11-4-2008

2008 Bill Summary

Assembly Committee on Public Safety

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

2008 Bill Summary

Assembly
California Legislature

PUBLIC SAFETY COMMITTEE

JOSE SOLORIO, CHAIR
ASSEMBLYMAN, SIXTY-NINTH DISTRICT

November 4, 2008

To All Interested Parties:

This has been an extremely productive and historic year for the Assembly Committee on Public Safety. The work completed this year will serve to make the state's many communities safer.

The Committee is one of the Assembly's most active policy committees. This year alone, legislators introduced more than 200 public safety bills. Committee staff has prepared this summary of bills heard by our committee and signed by the Governor in 2008. Most of these new law changes will take effect January 1, 2009.

Each of the measures included in this summary is available from several sources:

- Copies of chaptered bills may be requested at no cost from the Legislative Bill Room, State Capitol, Room B-32, Sacramento, California, 95814 or by calling (916) 445-2323. Copies of vetoed bills are available until February 2009.

- The Legislative Data Center maintains a Web site where these bills and analyses are available: http://www.leginfo.ca.gov/bilinfo.html

For additional information regarding this summary or other activities of the committee, please contact the committee staff at (916) 319-3744.

I hope this compilation of public safety legislation will be useful to you in facilitating access to new laws enacted this year.

Sincerely,

Jose Solorio

JOSE SOLORIO
Assemblyman, Sixty-Ninth District
Chairman, Committee on Public Safety

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ASSEMBLY COMMITTEE ON PUBLIC SAFETY

LEGISLATIVE SUMMARY 2008

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ANIMAL ABUSE

Animal Abuse

Existing law prohibits a non-federally inspected slaughterhouse, stockyard or auction from buying, selling, or receiving non-ambulatory animals, as defined. Existing law also prohibits a slaughterhouse, stockyard, auction, market agency, or dealer from holding a non-ambulatory animal without taking immediate action to humanely euthanize the animal or provide immediate veterinary treatment.

A video was released by the Humane Society of the United States which documented the abuse of downed cattle at a California meat packing company. "Downed" cattle are defined as being too diseased and/or disabled to stand or walk without assistance. Public health officials have long warned that meat derived from downed animals has a much increased susceptibility to passing on the E-Coli virus, mad cow disease and salmonella, which can lead to human complications and even death.

> **AB 2098 (Krekorian), Chapter 194**, strengthens California's ability to protect animals, people, and the food supply by specifically prohibiting slaughterhouses and other entities from processing and selling meat from non-ambulatory animals for human consumption. This new law also prohibits a slaughterhouse, stockyard, auction, market agency or dealer from buying, selling, consigning, shipping, or receiving a non-ambulatory animal.
>
> This new law makes these crimes punishable by imprisonment in a county jail for a period not to exceed one year, by a $20,000 fine, or both that fine and imprisonment.

BACKGROUND CHECKS

Hiring Peace Officers

Existing law requires peace officers to meet specified minimum standards, including being of good moral character, as determined by a thorough background investigation. Existing law also allows, under the Fair Employment and Housing Act (FEHA) an employer to require a medical or psychological examination of a job applicant after an offer of employment has been made, but before the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity. All entering employees in the same job classification are subject to the same examination or inquiry.

An applicant's non-medical information was required to be collected and evaluated before a conditional offer of employment was made and medical and psychological evaluations were required to be conducted after the conditional offer of employment. The Commission on Peace Officer Standards and Training has determined that the purpose of the background investigation in connection with the hiring of peace officers is to verify the absence of past behavior indicative of unsuitability to perform the duties of a peace officer.

The many areas of applicant character assessed during the background investigation include, but are not limited to, integrity, conscientiousness, stress tolerance, impulse control and judgment. Background investigators found that, in practice, responses to pre-conditional offer of employment inquiries often revealed post-conditional offer of employment medical information. For example, the discovery of risk-taking behavior may disclose a drug or alcohol disability, a topic that could be approached only after a conditional offer of employment.

> **AB 2028 (Solorio), Chapter 437,** provides that the collection of non-medical or non-psychological information related to peace officers, in connection with a thorough background investigation, may be deferred until after a conditional offer of employment is issued if the employer can demonstrate that the information could not reasonably have been collected prior to the offer of employment. This new law is required to be consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336) as well as with specified sections of FEHA as set forth in the Government Code.
>
> This new law resolves the duplication of effort by permitting deferral of the collection of non-medical and non-psychological information in accordance with a thorough background investigation until after a conditional offer of employment has been made if the employer can demonstrate that such information could not reasonably have been collected prior to issuing the employment offer.

CHILD ABUSE

Child Abuse and Neglect Reporting Law

The definition of "child abuse and neglect" contained in the Child Abuse and Neglect Reporting Law (CANRA) only includes injury inflicted by other than accidental means and does not make any reference to death inflicted by other than accidental means.

> **AB 673 (Hayashi), Chapter 393,** adds death by other than accidental means to the definition of "child abuse and neglect" contained in the CANRA, and clarifies that a mandated reporter not acting in his or her private capacity or in the course and scope of his or her employment may report instances of known or suspected child abuse.

Child Abuse and Neglect: Mandated Reporters

Under existing law, a mandated reporter who observes, or reasonably suspects, a child is a victim of child abuse is required to immediately report the incident by telephone to a law enforcement or child welfare agency. Further, the child welfare agency receiving the report is required to forward the report of suspected child abuse to the law enforcement having jurisdiction over the case. These reports are allowed to be transmitted by telephone, fax, or electronic transmission.

> **AB 2337 (Beall), Chapter 456,** adds drug and alcohol counselors to the list of mandated reporters for the purpose of the Child Abuse and Neglect Reporting Act; and defines an "alcohol and drug abuse counselor" as a person providing counseling therapy or other clinical services for a state-licensed or certified drug, alcohol, or drug and alcohol treatment program. This new law also clarifies that alcohol or drug abuse is not in and of itself a sufficient basis for reporting child abuse or neglect.

Background Investigations

Although county child welfare and adoption agencies routinely conduct background checks on potential employees and volunteers, these background checks were not as complete as they could have be as child welfare agencies cannot search the Child Abuse Central Index (CACI) maintained by the Department of Justice (DOJ).

> **AB 2618 (Solorio), Chapter 553,** requires the DOJ to make available to a county child welfare agency or delegated county adoption agency information regarding a known or suspected child abuser maintained in the CACI regarding any applicant who, in the course of his or her work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered abuse or

neglect. This information must be provided to an agency conducting a background investigation of an applicant seeking employment or volunteer status with such agency.

COMPUTER CRIME

Electronic Communication Devices: Harassment

Under existing law, every person who, with the intent to annoy, telephones or contacts another person with any obscene language or any threat to inflict injury on that person, that person's property, or any family member by means of an electronic communication device is guilty of misdemeanor.

AB 919 (Houston), Chapter 583, states every person who uses an electronic communication device to harass another person through the actions of a third party, as specified, is guilty of a misdemeanor. Specifically, this new law:

- Defines "harassment" as a knowing and willful course of conduct directed at a specific person that a reasonable person would consider seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

- Defines "of a harassing nature" as information that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

- Requires that a person who places another person in unreasonable fear for his or her own safety by means of electronic distribution, as specified, have the purpose of imminently causing that other person unwanted physical contract, as specified, and that the message or image be likely to incite or produce that unlawful action.

Music Piracy: Restitution

According to the California Chamber of Commerce, California loses $34 billion annually to counterfeiting and piracy. In 2005, Los Angeles County alone lost 106,000 jobs due to the trade of counterfeit goods.

In testimony before the Select Committee on the Preservation of California's Entertainment Industry on February 1, 2008, Joel Flatow, Senior Vice President, Recording Industry Association of America (RIAA), stated, "Music has never been as accessible to fans as it is right now, and, our studies show that more music is being acquired than ever - but less and less of it is being paid for. And, therein lies one of the great challenges. It's just too easy to get for free without compensating the creators, including cheap counterfeit goods. On the label side . . . the truth is that sales have been decimated, certainly at least in part from piracy . . . the sale of recorded music has been down for the last 7 of 8 years, amounting to an aggregate fall from 1999 through 2007 of roughly 25% and more than $3 billion decline in sales. According to a recent report on music piracy by the Institute for Policy Innovation (IPI), this translates into 70,000 lost

jobs and almost $2.7 billion in wages for US workers. Right here in California, the IPI study indicates that but for piracy the state of California would employ 21,227 more workers, which translates into more than $930 million in lost wages."

AB 2750 (Krekorian), Chapter 468, specifies restitution for misappropriating recorded music, misrepresenting the origin of specified recorded materials, transportation with intent to profit from misappropriated recordings. Specifically, this new law:

- Requires in addition to any other penalty or fine, the court to order any person convicted of any violation of: (1) misappropriation of recorded music for commercial advantage or private financial gain, (2) transportation of articles containing unauthorized recordings of sounds of live performances with the intent to profit, (3) unauthorized recordings of life performances with the intent to profit, or (4) failure to disclose the origin of a recording or audiovisual work for profit. This new law requires restitution to any owner, producer, or trade association acting on behalf of the owner or lawful producer of a recording that suffered economic loss resulting from the violation.

- Provides that, for the purpose of calculating restitution, the unit of measure is the value of each nonconforming article or device.

- Allows restitution to be assessed at a higher value if that value can be proved in the case of an unreleased audio work or an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc.

- Requires that the restitution ordered for costs incurred as a result of investigation of the violation is limited to "reasonable" costs.

Criminal Communications

Currently, threatening or obscene telephone calls or electronic contacts are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, no matter where those calls or contacts are received. Repeated telephone calls or electronic contacts made with an intent to annoy are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, if those calls or contacts are made to a home or workplace. However, such calls or contacts would not be illegal if made to cellular phones, by text message, or by e-mail (including mobile e-mail messages).

SB 129 (Kuehl), Chapter 109, expands the scope of the current crime of making two or more phone calls or electronic communications with the intent to annoy by prohibiting making two or more such communications regardless of where the communication is received. Specifically, this new law:

- Expands the scope of current law to provide that making two or more telephone calls or electronic communications with the intent to annoy or harass is a misdemeanor regardless of where the communication is received.

- Specifies that electronic communication devices include, but are not limited to, pagers, personal digital assistants, smart phones, and any other devices that transfer, sign, signal, write, image, sound or data; videophones; TTY/TDD devices; and all other devices used to aid or assist communication to, or from, deaf or disabled persons.

- Provides that the crime of making phone calls or electronic communications with the intent to annoy or harass does not apply to calls or communications made in good faith during the ordinary course and scope of business.

- Provides that a person is guilty of the crime of making annoying phone calls with the intent to annoy or harass if that person permits any telephone or electronic communication device under that person's control to be used for the purpose of making such prohibited communications.

- Clarifies that contact with the intent to annoy or harass may be measured by a combination of telephone calls or other electronic device, as specified.

Identity Theft: Venue

Federal and state courts have ruled that pursuant to the right of vicinage there must be a reasonable nexus between the crime and the county of trial. Current law provides for multiple jurisdictional options for a variety of crimes. In the case of identity theft, the impact of the crime often occurs at the victim's residence, where the credit card fraud, electronic theft, pretexting, or other theft of intangible property must be addressed.

SB 612 (Simitian), Chapter 47, provides that the venue for trial of an identity theft crime includes the county in which the victim resides and grants trial courts authority to determine whether the county of the victim's residence is the appropriate place for trial in a particular case. Specifically, this new law:

- Provides when an action for unauthorized use, retention, or transfer of personal identifying information is filed in the county in which the victim resided at the time the offense was committed and no other basis for the jurisdiction applies, the court, upon its own motion or the motion of the defendant, shall hold a hearing to determine whether the county of the victim’s residence is the proper venue for trial of the case.

- Specifies in ruling on the matter, the court shall consider the rights of the parties, the access of the parties to evidence, the convenience to witnesses, and the interests of justice.

CONTROLLED SUBSTANCES

Controlled Substances: Salvia Divinorum

Recently, "Salvia" (or "Salvia divinorum"), which has been identified as a hallucinogenic herb, is being sold on the Internet and in California "smoke and head" shops. Under current law, Salvia can be legally sold to minors.

> **AB 259 (Adams), Chapter 184,** provides that any person who sells, dispenses, distributes, furnishes, administers, gives, offers to sell, dispenses, distributes, furnishes, administers or gives Salvia divinorum, Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A to any person under 18 years of age is guilty of a misdemeanor.

Controlled Substances: Khat

Khat is a plant common to East Africa that contains Cathinone (when fresh) which then degrades into Cathine (within 48 hours of harvest). Possession of these substances is currently prohibited under federal law. Cathinone is regulated as a Schedule I substance and Cathine as a Schedule IV substance. Neither, however, is specifically listed as a scheduled substance under California law. Presently, the only way to prosecute possession, possession for sale, sale, and transportation thereof of these substances under California law is under the theory that they are substantially similar in effect to methamphetamine.

> **AB 1141 (Anderson), Chapter 292,** conforms California law to federal law. Specifically, this new law:
>
> - Provides that any material, compound, mixture, or preparation which contains any quantity of khat, which includes all parts of the plant classified botanically as Catha Edulis, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts having a stimulant effect on the central nervous system is a controlled substance listed in Schedule II.
>
> - States that any material, compound, mixture, or preparation which contains any quantity of cathinone having a stimulant effect on the central nervous system is a controlled substance listed in Schedule II.
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> - Provides that any material, compound, mixture, or preparation which contains any quantity of cathine having a stimulant effect on the central nervous

system, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers is possible within the specific chemical designation, is a controlled substance listed in Schedule II.

- Creates a misdemeanor for the unlawful possession of khat, cathinone, or cathine punishable by up to one year in county jail.

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

- Creates a felony for the transportation and sale of khat and cathinone, punishable by two, three, or four years in state prison.

CORRECTIONS

Juveniles: Unclaimed Funds

Existing law requires the Chief Deputy Secretary of the California Department of Corrections' (CDCR) Division of Juvenile Facilities (DJF) to hold unclaimed funds or property left when a person escapes, is discharged, or paroled from the institution for seven years. However, unclaimed funds or personal property of paroled minors may be exempt from these provisions during the period of their minority and one year after, at the discretion of the Chief Deputy Secretary.

The CDCR must hold an adult offender's unclaimed property after release for three years. The former California Youth Authority has become the DJF and merged with CDCR and these inconsistent policies regarding unclaimed funds should be made consistent.

> **AB 1864 (DeVore), Chapter 88,** reduces the time seven years to three years in which the Chief Deputy Secretary of CDCR must hold unclaimed funds or property left by a person escaped, discharged, or paroled from the DJF.

Corrections: Immigrants

Under existing federal law, the federal Attorney General may not remove an alien sentenced to imprisonment until the alien is released from imprisonment. Federal law states that parole, supervised release, probation, or the possibility of arrest or further imprisonment is not a reason to defer removal.

> **ACR 24 (Blakeslee), Chapter 88,** urges the Governor to demand the Bureau of Justice Assistance reimburse the State of California for all costs of incarcerating undocumented foreign nationals.

Corrections: Parole Rehabilitation

Currently, California faces an extraordinary and severe prison and jail overcrowding crisis. California's prison capacity is nearly exhausted as prisons today are being operated with a significant level of overcrowding. An effort must be made to reduce the prison inmate population through the reduction of parolee rehabilitation and reduced recidivism.

> **SB 391 (Ducheny), Chapter 645,** authorizes the Department of Corrections and Rehabilitation (CDCR) to expand the use of parole programs or services to improve the rehabilitation of parolees. Specifically, this new law:
>
> - Authorizes CDCR to expand the use of parole programs or services to improve the rehabilitation of parolees, reduce recidivism, reduce prison

overcrowding, and improve public safety, and through the use of intermediate sanctions for offenders who commit a violation of parole.

- Provides that the expansion of parole programs or services may include, but shall not be limited to, the following: counseling; electronic monitoring; half-way house services; home detention; intensive supervision; mandatory community service assignments; increased drug testing; participation in one or more components of the Preventing Parolee Crime Program pursuant to existing law; rehabilitation programs, such as substance abuse treatment; and restitution.

- Allows CDCR or the parole authority [Board of Parole Hearings (BPH)] to assign the programs or services specified to offenders who meet the criteria. The existing discretion given to the parole authority regarding the reporting by CDCR of parole violations or conditions of parole are not altered.

- Gives CDCR or BPH the ability to determine an individual parolee's eligibility for the parole programs or services by considering the totality of the circumstances, including, but not limited to, the instant violation offense, the history of the parole adjustment, the current commitment offense, a risk needs assessment of the offender, and the prior criminal history, with public safety and offender accountability as primary considerations.

- States that BPH, in the absence of a new conviction and commitment of the parolee to the state prison under other provisions of law, may assign a parolee who violates a condition of his or her parole to the parole programs or services in lieu of revocation of parole.

