1981

Summary of 1981 Crime Legislation

Joint Committee for the Revision of the Penal Code

California Legislature

SUMMARY OF 1981 CRIME LEGISLATION

compiled by

THE JOINT COMMITTEE FOR THE REVISION OF THE PENAL CODE

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SUMMARY OF 1981

CRIME LEGISLATION

1981 GENERAL SESSION

REPORT DONE BY THE

JOINT COMMITTEE FOR REVISION OF THE PENAL CODE

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CALIFORNIA LEGISLATURE

Joint Committee for Revision of the Penal Code

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INTRODUCTION

SUMMARY OF 1981 CRIME LEGISLATION

This compendium will provide you with a convenient summary and copies of the Legislature's statutory accomplishments in criminal law during the first half of the 1981-1982 session.

All bills enacted during 1981 will become effective January 1, 1982 unless they are urgency measures or were made inoperative. The summaries of the urgency measures specifiy their effective date. Bills that were enacted but will not become operative have been excluded. In some bills only portions of the measure will be inoperative. These sections are clearly labeled on the bills.

Senate and Assembly measures are listed separately, each in ascending numberical order. A topical index lists the measures by topic for easy reference. Each entry includes the chapter number, author, support and opposition groups and a brief description of the legislation. The bill descriptions included here are not analyses. The actual chaptered bills are included for purposes of analysis.

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SENATE BILLS

SB 23 (Watson)--(CHAPTER 726)--Sexual Assault Evidence Used for Prosecution

Existing law provides in a prosecution for rape, or rape by acting in concert with another person, or for an assault with intent to commit or attempts or conspiracy to commit such offenses, evidence of the sexual conduct of an alleged victim, if offered to attack the credibility of the alleged victim, is only admissible upon complying with a specific detailed procedure.

SB 23 requires the same specific detailed procedure if evidence of the sexual conduct of an alleged victim is offered to attack the victim's credibility in a prosecution for specified acts involving sodomy, oral copulation, or the penetration of the genital or anal openings by a foreign object.

Existing law provides in a prosecution for rape, or rape by acting in concert with another person, or for an attempt or conspiracy to commit such offenses, character evidence of the alleged victim's sexual conduct with others, not including the defendant, is inadmissible to prove consent by the alleged victim, except as specified.

SB 23 provides that in a prosecution for sodomy, oral copulation or the penetration of the genital or anal openings by a foreign object, or for an attempt or conspiracy to commit such offenses, character evidence of the alleged victims sexual conduct with others, not including the defendant, is inadmissible to prove consent by the alleged victim, except in limited, specified circumstances. Neither current law nor SB 23's extension of current law apply these rules of evidence to sexual attacks in local detention facilities or state prisons.

SUPPORT: Attorney General; CDAA; Los Angeles DA's Office; Alameda DA's Office

OPPOSITION: State Public Defender; Calif. Attorney for Criminal Justice; ACLU

SB 39 (Marks)--(CHAPTER 588)--Notice of Parole Hearings

SB 39 requires the Board of Prison Terms give a murder victim's next of kin 30 days written notice of the parole hearing of the victim's murderer if the conviction was for murder of the first degree and the victim's kin requests notification. The bill also requires the Youthful Offender Parole Board to send a written notice to the victim or the victim's next of kin where a juvenile committed to the Youth Authority for rape or murder is to be given a parole hearing or a hearing to commit the juvenile to state prison. The person requesting notification has the duty to keep the Board of Prison Terms or Youthful Offender Parole Board apprised of their current address.

SUPPORT: CDAA, SFDA

OPPOSITION: State Public Defender, CACJ, Friends Committee on Legislation

SB 54 (Roberti)--(CHAPTER 404)--Diminished Capacity and Insanity Defense

Senate Bill 54 makes the following changes to current law:

1. Section 21 of the Penal Code is amended to delete the requirement that intent is manifested by the sound mind and discretion of the accused.

2. Section 26 of the Penal Code is amended to exclude "Lunatics and insane persons".

The effect of these two changes is to make clear that insanity has nothing to do with factual guilt, and that the Legislature wants to keep the present bifurcated trial on insanity.

3. The defense of voluntary intoxication is repealed as it relates to diminished capacity, and a partial definition of voluntary intoxication is codified.

The effect of these changes is to return California's voluntary intoxication defense to its traditional purpose and to make clear that voluntary intoxication means all forms of intoxication, not just alcohol or narcotics.

4. The defenses of "diminished capacity", "diminished responsibility", and "irresistible impulse" are repealed.

SB 54 (Roberti) Continued

SB 54 does permit the introduction of evidence of mental illness to show the absence of intent, but not to negate intent by showing "diminished capacity" to form intent.

5. SB 54 overrules People vs Poddar, People vs Conley, People-vs Wolff, and cases based on them, as these cases relate to diminished capacity and diminished responsibility, and People vs Cantrell, and cases based upon it, which relate to irresistible impulse.

6. SB 54 prohibits an expert when testifying about a defendant's mental illness from testifying on the ultimate issues of whether the defendant had or did not have the requisite criminal intent.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: Citizens Commission on Human Rights; PORAC; Sacramento County DA; City & County of San Francisco; CDAA; Attorney General, LA County Board of Supervisors; CPOA

OPPOSITION: State Public Defender; CACJ; ACLU; State Bar, Criminal Law Section; Calif. Psychiatric Assn.

