Risk Assessment Tool for Sex Offenders (SARATSO). Specifically, this new law:

- States that on or before January 1, 2008, the SARATSO Review Committee, in consultation with parole officers and other law enforcement officers, shall develop a training program for probation officers, parole officers, and any other persons

authorized to administer the SARATSO.

- Requires probation and parole regional parole departments to designate persons within their organizations to attend yearly training, and shall train others within their organizations who are designated to perform risk assessments.

- States that the SARATSO Review Committee shall establish a plan for assessing eligible persons not assessed pursuant to this law. The plan shall provide for adult males to be assessed before January 1, 2012 and for females and juveniles to be assessed on or before January 1, 2013. This new law requires that on or before January 15, 2008, the Committee shall introduce legislation to implement the plan.

- States that commencing on January 1, 2008, every adult male sex offender registrant shall be assessed for the risk of re-offending using the SARATSO assessment and every adult male who has a risk assessment of "high" shall be continuously electronically monitored while on parole unless CDCR determines that such monitoring is unnecessary for a particular person.

- States that beginning January 1, 2009 and every two years thereafter, the CDCR shall report to the Legislature and the Governor on the effectiveness of continuous electronic monitoring, including the costs of the monitoring and the recidivism rates of those persons who have been monitored.

SEX OFFENSES

Sex Offenders

Existing law requires the Department of Justice (DOJ) to make information concerning certain persons required to register as sex offenders available to the public via an Internet Web site, including the offender's criminal history. However, there are concerns that the database has not disclosed other important aspects of the offender’s history. For example, the database fails to disclose the date of the offender’s last offense of a sexual nature and when the offender was released from incarceration for that crime.

> **AB 1849 (Leslie), Chapter 886,** requires that on or before July 1, 2010, the year of the conviction of the offender's last sexual offense, the year of release from incarceration for that offense, and whether he or she was subsequently incarcerated for any felony be posted on the Internet Web site. This new law also requires any state facility that releases a sex offender to provide the year of conviction and year of release for his or her most recent offense requiring registration as a sex offender to the DOJ. Additionally, any state facility that releases a person required to register as a sex offender from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register to so advise the DOJ. This new law takes effect immediately.

Sex Offender Registration Offenses

Existing law requires that persons convicted of specified sex offenses register annually with the Attorney General each year for life. The Attorney General makes certain information about the location of these sex offenders available to the public via the Internet on its Megan's Law Web site.

> **AB 1900 (Lieu), Chapter 340,** adds the additional of crime murder committed in the course of a sex crime to the list of sex offenses which require registration. This new law also clarifies that persons convicted in another state of pimping and pandering with a minor and required to register in that other state need not register in California unless the out-of-state conviction contains all of the elements of a registerable California offense. This new law further clarifies that sex offender registrants who have been incarcerated for less than 30 days and then return to the previously registered address are not required to re-register upon release from incarceration.

Sex Offenders: Working With Minors

Current California law requires a sex offender to disclose his or her status as a registrant only if the registrant will be working directly with children in an unaccompanied setting. Additionally, if the offender is convicted of a crime in which the victim was under 16 years of age, that registrant cannot work with children in an unaccompanied setting. However, he or she is authorized to work with children if the job takes place in an accompanied setting.

> **AB 2263 (Spitzer), Chapter 341,** requires a sex offender registrant who applies for, or accepts, a position as an employee or volunteer where the applicant would be working directly, and in an accompanied setting, with minor children on more than an incidental and occasional basis to disclose his or her status as a registrant upon application or acceptance of any such position if the applicant's work would require him or her to touch minor children on more than an incidental and occasional basis.

Spousal Rape

Under existing law, commencement of the prosecution for spousal rape shall not begin unless the violation was reported to medical personnel, a member of the clergy, an attorney, a shelter representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer, or a firefighter within one year after the date of the violation. This reporting requirement shall not apply if the victim's allegation of the offense is corroborated by independent evidence that would otherwise be admissible during trial.

> **SB 1402 (Kuehl), Chapter 45,** deletes the requirement that spousal rape only be prosecuted where the victim reported the attack to a specified person within one year of the offense or where the offense is corroborated by independent evidence that would otherwise be admissible at trial.

Victims of Crime

Existing law requires a public notice of any proposed name change to be published in a daily newspaper once a week for four consecutive weeks. For a person petitioning for a name change in order to avoid domestic violence and who is also enrolled in the Safe At Home program, the proposed name can be kept confidential as part of the public notice requirement; however, the original name must still be published in the notice. In view of the need of domestic violence and stalking victims to keep their addresses confidential from their abusers and stalkers, the Office of the Secretary of State acts as the program participants' agent for official service of process and forwards mail received at the substitute address provided.

SB 1743 (Bowen), Chapter 689, additionally applies the above provisions to a petitioner who is a victim of sexual assault or who is filing on behalf of a victim of sexual assault. This new law specifies that the action for change of name is exempt under the provisions requiring publication of the order to show cause which must be filed with the court and is otherwise subject to the publication
requirements. Thus, this new law provides the same confidentiality regarding name changes to victims of sexual assault as provided to victims of domestic violence or stalking.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Out-Patient Release

The Department of Mental Health (DMH) has developed terms and conditions of out-patient release to ensure the safety of communities and the success of a sexually violent predator's (SVP) rehabilitation. DMH should not be allowed to unilaterally alter any of the terms and conditions of the out-patient release of a SVP without the approval of the court.

AB 1683 (Shirley Horton), Chapter 339, requires DMH to provide the court and law enforcement with copies of specified information relating to the monitoring and supervision of a SVP proposed for outpatient treatment in the community. Specifically, this new law:

- Requires DMH to provide the court with a copy of the written contract entered into with any entity responsible for monitoring and supervising the out-patient placement and treatment of a SVP proposed for out-patient treatment in the community.

- States that the court in its discretion may order DMH to provide a copy of the written terms and conditions of out-patient release to the sheriff, chief of police, or both, who have jurisdiction over the actual or proposed placement community.

- Provides that except in an emergency, DMH or its designee shall not alter the terms and conditions of conditional release without the approval of the court.

- Requires DMH to give notice to the committed person, the district attorney, or designated county counsel of any proposed change in the terms of out-patient release.

- Provides that the court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change as soon as practicable.

- States that if a hearing on the proposed change is held, the court shall state its findings on the record. If the court approves a change in the terms and conditions of conditional release without a hearing, the court shall issue a written order.