- Permits BPH, as an alternative to ordering a revoked parolee returned to custody, to suspend the period of revocation pending the parolee's successful completion of the parole programs or services assigned by BPH.

- Bars CDCR from establishing a special condition of parole or assigning a parolee to the parole programs or services in lieu of initiating revocation proceedings if CDCR reasonably believes that the violation of the condition of parole involves commission of a serious or violent felony, or the use of a firearm.

- Requires as a condition of parole that to participate in residential programs services shall not be established without a hearing by BPH in accordance with existing law and regulations of the parole authority. Special conditions of parole providing an assignment to parole programs or services that does not consist of a residential component may be established without a hearing.

- Provides that expansion of parole programs or services by CDCR is subject to the appropriation of funding as provided in the Budget Act of 2007 and subsequent budget acts.

- Asks CDCR, in consultation with the Legislative Analyst's Office, contingent upon funding, to conduct an evaluation regarding the effect of the parole programs or services on public safety, parolee recidivism, and prison and parole costs and report the results to the Legislature three years after funding is provided.

- Requests CDCR to report annually to the Legislature, beginning January 1, 2009, regarding the status of the expansion of parole programs or services and the number of offenders assigned and participating in parole.

- Authorizes CDCR to create the Parole Violation Intermediate Sanctions Program (PVISP). The purpose of PVISP is to improve the rehabilitation of parolees, reduce recidivism, reduce prison overcrowding, and improve public safety through the use of intermediate sanctions for offenders who violate parole. The PVISP program allows CDCR to provide parole agents with an early opportunity to intervene with parolees who are not in compliance with the conditions of parole and facing return to prison. The PVISP includes key components used by drug and collaborative courts under a highly structured model, including close supervision and monitoring by a hearing officer; dedicated calendars; non-adversarial proceedings; frequent appearances before the hearing officer; utilization of incentives and sanctions; frequent dug and alcohol testing; immediate entry into treatment and rehabilitation programs; and close collaboration between the program, parole, and treatment to improve offender outcomes. The PVISP shall be local and community based.

- Refers a parolee deemed eligible by CDCR to participate in PVISP and who otherwise would be referred to the parole authority to have his or her parole for a parole violation by his or her parole officer for participation in the program in lieu of parole revocation. If the alleged violation of parole involves the commission of a serious felony; a violent felony as defined under existing law; or involves the control of, or use of a weapon, the parolee shall not be eligible for referral to the program in lieu of revocation of parole.

- Authorizes CDCR to establish local PVISPs that may have, but shall not be limited to, the following characteristics:

    - An assigned hearing officer who is a retired superior court judge or commissioner and experienced in using the drug court model and collaborative court model.

- The use of a dedicated calendar.

- Close coordination between the hearing officer, CDCR, counsel, community treatment and rehabilitation programs participating in PVISP and adherence to a team approach in working with parolees.

- Enhanced accountability through the use of frequent PVISP appearances by PVISP parolees, at least one per month, with more frequent appearances in the time period immediately following the initial referral to PVISP and thereafter in the discretion of the hearing officer.

- Reviews of progress by the parolee as to his or her treatment and rehabilitation plan and abstinence from the use of drugs and alcohol through progress reports provided by the parole agent, as well as all treatment and rehabilitation providers.

- Mandatory frequent drug an alcohol testing.

- Graduated, in-custody sanctions may be imposed after a hearing in which it is found the parolee failed treatment and rehabilitation programs or continued in the use of drugs or alcohol while in PVISP.

- A problem-solving focus and team approach to decision making.

- Direct interaction between the parolee and the hearing officer.

- Accessibility of the hearing officer to parole agents and parole employees, as well as treatment and rehabilitation of providers.

- Upon successful completion of PVISP, the parolee shall continue on parole or be granted other relief as shall be determined in the sole discretion of CDCR or as authorized by law.

- Authorizes CDCR to develop local PVISP programs. BPH is directed to convene in each county where the PVISPs are selected to be established, all local stakeholders, including, but not limited to, a retired superior court judge or commissioner, designated by the Administrative Office of the Courts, who shall be compensated by CDCR at the present rate of pay for retired judges and commissioners; local parole agents and other parole employees; the district attorney, the public defender, and an attorney actively representing parolees in the county and a private defense attorney designated by the public defenders association; the county director of alcohol and drug services, behavioral health, and mental health; and any other local stakeholders deemed appropriate. Specifically, persons directly involved in the areas of substance abuse treatment, cognitive skills development, education, life skills, vocational training and support, victim impact awareness, anger management,

family reunification, counseling, residential care, placement in affordable housing, employment development and placement are encouraged to be included in the meeting.

- Requires CDCR, in consultation with local stakeholders, to develop a plan consistent with this new law. The plan shall address, at a minimum, the following components:

    - The method by which each parolee eligible for PVISP shall be referred to PVISP.

    - The method by which each parolee is to be individually assessed as to his or her treatment and rehabilitative needs and level of community and court monitoring required, participation of counsel, and the development of a treatment and rehabilitation plan for each parolee.

    - The specific treatment and rehabilitation programs made available to the parolees and the process to ensure that they receive the appropriate level of treatment and rehabilitative services.

    - The criteria for continuing participation in, and successful completion of, PVISP, as well as the criteria for termination from the program and return to the parole revocation process.

    - The development of a PVISP team, as well as a plan for ongoing training in utilizing the drug court and collaborative court non-adversarial model.

- Gives the hearing officer in charge of the local PVISP to which the parolee is referred the authority to determine whether the parolee will be admitted to PVISP.

    - A parolee may be excluded from admission to PVISP if the hearing officer determines that the parolee poses a risk to the community or would not benefit from PVISP. The hearing officer may consider the history of the offender, the nature of the committing offense, and the nature if the violation. The hearing officer shall state his or her findings, and the reasons for those findings, on the record.

    - If the hearing officer agrees to admit the parolee into the PVISP, any pending parole revocation proceedings shall be suspended contingent upon successful completion of the PVISP as determined by PVISP hearing officer.

    - Participation in PVISP will not be construed to in any way affect the parolee's term of parole.

- Provides that special conditions of parole imposed as a condition of admission into PVISP consisting of a residential program shall not be established without a hearing in front of the hearing officer and regulations of BPH. A special condition of parole providing an admission to PVISP that does not consist of a residential component may be established without a hearing.

- States that implementation of PVISP is subject to the appropriation of funding in the Budget Act of 2008 and subsequent budget acts.

- Allows CDCR, in consultation with the Legislative Analyst's Office, to conduct an evaluation, contingent upon funding, of PVISP.

- Requires the final report is due to the Legislature three years after funding is provided. Until that date, CDCR shall report annually to the Legislature, beginning January 1, 2009, regarding the status of implementation of PVISP and the number of offenders assigned and participating in PVISP in the preceding fiscal year.

Inmate Health Care Services

Existing law authorizes a county sheriff, police chief, or other public agency that contracts for emergency health services to contract with providers of emergency health services for care to local law enforcement patients. Under existing law, a county sheriff or police chief is prohibited from releasing inmates from custody for the purpose of seeking medical care with the intent to re-arrest unless the hospital determines the action would enable it to collect from a third-party source.

Existing law also requires an Inmate Health Care and Medical Provider Fair Pricing Working Group to be convened and to meet at least three times annually to resolve industry issues that create fiscal barriers to timely and affordable inmate health care, among other things. The working group consists of six members from the California Hospital Association and the University of California, and six members from the California State Sheriffs' Association and the California Police Chiefs' Association.

These provisions expire on January 1, 2009.

SB 1169 (Runner), Chapter 142, extends the above provisions until January 1, 2014, but requires that the Inmate Health Care and Medical Provider Fair Pricing Working Group to meet as needed instead of at least three times annually.

Juveniles: Family Communication

Research demonstrates that family connection and communication is a key element of successful rehabilitation. Studies show that the youth in custody who receive the most letters, calls and visits are the least likely to re-offend post-release. Some argue that the

system separates a child from his/her family and makes it difficult to communicate with those most inclined to support the incarcerated youth.

In order to make communities safer and not further neglect the most vulnerable youth, barriers for families who are motivated to help their children succeed should be removed.

SB 1250 (Yee), Chapter 522, requires at least one individual who is a parent, guardian or designated emergency contact of a person in the custody of the Department of Juvenile Facilities (DJF), if the individual can be reasonably located, to be successfully notified within 24 hours of any suicide attempt by the person. Specifically, this new law:

- Allows a person in DJF's custody to designate other persons, in lieu of a parent or guardian, to be notified of any suicide attempt by the person, or any serious injury or serious offense committed against the person.

- Allows a minor to request that parents, guardians, or other persons not be notified with specified limitations, and allows a person 18 years of age or older to not consent.

- Provides that upon intake into a juvenile facility, and again upon attaining 18 years of age while in custody, an appropriate staff person shall explain in clearly understandable language that the person has a right to the following:

    - That the person may request parents, guardians, or other persons not be notified of a suicide attempt, serious injury, or serious offense against the person.

    - That the person may designate another person or persons in addition to, or in lieu of, a parent of guardian to be notified of a suicide attempt, serious injury, or serious offense against the person.

- Provides that any designation for emergency notification, the consent to notify and the withholding of that consent may be amended or revoked by the person, and shall be transferable among facilities.

- Requires DJF staff or county probation departments to enter the following information into the ward's record, as appropriate, upon its occurrence:

    - A minor's request that his or her parents, guardians, or other persons not be notified of an emergency, and the determination of the relevant public officer on that request.

    - The designation of persons who are emergency contacts, in lieu of parents or guardians, who may be notified as specified

- The revocation or amendment of a designation or consent.

- A person's consent, or withholding thereof, to notify parents, guardians, or other persons.

- Requires that, on or before January 1, 2010, DJF ensure that the listing of rights and posters regarding emergency notification are translated into Spanish and other languages as determined by DJF.

- Requires that copies of the rights of youth be included in orientation packets provided to parents and guardians of wards. Copies of the rights of youth, in English or Spanish, and other languages shall be made available in the visiting areas of DJF facilities and, upon request, to parents or guardians.

- Allows a ward a minimum of four telephone calls per month to his or her family. When speaking by telephone with a family member, clergy, or counsel, a ward may use his or her native language or the native language of the person to whom he or she is speaking.

- Requires the DJF to encourage correspondence with family or clergy by providing blank paper, envelopes, pencils, and postage. Materials shall be provided in a manner that protects institutional and public safety, and allows a person when corresponding to use his or her native language.

- Provides that blank paper, correspondence, envelopes, and pencils or other writing instruments shall not be deemed contraband nor seized except in cases where the staff determines that these items would likely be used to cause bodily harm, injury, or death to the ward, other persons, or destruction of property. If the staff asserts that it is necessary to seize materials normally used for correspondence, the reasons for the seizure shall be entered in writing in the ward's file or records.

- Provides that not less than 30 days prior to a scheduled parole consideration hearing, DJF shall notify the ward of the date and location of the parole consideration hearing. A ward shall have the right to contact his or her parent or guardian, if he or she can reasonably be located, to inform the parent or guardian of the date and location of the parole consideration hearing. The DJF shall allow the ward to inform other persons identified by the ward, if they can reasonably be located and who are considered by DJF as likely to contribute to a ward's preparation for the parole consideration hearing or the ward's post-release success.

- States that parole consideration hearing notification requirements shall not apply if a minor chooses not to contact parents, guardians or other persons, or a person 18 years of age or older does not consent to the contact.

- Provides that upon intake into a juvenile facility, and again upon attaining 18 years of age while in custody, an appropriate DJF staff person shall explain in clearly understandable language the rights of the ward regarding parole consideration hearing notification, as specified.

- Defines "suicide attempt" as a self-inflicted, destructive act committed with explicit or inferred intent to die.

Corrections: Inmate and Ward Labor

SB 737 (Romero), Chapter 10, Statutes of 2005, consolidated California Department of Corrections and the California Youth Authority into the California Department of Corrections and Rehabilitation (CDCR). However, the controlling statutes for the Juvenile Offender Day Labor program were not amended at that time to conform to the adult Inmate Day Labor program, resulting in both programs operating under separate statutes and accounting systems.

SB 1261 (Corbett), Chapter 116, allows the Secretary of the CDCR to order any authorized public works project involving the construction, renovation, or repair of juvenile justice facilities to be performed by ward labor. Specifically, this new law:

- Permits the Secretary of CDCR to order any authorized public works project involving the construction, renovation, or repair of prison facilities to be performed by inmate labor or juvenile justice facilities to be performed by ward labor when the total expenditure does not exceed the project limit.

- Creates a Ward Construction Revolving Account in the Prison Industries Revolving Fund.

California Rehabilitation Oversight Board: Reports

The January 15 deadline for the California Rehabilitation Oversight Board's (CROB) report is so close to the release of the Governor's Budget on January 10 that it limits the usefulness of the CROB report. In order to have its report drafted, reviewed, and approved by board members in time for the January 15 deadline, CROB must prepare its report before the Governor's budget has been made public. As a result, CROB is unable to consider or analyze any of the relevant budget proposals

SB 1684 (Machado), Chapter 144, changes the dates when the CROB must report to the Governor and the Legislature from January 1 to July 1 and from March 1 to September 1.

COURT HEARINGS

Contempt of Court: Elder Abuse

Under existing law, every person who willfully disobeys the terms as written of any process or court order or out-of-state court order lawfully issued by any court, including orders pending trial, is guilty of a misdemeanor.

> **AB 1424 (Davis), Chapter 152,** adds the crime of elder and dependant adult abuse to provisions of law punishing contempt of court for the willful and knowing violation of protective or stay away order, as specified..

Civil Compromise: Vandalism

Under existing law, a person injured by an act constituting a misdemeanor has a remedy by a civil action, except when the offense is committed as follows: by or upon an officer of justice, while in the execution of the duties of his or her office; riotously; with an intent to commit a felony; in violation of any court order as described in existing law relating to domestic violence; by or upon any family or household member, or upon any person when the violation involves any person described in the Family Code; upon an elder, in violation of provisions of law prohibiting elder abuse; or, upon a child, as prohibited in statutes relating to annoying or molesting a child.

> **AB 1767 (Ma), Chapter 208,** authorizes the City and County of San Francisco, as a pilot program, to require a person who has committed an act of vandalism by graffiti to complete a minimum of 24 hours of community service if the person engages in a civil compromise, as specified.

Domestic Violence Restraining Orders

Ambiguity existed in previous law regarding what evidence a court could consider determining whether good cause existed for the issuance of a domestic violence restraining order. Some courts would issue a domestic violence restraining order only upon a showing of good cause to believe that harm to a victim had occurred or was reasonably likely to occur.

Existing law was often interpreted to authorize a court to issue a domestic violence restraining order upon a good cause belief that harm to a victim has occurred or is reasonably likely to occur.

> **AB 1771 (Ma), Chapter 86,** expands existing law with respect to the information a court may consider in issuing a domestic violence restraining order.
>
> This new law provides that in determining whether good cause exists to issue an order in any case in which a complaint, information, or indictment charging a

crime of domestic violence has been filed, the court may consider the underlying nature of the offense charged and information provided to the court pursuant to a criminal history search.

This new law provides that the criminal history search shall include a thorough investigation of the defendant's criminal history, through accessing electronic databases, and shall include consideration of prior convictions of domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. This information shall be considered by a court in setting bond, upon consideration of any plea agreement, and when issuing any protective order.

This new law resolves ambiguity in the law by clarifying that a finding of good cause may be made upon the review of the above-described additional evidence.

Seized Property: Filing Fees

At present, the uniform fee for filing the first paper in a limited civil case worth less than an amount over $10,000 but no more than $25,000 is $300. In cases where the amount demanded, excluding attorney's fees and costs, is $10,000 or less, the uniform fee for filing the first paper is $180. For a civil action or proceeding in superior court worth over $25,000, the filing fee is $320. Under the current forfeiture hearing statute, the clerk shall not charge or collect a fee for the filing of a claim in which the value of the property is $5,000 or less. As a result, some courts currently require a $180 filing fee, or $300 fee when the property is worth more than $5,000, but less than $25,000; others require a $320 filing fee on all forfeiture filings since the property can be worth more than $25,000.

AB 1826 (Beall), Chapter 214, requires a $320 fee to adjudicate an interest in property worth $5,000 or more when that property has been seized in connection with specified controlled substance offenses. The claimant may proceed in forma pauperis if he or she does not have the requisite monies needed to file a claim.

Criminal Procedure: Expungements

Existing law prohibits individuals convicted of various crimes involving corruption from holding public office in the future. However, under existing law, individuals may expunge their convictions and have some of their rights reinstated once they have fulfilled their probation conditions. An expungement is not a subsequent finding of innocence; it is merely a restoration of some rights to the offender after successful completion of probation. Individuals convicted of corruption who have their crimes expunged should not be allowed to hold office in the future.