SB 73 (Speraw)--(CHAPTER 599)--Seizure and Impoundment of Vehicles

SB 73 requires return of a seized vehicle or component part to a good faith purchaser upon presentation of satisfactory evidence of ownership. It also requires that where the vehicle or component part is impounded and evidence reveals that the identification number or manufacturer's numbers have not been removed, altered, defaced, or destroyed, the seizing agency may be required to pay the towing and storage costs incurred pursuant to the seizure of the vehicle or component part.

SUPPORT: Modified Motorcycle Association

OPPOSITION: CPOA, California Police Chiefs Association

SB 132 (Presley)--(CHAPTER 32)--Retired Peace Officers Concealed Firearms

Grants port police the same peace officer powers as harbor police, and permits California State Police, after notifying the city police or county sheriff, to remove a vehicle from state owned or leased property to the nearest gargage, under specified circumstances. Also makes changes on possession of concealed handguns and tear gas by retired peace officers.

Urgency measure: Took effect May 14, 1981

SOURCE: CPOA

SUPPORT: PORAC

OPPOSITION: California Association of Licensed Investigators

SB 149 (Rains)--(CHAPTER 28)--Prosecutions

SB 149 specifies that written notices to appear for infractions be filed with the magistrate and authorizes the prosecuting attorney to direct the arresting officer to file written notices to appear for misdemeanors with the magistrate or juvenile court officer instead of with the prosecutor. It also provides that if notice to appear is filed with the prosecuting attorney, she or he would have 25 days within which to initiate prosecution in cases of adults.

SOURCE: CDAA

SUPPORT: Siskiyou County DA; CDAA; CPOA; San Mateo County DA; State Bar Commission Juvenile Justice

OPPOSITION: None Known

SB 153 (Presley)--(CHAPTER 273)--Prison Construction

Authorizes the issuance of $495 million in bonds for state prison construction and remodeling upon approval by the voters.

Urgency measure: Took effect August 26, 1981.

SOURCE: Department of Corrections

SUPPORT: CPOA; Calif. DA's Assn.; State Police Chiefs; State Sheriff's Assn; Calif. Probation & Parole Officers

OPPOSITION: Friends Committee on Legislation; State Public Defender

SB 166 (Holmdahl)--(CHAPTER 283)--Probation Reports

Increases from 30 to 60 days the time for inspecting probation reports after entry of judgment or granting of probation, whichever is earlier; and provides that any probation report from a previous arrest submitted to the court be made available for inspection under the same rule as for new reports.

SUPPORT: Calif. Newspaper Publishers Association

OPPOSITION: Calif. Probation & Correctional Officers Assn.

SB 169 (Russell)--(CHAPTER 114)--Peace Officers

Confers peace officer status on any airport law enforcement officer regularly employed by a district or a joint powers agency operating an airport.

SOURCE: Burbank-Glendale-Pasadena Airport Authority

SUPPORT: Unknown

OPPOSITION: Unknown

SB 176 (Presley)--(CHAPTER 540)--Narcotic Addicts-Commitment and Treatment

Omnibus bill to make technical and substantive changes regarding committment of narcotic addicts, sale of prison produce, sale of products of vocational training, and the design and building of prisons.

Urgency measure: Took effect September 17, 1981

SOURCE: Department of Corrections

SUPPORT: Unknown

OPPOSITION: Unknown

SB 181 (Beverly)--(CHAPTER 678)--Assault and Battery

SB 181 increases the penalties for assault and battery upon emergency medical technicians, mobile intensive care paramedics, mobile intensive care nurses, and physicians rendering emergency care outside an office or hospital.

SOURCE: California Rescue & Paramedic Association

SUPPORT: California Ambulance Association; Calif. Nurses Assn.; Calif. State Firemen's Assn.; City of LA; City of Pasadena; Calif. Correctional Officer's Assn.; United Paramedics of LA: County of Santa Clara; Santa Clara Valley Med Center; City of Palo Alto; SLV Paramedics; Calif. State Council, Dept. of Emergency Nurses Assn.; Emergency Med. Care Comm. of Stanislaus Co.; CMA; CPOA; Calif. Fire Rescue & Paramedic Assn.; American Heart Association; Prof. Aidan Gough, University of Santa Clara Law School

OPPOSITION: None

SB 193 (Presley)--(CHAPTER 115)--California Youth Authority

Existing law provides that the purpose of the California Youth Authority is to "protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young people found guilty of public offenses."

SB 193 repeals this statement of purpose and provides instead that purpose of the California Youth Authority is to "protect society from the consequences of criminal activity and to such purpose training and treatment shall be substitued for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

SUPPORT: CSEA; Calif. Probation, Parole, & Correctional Assn.; CPOA

OPPOSITION: Friends Committee on Legislation

SB 201 (Richardson)--(CHAPTER 710)--POST Training and Reimbursement

Requires the Commission on Peace Officer Standards & Training to adopt minimum standards for training of inspectors and investigators of a county DA's office who conduct criminal investigations and provides POST reimbursements for such training upon application by the county.