- Provides that in the case of an emergency, DMH or its designee may deviate from the terms and conditions of conditional release to protect the public safety or the safety of the person, and allows for a hearing on the emergency to be set as soon as practicable.

- Clarifies that matters concerning the residential placement, including any changes or proposed changes in residential placement, shall be considered and determined under existing statutory guidelines.

Sex Offender Punishment, Control and Containment Act of 2006: Sexually Violent Predators

Under existing law, a sexually violent predator (SVP) is an inmate who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

SB 1128 (Alquist), Chapter 337, makes several changes to the law as it relates to the civil commitment of offenders deemed SVPs. Specifically, this new law:

- States persons committed as SVPs shall be committed for an indeterminate term rather than the current law of two years.

- Tolls the period of parole while a person is committed as a SVP and states time spent on conditional release under the supervision of the court shall be subtracted from the person's period of parole.

- Expands the definition of "sexually violent offense" to include specified acts of rape, sodomy and oral copulation in concert.

- Specifies that a committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed for purposes of any court proceeding held pursuant to existing law and a jury shall be so instructed. Completion of treatment programs shall be a condition of release.

VEHICLES

Vehicles: Passengers in Trunks

The California Highway Patrol states that since 2000, there have been 153 collisions resulting in 140 injuries and 9 deaths associated with persons riding on portions of vehicles not designed or intended for the use of passengers. United States Department of Transportation statistics show that 96 people have died from riding in trunks from 1982 to 2003.

AB 1850 (Mountjoy), Chapter 900, makes it an infraction for a driver of a vehicle to knowingly permit a person to ride in the trunk of that vehicle and also for the person who rides in the trunk. Specifically, this new law:

- Makes a first offense punishable by a fine of $100.
- Makes a second offense occurring within one year of a prior violation punishable by a fine of $200.
- Makes a third offense occurring within one year of two prior violations punishable by a fine of $250.
- Provides that knowingly permitting a person to ride in the trunk of a motor vehicle shall be given a value of one point for purposes of traffic violation point count.
- Specifies that a person riding in the trunk of a motor vehicle shall not receive a violation point count.

<u>Vehicles: Vehicular Manslaughter</u>

Existing code sections relating to vehicle and vessel manslaughter are confusing and unorganized and in need of clarification.

AB 2559 (Benoit), Chapter 91, recasts Penal Code provisions relating to vehicular and vessel manslaughter to organize the sections in a more logical fashion while making no changes to existing law in terms of penalties or elements of offenses.

<u>Driving under the Influence</u>

An American Automobile Association's Foundation for Traffic Safety's January 2006 study found that between 1995 and 2004, more than 31,000 people throughout the nation suffered fatal injuries which resulted from accidents in which the driver was 15, 16 or 17 years old. Nearly 2,000 of those deaths occurred in California. The California Highway Patrol reports that during the same time period, 1,540 people were fatally injured in accidents where the driver was under 21 years of age and had been drinking.

Currently, California has what is called a ‘Zero Tolerance Policy’ for drinking and driving when under the age of 21. Current law does not carry any penalty for underage driving under the influence drivers with blood alcohol concentrations (BACs) below 0.05 percent. California only provides for Department of Motor Vehicle administrative penalties if a driver under 21 years of age has a BAC of 0.01 percent to 0.04 percent.

AB 2752 (Spitzer), Chapter 899, makes it an infraction for a person under the age of 21 to drive with a measurable BAC. This new law makes a first offense punishable by a fine of $100; a second offense, within a year of the first offense, a fine of $200; and a third or subsequent offense, occurring within one year of two or more prior infractions, a fine of $250.

Law Enforcement Patrol Vehicles

Under current law, the Alameda County Sheriff cannot conduct increased driving under the influence (DUI) patrols during holiday periods as their patrol vehicles, though distinctively marked, are painted a single color and do not match the required patrol vehicle color schemes. Without an exemption, if an Alameda County sheriff makes a DUI arrest, it is possible that individual could not be punished.

AB 3004 (Houston), Chapter 832, states legislative intent that the that the Commissioner of the California Highway Patrol amend the California Code of Regulations (CCR) relating to distinctively painted patrol vehicles to ensure that all distinctively painted patrol vehicles and motorcycles used by police and traffic officers are authorized to enforce Vehicle Code provisions relating to DUI. This new law also states that there is an emergency in Alameda County because the dark blue painted patrol vehicles and motorcycles used by the Alameda County Sheriff's Department do not meet the required CCR paint specifications that would allow them to enforce DUI provisions of the Vehicle Code.

Driving under the Influence: Ignition Interlock Devices

Alcohol-impaired driving is among the most common contributors of motor vehicle crashes in the United States. The 17,013 alcohol-related fatalities represent 40 percent of the 42,643 motor vehicle fatalities that occurred in 2003. Alcohol-related crashes are estimated to cost the public more than $50 billion per year. California has long been recognized as a leader in traffic safety, and many of the demonstrably effective driving-under-the-influence countermeasures have already been enacted and implemented in California. The ignition interlock is a device consisting of an alcohol-breath testing unit connected to the ignition switch of a vehicle. The driver is required to provide a breath sample before starting the vehicle; if the sample contains more than a predetermined amount of alcohol, the interlock ignition device (IID) locks the vehicle’s ignition, preventing the vehicle from being driven.

AB 3045 (Koretz), Chapter 835, prohibits the Department of Motor Vehicles (DMV) from re-instating the privilege to operate a motor vehicle of a person required to install an IID until the DMV receives proof, as specified, that a certified IID has been installed as ordered.

Police Pursuits

An individual who attempts to elude police in a vehicle have learned that most law enforcement

pursuit policies require officers to terminate the pursuit if a perpetrator starts to drive down a public highway or freeway in the wrong direction. This kind of action deserves a specific punishment.

SB 1735 (Cox), Chapter 688, makes it an alternate felony/misdemeanor to flee or attempt to elude a pursuing peace officer by driving a vehicle upon a highway in the wrong direction. Specifically, this new law:

- Provides that whenever a person willfully flees or attempts to elude a pursuing peace officer and the person operating the pursued vehicle willfully drives that vehicle on a highway in a direction opposite to that in which the traffic lawfully moves is guilty of a criminal offense.

- Makes the above offense punishable by imprisonment in the state prison for 16 months, 2 or 3 years; by imprisonment in a county jail for not less than six months nor more than one year; by a fine of not less than $1,000 nor more than $10,000; or by both imprisonment and a fine.