AB 2092 (De La Torre), Chapter 94, provides that the dismissal of an accusation or information underlying a conviction that prohibits a person from holding office as a result of that conviction does not permit that person to hold office.

Battered Women's Syndrome

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

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

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

AB 2306 (Karnette), Chapter 146, extends the sunset date from January 1, 2010 to January 1, 2020 on provisions of law that allow a writ of habeas corpus to be prosecuted on grounds that evidence relating to BWS was not introduced at the trial, thereby affecting the outcome of the trial.

Vandalism: Mandatory Clean Up

Existing law provides that upon conviction of any person for specified acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed, order either the defendant to clean up, repair, or replace the damaged property, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year.

AB 2609 (Davis), Chapter 209, makes it mandatory, instead of discretionary, for a court to order a defendant convicted of vandalism consisting of defacing property by graffiti to clean up or repair the property when appropriate and feasible; if it is determined that clean up is inappropriate, the court shall consider other types of community service.

Communicable Diseases: Involuntary Testing

Under existing law, a court order compelling a person to have his or her blood drawn and tested for communicable diseases may only be sought when an arrestee/defendant resisted arrest (the arrestee/defendant must actually be charged with an assault) with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or bodily fluids. However, here are situations in which public safety personnel may suffer a blood borne pathogen exposure (BBPE) but may not meet the legal requirement of "interference" in order to obtain source person testing.

AB 2737 (Feuer), Chapter 554, expands current involuntary testing provisions. Specifically, this new law:

- Authorizes a court to order the withdrawal of blood from any arrestee whenever a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids, as defined, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties.

- Requires a licensed health care provider, prior to filing a petition with the court, to first make a good-faith effort to obtain a voluntary informed consent in writing before filing the petition. This new law authorizes the petition to be filed ex parte.

- Expands the diseases for which testing may be ordered to HIV, hepatitis B, hepatitis C.

- Requires the arrestee whose sample was tested to be advised that he or she will be informed of hepatitis B, hepatitis C, and HIV test results only if he or she wishes to be so informed.

- Defines " blood borne pathogen exposure" as a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of non-intact skin or mucous membranes with any of the bodily fluids identified, in accordance with the most current BBPE definition established by the federal Centers for Disease Control and Prevention.

- Defines "bodily fluids" as any of the following: blood, tissue, mucous containing visible blood, semen, and vaginal secretions.

Probation Reports

Existing law provides that the name of the person who is the victim of a sex offense may be disclosed to county probation officer if the person who is alleged to have committed the sex offense is a probationer or is under investigation by a county probation

department in the preparation of a pre-sentence report. Inadvertently, probation officers do not have access to this information when preparing a pre-plea report.

> **AB 3038 (Tran), Chapter 596,** removes the limitation that allows the disclosure of the name and address of a victim of a sex offense to a probation officer only when conducting an investigation in the preparation of a pre-sentence report.

Criminal Proceedings: Commencement

Penal Code Section 804 is the section that generally defines when a prosecution commences. In general, the calculation of time for the statute of limitations starts with the date the crime is discovered and ends when the prosecution of that crime is commenced. Thus, Section 804 is critical to determining whether a prosecution is timely within the statute of limitations or is barred because the period prescribed by the statute of limitations has expired. Currently, Section 804 provides that a prosecution is commenced when any of the following occurs: a felony information or indictment is filed, a misdemeanor or infraction complaint is filed, a case is certified to the superior court, or an arrest warrant or bench warrant is issued.

The great majority of felony prosecutions in California are initiated by felony complaints filed by the prosecutor after the defendant is arrested on probable cause. Only a small percentage of felony prosecutions are initiated by a grand jury indictment or arrest warrant. The resulting effect of Penal Code Section 804 has led to cases being dismissed under the statute of limitations.

> **SB 610 (Corbett), Chapter 110,** provides that the commencement of prosecution for a felony offense shall begin on the date the defendant is arraigned upon the complaint.

Identity Theft: Venue

Federal and state courts have ruled that pursuant to the right of vicinage there must be a reasonable nexus between the crime and the county of trial. Current law provides for multiple jurisdictional options for a variety of crimes. In the case of identity theft, the impact of the crime often occurs at the victim's residence, where the credit card fraud, electronic theft, pretexting, or other theft of intangible property must be addressed.

> **SB 612 (Simitian), Chapter 47,** provides that the venue for trial of an identity theft crime includes the county in which the victim resides and grants trial courts authority to determine whether the county of the victim's residence is the appropriate place for trial in a particular case. Specifically, this new law:

Contempt: Victim of Domestic Violence

The California domestic violence community believes that the victim, not the court, is in the best position to determine whether testifying will further jeopardize his or her safety. Forcing a victim to testify by threatening incarceration is detrimental to the victim, the victim's family, and the victim's ability to trust the court and its procedures. It is difficult for these victims to come forward and report these crimes; re-victimizing them again is harmful and dissuades further victims from reporting these crimes. Prosecutors have many options when prosecuting these cases; one of the options need not be to incarcerate the victim.

> **SB 1356 (Yee), Chapter 49,** eliminates the court's discretion to imprison or otherwise confine in custody a victim of a domestic violence crime for contempt when the contempt consists of refusing to testify concerning that domestic violence crime.

Sentencing

In 2007, SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's Determinate Sentencing Law after the United States Supreme Court ruling in *Cunningham vs. California*. SB 40 contained a January 1, 2009 sunset date. However, it has become evident that more time is needed to evaluate these changes.

> **SB 1701 (Romero), Chapter 416,** extends the sunset date from January 1, 2009 to January 1, 2011 for which a court sentencing a defendant in the wake of *Cunningham vs. California* and the enactment of SB 40 (Romero), Chapter 3, Statutes of 2007, may impose the lower, middle or upper term of imprisonment, as specified.

CRIME PREVENTION

Sexually Exploited Minors

Currently, minors arrested for prostitution-related offenses are subject to juvenile court delinquency proceedings. However, many minors arrested for prostitution engaged in the prohibited conduct due to sexual exploitation. Under current law, an adult defendant may be eligible to participate in a diversion program. However, juveniles are not afforded an opportunity to participate in pretrial diversion programs and counseling available through diversion programs. Alternatively, juveniles are only permitted to participate in supervised informal probation proceedings or deferred entry of judgment proceedings. For deferred entry of judgment, the juvenile must actually enter a plea of guilty.

AB 499 (Swanson), Chapter 359, creates a pilot project in Alameda County which may be implemented contingent upon local funding for the purpose of diverting sexually exploited minors accused of soliciting an act of prostitution into supervised counseling and treatment programs. Specifically, this new law:

- Permits the County of Alameda, contingent upon local funding, to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of prostitution or loitering with intent to commit prostitution.

- States that the District Attorney of the County of Alameda may develop protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

- Authorizes the District Attorney of the County of Alameda to form a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do the following:

    - Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

    - Provide this training to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.

Emergency Telephone System Abuse

The California Highway Patrol and other agencies face new problems dealing with the number of "911" calls from the high use of cell phones. Calls from cell phones may be directed to different call centers in California depending on where the call is being placed. As a result, callers repeatedly break the law and deteriorate the 911 system without consequence as it is nearly impossible to track cell phones.

There are about 500,000 calls to 911 in the United States every day, about 183 million every year. In California, 911 calls made from cellular phones are answered by the California Highway Patrol (CHP). When call volume increases substantially, up to 37% cellular phone calls made to the CHP go unanswered.

It is critical to answer all phone calls made to the CHP's 911 call center even if the emergency is over as some callers may be witnesses who should be contacted when investigations are conducted. If a caller hangs up before contacting an operator, a potential witness may be lost.

AB 1976 (Benoit), Chapter 89, increases the penalties for knowingly using the 911 telephone system for any reason other than an emergency by removing one of two warnings, and increasing the fines for second or subsequent violations. Specifically, this new law:

- Creates an infraction, punishable by a $50 fine for a second violation, of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty from a written warning to a $100 fine.

- Increases the punishment to a $100 fine for a third violation of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty for a third offense from a $50 fine to a $100 fine.

- Increases the punishment to a $250 fine for a fourth or subsequent violation of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty for a fourth offense from a $100 fine to a $250 fine and increases the penalty for a fifth or subsequent offense from $200 to $250.

Corrections

California currently faces an extraordinary and severe prison and jail overcrowding crisis. California's prison capacity is nearly exhausted as prisons today are being operated with a significant level of overcrowding. An effort must be made to reduce the prison inmate population through the reduction of parolee rehabilitation and reduced recidivism.

SB 391 (Ducheny), Chapter 645, authorizes the Department of Corrections and Rehabilitation (CDCR) to expand the use of parole programs or services to improve the rehabilitation of parolees. Specifically, this new law:

- Authorizes CDCR to expand the use of parole programs or services to improve the rehabilitation of parolees, reduce recidivism, reduce prison overcrowding, and improve public safety through the use of intermediate sanctions for offenders who commit a violation of parole. The use of parole programs or services, in addition to supervision for any offender who is in need of services to reduce the parolee's likelihood to re-offend.

- Provides that the expansion of parole programs or services may include, but shall not be limited to the following: counseling, electronic monitoring, half-way house services, home detention, intensive supervision, mandatory community service assignments, increased drug testing, participation in one or more components of the Preventing Parolee Crime Program pursuant to existing law, rehabilitation programs, such as substance abuse treatment, and restitution.

- Allows CDCR or the parole authority (BPH) to assign the programs or services specified to offenders who meet the criteria, the existing discretion given to the parole authority regarding the reporting by CDCR of parole violations or conditions of parole are not altered.

- Gives CDCR or BPH the ability to determine an individual parolee's eligibility for the parole programs or services by considering the totality of the circumstances, including, but not limited to, the instant violation offense, the history of the parole adjustment, current commitment offense, risk needs assessment of the offender, and prior criminal history, with public safety and offender accountability as primary considerations.

- States that BPH, in the absence of a new conviction and commitment of the parolee to the state prison under other provisions of law, may assign a parolee who violates a condition of his or her parole to the parole programs or services in lieu of revocation of parole.

- Permits BPH, as an alternative to ordering a revoked parolee returned to custody, to suspend the period of revocation pending the parolee's successful completion of the parole programs or services assigned by BPH.

- Bars CDCR from establishing a special condition of parole, assigning a parolee to the parole programs or services in lieu of initiating revocation proceedings if CDCR reasonably believes that the violation of the condition of parole involves commission of a serious or violent felony, involves the control or use of a firearm.

- Requires as a condition of parole that to participate in residential programs services shall not be established without a hearing by BPH in accordance with existing law and regulations of the parole authority. Special conditions of parole providing an assignment to parole programs or services that does not consist of a residential component may be established without a hearing.

- Provides that expansion of parole programs or services by CDCR is subject to the appropriation of funding as provided in the Budget Act of 2007 and subsequent budget acts.

- Asks CDCR, in consultation with the Legislative Analyst's Office, contingent upon funding, to conduct an evaluation regarding the effect of the parole programs or services on public safety, parolee recidivism, and prison and parole costs and report the results to the Legislature three years after funding is provided.

- Requests CDCR to report annually to the Legislature beginning January 1, 2009, regarding the status of the expansion of parole programs or services and the number of offenders assigned and participating in parole.

- Authorizes CDCR to create the Parole Violation Intermediate Sanctions Program (PVISP). The purpose of PVISP shall be to improve the rehabilitation of parolees, reduce recidivism, reduce prison overcrowding, and improve public safety through the use of intermediate sanctions for offenders who violate parole. The PVISP program will allow the department to provide parole agents an early opportunity to intervene with parolees who are not in compliance with the conditions of parole and facing return to prison. The program will include key components used by drug and collaborative courts under a highly structured model, including close supervision and monitoring by a hearing officer, dedicated calendars, non-adversarial proceedings, frequent appearances before the hearing officer, utilization of incentives and sanctions, frequent dug and alcohol testing, immediate entry into treatment and rehabilitation programs, and close collaboration between the program, parole, and treatment to improve offender outcomes. The program shall be local and community based.

- Refers a parolee who is deemed eligible by CDCR to participate in this program, and who would otherwise be referred to the parole authority to have his/her parole for a parole violation by his/her parole officer for participation in the program in lieu of parole revocation. If the alleged violation of parole involves the commission of a serious felony, or a violent felony as defined under existing law, or involves the control of, or use of a weapon, the parolee shall not be eligible for referral to the program in lieu of revocation of parole.

- Authorizes CDCR to establish local PVISPs that may have, but shall not be limited to the following characteristics:

    - An assigned hearing officer who is a retired superior court judge or commissioner and who is experienced in using the drug court model and collaborative court model.

    - The use of a dedicated calendar.

    - Close coordination between the hearing officer, CDCR, counsel, community treatment and rehabilitation programs participating in PVISP and adherence to a team approach in working with parolees.

    - Enhanced accountability through the use of frequent PVISP appearances by PVISP parolees, at least one per month, with more frequent appearances in the time period immediately following the initial referral to PVISP and thereafter in the discretion of the hearing officer.

    - Reviews of progress by the parolee as to his/her treatment and rehabilitation plan and abstinence from the use of drugs and alcohol through progress reports provided by the parole agent as well as all treatment and rehabilitation providers.

    - Mandatory frequent drug an alcohol testing.

    - Graduated in-custody sanctions may be imposed after a hearing in which it is found the parolee failed treatment and rehabilitation programs or continued in the use of drugs or alcohol while in PVISP.

    - A problem-solving focus and team approach to decision making.

    - Direct interaction between the parolee and the hearing officer.

    - Accessibility of the hearing officer to parole agents and parole employees as well as treatment and rehabilitation of providers.

    - Upon successful completion of PVISP, the parolee shall continue on parole or be granted other relief as shall be determined in the sole discretion of CDCR or as authorized by law.

- Authorizes CDCR to develop local PVISP programs. BPH is directed to convene in each county where the PVISPs are selected to be established, all local stakeholders, including, but not limited to, a retired superior court judge or commissioner, designated by the Administrative Office of the Courts, who shall be compensated by CDCR at the present rate of pay for retired judges and commissioners, local parole agents and other parole employees, the

district attorney, the public defender, an attorney actively representing parolees in the county and a private defense attorney designated by the public defenders association, the county director of alcohol and drug services, behavioral health, and mental health; and any other local stakeholders deemed appropriate. Specifically, persons directly involved in the areas of substance abuse treatment, cognitive skills development, education, life skills, vocational training and support, victim impact awareness, anger management, family reunification, counseling, residential care, placement in affordable housing, employment development and placement are encouraged to be included in the meeting.

- Requires CDCR, in consultation with local stakeholder, to develop a plan that is consistent with this law. The plan shall address, at a minimum, the following components:

  - The method by which each parolee eligible for PVISP shall be referred to PVISP.

  - The method by which each parolee is to be individually assessed as to his or her treatment and rehabilitative needs and level of community and court monitoring required, participation of counsel, and the development of a treatment and rehabilitation plan for each parolee.

  - The specific treatment and rehabilitation programs that will be made available to the parolees and the process to ensure that they receive the appropriate level of treatment and rehabilitative services.

  - The criteria for continuing participation in, and successful completion of, PVISP, as well as the criteria for termination from the program and return to the parole revocation process.

  - The development of a PVISP team, as well as a plan for ongoing training in utilizing the drug court and collaborative court non-adversarial model.

- Gives the hearing officer in charge of the local PVISP, to which the parolee is referred, to the authority to determine whether the parolee will be admitted to PVISP.

  - A parolee may be excluded from admission to PVISP if the hearing officer determines that the parolee poses a risk to the community or would not benefit from PVISP. The hearing officer may consider the history of the offender, the nature of the committing offense, and the nature if the violation. The hearing officer shall state his or her findings, and the reasons for those findings, on the record.

- If the hearing officer agrees to admit the parolee into PVISP, any pending parole revocation proceedings shall be suspended contingent upon successful completion of the PVISP as determined by PVISP hearing officer.

- Participation in PVISP will not be construed to in any way affect the parolee's term of parole.

- Provides that special conditions of parole imposed as a condition of admission into PVISP consisting of a residential program shall not be established without a hearing in front of the hearing officer and regulations of BPH. A special condition of parole providing an admission to PVISP that does not consist of a residential component may be established without a hearing.

- States that implementation of PVISP is subject to the appropriation of funding in the Budget Act of 2008 and subsequent budget acts.

- Allows CDCR, in consultation with the Legislative Analyst's Office, to conduct an evaluation, contingent upon funding, of PVISP.

- Requires final report to be due to the Legislature three years after funding is provided. Until that date, CDCR shall report annually to the Legislature, beginning January 1, 2009, regarding the status of implementation of PVISP and the number of offenders assigned and participating in PVISP in the preceding fiscal year.

High Technology Crime Advisory Committee

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

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program, a public-private administrative body under the auspices of the Office of Emergency Services for the distribution of funding to develop regional high-technology crime units in California law enforcement agencies.