SOURCE: LA County DA's Association

SUPPORT: CDAA

OPPOSITION: None

SB 209 (Marks)--(CHAPTER 895)--Statute of Limitations

This bill provides that a prosecution for rape, rape in concert with another person, specified offenses of sodomy or oral copulation, penetration of anal or genital openings with a foreign object against the victim's will, or lewd and lascivious acts upon the body of child under 14 must be commenced within 6 years of their commission. The present law is 3 years for all of the listed crimes except felony child molesting which is 5 years.

SUPPORT: Attorney General; Calif. Women Lawyers; PORAC; Calif. NOW; CPOA; State Police Chiefs; State Sheriffs

OPPOSITION: Calif. Attorneys for Criminal Justice; State Public Defender

SB 210 (Presley)--(CHAPTER 966)--Peace Officer Training Fund

Revises the allocation scheme until January 1, 1986 for certain penalty assessments which are deposited in the State Treasury Assessment Fund by increasing the percentage allocation to POST by 9.07% for 1982 & .93% beginning in 1983. This will result in a corresponding decrease in the percentage allocation to the driver training fund. Applies POST standards to marshals and deputy marshals of a municipal court.

SOURCE: PORAC

SUPPORT: CPOA, P.O.S.T.

OPPOSITION: Auto Club of Southern Calif.; Calif. Fed. of Teachers; Department of Education

SB 262 (Robbins)--(CHAPTER 839)--Commitment of Juvenile Offenders

SB 262 overrules In re Mark Allen M. (1980) 109 Cal.App.3d 873 and permits without the filing of a supplemental petition commitment of a minor to a county institution for violation of probation for a period of 30 days or less pursuant to an original or previous order.

SOURCE: Judge Irwin Nebron, Sylmar Juvenile Court

SUPPORT: LA Unified School District; CPOA; Exec. Comm. of LA Superior Courts; San Bernardino Co. Juvenile Justice & Delinquency Prevention Commission

OPPOSITION: CACJ

SB 264 (Nielsen)--(CHAPTER 1076)--Juvenile Offenders

Requires a court to consider a defendant's juvenile record, unless sealed, in determining if there are circumstances in aggravation pursuant to Penal Code §1170 or to deny probation.

SOURCE: Attorney General

SUPPORT: Mayor of San Francisco; City of Fairfield; CPOA

OPPOSITION: California Child, Youth and Family Coalition; CACJ; State Public Defender; ACLU; Friends Committee on Legislation

SB 271 (Rains)--(CHAPTER 600)--California State Police Powers

Adds California State Police to the list of peace officers permitted to seal off areas because of calamities, riots, or other civil disturbances. It also provides that it is a misdemeanor to flee from pursuit of a California State Police Officer while operating a motor vehicle.

SOURCE: California State Police

SUPPORT: Calif. Organization of Police & Sheriffs

OPPOSITION: None

SB 276 (Rains)--(CHAPTER 901)--Sexual Assault Against Children (Limitation of Actions)

Existing law provides for a five-year statute of limitations for a violation of Penal Code §288 and a three-year statute of limitations for a violation of any other felony sex crime. SB 276 provides for a six-year statute of limitations for prosecution of serious sex felonies committed against a child under age 14.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: CPOA; Women Lawyers of Sacramento; Attorney General; Mothers of Bakersfield, S.L.A.M.; Parents United; V.I. C.T.I.M.S.; Calif. NOW; City & Co. of San Francisco; Calif. Women Lawyers

OPPOSITION: Office of the State Public Defender; CACJ

SB 277 (Rains)--(CHAPTER 681)--Access to Criminal Records of People Convicted of Sex Offenses

Existing law does not allow organizations such as Big Brothers to have access to the sex conviction records of applicants for positions which involve working closely with children. Research has shown that pedophiles tend to gravitate to positions which afford an opportunity to work closely with children. SB 277 permits organizations, whose employees or volunteers supervise children, to request from the Department of Justice whether an applicant has prior sex crime convictions or convictions for physically abusing children. SB 277 would require the department to furnish the applicant with a copy of the information obtained about him.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: CPOA; Big Brothers of Greater Los Angeles, Inc.; Calif. State PTA; Mothers of Bakersfield; San Diego City Schools; Parents United; S.L.A.M.; V.I.C.T.I.M.S.; City & Co. of San Francisco; Girl Scout Councils of Calif.; North Coast Big Brothers Big Sisters; American Academy of Pediatrics; Calif. Women Lawyers

OPPOSITION: None

SB 278 (Rains)--(CHAPTER 928)--Mentally Disordered Sex Offender Program

SB 278 abolishes prospectively the mentally disordered sex offender program and establishes a task force to develop a plan to provide for the transfer of prisoners who are in need of psychiatric care to the state hospitals and establishes a research program for serious sex offenders. Under current law mentally disordered sex offenders are released into the community while undergoing outpatient treatment. Many of these people reoffend while participating in the outpatient program. With the abolition of the MDSO program there will be no outpatient programs for sex offenders sent to prison.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: CPOA; Calif. State PTA; Attorney General; Mothers of Bakersfield; Mayor, City of Lakewood; Parents United; S.L.A.M.; V.I.C.T.I.M.S.; City & County of San Francisco; Mothers Against Drunk Drivers; Calif. Women Lawyers; Calif. State Psychological Assn.