VICTIMS

San Francisco General Hospital Trauma Recovery Center

The Trauma Recovery Center (TRC) has proven to be an extremely effective program, winning prestigious awards and serving the community with its innovative and comprehensive model of care. Designed not only to increase access for crime victims to Victim Restitution Funds, the TRC also has developed and tested a more cost-effective alternative model of care. The TRC provides a range of mental health services, and these services are available at the TRC and also via trips by staff to the patient's home or community depending on the needs of the patient.

AB 50 (Leno), Chapter 884, appropriates funds for the TRC at San Francisco General Hospital/University of California, San Francisco.

Victims' Compensation

The Victim Compensation and Government Claims Board provides reimbursement to crime victims, including domestic violence victims. Studies have shown that one out of four women will experience domestic violence during her lifetime.

Under current law, a domestic violence or sexual assault victims is eligible for a one-time cash payment of $2,000 to cover expenses incurred in relocating if the relocation is determined to be necessary for the victim's safety. The only way for a victim to receive another payment is if the crime is more than three years after the date of the original crime and involves a different offender, thus precluding a victim who must relocate a second time because the offender has found the victim.

AB 105 (Cohn), Chapter 539, provides that the Victim Compensation and Government Claims Board may authorize more than one reimbursement for relocation of one victim per crime if necessary for the personal safety or emotional well being of the victim. The total cash payment or reimbursement for all relocations due to the same crime shall not exceed the current $2,000.

Victim Compensation

Victims of crime have a constitutional right to receive restitution from their offenders (California Constitution, Article I, Section 28). Victim restitution is designed to increase offender accountability by holding offenders responsible for the actual costs of their crimes. Yet, currently, victim restitution orders are collected from offenders in state prison only upon request of the victims. Many victims are not aware that they must submit such a request. Only 19% of victims with restitution orders imposed against California Department of Corrections and Rehabilitation (CDCR) inmates request collection.

AB 1505 (La Suer), Chapter 555, authorizes the CDCR to collect restitution from an inmate or parolee, but collection is not required, and allows a victim to receive a restitution order without filing a claim with the Victim Compensation and Government Claims Board.

Sex Offender Registration Offenses

Existing law requires that persons convicted of specified sex offenses register annually with the Attorney General each year for life. The Attorney General makes certain information about the location of these sex offenders available to the public via the Internet on its Megan's Law Web site.

AB 1900 (Lieu), Chapter 340, adds the additional of crime murder committed in the course of a sex crime to the list of sex offenses which require registration. This new law also clarifies that persons convicted in another state of pimping and pandering with a minor and required to register in that other state need not register in California unless the out-of-state conviction contains all of the elements of a registerable California offense. This new law further clarifies that sex offender registrants who have been incarcerated for less than 30 days and then return to the previously registered address are not required to re-register upon release from incarceration.

Evidence: Victim Testimony

Under existing law when determining the credibility of a witness, a court or jury may consider any matter that has any tendency in reason to prove or disprove the truthfulness of his or her testimony at the hearing.

AB 1996 (Bogh), Chapter 225, extends procedures relating to sealed records of the sexual history of complaining witnesses to include certain sexual offenses pursuant to specified evidence provisions dealing with prior offenses.

Sex Offenders: Parole Conditions

Under existing law, a paroled inmate must be returned to the county of "last legal residence". An inmate may be returned to another county if it would be in the best interests of the public. If the Board of Parole Hearings (BPH) decides on a return to another county, the BPH shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police.

> **AB 2049 (Spitzer), Chapter 735,** prohibits a registered sex offender on parole, as specified, from having any contact or communication with the victim or the victim's immediate family.

Sex Offenders: Working With Minors

Current California law requires a sex offender to disclose his or her status as a registrant only if the registrant will be working directly with children in an unaccompanied setting. Additionally, if the offender is convicted of a crime in which the victim was under 16 years of age, that registrant cannot work with children in an unaccompanied setting. However, he or she is authorized to work with children if the job takes place in an accompanied setting.

> **AB 2263 (Spitzer), Chapter 341,** requires a sex offender registrant who applies for, or accepts, a position as an employee or volunteer where the applicant would be working directly, and in an accompanied setting, with minor children on more than an incidental and occasional basis to disclose his or her status as a registrant upon application or acceptance of any such position if the applicant's work would require him or her to touch minor children on more than an incidental and occasional basis.

Habeas Corpus: Notice

Existing law requires a person who is held in custody and is applying for a writ of habeas corpus to give 24 hours notice to the district attorney in the county wherein the person is held in custody.

> **AB 2272 (Parra), Chapter 274,** requires that if a writ challenging a denial of parole is made returnable, a copy of the writ and the order to show cause be served by the superior court upon the Attorney General and the district attorney of the county in which the underlying judgment was returned.

Victims of Crime: Compensation

Under current law, the Victim's Compensation Program (VCP) reimburses victims and their survivors for the loss of wages and income support. The loss of child care services due to the injury or death of a primary child care provider creates a similar need. In such cases, families must purchase replacement childcare services for the surviving children.

AB 2413 (Spitzer), Chapter 571, creates a pilot program to allow victims of crime to be reimbursed for child care expenses incurred as a result of the crime. The pilot will allow the VCP to determine how well the program meets the needs of victims and whether to change and/or extend the program beyond the sunset date in 2009. This new law allows survivors who were living with a deceased victim to be reimbursed for security enhancements in the home where the crime occurred. Also, this new law allows the VCP to reimburse the cost of crime scene cleanup when any eligible violent crime occurs in a residence that requires the services of a registered trauma scene management practitioner.

Theft of Free or Complimentary Newspapers

The unauthorized taking of freely distributed newspapers has been a problem for many years.

Recently, an individual in Chula Vista removed entire bundles from news racks and transported them across the border where he sold them to recyclers in Mexico. On three different occasions, the entire press run was taken from all of the racks owned by the "Chula Vista Star"; roughly 8,000 to 10,000 copies were removed in each instance. "La Prensa" also lost approximately 1,000 copies. When the publishers urged local police agencies to halt the thefts, officials responded they were unable to prosecute the thefts because under existing law the newspapers were complimentary, had no fair market value and, therefore, could not be stolen.

Freely distributed newspapers are often taken based on an unpopular viewpoint expressed in an article, column, editorial or advertisement. In Los Angeles, the "Epoch Times" began to notice it was losing thousands of copies in the San Gabriel Valley after publishing stories on controversial issues such as Article 23 in Hong Kong, the spread of SARS, human rights violations, and the Falun Gong. Over the course of 11 days, "Epoch Times" employees followed and videotaped a suspect who had several thousand stolen newspapers in the back of his pick-up truck.