SB 1116 (Alquist), Chapter 112, amends and recasts the list of members of the HTCAC and adds a representative of the State Chief Information Officer to the Committee. Specifically, this new law:

- Amends an outdated reference in the list of HTCAC members which includes a representative of the Office of Privacy Protection, to instead include a representative from the Office of Information Security and Privacy Protection.

- Adds a representative of the State Chief Information Officer to the list of HTCAC members.

- Designates the Director of the Office of Emergency Services, instead of the DOF, as the appointing officer of the HTCAC.

Driving Under the Influence: Ignition Interlock Devices

California has reduced drunk driving-related fatalities and injuries through increased prevention, stricter sentences and fines, and expanded treatment for offenders. State law already requires use of ignition interlock devices (IDDs) in certain circumstances. An IID is a breath-alcohol testing device, about the size of a cellular phone, installed on the steering column of a car. The IID prevents the vehicle from being started unless the driver blows into the device to demonstrate that he or she is alcohol free.

SB 1388 (Torlakson), Chapter 404, requires a person convicted of a violation of driving on a suspended license and has one or more prior conviction for driving under the influence (DUI) or reckless driving that was plead after a DUI charge, to immediately install IIDs in all vehicles, as specified.

Crime: School Zones

Existing law provides for criminal punishment for certain gang activities, lewd or lascivious acts, lewd conduct, interference with civil rights, vandalism, annoying or molesting a child, offenses involving driving while intoxicated, and certain drug offenses. Penal Code Section 626 creates "safe schools zones" of 1,000 feet around public schools.

SB 1666 (Calderon), Chapter 726, expands the area of a safe school zone from 1,000 to 1,500 feet from a school, and provides that existing school disruption and related crimes apply to proscribed conduct on or around a private school.

CRIMINAL JUSTICE PROGRAMS

Sexually Exploited Minors

Currently, minors arrested for prostitution-related offenses are subject to juvenile court delinquency proceedings. However, many minors arrested for prostitution engaged in the prohibited conduct due to sexual exploitation. Under current law, an adult defendant may be eligible to participate in a diversion program. However, juveniles are not afforded an opportunity to participate in pretrial diversion programs and counseling available through diversion programs. Alternatively, juveniles are only permitted to participate in supervised informal probation proceedings or deferred entry of judgment proceedings. For deferred entry of judgment, the juvenile must actually enter a plea of guilty.

AB 499 (Swanson), Chapter 359, creates a pilot project in Alameda County which may be implemented contingent upon local funding for the purpose of diverting sexually exploited minors accused of soliciting an act of prostitution into supervised counseling and treatment programs. Specifically, this new law:

- Permits the County of Alameda, contingent upon local funding, to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of prostitution or loitering with intent to commit prostitution.

- States that the District Attorney of the County of Alameda may develop protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

- Authorizes the District Attorney of the County of Alameda to form a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do the following:

    - Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

    - Provide this training to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.

Domestic Violence: Additional Fees

Funding and expanding prevention programs will help address the factors imposed socially and culturally that contribute to domestic violence abuse. In a time of difficult budget cuts throughout the state, it is important to continue funding domestic violence prevention programs. The flow of adequate funding to these programs must be maintained in order to prevent tragedies from continuing to occur.

AB 2405 (Arambula), Chapter 241, allows counties to authorize an additional fee of not more than $250 upon every fine, penalty, or forfeiture imposed and collected by the courts for specified crimes involving domestic violence. Specifically, this new law:

- Directs the additional funds to domestic violence prevention programs that focus on assisting immigrants, refugees, and persons residing in rural communities. This new law allows the court to waive the assessment upon finding of inability to pay.

- Specifies that it is the intent of the Legislature that the programs created by this act serve individuals in urban, rural, and suburban areas of California.

Bad Check Diversion

The California Penal Code enables district attorney offices to offer diversion, rather than prosecution, to eligible bad check writers believed to be in violation of criminal laws. Offenders who choose to participate in a bad check diversion program are required to: (1) make full restitution to the victim; (2) pay various diversion fees, i.e., processing fees and bank charges; and, (3) successfully complete a check-writing education class.

When checks are referred to the program directly from vendors or collectors, the company contracting to operate the diversion program applies a specified list of referral criteria to the checks. If the alleged offender meets the requirements for admission into the program, the company sends a letter on the district attorney's letterhead. The letter informs the consumer who wrote the bad check that he or she may have broken the law and provides the consumer with the details of enrolling in the diversion program to avoid criminal prosecution. Contact information is provided for the company if the alleged offender has any questions.

AB 2606 (Emmerson), Chapter 264, increases fees for bad check diversion programs and for convictions for writing bad checks, and makes clarifying changes. Specifically, this new law:

- Clarifies that restitution made to the victim of the bad check is for the purpose of holding an offender accountable for victim's losses as a result of criminal conduct.

- Increases the maximum processing fee for bad check diversion to $50 from the existing $35 fee for each bad check.

- Increases the maximum processing fee for the recovery of processing efforts by the district attorney when the offender is convicted of the offense. The fee increases to $50 from the existing $35 maximum fee for each bad check. This new law clarifies that this fine is in addition to the actual amount of the check and bank charges, including the returned check fee if any.

- Specifies a new maximum returned check fee of $1,200, raising the amount from the existing returned check fee of $1,000.

- Sets the maximum returned check fee at $15, raising the amount from the existing maximum fee of $10.

Pediatric Trauma Centers: Sunset Date

Existing law authorizes a county board of supervisors to elect to levy an additional penalty in the amount of $2 for every $10, upon fines, penalties and forfeitures collected for specified criminal offenses until January 1, 2009. Existing law also requires that 15% of the funds collected pursuant to the additional penalty to be expended for pediatric trauma centers. These provisions expire on January 1, 2009.

SB 1236 (Padilla), Chapter 60, extends the sunset date from January 1, 2009 to January 1, 2014, unless a later enacted statute deletes or extends that date.

Sex Offenders

Existing law establishes a tiered system for making available to the public, via an Internet Web site, information on persons required to register as sex offenders for a wide variety of specified sex offenses. Existing law provides that certain offenses, deemed most serious, require the registrant's specific home address be provided to the public; other offenders are identified by resident zip codes only rather than specific home addresses.

SB 1302 (Cogdill), Chapter 599, adds murder with intent to commit a specified sex offense to list of offense for which registration as a sex offender is required and makes various other technical changes. Specifically, this new law:

- Includes the continuous sexual abuse of a child, as specified, to list of sex offenses for which the court must make certain findings in order to grant probation and includes the commission of specified sex offenses where the victim is a child under the age of 10 to the list of offenses in which probation is prohibited.

- Provides any person convicted of using a minor to produce child pornography for commercial production may not receive probation but, instead, clarifies a

person convicted of production of child pornography not for commercial use may still be eligible for probation.

- Includes a conviction for sexual battery, as specified, to the list of offenses for which a person is prohibited from owning or possessing a firearm.

- Includes assault with the intent to commit a specified sex crime to the statutory list of offenses for which enhancements are imposed for infliction of great bodily injury, and being armed or using a weapon in the commission of an offense, as specified.

Court Facility Financing

Many California court facilities are in a state of disrepair and require substantial rehabilitation or replacement in order to assure timely and efficient judicial services and ensure the safety of court personnel, jurors, and witnesses. Due to this problem, the State Court Facilities Construction Fund was established under the Trial Court Facilities Act of 2002. This law provided that moneys in the Fund may be used to acquire, rehabilitate, construct, or finance court facilities and to implement trial court projects in designated counties.

SB 1407 (Perata), Chapter 311, extended the purposes for which moneys in the Fund may be used to include the planning, design, construction, rehabilitation, replacement, leasing or acquisition of court facilities. This new law provides for the issuance of lease-revenue bonds, which will be repaid through a variety of increases in various uniform fees for filing specified documents in connection with certain civil proceedings, and imposes supplemental penalties and fees upon parking offenses and on persons ordered to attend traffic violator school.

This new law also established the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, the proceeds of which will be used for the planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities; for the repayment of moneys appropriated for lease of court facilities pursuant to the issuance of lease-revenue bonds; and for the payment for lease or rental of court facilities. The law further provides for a specified portion of all of these additional fees to be deposited into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund.

This new law authorizes the Judicial Council to acquire sites for the replacement of deficient court facilities in four specified counties and declares legislative intent to establish a moratorium on further increases in court filing fees until January 1, 2012.

CRIMINAL OFFENSES

Controlled Substances: Salvia Divinorum

Recently, "Salvia" (or "Salvia divinorum"), which has been identified as a hallucinogenic herb, is being sold on the Internet and in California "smoke and head" shops. Under current law, Salvia can be legally sold to minors.

> **AB 259 (Adams), Chapter 184,** provides that any person who sells, dispenses, distributes, furnishes, administers, gives, offers to sell, dispenses, distributes, furnishes, administers or gives Salvia divinorum, Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A to any person under 18 years of age is guilty of a misdemeanor.

Electronic Communication Devices: Harassment

Under existing law, every person who, with the intent to annoy, telephones or contacts another person with any obscene language or any threat to inflict injury on that person, that person's property, or any family member by means of an electronic communication device is guilty of misdemeanor.

> **AB 919 (Houston), Chapter 583,** states every person who uses an electronic communication device to harass another person through the actions of a third party, as specified, is guilty of a misdemeanor. Specifically, this new law:
>
> - Defines "harassment" as a knowing and willful course of conduct directed at a specific person that a reasonable person would consider seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.
>
> - Defines "of a harassing nature" as information that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.
>
> - Requires that a person who places another person in unreasonable fear for his or her own safety by means of electronic distribution, as specified, have the purpose of imminently causing that other person unwanted physical contract, as specified, and that the message or image be likely to incite or produce that unlawful action.

Controlled Substances: Khat

Khat is a plant common to East Africa that contains Cathinone (when fresh) which then degrades into Cathine (within 48 hours of harvest). Possession of these substances is currently prohibited under federal law. Cathinone is regulated as a Schedule I substance

and Cathine as a Schedule IV substance. Neither, however, is specifically listed as a scheduled substance under California law. Presently, the only way to prosecute possession, possession for sale, sale, and transportation thereof of these substances under California law is under the theory that they are substantially similar in effect to methamphetamine.

AB 1141 (Anderson), Chapter 292, conforms California law to federal law. Specifically, this new law:

- Provides that any material, compound, mixture, or preparation which contains any quantity of khat, which includes all parts of the plant classified botanically as Catha Edulis, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts having a stimulant effect on the central nervous system is a controlled substance listed in Schedule II.

- States that any material, compound, mixture, or preparation which contains any quantity of cathinone having a stimulant effect on the central nervous system is a controlled substance listed in Schedule II.

- Provides that any material, compound, mixture, or preparation which contains any quantity of cathine having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers is possible within the specific chemical designation, is a controlled substance listed in Schedule II.

- Creates a misdemeanor for the unlawful possession of khat, cathinone, or cathine punishable by up to one year in county jail.

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

- Creates a felony for the transportation and sale of khat and cathinone, punishable by two, three, or four years in state prison.

Counterfeit Trademarks

Changes in technology has allowed for quick production of counterfeit goods in large quantities. Existing penalties do not reflect the serious economic burden that the crime of counterfeiting has on California's industries, particularly the entertainment industry. Additionally, existing law does not provide that the proceeds of the crime be forfeited. The Trademark Counterfeiting Act of 1984 amended the federal criminal code, establishing penalties of up to five years in prison and/or a $250,000 fine ($1 million fine for corporations or other business entities) for selling, or attempting to sell, counterfeit goods or services. Penalties for subsequent violations were also increased.

AB 1394 (Krekorian), Chapter 431, modifies the system of penalties and fines related to criminal counterfeit trademark infringement. Specifically, this new law:

- Specifies a fine not to exceed $250,000 for offenses involving 1,000 or more of articles or has a total retail value greater than that required for grand theft as defined in the Penal Code. This new law permits fines not exceeding $500,000 for offenses involving 1,000 or more articles when the offending party is a business entity.

- Provides for forfeiture of the proceeds of the crime upon a conviction or plea of no contest.

- Permits a defense of fair use of trademarks as defined in the Business and Professions Code.

- States that when counterfeited but unassembled components of any articles covered by the trademark, including, but not limited to, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging, or any other components of any type of nature designed, marketed, or otherwise intended to be used on or in connection with any articles covered. The number of "articles" shall be equivalent to the number of completed articles that could have been made from those components.

- Provides that when a person is convicted relating to counterfeit trademarks, the court shall order the defendant to pay restitution to the trademark holder and any other victim of the offense. In determining the value of economic loss, the court shall grant restitution for any and all economic loss, including, but not limited to, expenses incurred by the trademark holder in the investigation of the offense.

Emergency Telephone System Abuse

The California Highway Patrol and other agencies face new problems dealing with the number of "911" calls from the high use of cell phones. Calls from cell phones may be directed to different call centers in California depending on where the call is being placed. As a result, callers repeatedly break the law and deteriorate the 911 system without consequence as it is nearly impossible to track cell phones.

There are about 500,000 calls to 911 in the United States every day, about 183 million every year. In California, 911 calls made from cellular phones are answered by the California Highway Patrol (CHP). When call volume increases substantially, up to 37% cellular phone calls made to the CHP go unanswered.

It is critical to answer all phone calls made to the CHP's 911 call center even if the emergency is over as some callers may be witnesses who should be contacted when investigations are conducted. If a caller hangs up before contacting an operator, a potential witness may be lost.

AB 1976 (Benoit), Chapter 89, increases the penalties for knowingly using the 911 telephone system for any reason other than an emergency by removing one of two warnings, and increasing the fines for second or subsequent violations. Specifically, this new law:

- Creates an infraction, punishable by a $50 fine for a second violation, of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty from a written warning to a $100 fine.

- Increases the punishment to a $100 fine for a third violation of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty for a third offense from a $50 fine to a $100 fine.

- Increases the punishment to a $250 fine for a fourth or subsequent violation of knowingly using, or allowing the use of, the 911 telephone system for any other reason than an emergency. This new law increases the penalty for a fourth offense from a $100 fine to a $250 fine and increases the penalty for a fifth or subsequent offense from $200 to $250.

Animal Abuse

Existing law prohibits a non-federally inspected slaughterhouse, stockyard or auction from buying, selling, or receiving non-ambulatory animals, as defined. Existing law also prohibits a slaughterhouse, stockyard, auction, market agency, or dealer from holding a non-ambulatory animal without taking immediate action to humanely euthanize the animal or provide immediate veterinary treatment.

A video was released by the Humane Society of the United States which documented the abuse of downed cattle at a California meat packing company. "Downed" cattle are defined as being too diseased and/or disabled to stand or walk without assistance. Public health officials have long warned that meat derived from downed animals has a much increased susceptibility to passing on the E-Coli virus, mad cow disease and salmonella, which can lead to human complications and even death.

AB 2098 (Krekorian), Chapter 194, strengthens California's ability to protect animals, people, and the food supply by specifically prohibiting slaughterhouses and other entities from processing and selling meat from non-ambulatory animals

for human consumption. This new law also prohibits a slaughterhouse, stockyard, auction, market agency or dealer from buying, selling, consigning, shipping, or receiving a non-ambulatory animal.

This new law makes these crimes punishable by imprisonment in a county jail for a period not to exceed one year, by a $20,000 fine, or both that fine and imprisonment.

Imitation Firearms: College Campuses

Under existing law, it is an alternate misdemeanor/felony to bring specified weapons to any public or private school providing instruction in Kindergarten and Grades one through 12, inclusive. Weapons included in this prohibition include instruments that expel metallic projectiles, such as a BB or pellet, through the force of air pressure, carbon dioxide pressure, or spring action. Existing law also makes it a crime to openly display or expose any imitation firearm in specified public places.

However, existing law does not address gun violence occurring on college campuses or include less lethal weapons within the scope of the prohibition.

AB 2470 (Karnette), Chapter 676, expands the prohibition against bringing or possessing specified instruments that expel a non-metallic BB or pellet on the grounds of, or within, specified public or private colleges and universities. This new law addresses reports by College and University Police Chiefs that these weapons are often used in on-campus crimes, and expands the definition of "public places" in which imitation firearms may not be displayed to include a public or private college or university.

Vehicles: Alcohol-Related Reckless Driving

California law permits a person arrested for drunk driving to plead down to a charge of alcohol-related reckless driving ("wet reckless"). Both wet reckless and driving under the influence (DUI) convictions are the result of being arrested for driving while drunk, but a wet reckless conviction carries far fewer penalties than a DUI conviction. Under existing law, a person convicted of a wet reckless with prior DUI conviction is not required to obtain treatment.