OPPOSITION: State Public Defender

SB 283 (Garamendi)--(CHAPTER 1002)--School-Community Primary Prevention Program

Existing law requires specified drug education in public elementary and secondary schools, and requires drug abuse services as part of the county Short-Doyle program.

In addition, this bill will establish the School-Community Primary Prevention Program, which would affect only those counties in which the board of supervisors and county board of education have each adopted a resolution electing to apply for available funds under the program. This bill will establish, as the highest priority for funding, programs which emphasize a joint School-Community Primary Prevention Program and would generally authorize school and classroom-oriented drug abuse prevention programs, school- or community-based nonclassroom alternative programs, or both, and family-oriented programs.

Procedures will be instituted for funding application and for planning at the state and local levels. Approved programs will be administered and implemented jointly by the county board of education and the county drug program coordinator, except that either of these parties could assume full or partial responsibilities for the other pursuant to interagency agreement.

SB 283 (Garamendi) Continued:

The State Department of Education will be required to approve the plan for county offices of education, and the State Department of Alcohol and Drug Programs will be required to approve the plan for the county drug program coordinators.

This bill will require that each of these plans be combined into a coordinated master plan prior to submission to the state. Approval of both state departments will be required in order for a county to receive funding. Review and comment of the master plan willbe required, prior to submission to the state, by a primary prevention advisory committee, with specified membership under the bill.

This bill will provide for an evaluation on a representative sampling basis, and a report to the Legislature, by the Department of Education and the State Department of Alcohol and Drug Programs, regarding implementation of the School-Community Primary Prevention Programs.

SOURCE: Author & City of Los Angeles

SUPPORT: Los Angeles Co. Sheriff; Manteca City Police; Calif. State PTA; CPOA; LA County Police Chiefs Assn.; Fresno Juvenile Justice Commission

OPPOSITION: State Public Defender; CACJ

SB 287 (Davis)--(CHAPTER 948)--Mandatory Sentence for use of PCP

SB 287 adds analogs of pheneyclidine to Schedule II of the California Uniform Controlled Substance Act, making use of such analogs a misdemeanor. The bill also authorizes the Attorney General to add additional analogs of pheneyclidine by rule or regulation in the manner specified.

SOURCE: City of Los Angeles

SUPPORT: CPOA; Board of Osteopathic Examiners; Calif. State PTA; City of San Diego

OPPOSITION: CACJ; Friends Commission on Legislation; State Public Defender

SB 289 (Davis)--(CHAPTER 742)--Methaqualone

SB 289 raises the penalty for possession of methaqualone from a misdemanor to a felony (wobbler).

SOURCE: City of Los Angeles

SUPPORT: CPOA

OPPOSITION: Friends Committee on Legislation

SB 303 (Davis)--(CHAPTER 988)--Juvenile Facilities: Contrabrand

Existing statutory law prohibits any person from knowingly bringing or assisting in bringing controlled substances, alcoholic beverages, or weapons into institutions administered by the CYA. This bill extends this prohibition to local juvenile facilities.

SOURCE: Ventura Co. Correction Services Agency

SUPPORT: CPOA; State Bar; Committee on Juvenile Justice; Calif. Judges Association

OPPOSITION: Friends Committee on Legislation

SB 311 (Holmdahl)--(CHAPTER 1017)--Statute of Limitations

Present law requires an indictment be found, and information filed or the case be certified to superior court to toll the statute of limitations. SB 311 deletes these provisions and only requires an indictment be found, or an arrest warrant be issued to toll the statute of limitations.

SB 311 establishes a three year statute of limitations, from the date of discovery, for a welfare fraud offense. When there is a dismissal, SB 311, subject to Penal Code §1387, excludes from the statute of limitations the time during which a criminal action is pending.

SOURCE: California District Attorney's Association

SUPPORT: Alameda Co. Board of Supervisors

OPPOSITION: CACJ; ACLU

SB 319 (Ellis)--(CHAPTER 937)--Wrong Way Drivers

Under existing law, it is unlawful to drive any vehicle upon any highway which has been divided into 2 or more roadways by means of intermittent barriers or by means of a dividing section of not less than 2 feet in width either unpaved or delineated by curbs, lines, or other markings on the roadway, except to the right of the barrier or dividing section.

Under existing law, a violation of this provision is an infraction, punishable upon a first conviction by a fine not exceeding $50, upon a second conviction within a one-year period by a fine not exceeding $100, and upon a third or any subsequent conviction within a one-year period by a fine not exceeding $250.

SB 319 makes it a misdemeanor, punishable upon conviction by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months, or by both fine and imprisonment, to so drive a vehicle upon any highway or freeway which has been so divided into 2 or more roadways.

SOURCE: California Highway Patrol

SUPPORT: City of San Diego; CPOA

OPPOSITION: None Known

SB 322 (Rains)--(CHAPTER 29)--Child Abuse-Report Requirements

SB 322 removes the requirement to report consensual sexual conduct by a female minor fourteen years and older.