AB 2612 (Plescia), Chapter 228, makes it a crime to take more than 25 copies of the current issue of a free or complimentary newspaper if done to recycle, barter, or to deprive others of the opportunity to read the newspaper, or to harm a business competitor. An issue is current if no more than one half of the period of time has expired until the distribution of the next issue has passed. Specifically, this new law:

- Makes a first offense punishable by a fine not to exceed $250.

- Makes a second or subsequent violation an alternate infraction/misdemeanor. A misdemeanor conviction is punishable by a fine not exceeding $500, imprisonment of up to 10 days in the county jail, or by both that fine and imprisonment.

- Exempts owners, publishers, printers, deliverers, advertisers and others, as specified.

Probation Reports: Sexual Assault Victims

Under current law, a probation department is mandated to contact a crime victim in order to conduct investigations, write pre-sentence reports, and make recommendations to the court when

relating to an alleged sex offense. Current law does not technically specify probation departments as authorized recipients of sexual assault victims' names and addresses and must obtain contact information through at third party (telephone directory, district attorney's office, victim's advocacy group, etc.) inhibiting the probation officer's ability to provide thorough and accurate recommendations on sentencing to a court.

The probation officer's report is a permanent record of the victim's statement that can be referred to by the prosecutor in future criminal filings, can provide valuable information to the California Department of Corrections and Rehabilitation in parole hearings or for clemency consideration, and can allow a victim's voice in the court to resonate should the victim not be available at a future date.

> **AB 2615 (Tran), Chapter 92,** adds a county probation officer to the list of law enforcement officials who may obtain the name and address of a victim of a sex offense for the purpose of conducting official business.

Information Card for Victims of Crime

Under existing law, many cities and agencies offer programs and services to victims of certain violent crimes. However, some agencies are reluctant to participate because they believe a liability exists if the distribution of information regarding victim's rights already offered under current law does not result in services being received by the victim or if the peace officer does not distribute such information.

> **AB 2705 (Spitzer), Chapter 94,** encourages the distribution of information regarding victims' rights by giving the agencies the protection they need to encourage the dissemination of information to victims. This new law provides that a city or county may authorize a law enforcement officer to provide to a crime victim a "Victim's Rights Card." A "Victim's Rights Card" is a card or paper that provides a printed notice with a disclaimer, in at least 10-point type, to a victim of a crime regarding potential services that may be available under existing state law to assist the victim.
>
> This new law states that provision of the victim's rights card is a discretionary act and shall be operative only in a city or county in which the city council or board of supervisors has enacted a resolution regarding the victim's right card. This new law specifically states that it shall not be interpreted as replacing or prohibiting any services currently offered to victims of crime by any agency or person.

Victim's Compensation: Burial Expenses

Current law is sufficiently ambiguous as to allow the Victim's Compensation and Government Claims Board to deny a claim made by a family member to pay for the burial or funeral costs of his or her relative if the relative was still on parole or probation at the time of death.

AB 2869 (Leno), Chapter 582, clarifies that the Board is required to award compensation to a person seeking reimbursement for the funeral and burial expenses of a victim who died as a result of a crime without respect to any felony status of the victim.

Protective Orders: Firearms Relinquishment

Under existing law when a court issues a protective order, the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order by either surrendering the firearm to the control of local law enforcement officials or by selling the firearm to a licensed gun dealer, as specified. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order.

SB 585 (Kehoe), Chapter 467, requires a person ordered to relinquish a firearm pursuant to the terms of a protective order to surrender the weapon in a safe manner upon request of any law enforcement officer or within 24 hours, as specified.

Confidential Addresses

SB 489 (Alpert), Chapter 1005, Statutes of 1998, created the California Confidential Address Program (CalCAP) to protect victims of domestic violence from the disclosure of address information. Victims of stalking were added in 2000 pursuant to AB 1318 (Alpert), Chapter 562, Statutes of 2000. CalCAP allows a documented victim of domestic violence and stalking to use an alternate address maintained by the Secretary of State's Office (SOS) for his or her mailing address and for any public record disclosures, which allows a CalCAP participant to keep his or her residential address and, therefore, his or her physical location confidential. The SOS then forwards mail to the victim's actual address. Currently, sexual assault survivors are not allowed to participate in the program.

SB 1062 (Bowen), Chapter 639, makes victims of sexual assault eligible for participation in CalCAP. Specifically, this new law:

- Extends CalCAP (also known as the "Safe at Home Project") eligibility to victims of sexual assault in addition to victims of domestic violence and stalking.

- Defines "sexual assault" as assault with intent to commit a specified sex offense, rape, unlawful sexual intercourse, spousal rape, rape in concert, aggravated sexual assault of a child, incest, sodomy as specified, oral copulation as specified, child molestation, continuous sexual abuse of a child, forcible sexual penetration and annoying a child under the age of 18.

- Requires any agency that receives funding from both the Maternal and Child Health Branch, administered by the Department of Health Services (DHS), and the Comprehensive Statewide Domestic Violence Program, administered by the

Office of Emergency Services, to coordinate site visits and share performance assessment data with the goal of improving efficiency, eliminating duplication, and reducing administrative costs.

- Extends until January 1, 2010 provisions of law that establish an advisory council to consult with DHS on funding priorities on issues relating to battered women's services and programs.

Victims of Crime

Existing law requires a public notice of any proposed name change to be published in a daily newspaper once a week for four consecutive weeks. For a person petitioning for a name change in order to avoid domestic violence and who is also enrolled in the Safe At Home program, the proposed name can be kept confidential as part of the public notice requirement; however, the original name must still be published in the notice. In view of the need of domestic violence and stalking victims to keep their addresses confidential from their abusers and stalkers, the Office of the Secretary of State acts as the program participants' agent for official service of process and forwards mail received at the substitute address provided.

SB 1743 (Bowen), Chapter 689, additionally applies the above provisions to a petitioner who is a victim of sexual assault or who is filing on behalf of a victim of sexual assault. This new law specifies that the action for change of name is exempt under the provisions requiring publication of the order to show cause which must be filed with the court and is otherwise subject to the publication requirements. Thus, this new law provides the same confidentiality regarding name changes to victims of sexual assault as provided to victims of domestic violence or stalking.

WEAPONS

Assault Weapons

Currently, there is a discrepancy in the law regarding the delivery of handguns to law-abiding consumers when the manufacturer has failed to pay its annual maintenance fees to the Department of Justice (DOJ) in a timely manner. The resulting confusion creates a great deal of paperwork for both the state and the retailer.