AB 2802 (Houston), Chapter 103, modifies probation conditions for a defendant convicted of a wet reckless and has a prior alcohol-related driving conviction within 10 years. Specifically, new law:

- Requires courts to order a defendant convicted of a wet reckless to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of specified activities, including education, group

counseling, and individual interview sessions, if that person has a prior conviction of a violation of a wet reckless or another specified DUI law and the prior convicted offense occurred within 10 years.

- Requires the Department of Motor Vehicles (DMV) to additionally include in the annual report to the Legislature an evaluation of the effectiveness of that program.

- Requires courts to revoke a probationer's probation for failure to enroll in, participate in, or complete the program unless good cause is shown by the probationer.

- Includes programs that provide alcohol or drug recovery services to persons admitted to those programs for alcohol-related reckless driving with a prior conviction of a wet reckless or other specified DUI law in those programs licensed exclusively by the Department of Alcohol and Drug Programs.

Human Trafficking

Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking" there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50 percent are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied" notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).]

AB 2810 (Brownley), Chapter 358, grants victims of human trafficking specified rights. Specifically, this new law:

- Adds a human trafficking victims to the list of victims whose names and addresses may be withheld from disclosure at the request of the victim or the guardian of the victim. This new law includes victims of human trafficking in the list of victims who must be informed by law enforcement of their rights not to have their personal information disclosed.

- States law enforcement agencies shall use due diligence to identify all victims of human trafficking regardless of the person's citizenship. When a peace officer comes into contact with a person who has been deprived of his or her

personal liberty, a person suspected of violating specified prostitution offenses, or a victim of a crime of domestic violence or rape, the peace officer shall determine whether the following indicators of human trafficking are present:

- Signs of trauma, fatigue, injury, or other evidence of poor care.
- The person is withdrawn, afraid to talk, or his or her communication is censored by another person.
- The person does not have freedom of movement.
- The person lives and works in one place.
- The person owes a debt to his or her employer.
- Security measures are used to control who has contact with the person.
- The person does not have control over his or her own government issued identification or over his or her worker immigration documents.

- Declares law enforcement personnel, social workers, and legal personnel must be trained to understand trafficking in persons, recognize victim profiles, and appreciate the special circumstances and needs of victims. If the people in the community are trained to recognize instances of trafficking and are better equipped to rescue victims and prosecute traffickers, human trafficking could be slowly reduced because each trafficker prosecuted could help save thousands of future victims.

Stun Guns

For more than a decade, stun guns have been sold to civilians in California as a non-lethal choice for personal protection. However, minors under the age of 18 should not have access to these devices.

AB 2973 (Soto), Chapter 556, creates restrictions involving the acquisition, sale, and use of a stun gun or less than lethal weapon. Specifically, this new law:

- Provides that every person who commits an assault upon the person of another with a stun gun or less than lethal weapon shall be punished by imprisonment in a county jail for a term not exceeding one year or by imprisonment in the state prison for 16 months, 2 or 3 years.

- Provides that every person who commits an assault upon a peace officer or firefighter with a stun gun or less than lethal weapon, who knows or reasonably should know that the person is a peace officer or firefighter

engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year or by imprisonment in the state prison for two, three, or four years.

- Mandates that any person who sells a less than lethal weapon to a person under the age of 18 years is guilty of a misdemeanor, punishable by imprisonment in the county jail for up to six months; by a fine of not more than $1,000; or by both that imprisonment and fine.

Criminal Communications

Currently, threatening or obscene telephone calls or electronic contacts are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, no matter where those calls or contacts are received. Repeated telephone calls or electronic contacts made with an intent to annoy are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, if those calls or contacts are made to a home or workplace. However, such calls or contacts would not be illegal if made to cellular phones, by text message, or by e-mail (including mobile e-mail messages).

SB 129 (Kuehl), Chapter 109, expands the scope of the current crime of making two or more phone calls or electronic communications with the intent to annoy by prohibiting making two or more such communications regardless of where the communication is received. Specifically, this new law:

- Expands the scope of current law to provide that making two or more telephone calls or electronic communications with the intent to annoy or harass is a misdemeanor regardless of where the communication is received.

- Specifies that electronic communication devices include, but are not limited to, pagers, personal digital assistants, smart phones, and any other devices that transfer, sign, signal, write, image, sound or data; videophones; TTY/TDD devices; and all other devices used to aid or assist communication to, or from, deaf or disabled persons.

- Provides that the crime of making phone calls or electronic communications with the intent to annoy or harass does not apply to calls or communications made in good faith during the ordinary course and scope of business.

- Provides that a person is guilty of the crime of making annoying phone calls with the intent to annoy or harass if that person permits any telephone or electronic communication device under that person's control to be used for the purpose of making such prohibited communications.

- Clarifies that contact with the intent to annoy or harass may be measured by a combination of telephone calls or other electronic device, as specified.

Inmates: Prohibited Items

Under current law, it is a felony to bring into a jail or prison certain types of contraband (alcohol and drugs, etc.). This provision was written before tobacco was banned from jails and prisons and prior to the advent of the cell phone. Any inmate who possesses a cellular phone or other wireless communication device in a custodial environment poses a tremendous security risk to that facility. The ability to communicate unsupervised and at any time with the outside world gives the inmate the ability to orchestrate an escape or conduct illicit business or activity.

Under current law, alcohol, which is not illegal outside of custody, is illegal in a custodial environment; tobacco should be considered illegal in the same manner. Tobacco in a county jail is unauthorized but not illegal; in state prison, tobacco possession is illegal.

SB 655 (Margett), Chapter 655, prohibits possession of tobacco products and wireless communication devices in a local correctional facility. Specifically, this new law:

- Provides that any person in a local correctional facility that possesses a wireless communication device including, but not limited to, a cellular telephone, pager, or wireless Internet device, and who is not authorized to possess that item is guilty of a misdemeanor punishable by a fine of not more than $1,000.

- States that any person housed in a local correctional facility who possesses any tobacco products in any form, including snuff products, smoking paraphernalia, any device intended to be used for ingesting or consuming tobacco, or any container or dispenser used for any of those products is guilty of an infraction, punishable by a fine not exceeding $250. The aforementioned shall only apply to persons in a local correctional facility in a county in which the board of supervisors has adopted an ordinance or passed a resolution banning tobacco in its correctional facilities.

- Disperses money collected into the inmate welfare fund.

Undetectable Knives

Under existing law, it is a misdemeanor for any person in California to commercially manufacture, knowingly import into California for commercial sale, keep for commercial sale, or offer or expose for commercial sale any undetectable knife.

SB 1033 (Runner), Chapter 111, also makes it a misdemeanor for any person to knowingly export an undetectable knife out of the state for commercial sale. Specifically, this new law:

- Provides that any person who knowingly exports any undetectable knife out of California for commercial, dealer, wholesaler, or distributor sale is guilty of a misdemeanor.

- Allows the manufacture or importation of undetectable knives for sale to a law enforcement agency or military unit with a valid agency, department, or unit purchase order.

Hard Wooden Knuckles

Existing law defines "metal knuckles" for purposes of the offense to include any device or instrument made wholly or partially of metal. The definition of "metal knuckles" should be expanded to include any device or instrument made wholly or partially of plastic, wood, composite, or paper products. Wood knuckles are becoming more and more prevalent. Wood knuckles constructed of Ironwood are equally deadly as metal knuckles.

SB 1162 (Maldonado), Chapter 346, adds "hard wooden knuckles" to existing provisions of law that makes it a misdemeanor to commercially manufacture or cause to be commercially manufactured; to knowingly import into California for commercial sale; and keep for commercial sale, or offer or expose for commercial sale any hard plastic knuckles.

Highway Workers: Assault and Battery

Recently, there has been a serious problem of assaults against California Department of Transportation (Caltrans) highway maintenance workers and contractor employees assisting those workers. Among the documented recent assaults Caltrans highway maintenance workers have included assaults with a paint ball gun, a BB gun, and jumper cables. There has also been a recent instance of a knife attack; numerous cases of objects being thrown at workers by passing motorists; several instances of vehicles swerving into a closed lane to threaten workers; and, in multiple cases, vehicles have struck workers causing severe injuries. Most recently, an individual brandished a fire arm at a group of Caltrans employees.

SB 1509 (Lowenthal), Chapter 410, enacts a new assault crime against a highway worker engaged in the performance of his or her duties. Specifically, this new law:

- Provides that when an assault is committed against a highway worker engaged in the performance of his or her duties and the person committing the offense knows, or reasonably should know, that the victim is a highway worker engaged in the performance of his or her duties, the offense is punishable by a fine not to exceed $2,000; by imprisonment in a county jail up to one year; or by both that fine and imprisonment.

- Defines a "highway worker" as "an employee or contractor of the California Department of Transportation who does one of the following:

  - "Performs maintenance, repair, or construction of state highway infrastructures and associated rights-of-way in highway work zones.

  - "Operates equipment on state highway infrastructures and associated rights-of-way in highway work zones.

  - "Performs any related maintenance work, as required on state highway infrastructures on highway work zones."

- Provides that when a battery is committed against a highway worker engaged in the performance of his or her duties and the person committing the offense knows, or reasonably should know, that the victim is a highway worker engaged in the performance of his or her duties the offense shall be punished by a fine not exceeding $2,000; by imprisonment in a county jail not exceeding one year; or by both that fine and imprisonment.

Burglary Tools: Bump Keys

"Bumping" is a relatively new form of burglary that uses a filed-down key ("bump key") to transmit the force of an impact to the pins inside a lock. The impact causes the pins within the lock to separate from the key pins, allowing the lock to be opened. There are two issues of importance with the bump key: their use is difficult to prove (no unusual scratches are left on the inside of the lock as with standard lock picking) and the technique has come to public attention through a number of online videos that demonstrate how easy the tool is to use. The bump key has the potential to become an increasingly common burglary tool.

SB 1554 (Dutton), Chapter 119, makes the possession of a bump key with the intent to commit burglary a misdemeanor punishable by up to six months in county jail; a fine not to exceed $1,000; or both.

Anti-Reproductive Rights Crime

Existing law requires the Attorney General to assume specified duties with respect to planning, information gathering and analyzing anti-reproductive rights crimes, as defined, including consultation with subject matter experts. Under existing law, an advisory committee must be convened to evaluate the effectiveness of existing law and submit a report to the Legislature on this evaluation. Further, the Commission on Peace Officer Standards and Training (POST) is required to develop an optional course of training for law enforcement agencies regarding anti-reproductive rights crime.

These provisions expire on January 1, 2009.

SB 1770 (Padilla), Chapter 206, extends the date of repeal to January 1, 2014. This new law deletes the requirement that the Attorney General analyze and report on information relating to anti-reproductive rights crimes and instead requires the Attorney General to collect and annually publish this information on its Internet Web site. This new law requires POST to establish guidelines for the standard procedures to be followed by law enforcement agencies in the investigation and reporting of cases involving anti-reproductive rights crimes.

DOMESTIC VIOLENCE

Domestic Violence Restraining Orders

Ambiguity existed in previous law regarding what evidence a court could consider determining whether good cause existed for the issuance of a domestic violence restraining order. Some courts would issue a domestic violence restraining order only upon a showing of good cause to believe that harm to a victim had occurred or was reasonably likely to occur.

Existing law was often interpreted to authorize a court to issue a domestic violence restraining order upon a good cause belief that harm to a victim has occurred or is reasonably likely to occur.

> **AB 1771 (Ma), Chapter 86,** expands existing law with respect to the information a court may consider in issuing a domestic violence restraining order.
>
> This new law provides that in determining whether good cause exists to issue an order in any case in which a complaint, information, or indictment charging a crime of domestic violence has been filed, the court may consider the underlying nature of the offense charged and information provided to the court pursuant to a criminal history search.
>
> This new law provides that the criminal history search shall include a thorough investigation of the defendant's criminal history, through accessing electronic databases, and shall include consideration of prior convictions of domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. This information shall be considered by a court in setting bond, upon consideration of any plea agreement, and when issuing any protective order.
>
> This new law resolves ambiguity in the law by clarifying that a finding of good cause may be made upon the review of the above-described additional evidence.

Battered Women's Syndrome

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

Passage of AB 785 did not help those women convicted of killing or assaulting abusive husbands prior to the legal community recognizing the relevance of BWS evidence. In

fact, prior to the passage of AB 785, many judges refused to allow this type of evidence to be admitted in court. Without the opportunity to offer such evidence, some women were denied an opportunity to present a full defense.

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

AB 2306 (Karnette), Chapter 146, extends the sunset date from January 1, 2010 to January 1, 2020 on provisions of law that allow a writ of habeas corpus to be prosecuted on grounds that evidence relating to BWS was not introduced at the trial, thereby affecting the outcome of the trial.

Domestic Violence: Additional Fees

Funding and expanding prevention programs will help address the factors imposed socially and culturally that contribute to domestic violence abuse. In a time of difficult budget cuts throughout the state, it is important to continue funding domestic violence prevention programs. The flow of adequate funding to these programs must be maintained in order to prevent tragedies from continuing to occur.

AB 2405 (Arambula), Chapter 241, allows counties to authorize an additional fee of not more than $250 upon every fine, penalty, or forfeiture imposed and collected by the courts for specified crimes involving domestic violence. Specifically, this new law:

- Directs the additional funds to domestic violence prevention programs that focus on assisting immigrants, refugees, and persons residing in rural communities. This new law allows the court to waive the assessment upon finding of inability to pay.

- Specifies that it is the intent of the Legislature that the programs created by this act serve individuals in urban, rural, and suburban areas of California.

Criminal Communications

Currently, threatening or obscene telephone calls or electronic contacts are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, no matter where those calls or contacts are received. Repeated telephone calls or electronic contacts made with an intent to annoy are misdemeanors, punishable by six months in county jail, a $1,000 fine, or both, if those calls or contacts are made to a home or workplace. However, such calls or contacts would not be illegal if made to cellular phones, by text message, or by e-mail (including mobile e-mail messages).

SB 129 (Kuehl), Chapter 109, expands the scope of the current crime of making two or more phone calls or electronic communications with the intent to annoy by prohibiting making two or more such communications regardless of where the communication is received. Specifically, this new law:

- Expands the scope of current law to provide that making two or more telephone calls or electronic communications with the intent to annoy or harass is a misdemeanor regardless of where the communication is received.

- Specifies that electronic communication devices include, but are not limited to, pagers, personal digital assistants, smart phones, and any other devices that transfer, sign, signal, write, image, sound or data; videophones; TTY/TDD devices; and all other devices used to aid or assist communication to, or from, deaf or disabled persons.

- Provides that the crime of making phone calls or electronic communications with the intent to annoy or harass does not apply to calls or communications made in good faith during the ordinary course and scope of business.

- Provides that a person is guilty of the crime of making annoying phone calls with the intent to annoy or harass if that person permits any telephone or electronic communication device under that person's control to be used for the purpose of making such prohibited communications.

- Clarifies that contact with the intent to annoy or harass may be measured by a combination of telephone calls or other electronic device, as specified.

Contempt: Victim of Domestic Violence

The California domestic violence community believes that the victim, not the court, is in the best position to determine whether testifying will further jeopardize his or her safety. Forcing a victim to testify by threatening incarceration is detrimental to the victim, the victim's family, and the victim's ability to trust the court and its procedures. It is difficult for these victims to come forward and report these crimes; re-victimizing them again is harmful and dissuades further victims from reporting these crimes. Prosecutors have many options when prosecuting these cases; one of the options need not be to incarcerate the victim.

SB 1356 (Yee), Chapter 49, eliminates the court's discretion to imprison or otherwise confine in custody a victim of a domestic violence crime for contempt when the contempt consists of refusing to testify concerning that domestic violence crime.

ELDER ABUSE

Contempt of Court: Elder Abuse

Under existing law, every person who willfully disobeys the terms as written of any process or court order or out-of-state court order lawfully issued by any court, including orders pending trial, is guilty of a misdemeanor.

> **AB 1424 (Davis), Chapter 152,** adds the crime of elder and dependant adult abuse to provisions of law punishing contempt of court for the willful and knowing violation of protective or stay away order, as specified..

Elder Abuse: Reporting

Instances of physical and financial abuse occurring in long-term care facilities are rarely prosecuted. Ombudspersons in the position of learning about instances of abuse are not reporting these instances to district attorneys. Because of the nature of these crimes and the chances that critical evidence will be lost, time is of the essence and it is imperative that the county justice system be contacted in as soon as possible. Ombudspersons should be required to immediately report instances of known or suspected physical or financial abuse to their local district attorney.

> **AB 2100 (Wolk), Chapter 481,** requires the local ombudsperson and local law enforcement agency to, as soon as practicable, report cases of known or suspected physical abuse or financial abuse of an elder in specified health care facilities to the local district attorney's office.