Urgency measure: Took effect May 8, 1981

SOURCE: Author

SUPPORT: Calif. Medical Assn.; Calif. Nurses Assn.; Attorney General; CACJ; Planned Parenthood

OPPOSITION: Reverend Timberlake

SB 325 (Ayala)--(CHAPTER 297)--Passing of Bad Checks

This bill provides that prima facie evidence of the identity of the writer of a check in a prosecution involving two or more bad checks is established if at the time the instrument was accepted, the payee obtained the writer's name, address, and a valid driver's license number, DMV identification card number, or the writer's home or work phone number or place of employment, and the person receiving the check witnesses the signature and initials the check at the time of receipt.

SOURCE: State Chamber of Commerce

SUPPORT: J.C. Penney Co.; Retail Liquor Assn.; Natl. Fed. of Independent Businesses; Calif. Savings & Loan League; Calif. Grocers Assn.; CPOA; Calif. Chamber of Commerce

OPPOSITION: State Public Defender; CACJ

SB 331 (Stiern)--(CHAPTER 1056)-- Child Pornography

SB 331 makes it unlawful to knowingly develop, duplicate, print, or exchange any film, photograph, videotape, negative or slide in which a child under the age of 14 is engaged in an act of "sexual conduct". Defines "sexual conduct".

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: Attorney General; CPOA

OPPOSITION: ACLU

SB 356 (Sieroty)--(CHAPTER 875)--Minor Dependents of the Court

Under existing law probation officers and social workers are required to investigate any minor who they believe could be adjudged a dependent child of the court. SB 356 requires the probation officer or social worker carrying out such an investigation to interview any minor who is four years or older and is in custody regarding that minor's home environment and be required to include the substance of the interview in any report submitted at an adjudicatory hearing.

SOURCE: L.A. County Bar Association

SUPPORT: L.A. County Public Defender; State Public Defender; CACJ; Calif. PTA; Calif. Dept. of Social Services; Calif.; State Bar Committee on Juvenile Justice

OPPOSITION: Calif. State Bar, Family Law Section

SB 374 (Russell)--(CHAPTER 935)--Drunk Driving Tests

SB 374 provides that if a person is lawfully arrested for driving under the influence of alcohol or a combination of alcohol and any drug and is first transported to a medical facility because of the need for medical treatment, that the person would only have the choice of those tests which are available at the facility and would be so advised of that choice by the arresting officer.

SUPPORT: CPOA; Mothers Against Drunk Drivers; Californians for Sober Highways; Calif. Council on Alcohol Problems; Calif. Ambulance Assn.; Safety Consultant Services Inc.; State Farm Insurance Co.; Calif. Assn. of Special Investigators; General Telephone Company

OPPOSITION: None

SB 379 (Russell)--(CHAPTER 1054)--Escapes from State Hospitals

SB 379 extends the penalty provisions applied to judicially committed and remanded persons who escape from state mental health facilities to all judicially committed and remanded patients in state, other public, and private mental health facilities, and to those individuals who assist in their escape. SB 379 specifies that any mental health facility be required to so inform local and state law enforcement officials of the escape, and shall request the assistance of the chief of police or sheriff in apprehending the person.

SOURCE: LA District Attorney's Office

SUPPORT: CPOA; CDAA OPPOSITION: None

SB 412 (Johnson)--(CHAPTER 987)--Custodial Officers

Under existing law, custodial officers of a county having a population of 250,000 or less are required to have completed POST and jail operations training prior to actual assignment. SB 412 permits the assignment of an employee as a custodial officer prior to the completion of the required training, and would allow the employee to perform custodial officer duties under direct supervision, as specified.

Urgency measure: Took effect September 29, 1981

SOURCE: Sheriff-Coroner Donald J. Nunes of Placer County

SUPPORT: CPOA OPPOSITION: None

SB 434 (Presley)--(CHAPTER 687)--Shopping Carts

SB 434 makes it unlawful to remove a shopping cart from the premises or parking area of a retail establishment if the cart has a specified permanently affixed sign, and makes it unlawful to be in possession of, or to abandon, alter or tamper with, any cart so identified, and imposes misdemeanor penalties for the above offenses. SB 434 also requires any person who engages in the business of retrieving shopping carts to receive and retain records showing written authorization for his or her services. Misdemeanor penalties are imposed for a violation thereof.

SOURCE: California Grocer's Association

SUPPORT: Calif. Retailers Assn.; Northern Calif. Grocer's Assn.; CPOA; Los Angeles Police Dept.; Lucky Stores; Alpha Beta Co.; Big Bear Markets; Gelsons Market

OPPOSITION: None

SB 439 (Davis)--(CHAPTER 1057)--Concealed Weapons

Prohibits carrying of concealed or loaded flare guns or similar rocket devices except for emergency use or those carried while hunting in a peritted hunting area and the person has a hunting permit or license.

SOURCE: City of San Diego

SUPPORT: Dept. of Justice; Calif. State Firemen's Assn.; CHP

OPPOSITION: None

SB 494 (Montoya)--(CHAPTER 936)--Freeways: Vending

Current law prohibits parking any vehicle or structure on a state highway for the purpose of selling articles or services. The law does not specifically prohibit, however, the sale of items or services within a freeway right-of-way or at freeway on-ramps or off-ramps.

SB 494 prohibits the sale of merchandise or services within the boundaries of a freeway, except for tow trucks, service vehicles, and persons issued a permit to vend upon a highway.