AB 2111 (Haynes), Chapter 71, provides that if a purchaser of a handgun initiates a transfer and prior to delivery the handgun is removed from the DOJ's roster of handguns found not to be unsafe for a failure to pay the required fee to keep the handgun on the roster, the handgun shall be delivered to the purchaser if the purchaser is not prohibited from owning or possessing the handgun.

Protective Orders: Firearm Relinquishment

In 2004, the Legislature amended the firearms relinquishment provisions that apply to Domestic Violence Prevention Act (DVPA) protective orders issued under the Family Code to provide that persons subject to DVPA orders must relinquish any firearms in their possession within 24 hours of being served with the order. Prior to this change, the restrained person was afforded 48 hours to relinquish the firearm if he or she had been present at a noticed hearing on the order request, but only 24 hours if he or she was not at the hearing. The changes made by SB 1391 (Romero), Chapter 250, Statutes of 2004, were to clarify and simplify the relinquishment standard, and to eliminate the need to have checkboxes to indicate which time applied in each situation on the order form. When the Legislature simplified the provision for DVPA orders, the Legislature did not change the provision applicable to other types of protective orders. That provision is found in the Code of Civil Procedure Section 527.9 and governs protective orders issued by a criminal court, as well as civil harassment, workplace violence, and elder and dependent adult abuse protective orders.

> **AB 2129 (Spitzer), Chapter 474,** requires a person who has been served with a protective order to relinquish any firearm within 24 hours regardless of whether the person was present in court when the order was served.

Firearms: Exempt Federal Firearms License

Under federal law, a distributor of firearms only needs to obtain a copy of a federal firearms license (FFL) prior to shipping guns to a dealer. In 1996, Sean Twomey of Hayward, California, forged a FFL utilizing Adobe Acrobat Reader. Twomey used this forged license to obtain hundreds of guns from gun distributors in Ohio. The distributors were unaware that the license was forged. This process allowed thousands of guns to be distributed in California communities that have been used in assaults, robberies, and murders.

> **AB 2521 (Jones), Chapter 784,** authorizes the Department of Justice to create a centralized Internet list of exempt federal firearms licensees and place certain responsibilities on federally licensed firearms dealers and exempt federal firearms licensees, as specified.

Assault Weapons: Public Nuisance

With the enactment of SB 23 (Perata) in 1999, the add-on provisions of Penal Code Section 12276.5 have become obsolete. If additional assault weapons are added to the list, the proliferation of assault weapons in California will continue. Consequently, it is in California's to remove the Attorney General’s power to add additional weapons. Law should also declare assault weapons possessed in violation of California law nuisances, thereby allowing their destruction. District attorneys should be allowed to seek and impose civil fines against persons found in possession of illegal assault weapons in lieu of prosecution.

> **AB 2728 (Klehs), Chapter 793,** provides that any possession of an assault weapon or .50 BMG rifle in violation of exiting law is a public nuisance. Specifically, this new law:

- Repeals provisions of law that allow a court to declare a firearm an assault weapon, as specified.

- Ends the Department of Justice (DOJ) authorization to declare a firearm an assault weapon as of January 1, 2007, and any firearm declared to be an assault weapon prior to that date shall remain on the list of specified firearms with the Secretary of State.

- Clarifies that except as provided in existing law related to the sale and distribution of assault weapons, possession of an assault weapon is a public nuisance, as specified.

- Authorizes the Attorney General (AG), any district attorney, or any city attorney in lieu of criminal prosecution to bring a civil action or reach a civil compromise in any superior court to enjoin the possession of an assault weapon or .50 BMG rifle that is a public nuisance, as specified.

- States upon motion of the AG, a district attorney or city attorney, a superior court may impose a civil fine not to exceed $300 for the first assault weapon or .50 BMG rifle deemed a public nuisance, as specified, and up to $100 for each additional assault weapon or .50 BMG rifle deemed a public nuisance, as specified.

- States that any assault weapon or .50 BMG rifle possessed in violation of existing law must be destroyed so that it may no longer be used, except upon filing of a certificate of a judge if a court of records, the district attorney, or the DOJ stating that the preservation of the assault weapon or .50 BMG rifle is in the interest of justice.

- Provides that for a conviction for a misdemeanor or felony involving an assault weapon, the assault weapon shall be deemed a nuisance and disposed of pursuant to existing law.

BB Devices

If a person threatens or injures another person with a BB device, that person can be charged with a variety of crimes. However, each of those crimes involves some degree of "criminal intent" which becomes a necessary element for the prosecution and is often difficult to prove.

SB 532 (Torlakson), Chapter 180, creates a new crime for the willful discharge of a BB device in a grossly negligent manner. Specifically, this new law:

- Provides that any person who willfully discharges a BB device in a grossly negligent manner which could result in injury or death to another person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year.

- Defines "BB device" as any instrument that expels a projective, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.

Protective Orders: Firearms Relinquishment

Under existing law when a court issues a protective order, the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order by either surrendering the firearm to the control of local law enforcement officials or by selling the firearm to a licensed gun dealer, as specified. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order.

> **SB 585 (Kehoe), Chapter 467,** requires a person ordered to relinquish a firearm pursuant to the terms of a protective order to surrender the weapon in a safe manner upon request of any law enforcement officer or within 24 hours, as specified.

Firearms: Transactions

Under existing law, the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state-licensed dealer or a local law enforcement agency with appropriate transfer forms being used, as specified. In those cases where dealer or law enforcement processing is not required, a handgun change of title report must still be sent to the Department of Justice.

> **SB 1239 (Hollingsworth), Chapter 52,** requires a dealer, in a private-party firearms transaction, to provide copies of paperwork completed in connection with said transaction to both the buyer and the seller and to redact from those documents the purchaser's personal information from the seller's copy and the seller's personal information from the purchaser's copy.

Firearms

Under Penal Code Section 12021, any convicted felon who "owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony", punishable by 16 months, or 2 or 3 years in state prison. Penal Code Section 664 states "every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts." An attempt is generally punishable by one-half the length of incarceration provided for the crime attempted. Penal Code Section 12076(b)(1) specifically addresses the attempted purchase of a firearm by a felon, stating "[a]ny person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor. It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment".

SB 1538 (Scott), Chapter 668, increases the penalty for persons who are prohibited from owning a firearm to knowingly provide false or incomplete information to a firearms dealer in attempting to purchase a firearm, from a misdemeanor to an alternate felony-misdemeanor, punishable by imprisonment in the state prison for eight, 12 or 18 months.