Witness Testimony: Support Persons

Under existing law, a victim of specified sex crimes, violent crimes, and child abuse crimes may choose up to two support persons, one of whom may accompany the witness to the witness stand. The witness support person may remain in the courtroom. If the person chosen is also a prosecution witness, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support, will be helpful to the prosecuting witness, and the testimony of the support person should be taken before he or she in the court room with the prosecuting witness. This provision has been found not to violate the Confrontation Clause of the Constitution. [*People v. Adams*, (1993) 19 C.A. 4th 412, 437, 444.]

> **SB 1343 (Battin), Chapter 48,** adds specified crimes against elder and dependant adults to the list of offenses for which a prosecuting witness, who is an elder or dependent adult, may have up to two support persons during the witness' testimony. Specifically, this new law:

- Permits support persons for elder or dependent adult witnesses for crimes involving any person under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elderly or dependant adult to suffer, or inflicts unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependant adult, willfully caused or permits the person or health of the elder or dependant adult to be injured or willfully causes or permits the elder or dependant adult to be placed in a situation in which his or her person or health is endangered.

- Permits support persons for elder or dependent adult witnesses for crimes involving any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud or identity theft with respect to the property or personal identifying information of an elder or dependant adult, and who knows or reasonable should know that the victim is an elder or a dependant adult.

- Permits support persons for elder or dependent adult witnesses for crimes involving any caretaker of an elder or dependant adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependant adult.

JUVENILES

Sexually Exploited Minors

Currently, minors arrested for prostitution-related offenses are subject to juvenile court delinquency proceedings. However, many minors arrested for prostitution engaged in the prohibited conduct due to sexual exploitation. Under current law, an adult defendant may be eligible to participate in a diversion program. However, juveniles are not afforded an opportunity to participate in pretrial diversion programs and counseling available through diversion programs. Alternatively, juveniles are only permitted to participate in supervised informal probation proceedings or deferred entry of judgment proceedings. For deferred entry of judgment, the juvenile must actually enter a plea of guilty.

AB 499 (Swanson), Chapter 359, creates a pilot project in Alameda County which may be implemented contingent upon local funding for the purpose of diverting sexually exploited minors accused of soliciting an act of prostitution into supervised counseling and treatment programs. Specifically, this new law:

- Permits the County of Alameda, contingent upon local funding, to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of prostitution or loitering with intent to commit prostitution.

- States that the District Attorney of the County of Alameda may develop protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

- Authorizes the District Attorney of the County of Alameda to form a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do the following:

    - Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

    - Provide this training to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.

Juveniles: Unclaimed Funds

Existing law requires the Chief Deputy Secretary of the California Department of Corrections' (CDCR) Division of Juvenile Facilities (DJF) to hold unclaimed funds or property left when a person escapes, is discharged, or paroled from the institution for seven years. However, unclaimed funds or personal property of paroled minors may be exempt from these provisions during the period of their minority and one year after, at the discretion of the Chief Deputy Secretary.

The CDCR must hold an adult offender's unclaimed property after release for three years. The former California Youth Authority has become the DJF and merged with CDCR and these inconsistent policies regarding unclaimed funds should be made consistent.

> **AB 1864 (DeVore), Chapter 88,** reduces the time seven years to three years in which the Chief Deputy Secretary of CDCR must hold unclaimed funds or property left by a person escaped, discharged, or paroled from the DJF.

Vandalism: Mandatory Clean Up

Existing law provides that upon conviction of any person for specified acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed, order either the defendant to clean up, repair, or replace the damaged property, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year.

> **AB 2609 (Davis), Chapter 209,** makes it mandatory, instead of discretionary, for a court to order a defendant convicted of vandalism consisting of defacing property by graffiti to clean up or repair the property when appropriate and feasible; if it is determined that clean up is inappropriate, the court shall consider other types of community service.

Background Investigations

Although county child welfare and adoption agencies routinely conduct background checks on potential employees and volunteers, these background checks were not as complete as they could have be as child welfare agencies cannot search the Child Abuse Central Index (CACI) maintained by the Department of Justice (DOJ).

> **AB 2618 (Solorio), Chapter 553,** requires the DOJ to make available to a county child welfare agency or delegated county adoption agency information regarding a known or suspected child abuser maintained in the CACI regarding any applicant who, in the course of his or her work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered abuse or

neglect. This information must be provided to an agency conducting a background investigation of an applicant seeking employment or volunteer status with such agency.

Juveniles: Family Communication

Research demonstrates that family connection and communication is a key element of successful rehabilitation. Studies show that the youth in custody who receive the most letters, calls and visits are the least likely to re-offend post-release. Some argue that the system separates a child from his/her family and makes it difficult to communicate with those most inclined to support the incarcerated youth.

In order to make communities safer and not further neglect the most vulnerable youth, barriers for families who are motivated to help their children succeed should be removed.

SB 1250 (Yee), Chapter 522, requires at least one individual who is a parent, guardian or designated emergency contact of a person in the custody of the Department of Juvenile Facilities (DJF), if the individual can be reasonably located, to be successfully notified within 24 hours of any suicide attempt by the person. Specifically, this new law:

- Allows a person in DJF's custody to designate other persons, in lieu of a parent or guardian, to be notified of any suicide attempt by the person, or any serious injury or serious offense committed against the person.

- Allows a minor to request that parents, guardians, or other persons not be notified with specified limitations, and allows a person 18 years of age or older to not consent.

- Provides that upon intake into a juvenile facility, and again upon attaining 18 years of age while in custody, an appropriate staff person shall explain in clearly understandable language that the person has a right to the following:

    - That the person may request parents, guardians, or other persons not be notified of a suicide attempt, serious injury, or serious offense against the person.

    - That the person may designate another person or persons in addition to, or in lieu of, a parent of guardian to be notified of a suicide attempt, serious injury, or serious offense against the person.

- Provides that any designation for emergency notification, the consent to notify and the withholding of that consent may be amended or revoked by the person, and shall be transferable among facilities.

- Requires DJF staff or county probation departments to enter the following information into the ward's record, as appropriate, upon its occurrence:

    - A minor's request that his or her parents, guardians, or other persons not be notified of an emergency, and the determination of the relevant public officer on that request.

    - The designation of persons who are emergency contacts, in lieu of parents or guardians, who may be notified as specified

    - The revocation or amendment of a designation or consent.

    - A person's consent, or withholding thereof, to notify parents, guardians, or other persons.

- Requires that, on or before January 1, 2010, DJF ensure that the listing of rights and posters regarding emergency notification are translated into Spanish and other languages as determined by DJF.

- Requires that copies of the rights of youth be included in orientation packets provided to parents and guardians of wards. Copies of the rights of youth, in English or Spanish, and other languages shall be made available in the visiting areas of DJF facilities and, upon request, to parents or guardians.

- Allows a ward a minimum of four telephone calls per month to his or her family. When speaking by telephone with a family member, clergy, or counsel, a ward may use his or her native language or the native language of the person to whom he or she is speaking.

- Requires the DJF to encourage correspondence with family or clergy by providing blank paper, envelopes, pencils, and postage. Materials shall be provided in a manner that protects institutional and public safety, and allows a person when corresponding to use his or her native language.

- Provides that blank paper, correspondence, envelopes, and pencils or other writing instruments shall not be deemed contraband nor seized except in cases where the staff determines that these items would likely be used to cause bodily harm, injury, or death to the ward, other persons, or destruction of property. If the staff asserts that it is necessary to seize materials normally used for correspondence, the reasons for the seizure shall be entered in writing in the ward's file or records.

- Provides that not less than 30 days prior to a scheduled parole consideration hearing, DJF shall notify the ward of the date and location of the parole consideration hearing. A ward shall have the right to contact his or her parent or guardian, if he or she can reasonably be located, to inform the parent or

guardian of the date and location of the parole consideration hearing. The DJF shall allow the ward to inform other persons identified by the ward, if they can reasonably be located and who are considered by DJF as likely to contribute to a ward's preparation for the parole consideration hearing or the ward's post-release success.

- States that parole consideration hearing notification requirements shall not apply if a minor chooses not to contact parents, guardians or other persons, or a person 18 years of age or older does not consent to the contact.

- Provides that upon intake into a juvenile facility, and again upon attaining 18 years of age while in custody, an appropriate DJF staff person shall explain in clearly understandable language the rights of the ward regarding parole consideration hearing notification, as specified.

- Defines "suicide attempt" as a self-inflicted, destructive act committed with explicit or inferred intent to die.

Corrections: Inmate and Ward Labor

SB 737 (Romero), Chapter 10, Statutes of 2005, consolidated California Department of Corrections and the California Youth Authority into the California Department of Corrections and Rehabilitation (CDCR). However, the controlling statutes for the Juvenile Offender Day Labor program were not amended at that time to conform to the adult Inmate Day Labor program, resulting in both programs operating under separate statutes and accounting systems.

SB 1261 (Corbett), Chapter 116, allows the Secretary of the CDCR to order any authorized public works project involving the construction, renovation, or repair of juvenile justice facilities to be performed by ward labor. Specifically, this new law:

- Permits the Secretary of CDCR to order any authorized public works project involving the construction, renovation, or repair of prison facilities to be performed by inmate labor or juvenile justice facilities to be performed by ward labor when the total expenditure does not exceed the project limit.

- Creates a Ward Construction Revolving Account in the Prison Industries Revolving Fund.

PEACE OFFICERS

Illegal Dumping Officers

Illegal dumping is the most frequently committed environmental crime in California. In the Los Angeles Police Department's southeast area alone, the Bureau of Street Services removed the equivalent of 1,278 dump trucks of trash in 2006-2007 at a cost of over $1 million. Citywide, the cost of cleaning illegal dumping is $11 million per year**.** Illegal dumping strains the resources of law enforcement, code enforcement and public health agencies. Many communities use trained volunteers to address this problem.

AB 1931 (Silva), Chapter 217, adds part-time, not regularly employed, or volunteer "illegal dumping officers" who have completed specified training to the list of persons who are not peace officers, but have the powers of arrest. Specifically, this new law:

- Specifies that individuals "not regularly employed" as illegal duping officers who have undergone training will also have powers of arrest.

- Clarifies that only regularly employed illegal dumping officers will have access to summary criminal history information.

Hiring Peace Officers

Existing law requires peace officers to meet specified minimum standards, including being of good moral character, as determined by a thorough background investigation. Existing law also allows, under the Fair Employment and Housing Act (FEHA) an employer to require a medical or psychological examination of a job applicant after an offer of employment has been made, but before the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity. All entering employees in the same job classification are subject to the same examination or inquiry.

An applicant's non-medical information was required to be collected and evaluated before a conditional offer of employment was made and medical and psychological evaluations were required to be conducted after the conditional offer of employment. The Commission on Peace Officer Standards and Training has determined that the purpose of the background investigation in connection with the hiring of peace officers is to verify the absence of past behavior indicative of unsuitability to perform the duties of a peace officer.

The many areas of applicant character assessed during the background investigation include, but are not limited to, integrity, conscientiousness, stress tolerance, impulse control and judgment. Background investigators found that, in practice, responses to pre-conditional offer of employment inquiries often revealed post-conditional offer of

employment medical information. For example, the discovery of risk-taking behavior may disclose a drug or alcohol disability, a topic that could be approached only after a conditional offer of employment.

> **AB 2028 (Solorio), Chapter 437,** provides that the collection of non-medical or non-psychological information related to peace officers, in connection with a thorough background investigation, may be deferred until after a conditional offer of employment is issued if the employer can demonstrate that the information could not reasonably have been collected prior to the offer of employment. This new law is required to be consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336) as well as with specified sections of FEHA as set forth in the Government Code.
>
> This new law resolves the duplication of effort by permitting deferral of the collection of non-medical and non-psychological information in accordance with a thorough background investigation until after a conditional offer of employment has been made if the employer can demonstrate that such information could not reasonably have been collected prior to issuing the employment offer.

Animals: Peace Officer and Firefighter Canine Units

Existing law provides that individuals with disabilities are entitled to full and equal access, as are other members of the general public, to accommodations; advantages; facilities; medical facilities, including hospitals, clinics and physician's offices; and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided. Full and equal access is also guaranteed by hotels, lodging places, places of public accommodation and other places to which the public is invited.

Existing law also permits disabled individuals to be accompanied in these places by guide dogs, signal dogs, or service dogs without paying an extra charge. Existing law provides that any person, firm, association, or corporation, or any agent of any such person or entity who prevents a disabled person from exercising, or interferes with a disabled person in the exercise of, the rights to have with him or her a specially trained guide dog, signal dog, or service dog is guilty of a misdemeanor punishable by a fine not exceeding $2,500.

> **AB 2131 (Niello), Chapter 226,** provides that a peace officer or firefighter assigned to a canine unit, who is assigned to duty away from his or her home jurisdiction because of a declared federal, state, or local emergency, and in the course and the course and scope of his or her official duties may not be discriminated against in hotels, lodging establishments, eating establishments, or public transportation by being required to pay an extra charge or security deposit for the peace officer's or firefighter's dog.

This new law provides that any person, firm, association or corporation, or agent of such person or entity that prevents a peace officer or firefighter from exercising, or interferes with the exercise of specified rights, is subject to a civil fine not exceeding $1,000. This new law also states the intent of the Legislature with regard to access by a peace officer or firefighter with a trained service dog to lodging, eating establishments and public transportation during a declared emergency. This new law defines "declared emergency" as any emergency declared by the President of the United States, the Governor of a State, or local authorities.

Peace Officers: County Custodial Officers

Existing law specifies that any deputy sheriff in Glenn, Lassen, Los Angeles, Kern, Humboldt, Imperial, Mendocino, Butte, Plumas, Riverside, San Diego, Santa Barbara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, and Tehama Counties who is employed to perform duties exclusively or initially relating to custodial assignments is a peace officer whose authority extends to any place in California while engaged in the performance of his or her employment. Sheriff deputies in the aforementioned counties who are directed by their employing agencies to perform law enforcement duties during a local state of emergency are also designated as peace officers. Designating peace officer status in these situations enhances the ability to preserve the public peace, health, and/or safety by creating the necessary flexibility in operating and staffing custodial facilities.

AB 2215 (Berryhill), Chapter 15, adds Lake, Mariposa, Calaveras, and San Benito Counties to the list of counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to specified custodial assignments are defined as "peace officers who authority extends to any place in California while engaged in the performance of his or her employment."

Illegal Dumping Enforcement Officers: Batons

Illegal dumping enforcement officers provide a valuable and necessary service. These officers risk their lives to keep communities, parks and highways clean. Without these officers, the health and safety of millions of Californians would be at risk. Illegal dumping enforcement officers face many risks. In the course of their duties, officers routinely conduct surveillance and must often make arrests. While every effort is made to avoid confrontations, the act of making arrests makes physical confrontations unavoidable.

AB 2245 (Soto), Chapter 96, allows an illegal dumping enforcement officer to carry a club or baton if he or she is properly trained to carry and use a club or baton by the Department of Consumer Affairs (DCA), and authorizes DCA certified training institutions to charge fees to include training costs.

County Jails: Inmate Welfare Funds

Existing law created a pilot program in Alameda, Los Angeles, Orange, San Francisco, San Diego, and Stanislaus Counties that authorized sheriffs to expend money from the Inmate Welfare Fund to provide indigent inmates with assistance with the re-entry process within 14 days of the inmates' release from county jails or any other adult detention facilities in those counties. Re-entry assistance may include, but is not limited to, work placement, counseling, obtaining proper identification, education and housing.

AB 2574 (Emmerson), Chapter 16, adds Kern, San Bernardino and Santa Clara Counties to a pilot program that authorizes the sheriff in specified counties to expend money from the Inmate Welfare Fund to provide indigent inmates with assistance with the re-entry process within 14 days of the inmates' release from county jails or any other adult detention facilities.

Communicable Diseases: Involuntary Testing

Under existing law, a court order compelling a person to have his or her blood drawn and tested for communicable diseases may only be sought when an arrestee/defendant resisted arrest (the arrestee/defendant must actually be charged with an assault) with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or bodily fluids. However, here are situations in which public safety personnel may suffer a blood borne pathogen exposure (BBPE) but may not meet the legal requirement of "interference" in order to obtain source person testing.

AB 2737 (Feuer), Chapter 554, expands current involuntary testing provisions. Specifically, this new law:

- Authorizes a court to order the withdrawal of blood from any arrestee whenever a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids, as defined, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties.

- Requires a licensed health care provider, prior to filing a petition with the court, to first make a good-faith effort to obtain a voluntary informed consent in writing before filing the petition. This new law authorizes the petition to be filed ex parte.

- Expands the diseases for which testing may be ordered to HIV, hepatitis B, hepatitis C.

- Requires the arrestee whose sample was tested to be advised that he or she will be informed of hepatitis B, hepatitis C, and HIV test results only if he or she wishes to be so informed.

- Defines " blood borne pathogen exposure" as a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of non-intact skin or mucous membranes with any of the bodily fluids identified, in accordance with the most current BBPE definition established by the federal Centers for Disease Control and Prevention.