SOURCE: California Highway Patrol

SUPPORT: CHP

OPPOSITION: None Known

SB 586 (Joint Committee for Revision of the Penal Code) (CHAPTER 1064)--Prosecution for Child Molesting

SB 586 mandates that in any prosecution for child molestation the needs of the child to be protected from further psychological harm during arrest and prosecution be placed on an equal priority with the successful prosecution of the offender.

SB 586 increases the penalty for child molestation and requires mandatory prison terms for any person who committed the crime of child molestation by force, violence, menace or threat; who causes bodily injury on the child victim; who is a stranger to the victim, or made friends with the victim for the purpose of molesting the child victim; who uses a weapon when attacking the child victim; who has prior sex crime convictions; or who committed the crime during the kidnap of the child victim. Mandatory prison terms with no exceptions for anyone, including family members, are required if any one of these actions take place.

Mandatory prison is also required for molesting more than one victim, having sexual conduct with a child under age 11 and for persons in a position of special trust who sexually abuse children in their care. An exception can be made for these three kinds of molests in intrafamily molest cases.

Because it can be necessary to involve the offending family member in cases of intrafamily child molest in order to rehabilitate the child victim, SB 586 permits probation for these offenders in the above three situations if the judge finds that the offender poses no threat of physical harm to the child, that granting the offender probation is in the best interest of the child and that rehabilitation of the defendant is feasible.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: CPOA; Ventura Co. DA's Office; Attorney General; Mothers of Bakersfield; S.L.A.M.; Parents United; Calif. State PTA; V.I.C.T.I.M.S.; City & County of San Francisco; LA Co. Board of Supervisors; Calif. Women Lawyers; Calif. Teachers Assn.; The Committee on Juvenile Justice

OPPOSITION: State Public Defender

SB 588 (Rains)--(CHAPTER 1062)--Child Molesting-Peace Office Training Programs

SB 588 provides for the Commission on Peace Officer Standards and Training to prepare guidelines establishing procedures which may be followed by police agencies in the investigation of cases involving the sexual assault and exploitation of children and to implement a course of training for specialists in this area.

SB 588 also expands the services of the Rape Crises Community Centers to all victims of child molestation.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: CPOA; Calif. State PTA; Mothers of Bakersfield; S.L.A.M.; Parents United; V.I.C.T.I.M.S.; Calif. Child, Youth & Family Coalition; City & County of San Francisco; Calif. Women Lawyers; The Committee on Juvenile Justice; Calif. Assn. of Marriage & Family Therapists

OPPOSITION: None Known

SB 589 (Rains)--(CHAPTER 566)--School Violence on School Property

Current law permits a peace officer to detain a juvenile for assault or battery based on probable cause. SB 589 permits a peace officer to arrest any person who is believed to have committed an assault or battery on school property based upon the officer's reasonable belief that he has probable cause. SB 589 also provides for restitution as a condition of probation in school battery and assault cases except in those cases where the court finds that it is inappropriate.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: Calif. Teachers Assn.; Calif. School Peace Officers Assn.; Calif. State PTA; FACCTS; Fresno United Achool District; Assoc. of Calif. School Administrators; San Diego City Schools

OPPOSITION: Calif. Probation, Parole & Correctional Assn.

SB 590 (Rains)--(CHAPTER 787)--Insanity Defense -Psychiatric Testimony

The current law allows a court appointed psychiatrist to report to the court on the ultimate issue of the defendant's sanity at the time the crime was committed.

SB 590 amends PC §1027 to require court-appointed psychiatrists to report on the defendant's mental status rather than his sanity at the time of the commission of the crime and provides for uniformity of reports by requiring all reports to contain at least the following: the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his examination of the defendant, and the present psychological or psychiatric symptoms of the defendant, if any.

Under the current law some courts have construed PC §1027 to prohibit the court from limiting or excluding any psychiatric evidence about the defendant's sanity regardless of its relevancy to the case before the court.

SB 590 amends PC §1027 to make clear the policy that the judge has discretionary powers to determine the extent and scope of psychiatric testimony.

SOURCE: Joint Committee for Revision of the Penal Code

SUPPORT: L. A. County Dept. of Mental Health

OPPOSITION: Calif. Attorneys for Criminal Justice; State Public Defender

SB 627 (Presley)--(CHAPTER 697)--Juvenile Facilities -Fraudulent Access

SB 627 makes it a misdemeanor for a person to gain access to a juvenile facility or one of its detainees through misrepresentation or false identification.

SOURCE: CYA; Judge Ronald Deisler, Riverside Co. Juvenile Justice Court Judge

SUPPPORT: Commission on Juvenile Justice of the State Bar; Co. of Sacramento Dept. of Probation

OPPOSITION: ACLU

SB 628 (Presley)--(CHAPTER 1065)--Firearms: Loaded

Existing law authorizes the carrying of a loaded firearm by a person who reasonably believes it is necessary for the preservation of a person or property which is in immediate danger.

SB 628 defines "immediate" as the brief interval after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance, and also requires the danger to be grave.

SUPPORT: Judge Howard Dabney, Riverside Municipal Court (Sponsor)

OPPOSITION: None Known

SB 647 (Presley)--(CHAPTER 387)--Law Enforcement Organizations

Existing law prohibits using the term "peace officer" in the name of a nongovernmental organization when, in fact, less than 90% of the voting members are peace officers or firemen.