MISCELLANEOUS

San Francisco General Hospital Trauma Recovery Center

The Trauma Recovery Center (TRC) has proven to be an extremely effective program, winning prestigious awards and serving the community with its innovative and comprehensive model of care. Designed not only to increase access for crime victims to Victim Restitution Funds, the TRC also has developed and tested a more cost-effective alternative model of care. The TRC provides a range of mental health services, and these services are available at the TRC and also via trips by staff to the patient's home or community depending on the needs of the patient.

AB 50 (Leno), Chapter 884, appropriates funds for the TRC at San Francisco General Hospital/University of California, San Francisco.

Illegal Dumping Enforcement Officers

Current law limits the effectiveness of local code enforcement or other specialized, non-sworn enforcement/civilian officers to pro-actively combat illegal dumping. Under Penal Code Section 836.5, local agencies can designate certain employees to issue citations for infractions and misdemeanor violations of local ordinance. This limited authority is insufficient and contrasts with the effective environmental protection enforcement model used in other states.

AB 1688 (Niello), Chapter 267, adds illegal dumping enforcement officers employed by a city, county, or city and county, to the extent necessary to enforce laws related to illegal waste dumping or littering, and authorized by a memorandum of understanding with the sheriff or chief of police within whose jurisdiction the person is employed, to the list of persons who are not peace officers but may exercise the powers of arrest of a peace officer if that person completes the required course.

Confidentiality: Victim Advocates and Crime Scene Investigators

Existing law provides protection to certain groups in society that come into contact with criminals, including according confidential status to their home addresses and telephone numbers, including active or retired police officers, district attorneys, public defenders, specified California Department of Corrections and Rehabilitation employees and others who work closely with convicts.

AB 2005 (Emmerson), Chapter 472, expands existing Department of Motor Vehicle confidentiality provisions to include specified employees who routinely have contact with individuals involved in criminal activity to the list of public safety officials whose personal information is protected from disclosure on the Internet. This new law adds

specified employees of the Attorney General, as well as the United States Attorney and Federal Public Defender, to the definition of "public safety official". This new law also adds state and federal judges and court commissioners, probation officers, and specified employees who supervise inmates in a city police department to the list of public safety officials whose information is protected from disclosure.

Human Remains: Permits

Current law states that human remains may not be removed from California without a permit. As a result, an out-of-state funeral director is not authorized to remove a body from California for embalming without a death certificate and issuance of an appropriate permit.

A problem has occurred when California residents who lived alongside the Colorado River and only a few miles from the Arizona border have died. One decedent's family would have preferred to send the body to a mortuary in Parker, Arizona, only a short distance from the state line. However, current law requires that a signed Certificate of Death as well as a Disposition Permit both be filed with the county health department prior to the release of a body across state lines. As a result, a body that will eventually end up at a mortuary only a few miles from the decedent's home must often be transported to a much more distant county mortuary to be embalmed and await the filing of the Death Certificate.

Moreover, in San Bernardino County, if a more proximate county mortuary is full, the main county morgue - over 230 miles away - will be designated. When this situation occurs, the cost to the County is over $500, not including additional costs such as overtime pay. Current law only allows counties to recover up to $185 for this occurrence.

AB 2105 (Emmerson), Chapter 463, allows human remains to be transported to an adjacent state without a death certificate or permit for disposition. Specifically, this new law:

- Provides that neither a death certificate nor a permit for disposition shall be required to transport human remains from California to an adjacent state for disposition in that state when the following circumstances exist:
  - The remains are recovered within 50 miles of the California border and the nearest mortuary is within 20 miles of the border in the adjacent state.
  - The coroner with jurisdiction over the area in which the remains were recovered authorizes their release.
- Provides that the coroner shall release the remains to an out-of-state mortuary without a death certificate or permit for disposition when he or she makes each of the following determinations:
  - No forensic interest in the remains exists.

- A reasonable certainty exists that the cause of death will be provided either by the primary physician or by a review of medical records by the medical examiner.

- Provides that except when a permit is not required to be issued, the permit shall accompany the body to its destination.

- Requires the coroner with jurisdiction over the area in which the remains were found and who releases human remains to an out-of state funeral establishment to file a death certificate with the local registrar within 72 hours after the remains were found.

- States that nothing in this section shall exempt a coroner, health officer, health care provider, or other individual from reporting a case or suspected case of any reportable communicable disease or condition as required by other provisions of law.

Student Advisory Review Board: Sunset Date

Education Code Section 48293(c), relating to the failure of a parent to enroll his or her student in school, was originally due to sunset on January 1, 2005. The Legislative Analyst's Office and the State School Attendance Review Board were required to develop a report regarding the implementation of Compulsory Education Law provisions; the recommendation was for the sunset provision to be eliminated. However, the annual Education Omnibus Bill was not the proper vehicle for eliminating the sunset date and, subsequently, Education Code Section 48293(c) is to sunset on January 1, 2006. If Education Code 48293(c) is eliminated and not restored after January 1, 2006, the courts will lose one of the tools they need to deal with parents who are neglecting the education of their children.

> **AB 2181 (Salinas), Chapter 273,** deletes the sunset date of January 1, 2006 from provisions related to mandatory education thereby extending indefinitely the authority of the court to order or punish a person for failing to comply with compulsory attendance laws.

Reproductive Health Care Services: Confidentiality of Personal Information

Anti-abortion activists have long used violence or true threats of violence to intimidate and harass women exercising their constitutionally protected right to make personal, private, reproductive choices. Women should never face the risk of vigilante justice for exercising their right to choose; the same goes for those who enable women to exercise this right.

> **AB 2251(Evans), Chapter 486,** seeks to protect the personal safety of reproductive health care providers, employees, volunteers, and patients by prohibiting the posting of such people's personal information on the Internet under specified circumstances. Specifically, this bill provides:

- Civil penalties for any person, business, or association who displays on the Internet the home address, telephone number, or image of any provider, employee, volunteer, or patient of a reproductive health services facility with the intent to do either of the

following: (1) incite a third person to cause great bodily harm to the person identified, or a person with whom that person resides; or (2) threaten the person identified, or a person with whom he or she resides, in a manner that places the person in objectively reasonable fear of his or her personal safety.

- That any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of his or her home address and phone number on an Internet Web site may make a written demand that such information be removed from the Web site so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute.