- Defines "bodily fluids" as any of the following: blood, tissue, mucous containing visible blood, semen, and vaginal secretions.

Search Warrants: Department of Justice Auditors

Existing law specifies certain persons, who, although they are not peace officers, are authorized to serve search warrants and to receive state summary criminal history information. However, the law did not include investigative auditors employed by the Department of Justice (DOJ) whose primary duty is investigating financial crimes. Although these investigative auditors routinely prepare search warrants for service on financial institutions, a DOJ special agent was required to accompany the auditor to the financial institutions and serve the warrant. This situation caused an unnecessary duplication of resources.

SB 1164 (Scott), Chapter 81, adds to the list of persons authorized to serve search warrants and to receive state summary criminal history information auditors employed by the DOJ whose primary duty is the investigation of financial crimes. This new law authorizes investigative auditors to serve only warrants for the production of documentary evidence held by financial institutions, Internet service providers, telecommunications companies, and third parties who are not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which the warrant is requested.

Peace Officer Training: Autistic Spectrum Disorders

Existing law requires the Commission on Peace Officer Standards and Training (POST) to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled persons. Documented evidence indicates that the rates of autism have risen dramatically in recent years, with an estimated one person of 150 people suffering from autistic spectrum disorders (ASD), according to the Center for Disease Control and Prevention.

SB 1531 (Correa), Chapter 621, requires POST, upon the next regularly scheduled review of a training module relating to persons with disabilities, to

create and make available on DVD, as well as by electronic distribution, a course on how to recognize and interact with persons with ASD. This new law specifies that the course shall be designed for, and made available to, peace officers who are first responders. POST is required to develop the course in consultation with designated entities and distribute, as necessary, a training bulletin via the Internet to specified law enforcement agencies.

PROBATION

Probation Reports

Existing law provides that the name of the person who is the victim of a sex offense may be disclosed to county probation officer if the person who is alleged to have committed the sex offense is a probationer or is under investigation by a county probation department in the preparation of a pre-sentence report. Inadvertently, probation officers do not have access to this information when preparing a pre-plea report.

AB 3038 (Tran), Chapter 596, removes the limitation that allows the disclosure of the name and address of a victim of a sex offense to a probation officer only when conducting an investigation in the preparation of a pre-sentence report.

RESTITUTION

Civil Compromise: Vandalism

Under existing law, a person injured by an act constituting a misdemeanor has a remedy by a civil action, except when the offense is committed as follows: by or upon an officer of justice, while in the execution of the duties of his or her office; riotously; with an intent to commit a felony; in violation of any court order as described in existing law relating to domestic violence; by or upon any family or household member, or upon any person when the violation involves any person described in the Family Code; upon an elder, in violation of provisions of law prohibiting elder abuse; or, upon a child, as prohibited in statutes relating to annoying or molesting a child.

AB 1767 (Ma), Chapter 208, authorizes the City and County of San Francisco, as a pilot program, to require a person who has committed an act of vandalism by graffiti to complete a minimum of 24 hours of community service if the person engages in a civil compromise, as specified.

Bad Check Diversion

The California Penal Code enables district attorney offices to offer diversion, rather than prosecution, to eligible bad check writers believed to be in violation of criminal laws. Offenders who choose to participate in a bad check diversion program are required to: (1) make full restitution to the victim; (2) pay various diversion fees, i.e., processing fees and bank charges; and, (3) successfully complete a check-writing education class.

When checks are referred to the program directly from vendors or collectors, the company contracting to operate the diversion program applies a specified list of referral criteria to the checks. If the alleged offender meets the requirements for admission into the program, the company sends a letter on the district attorney's letterhead. The letter informs the consumer who wrote the bad check that he or she may have broken the law and provides the consumer with the details of enrolling in the diversion program to avoid criminal prosecution. Contact information is provided for the company if the alleged offender has any questions.

AB 2606 (Emmerson), Chapter 264, increases fees for bad check diversion programs and for convictions for writing bad checks, and makes clarifying changes. Specifically, this new law:

- Clarifies that restitution made to the victim of the bad check is for the purpose of holding an offender accountable for victim's losses as a result of criminal conduct.

- Increases the maximum processing fee for bad check diversion to $50 from the existing $35 fee for each bad check.

- Increases the maximum processing fee for the recovery of processing efforts by the district attorney when the offender is convicted of the offense. The fee increases to $50 from the existing $35 maximum fee for each bad check. This new law clarifies that this fine is in addition to the actual amount of the check and bank charges, including the returned check fee if any.

- Specifies a new maximum returned check fee of $1,200, raising the amount from the existing returned check fee of $1,000.

- Sets the maximum returned check fee at $15, raising the amount from the existing maximum fee of $10.

Music Piracy: Restitution

According to the California Chamber of Commerce, California loses $34 billion annually to counterfeiting and piracy. In 2005, Los Angeles County alone lost 106,000 jobs due to the trade of counterfeit goods.

In testimony before the Select Committee on the Preservation of California's Entertainment Industry on February 1, 2008, Joel Flatow, Senior Vice President, Recording Industry Association of America (RIAA), stated, "Music has never been as accessible to fans as it is right now, and, our studies show that more music is being acquired than ever - but less and less of it is being paid for. And, therein lies one of the great challenges. It's just too easy to get for free without compensating the creators, including cheap counterfeit goods. On the label side . . . the truth is that sales have been decimated, certainly at least in part from piracy . . . the sale of recorded music has been down for the last 7 of 8 years, amounting to an aggregate fall from 1999 through 2007 of roughly 25% and more than $3 billion decline in sales. According to a recent report on music piracy by the Institute for Policy Innovation (IPI), this translates into 70,000 lost jobs and almost $2.7 billion in wages for US workers. Right here in California, the IPI study indicates that but for piracy the state of California would employ 21,227 more workers, which translates into more than $930 million in lost wages."

AB 2750 (Krekorian), Chapter 468, specifies restitution for misappropriating recorded music, misrepresenting the origin of specified recorded materials, transportation with intent to profit from misappropriated recordings. Specifically, this new law:

- Requires in addition to any other penalty or fine, the court to order any person convicted of any violation of: (1) misappropriation of recorded music for commercial advantage or private financial gain, (2) transportation of articles containing unauthorized recordings of sounds of live performances with the intent to profit, (3) unauthorized recordings of life performances with the

intent to profit, or (4) failure to disclose the origin of a recording or audiovisual work for profit. This new law requires restitution to any owner, producer, or trade association acting on behalf of the owner or lawful producer of a recording that suffered economic loss resulting from the violation.

- Provides that, for the purpose of calculating restitution, the unit of measure is the value of each nonconforming article or device.

- Allows restitution to be assessed at a higher value if that value can be proved in the case of an unreleased audio work or an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc.

- Requires that the restitution ordered for costs incurred as a result of investigation of the violation is limited to "reasonable" costs.

Court-Ordered Restitution: Collection

Existing law allows state and local agencies to refer fines, state or local penalties, forfeitures, restitution penalties, fines, or certain amounts that exceed $100 in the aggregate and are more than 90 days delinquent to the Franchise Tax Board (FTB). Agencies, including the California Department of Corrections and Rehabilitation (CDCR), may refer restitution orders to the FTB when the referring agency: (1) is authorized to collect on behalf of the state or victim, (2) is responsible for distributing collected amounts, (3) ensures that its efforts are coordinated with their own collections and referrals and that of other referring agencies, and (4) guarantees compliance with laws guiding reimbursement of the State Restitution Fund. However, once an offender is no longer under CDCR's jurisdiction, this referral can no longer be made. Thus, as a matter of law, the burden to collect restitution falls on the victim once an offender is no longer on parole. Under current law, restitution is owed for life and cannot be dissolved in bankruptcy; therefore, it is imperative that California develop a mechanism to collect once a parolee is discharged.

AB 2928 (Spitzer), Chapter 752, expands the FTB's Court-Ordered Debt Program to include restitution from those no longer under CDCR's jurisdiction. Specifically, this new law:

- Allows the CDCR to refer restitution awards to the FTB for any person subject to a restitution order who is, or has been, under CDCR's jurisdiction.

- Enables the victim of the crime for which the court ordered the restitution to notify CDCR to not refer the order to the FTB.

Victim Compensation

Under current law, a "derivative victim" of a crime is limited to $3,000 in mental health counseling benefits. This limit has been in effect for more than a decade. In light of cost-of-living and inflation factors, as well as increases in numbers of mental health counseling sessions allowed by the Victim Program under its in-house guidelines, this limit is inadequate.

SB 883 (Calderon), Chapter 564, raises the limit for mental health counseling for specified "derivative" victims from $3,000 to $5,000. Specifically, this new law:

- Raises the maximum reimbursement from $3,000 to $5,000 for mental health counseling for a direct victim of unlawful sexual intercourse where the defendant is over 21 years of age and the victim is under 16 years of age.

- Raises the maximum reimbursement from $3,000 to $5,000 for mental health counseling for specified derivative victims.

- Provides the California Victim Compensation and Government Claims Board with discretion to order reconsideration of a claim decision, or any part thereof, at any time, rather than a maximum period of 60 days from the date of the decision.

SEX OFFENSES

Sex Offenders

Existing law establishes a tiered system for making available to the public, via an Internet Web site, information on persons required to register as sex offenders for a wide variety of specified sex offenses. Existing law provides that certain offenses, deemed most serious, require the registrant's specific home address be provided to the public; other offenders are identified by resident zip codes only rather than specific home addresses.

SB 1302 (Cogdill), Chapter 599, adds murder with intent to commit a specified sex offense to list of offense for which registration as a sex offender is required and makes various other technical changes. Specifically, this new law:

- Includes the continuous sexual abuse of a child, as specified, to list of sex offenses for which the court must make certain findings in order to grant probation and includes the commission of specified sex offenses where the victim is a child under the age of 10 to the list of offenses in which probation is prohibited.

- Provides any person convicted of using a minor to produce child pornography for commercial production may not receive probation but, instead, clarifies a person convicted of production of child pornography not for commercial use may still be eligible for probation.

- Includes a conviction for sexual battery, as specified, to the list of offenses for which a person is prohibited from owning or possessing a firearm.

- Includes assault with the intent to commit a specified sex crime to the statutory list of offenses for which enhancements are imposed for infliction of great bodily injury, and being armed or using a weapon in the commission of an offense, as specified.

SEXUALLY VIOLENT PREDATORS

Victims and Witnesses: Confidentiality

In civil sexually violent predator (SVP) proceedings, both parties are granted the ability to utilize discovery methods available under the Civil Discovery Act, which means that both parties in an SVP proceeding may request and obtain the name and contact information of victims if they are potential witnesses. Although the Penal Code provides several protections against disclosure of this information in a criminal proceeding, there are no equivalent protections provided for victims or witnesses in civil SVP hearings. Affording parties in SVP proceedings access to victim information compromises victim privacy rights, could deter some victims from testifying at the hearing, and could be used to harass the victim or witness at a later time. Both existing law and this new law allows either party to obtain contact information regarding the victim in order to conduct a fair proceeding. However, neither party may disclose that information to the defendant.

While SVP proceedings are considered civil proceedings, those proceedings mirror criminal procedure on several levels. This new law brings parity between the protections afforded victims and witnesses in criminal matters with those of past victims and witnesses in SVP proceedings.

AB 2410 (Nava), Chapter 155, creates victim and witness confidentiality requirements in SVP quasi-criminal proceedings which are commensurate with the standards set forth in criminal proceedings. Specifically, this new law:

- Prohibits either party's attorney from disclosing the name, address, telephone number, or other identifying information of a victim or witness in a SVP civil commitment proceeding except to his or her staff, persons hired or appointed to assist on the case, opposing counsel as needed to prepare the case, or pursuant to a court order after a hearing.

- Specifies that the willful violation of this prohibition is a misdemeanor.

- Provides if the defendant is acting as his or her own counsel, contact with the victim or witness must be made by a private investigator or otherwise restricted to protect the identity and personal information of the victim or witness.

- Prohibits disclosure of a victim’s identifying information discovered in the process of preparation for a SVP civil commitment proceeding by an agent of the California Department of Corrections and Rehabilitation, Board of Parole Hearings, or the Department of Mental Health.

- Gives courts the authority to identify the victim in all records and during all proceedings of a SVP civil commitment proceeding as "Jane Doe" or "John

Doe" as long as it is not prejudicial to either side and the jury is instructed that the victim's identity is being withheld to protect his or her privacy.

Sexually Violent Predators: Evaluations

The Welfare and Institutions Code specifies that a person who may be a sexually violent predator (SVP) shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of the Department of Mental Health (DMH).

The statute also requires that if the first two professionals do not concur in the recommendation, the DMH Director shall arrange for additional evaluations by two independent professionals. Statute further defines the independent professional as not a state government employee who has at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology.

Finding qualified clinicians who are willing to enter into state employment has proven difficult, at best, and has not been possible in the numbers needed to conduct necessary evaluations.

A solution would be to permit that the initial, pre-commitment SVP evaluations be performed by independent contractors - not just when there is a difference of opinion in recommendations by the first two professionals.

SB 1546 (Runner), Chapter 601, allows the DMH to contract with independent professionals, as specified, to perform the initial evaluation of an inmate for possible civil commitment as a SVP. Specifically, this new law:

- Allows the DMH to contract with independent professionals, as specified, to perform the initial evaluation of an inmate for possible civil commitment as a SVP, and provides that this authority shall remain in effect until January 1, 2011.

- Requires the DMH to provide the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance with a semiannual update on the progress made to hire qualified state employees to conduct the initial SVP evaluation.

- Requires that, on or before January 2, 2010, DMH report to the Legislature on all of the following:

- The costs to DMH for the sexual offender commitment program attributable to the provisions in Proposition 83 ("Jessica's Law") of the November 2006 General Election.

- The number and proportion of inmates evaluated by DMH for commitment to the program as a result of the expanded evaluation and commitment criteria in Jessica's Law.

- The number and proportion of those inmates who have actually been committed for treatment in the program.

VEHICLES

Penalty Assessments

Santa Barbara County's Maddy Emergency Medical Services (EMS) Fund allows the County to impose a $5 enhancement for specified Vehicle Code violations. Local hospitals are losing an estimated $8 million annually for providing uncompensated emergency and trauma care. Two hospitals have closed in Santa Barbara County in the past decade, leaving five remaining hospitals to serve the area. Santa Barbara County is home to the only Level II Trauma Center (Cottage Hospital) between the major metropolitan areas of Los Angeles and San Jose. As such, Cottage Hospital has the only around-the-clock physician on-call panel and pediatric intensive care unit on the Central Coast, and supports facilities throughout the tri-county region. Legislation permitting this funding was scheduled to sunset on January 1, 2009.

AB 1900 (Nava), Chaptered 323, extends the sunset date until January 1, 2011 on provisions of law that provides funds through criminal penalty assessments for emergency medical services in Santa Barbara County. Specifically, this new law:

- Exempts Vehicle Code violations, with the exception of specified driving under the influence convictions, from the additional penalty assessments and deletes the existing fund distribution procedure.

- Makes legislative findings and declarations as follows:

    - That due to the unique circumstances regarding emergency medical services in Santa Barbara County a general statute cannot be made applicable within the meaning of the California Constitution.

    - That this is the third time the County of Santa Barbara has sought extraordinary assistance from the Legislature for this funding source.

    - That Santa Barbara County is the only county receiving this unique funding.

    - It is the intent of the Legislature in passing another extension on this penalty assessment that the County of Santa Barbara secure a permanent local funding mechanism to ensure the continuation of trauma care in the region before the special penalty assessment is repealed.

Vehicles: Alcohol-Related Reckless Driving

California law permits a person arrested for drunk driving to plead down to a charge of alcohol-related reckless driving ("wet reckless"). Both wet reckless and driving under the influence (DUI) convictions are the result of being arrested for driving while drunk, but a

wet reckless conviction carries far fewer penalties than a DUI conviction. Under existing law, a person convicted of a wet reckless with prior DUI conviction is not required to obtain treatment.

AB 2802 (Houston), Chapter 103, modifies probation conditions for a defendant convicted of a wet reckless and has a prior alcohol-related driving conviction within 10 years. Specifically, new law:

- Requires courts to order a defendant convicted of a wet reckless to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of specified activities, including education, group counseling, and individual interview sessions, if that person has a prior conviction of a violation of a wet reckless or another specified DUI law and the prior convicted offense occurred within 10 years.

- Requires the Department of Motor Vehicles (DMV) to additionally include in the annual report to the Legislature an evaluation of the effectiveness of that program.

- Requires courts to revoke a probationer's probation for failure to enroll in, participate in, or complete the program unless good cause is shown by the probationer.

- Includes programs that provide alcohol or drug recovery services to persons admitted to those programs for alcohol-related reckless driving with a prior conviction of a wet reckless or other specified DUI law in those programs licensed exclusively by the Department of Alcohol and Drug Programs.