SB 647 prohibits using the term "peace officer" when less than 90% of the voting members are "law enforcement personnel" or firemen.

SOURCE: Peace Officers Research Association of California

SUPPORT: Unknown

OPPOSITION: None Known

SB 648 (Ellis)--(CHAPTER 837)--Malicious Access to Computer Systems

Existing law prohibits the use of computer systems and computer networks to defraud, extort or misrepresent for the purposes of obtaining money, property or services, and, in addition, proscribes the malicious altering or damaging of any computer system or data.

SB 648 makes it unlawful for any person to maliciously access any computer system or network for the purpose of obtaining unauthorized credit information, or to change credit information for the purpose of wrongfully damaging or enhancing the credit rating of any person.

SUPPORT: CPOA; TRW

OPPOSITION: None Known

SB 672 (Sieroty)--(CHAPTER 792)--Subpoenas-Parole Hearings

SB 672 gives subpoena power specifically to the Board of Prison Terms chairman, the Youthful Offender Parole Board chairman, and the Narcotic Addict Evaluation Authority chairman.

The bill also extends statewide the subpoena power of the Commission on Judicial Qualifications.

SOURCE: State Bar Commission on Corrections

SUPPORT: State Bar Commission on Corrections

OPPOSITION: None Known

SB 674 (Sieroty)--(CHAPTER 488)--Destruction of Juvenile Court Records

SB 674 clarifies inconsistent statutory language on when to destroy juvenile records.

SOURCE: Jim Simpson, Sacramento County Clerk

SUPPORT: County Clerks' Assn.; Santa Cruz County Clerk; Santa Barbara County Clerk

OPPOSITION: None Known

SB 689 (Presley)--(CHAPTER 973)--Peace Officers

SB 689 broadens the peace officer powers of county welfare fraud investigators and inspectors. The bill also makes members of the Arson-Bomb Investigating Unit in the State Fire Marshal's Office and port police peace officers.

SOURCE: State Attorney General; Peace Officers Research Assn.

SUPPORT: San Bernardino Police Dept.; PORAC; Attorney General

OPPOSITION: ACLU; Calif. Organization of Police & Sheriffs

SB 776 (Ellis)--(CHAPTER 1043)--Pimping & Pandering Sentences Concerning Minors

Under existing law, pimping and pandering are felonies punishable by imprisonment for 2, 3, or 4 years. Certain conduct with respect to the use of a minor under the age of 16 in connection with designated commercial activity involving sexual conduct is also a felony, punishable by imprisonment for 3, 4, or 5 years.

SB 776 increases the punishment for pimping and pandering in cases involving persons under 14 years of age to 3, 6, or 8 years. It increases the punishment with regard to the use of minors under the age of 14 in connection with designated commercial activity involving sexual conduct to 3, 6, or 8 years. It also prohibits probation for these offenses, making the sentences mandatory.

It also makes it a felony to give, transport, provide, or make available a child under 14 for the purpose of any lewd or lascivious act, as specified, and prohibits the probation or suspension of the sentence of a person convicted thereof.

Urgency measure: Took effect September 30, 1981

SOURCE: Attorney General

SUPPORT: CPOA; LA County Board of Supervisors; Attorney General

OPPOSITION: None

SB 862 (O'Keefe)--(CHAPTER 1070)--Computer Parts Theft

SB 862 adds computer parts to the list of items (such as, radios, typewriters, watches, and adding machines) with respect to which it is a misdemeanor for any person knowingly to buy, sell, receive, dispose of, conceal, or possess if the manufacturer's name plate, serial number, or other identification has been removed, altered, or destroyed. In addition, the bill makes it a felony/misdemeanor (punishable in state prison, or one year in county jail) if the value of the integrated chip exceeds $400.

SOURCE: San Jose Police Department

SUPPORT: San Jose Police Dept.; Santa Clara Valley Manufacturers Association; Hewlett-Packard

OPPOSITION: None Known

SB 887 (Ayala)--(CHAPTER 766)--Transit Infractions by Passengers

Existing law (e.g., Public Utilities Code Sections 28766.5 and 28766.6 prohibiting fare evasions and smoking on Bay Area Rapid Transit District vehicles) prohibits certain behavior of passengers riding on specified transit district organized under the Public Utilities Code. In addition existing law largely leaves to each city or county the task of prohibiting by ordinance any undesired transit passenger behavior.

SB 887 prohibits fare evasion, misuse of transfers, playing sound equipment in a clearly audible manner, and other specified nuisances, and applys them uniformly to all transit districts organized under the Public Utilities Code. The penalty remains the same as current law, an infraction.

SOURCE: Southern Calif. Rapid Transit District

SUPPORT: BART; LA Co. Transportation Commission; Metro. Transit Development Board, San Diego; County of Los Angeles; City Council of Los Angeles; Metro Transportation Comm. of Berkeley; United Transportation Union; Amalgamated Transit Union; CPOA; Calif. Assn. of Publicly Owned Transit Systems

OPPOSITION: None Known

SB 959 (Garamendi)--(CHAPTER 610)--Healing Arts

Existing law provides that it is unlawful for any person licensed under the healing arts division of the B&P Code to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration as compensation, or inducement for referring patients, clients, or customers to any person. A violation of the provision is a misdemeanor. SB 959 provides, instead, that a violation of the above provision is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment in state prison or a fine not exceeding $10,000 or by both fine and imprisonment and upon a second conviction, by imprisonment in the state prison.