- That no person, business, or association shall solicit, sell, or trade on the Internet the home address, telephone number, or image of a reproductive health service provider, employee, volunteer, or patient with the intent to do either of the following: (1) incite a third person to cause great bodily harm to the person identified, or a person with whom that person resides; or (2) threaten the person identified, or a person with whom he or she resides, in a manner that places the person in objectively reasonable fear of his or her personal safety.

Emergency Medical Services

In Santa Barbara County, local hospitals are reported to be losing an estimated $8 million annually due to uncompensated emergency and trauma care. Two hospitals have closed in Santa Barbara County in the past seven years, leaving five hospitals to serve the area. Santa Barbara County has the only level two trauma center between Los Angeles and San Jose (Cottage Hospital). Cottage Hospital has the only around-the-clock physician, on-call panel on the Central Coast; has the only pediatric intensive on the Central Coast; and supports facilities throughout the tri-county region.

In 2002, over 115,000 emergency room visits were made in Santa Barbara. Of those, 58 percent of the patients were uninsured or underinsured. Special legislation was passed, implementing an additional penalty assessment for Santa Barbara County only, to respond to this crisis. That legislation provided that the additional assessment terminated in 2006.

In February 2005, a local Maddy Committee formed and held numerous meetings to strategize about permanent funding sources. In April 2005, a public opinion survey was conducted. Voters were positive about Santa Barbara hospitals, and a majority supported a sales tax increase for trauma/emergency care/law enforcement system. However, the support was less than the 66 percent necessary to pass a local ballot initiative. Therefore, Santa Barbara County required an extension of the additional penalty assessment period.

AB 2265 (Nava), Chapter 768, authorizes Santa Barbara County to collect the additional penalty revenues to pay for emergency medical services until January 1, 2009. This new law contains legislative findings that the Legislature, in extending the period of time during which the additional penalties may be collected, expects Santa Barbara County to

place an appropriate proposed tax ordinance as a county measure on the ballot for, or before, the November 2008 election ensuring the collection of sufficient funds to fully support the trauma center.

Court Hearings: Mentally Incompetent Offenders

Under existing law at the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.

AB 2858 (Leno), Chapter 799, states that where a defendant has bee found mentally incompetent to stand trial, the district attorney shall be notified if the offender is placed on an out-patient status.

Telephone Calling Records

Telephone phone records are readily available to any person who is willing to pay a nominal fee for the information. Although many of the methods used for acquiring the records are illegal, businesses are openly selling this information without the consumer's knowledge or consent.

SB 202 (Simitian), Chapter 626, prohibits the purchase or sale of any telephone calling pattern record or list without the written consent of the person making the calls. Specifically, this new law:

- Provides that any person who purchases, sells, offers to purchase or sell, or conspires to purchase or sell any telephone calling pattern record or list, without the written consent of the person making the calls shall be punished by a fine not exceeding $2,500; by imprisonment in the county jail not exceeding one year; or by both a fine and imprisonment.

- Provides that if the person has previously been convicted of a violation of this section, he or she is punishable by a fine not exceeding $10,000; by imprisonment in the county jail not exceeding one year; or by both a fine and imprisonment.

- Provides that any personal information contained in a telephone calling pattern record or list obtained in violation of this section shall be inadmissible as evidence in any judicial, administrative, legislative, or other proceeding except when that information is offered as proof in an action or prosecution for a violation of this section.

- Defines "person" as an individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity.

- Defines "telephone calling pattern record or list" as information retained by a telephone company that relates to the telephone numbers dialed by the customer or other person using the customer's telephone with permission; the incoming call

number of calls directed to the customer or other data related to such calls typically contained on a customer telephone bill, such as the time the call started and ended; the duration of the call and any charges applied whether the call was made from or to a telephone connected to the public switched telephone network, a cordless telephone, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, or a cellular telephone.

- Provides that an employer of, or entity contract with, a person who purchases, sells, offers to purchase or sell, or conspires to purchase or sell any telephone calling pattern record or list without the written consent of the person making the call shall only be subject to prosecution pursuant to that section if the employer or contracting entity knowingly allowed the employee or contractor to engaged in unlawful conduct.

- Provides that this section shall not be construed to prevent any law enforcement or prosecutorial agency or any officer, employee, or agent thereof from obtaining telephone records in connection with the performance of the official duties of the agency consistent with any other applicable state and federal law.

Anti-Reproductive Rights Crimes

Under existing law, "anti-reproductive-rights crime" is defined as a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant. "Anti-reproductive-rights crime" includes, but is not limited to, a violation of existing law related to free access to clinics.

SB 603 (Romero), Chapter 481, makes specified changes to the list of organizations within the statutory definition of "subject matter experts" on the issue of "anti-reproductive rights crime" and requires the Commission on the Status of Women to convene an advisory committee consisting of one person appointed by the Attorney General and one person appointed by each of the organizations listed as subject matter experts, as specified, who choose to appoint a member or any other subject matter experts the Commission may appoint.

Firearms: Transactions

Under existing law, the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state-licensed dealer or a local law enforcement agency with appropriate transfer forms being used, as specified. In those cases where dealer or law enforcement processing is not required, a handgun change of title report must still be sent to the Department of Justice.

SB 1239 (Hollingsworth), Chapter 52, requires a dealer, in a private-party firearms transaction, to provide copies of paperwork completed in connection with said transaction to both the buyer and the seller and to redact from those documents the purchaser's

personal information from the seller's copy and the seller's personal information from the purchaser's copy.

Criminal Justice Statistics

The Office of the Attorney General, through the Department of Justice's (DOJ) Criminal Justice Statistics Center, collects, analyzes, and develops reports and data sets that provide valid measures of crime and the criminal justice process in California. The statistics are aggregated by state, county, city and jurisdictions with populations of 100,000 or more. Though the statistics provided are fairly comprehensive, not all of the statistical information collected is available on the Internet; the public is generally unaware that they may make special requests for such statistics to the Statistics Center.

The availability of this information would allow Californians to easily compare the number of crimes reported, number of crimes cleared, and clearance rates of these crimes by individual law enforcement agencies, and make data readily available that is already collected by DOJ.

SB 1261 (McClintock), Chapter 306, requires the DOJ to maintain a data set, updated annually, relating to crimes reported, the number of clearances and clearance rates reported by law enforcement agencies. This new law further requires that the report shall be accessible by a hypertext link on the DOJ Internet Web site.

Public Safety: Omnibus Bill

The annual Senate omnibus bill makes technical changes and corrections to various provisions of code.

SB 1422 (Margett), Chapter 901, makes various technical, non-substantive changes to provisions related to, among other things, crime, firearms, child welfare and controlled substances addiction. Specifically, this new law:

- Repeals a Penal Code statute related to sentencing enhancements for various crimes which no longer has any application.