Driving Under the Influence: Ignition Interlock Devices

California has reduced drunk driving-related fatalities and injuries through increased prevention, stricter sentences and fines, and expanded treatment for offenders. State law already requires use of ignition interlock devices (IDDs) in certain circumstances. An IID is a breath-alcohol testing device, about the size of a cellular phone, installed on the steering column of a car. The IID prevents the vehicle from being started unless the driver blows into the device to demonstrate that he or she is alcohol free.

SB 1388 (Torlakson), Chapter 404, requires a person convicted of a violation of driving on a suspended license and has one or more prior conviction for driving under the influence (DUI) or reckless driving that was plead after a DUI charge, to immediately install IIDs in all vehicles, as specified.

WEAPONS

Imitation Firearms: College Campuses

Under existing law, it is an alternate misdemeanor/felony to bring specified weapons to any public or private school providing instruction in Kindergarten and Grades one through 12, inclusive. Weapons included in this prohibition include instruments that expel metallic projectiles, such as a BB or pellet, through the force of air pressure, carbon dioxide pressure, or spring action. Existing law also makes it a crime to openly display or expose any imitation firearm in specified public places.

However, existing law does not address gun violence occurring on college campuses or include less lethal weapons within the scope of the prohibition.

AB 2470 (Karnette), Chapter 676, expands the prohibition against bringing or possessing specified instruments that expel a non-metallic BB or pellet on the grounds of, or within, specified public or private colleges and universities. This new law addresses reports by College and University Police Chiefs that these weapons are often used in on-campus crimes, and expands the definition of "public places" in which imitation firearms may not be displayed to include a public or private college or university.

Stun Guns

For more than a decade, stun guns have been sold to civilians in California as a non-lethal choice for personal protection. However, minors under the age of 18 should not have access to these devices.

AB 2973 (Soto), Chapter 556, creates restrictions involving the acquisition, sale, and use of a stun gun or less than lethal weapon. Specifically, this new law:

- Provides that every person who commits an assault upon the person of another with a stun gun or less than lethal weapon shall be punished by imprisonment in a county jail for a term not exceeding one year or by imprisonment in the state prison for 16 months, 2 or 3 years.

- Provides that every person who commits an assault upon a peace officer or firefighter with a stun gun or less than lethal weapon, who knows or reasonably should know that the person is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year or by imprisonment in the state prison for two, three, or four years.

- Mandates that any person who sells a less than lethal weapon to a person under the age of 18 years is guilty of a misdemeanor, punishable by imprisonment in the county jail for up to six months; by a fine of not more than $1,000; or by both that imprisonment and fine.

Undetectable Knives

Under existing law, it is a misdemeanor for any person in California to commercially manufacture, knowingly import into California for commercial sale, keep for commercial sale, or offer or expose for commercial sale any undetectable knife.

SB 1033 (Runner), Chapter 111, also makes it a misdemeanor for any person to knowingly export an undetectable knife out of the state for commercial sale. Specifically, this new law:

- Provides that any person who knowingly exports any undetectable knife out of California for commercial, dealer, wholesaler, or distributor sale is guilty of a misdemeanor.

- Allows the manufacture or importation of undetectable knives for sale to a law enforcement agency or military unit with a valid agency, department, or unit purchase order.

Hard Wooden Knuckles

Existing law defines "metal knuckles" for purposes of the offense to include any device or instrument made wholly or partially of metal. The definition of "metal knuckles" should be expanded to include any device or instrument made wholly or partially of plastic, wood, composite, or paper products. Wood knuckles are becoming more and more prevalent. Wood knuckles constructed of Ironwood are equally deadly as metal knuckles.

SB 1162 (Maldonado), Chapter 346, adds "hard wooden knuckles" to existing provisions of law that makes it a misdemeanor to commercially manufacture or cause to be commercially manufactured; to knowingly import into California for commercial sale; and keep for commercial sale, or offer or expose for commercial sale any hard plastic knuckles.

MISCELLANEOUS

Seized Property: Filing Fees

At present, the uniform fee for filing the first paper in a limited civil case worth less than an amount over $10,000 but no more than $25,000 is $300. In cases where the amount demanded, excluding attorney's fees and costs, is $10,000 or less, the uniform fee for filing the first paper is $180. For a civil action or proceeding in superior court worth over $25,000, the filing fee is $320. Under the current forfeiture hearing statute, the clerk shall not charge or collect a fee for the filing of a claim in which the value of the property is $5,000 or less. As a result, some courts currently require a $180 filing fee, or $300 fee when the property is worth more than $5,000, but less than $25,000; others require a $320 filing fee on all forfeiture filings since the property can be worth more than $25,000.

> **AB 1826 (Beall), Chapter 214,** requires a $320 fee to adjudicate an interest in property worth $5,000 or more when that property has been seized in connection with specified controlled substance offenses. The claimant may proceed in forma pauperis if he or she does not have the requisite monies needed to file a claim.

Penalty Assessments

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Communicable Diseases: Involuntary Testing

Under existing law, a court order compelling a person to have his or her blood drawn and tested for communicable diseases may only be sought when an arrestee/defendant resisted arrest (the arrestee/defendant must actually be charged with an assault) with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or bodily fluids. However, here are situations in which public safety personnel may suffer a blood borne pathogen exposure (BBPE) but may not meet the legal requirement of "interference" in order to obtain source person testing.

AB 2737 (Feuer), Chapter 554, expands current involuntary testing provisions. Specifically, this new law:

- Authorizes a court to order the withdrawal of blood from any arrestee whenever a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids, as defined, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties.

- Requires a licensed health care provider, prior to filing a petition with the court, to first make a good-faith effort to obtain a voluntary informed consent in writing before filing the petition. This new law authorizes the petition to be filed ex parte.

- Expands the diseases for which testing may be ordered to HIV, hepatitis B, hepatitis C.

- Requires the arrestee whose sample was tested to be advised that he or she will be informed of hepatitis B, hepatitis C, and HIV test results only if he or she wishes to be so informed.

- Defines " blood borne pathogen exposure" as a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of non-intact skin or mucous membranes with any of the bodily fluids identified, in accordance with the most current BBPE definition established by the federal Centers for Disease Control and Prevention.

- Defines "bodily fluids" as any of the following: blood, tissue, mucous containing visible blood, semen, and vaginal secretions.

Corrections: Immigrants

Under existing federal law, the federal Attorney General may not remove an alien sentenced to imprisonment until the alien is released from imprisonment. Federal law states that parole, supervised release, probation, or the possibility of arrest or further imprisonment is not a reason to defer removal.

ACR 24 (Blakeslee), Chapter 88, urges the Governor to demand the Bureau of Justice Assistance reimburse the State of California for all costs of incarcerating undocumented foreign nationals.

Criminal Proceedings: Commencement

Penal Code Section 804 is the section that generally defines when a prosecution commences. In general, the calculation of time for the statute of limitations starts with the date the crime is discovered and ends when the prosecution of that crime is commenced. Thus, Section 804 is critical to determining whether a prosecution is timely within the statute of limitations or is barred because the period prescribed by the statute of limitations has expired. Currently, Section 804 provides that a prosecution is commenced when any of the following occurs: a felony information or indictment is filed, a misdemeanor or infraction complaint is filed, a case is certified to the superior court, or an arrest warrant or bench warrant is issued.

The great majority of felony prosecutions in California are initiated by felony complaints filed by the prosecutor after the defendant is arrested on probable cause. Only a small percentage of felony prosecutions are initiated by a grand jury indictment or arrest warrant. The resulting effect of Penal Code Section 804 has led to cases being dismissed under the statute of limitations.

SB 610 (Corbett), Chapter 110, provides that the commencement of prosecution for a felony offense shall begin on the date the defendant is arraigned upon the complaint.

High Technology Crime Advisory Committee

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

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program, a public-private administrative body under the auspices of the Office of Emergency Services for the distribution of funding to develop regional high-technology crime units in California law enforcement agencies.

SB 1116 (Alquist), Chapter 112, amends and recasts the list of members of the HTCAC and adds a representative of the State Chief Information Officer to the Committee. Specifically, this new law:

- Amends an outdated reference in the list of HTCAC members which includes a representative of the Office of Privacy Protection, to instead include a representative from the Office of Information Security and Privacy Protection.

- Adds a representative of the State Chief Information Officer to the list of HTCAC members.

- Designates the Director of the Office of Emergency Services, instead of the DOF, as the appointing officer of the HTCAC.

Pediatric Trauma Centers: Sunset Date

Existing law authorizes a county board of supervisors to elect to levy an additional penalty in the amount of $2 for every $10, upon fines, penalties and forfeitures collected for specified criminal offenses until January 1, 2009. Existing law also requires that 15% of the funds collected pursuant to the additional penalty to be expended for pediatric trauma centers. These provisions expire on January 1, 2009.

SB 1236 (Padilla), Chapter 60, extends the sunset date from January 1, 2009 to January 1, 2014, unless a later enacted statute deletes or extends that date.

Public Safety: Omnibus Bill

Existing law contains technical and non-substantive errors due to newly enacted legislation. These provisions must be updated to reflect current law.

SB 1241 (Margett), Chapter 699, makes technical and corrective changes to various code sections relating generally to criminal justice laws. Specifically, this new law:

- Changes a cross-reference from Family Code Section 3411 to Family Code Section 3430 relating to orders to appear for purposes of adjudication of custody.

- Modifies a cross-reference from Family Code Section 3428 to Family Code Section 3408 relating to notice requirements under the law for child custody proceedings between California residents, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

- Amends a cross-reference from Family Code Section 3444 to Family Code Section 3445 concerning child custody determinations for which enforcement has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under existing law.

- Provides that public officers or employees declared by law to be peace officers shall be a high school graduate; pass the General Education Development Test indicating high school graduation level; pass the California High School Proficiency Examination; or have attained a two-year, four-year, or advanced degree from an accredited college or university. The high school shall be a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this paragraph shall be from a state or local government educational agency using local or state government approved accreditation; licensing, registration, or other approval standards; a regional accrediting association; an accrediting association recognized by the Secretary of the United States Department of Education; an accrediting association holding full membership in the National Council for Private School Accreditation; an organization holding full membership in the Commission on International and Trans-Regional Accreditation; an organization holding full membership in the Council for American Private Education; or an accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations.

- Removes the requirement that Department of Justice (DOJ) report on the activities of the Crack Down Task Force Program.

- Repeals the requirement that DOJ shall report annually on its activities and on the accomplishments of the Clandestine Laboratory Program to the Legislature and to federal, state, and local law enforcement agencies, as well as to other interested groups.

- Provides that a violation of any provision where an amount the employer failed to pay into an employee health or welfare fund exceeds $500 shall be punishable by imprisonment in the state prison or in a county jail for a period of not more than one year; by a fine of not more than $1,000; or by both that imprisonment and fine.

- Renames the Department of Justice's "DNA Testing Fund" the "DNA Identification Fund" as established under existing law.

- Deletes the requirement that moneys collected from persons convicted under Penal Code Section 290(c) shall be directed to the DOJ and transferred to the Department of Justice's DNA Testing Fund.

- Revises the amount from $100 to one-third of every first conviction fine collected and one-fifth of every second conviction fine collected to be transferred to the California Department of Corrections and Rehabilitation (CDCR) to help defray the cost of the global positioning system used to monitor sex offender parolees.

- Adds inmates and wards as persons that the members of CDCR's Office of Correctional Safety shall have the primary duty to investigate and apprehend in the violation of criminal law discovered while performing the usual and authorized duties of employment.

- Removes the responsibility that the county treasurer shall, upon request of the judge, keep the deposit and return it to the clerk on order of the judge.

- Removes the requirement that DOJ must fail to submit any remittance payable upon demand by DOJ as provided "under this section."

- Removes the requirement that the State shall provide sufficient circuitry from Sacramento to each county, or group of counties, to process fingerprint data traffic.

- Changes the reference in Penal Code Section 11167.5(b)(11) from paragraph (6) to paragraph (7) of Penal Code Section 11170(b) or Penal Code Section 11170(c) and changes the reference in Penal Code Section 11167.5(b)(11) from subdivision (e) to subdivision (f) of Penal Code Section 11170 relating to child abuse reporting.

- Makes CDCR and DOJ exempt from specific provisions concerning the sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles.

- Removes the specification of the Sacramento DOJ office for firearms dealers to submit firearm purchaser information.

- Revises fee language concerning the sale, loan or transfer of firearms.

- Repeals the provision concerning the possession of any pistol or revolver upon which the name of the maker, model, manufacturer's number or other mark of identification has been changed, altered, removed, or obliterated, shall be presumptive evidence that the possessor has changed, altered, removed, or obliterated the same.

- Provides the DOJ is required to submit an annual report to the Legislature when the California Gang, Crime, and Violence Prevention Partnership Program receives funds.

- Revokes the requirement that the Corrections Standards Authority provide for the presentation of training to peace officers which will enable them to more efficiently handle, on the local level, the tracing of missing persons and victims of violent crimes.

- Corrects cross-references to Penal Code Section 290(3) (d) and (c) and replaces it with Penal Code Section 290.008.

- Declares legislative intent that in enacting amendments to Labor Code Section 227 these changes are for the sole purpose of correcting an obsolete penalty provision and no other consequence is intended.

Court Facility Financing

Many California court facilities are in a state of disrepair and require substantial rehabilitation or replacement in order to assure timely and efficient judicial services and ensure the safety of court personnel, jurors, and witnesses. Due to this problem, the State Court Facilities Construction Fund was established under the Trial Court Facilities Act of 2002. This law provided that moneys in the Fund may be used to acquire, rehabilitate, construct, or finance court facilities and to implement trial court projects in designated counties.

SB 1407 (Perata), Chapter 311, extended the purposes for which moneys in the Fund may be used to include the planning, design, construction, rehabilitation, replacement, leasing or acquisition of court facilities. This new law provides for the issuance of lease-revenue bonds, which will be repaid through a variety of increases in various uniform fees for filing specified documents in connection with certain civil proceedings, and imposes supplemental penalties and fees upon parking offenses and on persons ordered to attend traffic violator school.

This new law also established the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, the proceeds of which will be used for the planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities; for the repayment of moneys appropriated for lease of court facilities pursuant to the issuance of lease-revenue bonds; and for the payment for lease or rental of court facilities. The law further provides for a specified portion of all of these additional fees to be deposited into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund.

This new law authorizes the Judicial Council to acquire sites for the replacement of deficient court facilities in four specified counties and declares legislative intent to establish a moratorium on further increases in court filing fees until January 1, 2012.

Burglary Tools: Bump Keys

"Bumping" is a relatively new form of burglary that uses a filed-down key ("bump key") to transmit the force of an impact to the pins inside a lock. The impact causes the pins within the lock to separate from the key pins, allowing the lock to be opened. There are two issues of importance with the bump key: their use is difficult to prove (no unusual scratches are left on the inside of the lock as with standard lock picking) and the technique has come to public attention through a number of online videos that demonstrate how easy the tool is to use. The bump key has the potential to become an increasingly common burglary tool.

SB 1554 (Dutton), Chapter 119, makes the possession of a bump key with the intent to commit burglary a misdemeanor punishable by up to six months in county jail; a fine not to exceed $1,000; or both.

Crime: School Zones

Existing law provides for criminal punishment for certain gang activities, lewd or lascivious acts, lewd conduct, interference with civil rights, vandalism, annoying or molesting a child, offenses involving driving while intoxicated, and certain drug offenses. Penal Code Section 626 creates "safe schools zones" of 1,000 feet around public schools.

SB 1666 (Calderon), Chapter 726, expands the area of a safe school zone from 1,000 to 1,500 feet from a school, and provides that existing school disruption and related crimes apply to proscribed conduct on or around a private school.

California Rehabilitation Oversight Board: Reports

The January 15 deadline for the California Rehabilitation Oversight Board's (CROB) report is so close to the release of the Governor's Budget on January 10 that it limits the usefulness of the CROB report. In order to have its report drafted, reviewed, and approved by board members in time for the January 15 deadline, CROB must prepare its

report before the Governor's budget has been made public. As a result, CROB is unable to consider or analyze any of the relevant budget proposals

> **SB 1684 (Machado), Chapter 144,** changes the dates when the CROB must report to the Governor and the Legislature from January 1 to July 1 and from March 1 to September 1.

Sentencing

In 2007, SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's Determinate Sentencing Law after the United States Supreme Court ruling in *Cunningham vs. California*. SB 40 contained a January 1, 2009 sunset date. However, it has become evident that more time is needed to evaluate these changes.

> **SB 1701 (Romero), Chapter 416,** extends the sunset date from January 1, 2009 to January 1, 2011 for which a court sentencing a defendant in the wake of *Cunningham vs. California* and the enactment of SB 40 (Romero), Chapter 3, Statutes of 2007, may impose the lower, middle or upper term of imprisonment, as specified.

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