- Changes references to "district attorney" to "prosecuting attorney".

- Codifies a statutory determination of People vs. Shabazz (2006) 38 Cal.4th 55 relating to applying the enhancement language in California's "10-20-Life" firearms statute.

- Adds uncodified intent language explaining intent to be declaratory of existing law, and to conform the language of the statute to the decision of the California Supreme Court in People v. Shabazz (2006) 38 Cal.4th 55, 66-70.

- Deletes duplicate listings of "assault with intent to commit murder" and "assault with a deadly weapon" which are listed twice in Penal Code Section 667.7.

- Adds "attorney general" to the prohibition on making a false report to a district attorney.

- Codifies an Attorney General opinion which clarifies that those existing public agencies authorized to inspect juvenile case files may also copy those files.

- Corrects numerous technical and non-substantive grammar and cross-referencing errors.

Transit Fare Evasion

Under current law, transit fare evasion and other minor transit infractions (e.g. smoking, eating, expectorating or playing loud music on a bus) are charged as an infraction under Penal Code Section 640. San Francisco Municipal Transportation Agency and Los Angeles County Metropolitan Transportation Authority want to decriminalize that behavior and, instead, adjudicate any or all of the specified violations through administrative review, freeing up court dockets to handle more serious offenses. This change is consistent with the trend in other states to "decriminalize" minor traffic and parking offenses.

SB 1749 (Migden), Chapter 258, allows for administrative enforcement of transit-related violations in the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority. Specifically, this new law:

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance providing that any acts prohibited on or in a facility or vehicle for which the City and County has jurisdiction shall be subject only to an administrative penalty imposed and enforced in a civil proceeding.

- Provides that minors are exempt from these administrative penalties.

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance to impose and enforce an administrative penalty, excluding minors, for any of the following:

  - Evasion of the payment of a fare of the system;

  - Misuse of a transfer, pass, ticket or token with the intent to evade the payment of fare;

  - Playing sound equipment on or in a system facility or vehicle;

  - Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system;

    - Expectorating upon a system facility or vehicle;
    - Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior;
    - Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a system facility or vehicle;
    - Urinating or defecating in a system facility or vehicle, except in a lavatory;
    - Willfully blocking the free movement of another in a system facility or vehicle;
    - Skateboarding, roller skating, bicycle riding, or rollerblading in a system facility, including a parking structure, or in a system vehicle; and,
    - Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket.

- Provides that the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may contract with a private vendor for the processing of notices of fare evasion or passenger conduct violation, and notices of delinquent fare evasion or specified passenger conduct violations.

- Defines "processing agency" as the agency issuing the notice of fare evasion or passenger conduct violation and the notice of delinquent fare evasion or passenger conduct violation, or the party responsible for processing the notice of fare evasion or passenger conduct violation and the notice of delinquent violation.

- Defines "fare evasion or passenger conduct violation penalty" as including, but not limited to, a late payment penalty, administrative fee, fine, assessment, and costs of collection as provided for in the ordinance.

- Provides that if a fare evasion or passenger conduct violation is observed by a person authorized to enforce the ordinance, a notice of fare evasion or passenger conduct violation shall be issued. The notice shall set forth the violation including reference to the ordinance setting forth the administrative penalty, the date of violation, the approximate time, and the location where the violation occurred. The notice shall be served by personal service upon the violator. The notice, or copy of the notice, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency, and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of evidence.

- Provides that when a notice of fare evasion or passenger conduct violation has been served, the person issuing notice shall file the notice with the processing agency.

- Sets up a review process for a citation under this new law. This new law provides for a period of 21 calendar days from the issuance to a person of the notice of fare evasion or passenger conduct violation, where the person may request an initial review of the violation by the issuing agency. Following the initial review, the issuing agency may cancel the notice if it believes the violation did not occur or extenuating circumstances should result in its dismissal. After the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the results of the issuing agency's initial review. The person requesting the review shall deposit the amount due under the notice for which the hearing is requested, although there must be a process to request a hearing without payment upon a showing of an inability to pay. The administrative hearing shall be held within 90 calendar days following the request.

- Provides that the administrative hearing process shall include all of the following:

  - The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with a private vendor, hearings shall be held within the jurisdiction of the issuing agency;

  - The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested violations;

  - The administrative review shall be conducted before a hearing officer designated to conduct the review by the issuing agency's governing body or chief executive officer. In addition to any other requirements of employment, a hearing officer shall demonstrate those qualifications, training, and objectivity prescribed by the issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this chapter. The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fare evasion or passenger conduct violation penalties imposed by the hearing officer;

  - The person who issued the notice of fare evasion or passenger conduct violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of fare evasion or passenger conduct violation. The documentation in proper form shall be prima facie evidence of the violation;

  - The hearing officer's decision following the administrative hearing may be personally delivered to the person by the hearing officer or sent by first-class mail; and,

  - Following a determination by the hearing officer that a person committed the violation, the hearing officer may allow payment of the fare evasion or passenger

conduct penalty in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion or passenger conduct penalty in full. If authorized by the issuing agency, the hearing officer may permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty.

- Provides that within 30 calendar days after the mailing or personal delivery of the decision, the person may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of fare evasion or passenger conduct violation shall be admitted into evidence as prima facie evidence of the facts stated therein establishing a rebuttable presumption affecting the burden of producing evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the person filing the appeal.

- Provides that the fee for filing the notice of appeal shall be $25.

- Provides that an appeal under this section may be performed by a commissioner or other subordinate judicial officials at the direction of the presiding judge of the court.

Fines and Forfeitures

Existing law provides that counties shall levy a $2 penalty assessment out of every $10 base fine for criminal offenses (including traffic violations) to fund emergency medical services. As reported by the State Auditor, in 2002-2003 counties collected about $56 million. However, emergency services are reportedly severely under-funded and funds need to be raised to alleviate this problem. These additional funds would also be instrumental in maintaining the financial stability of the emergency and trauma centers, decreasing diversion time and the time a patient must wait for services, and improving services overall.

SB 1773 (Alarcon), Chapter 841, provides that until January 1, 2009, a county board of supervisors may elect to levy an additional penalty in the amount of $2 for every $10, upon fines, penalties and forfeitures collected for criminal offenses. This new law requires that 15% of the funds collected pursuant to these provisions be expended for pediatric trauma centers and requires use of these funds, not to exceed 10 percent, for administrative costs.