Existing law prohibits a licensee of the Dental Practice Art, the Medical Practice Act, and the initiative act relating to osteopaths from referring patients, clients, or customers to any clinical laboratory in which the licensee has a financial interest, as specified, unless the licensee discloses in writing the interest to the patient, client, or customer. SB 959 provides, instead, that a violation of the provision is a public offense punishable

SB 959 (Garamendi)-Continued

upon a first conviction by imprisonment in the county jail for not more than 1 year or by imprisonment in the state prison or by a fine not exceeding $10,000 or by both imprisonment and fine and by imprisonment in the state prison for subsequent convictions.

Existing law prohibits any person licensed under the healing arts division of the B& P Code, or under any initiative act referred to in that division, or any clinical laboratory from charging any patient for any clinical laboratory service not actually rendered by that person or clinical laboratory unless the patient is apprised at the time of the first charging of the name, address and charge of the clinical laboratory performing the service. The law provides that a violation of the provision is a misdemeanor which is punishable by imprisonment in the county jail for not more than 6 months or a fine not exceeding $500 or both imprisonment and fine.

SB 959 provides, instead, that a violation of the provision is a public offense punishable upon a first conviction by imprisonment in the county jail for not more than 1 year or by imprisonment in the state prison or by a fine not to exceed $10,000 or by both fine and imprisonment and upon a second conviction, by imprisonment in the state prison.

SUPPORT: Dept. of Consumer Affairs; National Retired Teachers Assn.; American Association of Retired Persons; Calif. Coalition of Laboratory Scientists

OPPOSITION: None Known

SB 964 (O'Keefe)--CHAPTER 967)--Rap Sheets

SB 964 grants the University of California, the California State University and colleges, or any four-year college or university properly accredited, access to criminal conviction records when needed in conjunction with an application for admission by a convicted felon to any special educational programs for convicted felons.

SOURCE: San Jose Police Chief

SUPPORT: None Known

OPPOSITION: None Known

SB 1015 (Sieroty)--(CHAPTER 611)--Disposition of Previously Incompetent Defendants

Under existing law a defendant who had been found not competent to stand trial and who has been certified to have regained mental competency, must have a hearing to determine whether she or he is entitled to release pending conclusion of court proceedings. However, existing law contains no provision for returning defendants who are not released on bail to a mental health facility.

SB 1015 provides that if the court determines that the defendant is not entitled to release, it may, upon recommendation of the director of the treating facility that continued treatment is necessary to maintain competence, return the defendant to that facility or other appropriate secure facility pending trial.

SOURCE: Dr. Roger Schock, LA Department of Mental Health

SUPPORT: Mental Health Advocacy Services, Inc.; Calif. Psychiatric Association

OPPOSITION: CPOA

ASSEMBLY BILLS

AB 5 (Felando)--(CHAPTER 140)--Open Juvenile Court Hearings

Under current law, juvenile court hearings are generally not open to the public. However, if the juvenile is charged with a specified felony, the public shall be admitted. Included in the list of specified felonies are arson of an inhabited building, kidnapping for ransom, robbery, or with bodily harm, murder, forcible rape, armed robbery, and certain violent assaults.

AB 5 adds forcible sodomy, forcible oral copulation, and object rape to the list of crimes requiring a public hearing. The bill also provides that a hearing of a minor charged with a forcible sex offense shall be closed upon a motion by the district attorney who shall make the motion if so requested by the victim, or during the victim's testimony, if the victim was under age 16 at the time of the offense.

SUPPORT: Attorney General; CDAA; CPOA; County of Los Angeles; Los Angeles Police Protective League; LA Co. Sheriff's Dept.; LA County Probation Dept.; The Citizens Com. to Stop Crime; Committee on Juvenile Justice; Calif. Federation of Republican Women

OPPOSITION: State Public Defender, Alameda Co. Public Defender; Friends Com. on Legislation; California Attorneys for Criminal Justice; ACLU; Juvenile Justice Commission; PTA; Calif. Probation Parole & Correctional Assn.

AB 7 (Hart)--(CHAPTER 939)--Drunk Driving

AB 7 makes it a misdemeanor for anyone to drive a motor vehicle while he or she has a .10% or more, by weight of alcohol in the blood. Under existing law, having .10% alcohol in the blood raises a presumption of driving under the influence of alcohol. The bill also makes conforming changes to the Vehicle Code.

SUPPORT: CDAA; DMV; Dept. of Alcohol and Drug Programs; Calif. Highway Patrol; State Farm Insurance Co.; City of Los Angeles; Los Angeles County DA; Alcoholism Council of California

OPPOSITION: ACLU; CACJ; State Public Defender

AB 13 (Moorhead)--(CHAPTER 591)--Youth Authority Parole Hearings

AB 13 provides that at least 30 days prior to a parole hearing involving an inmate in the Youth Authority over the age of 18 years who was committed upon being convicted of a specified violent offense, written notice shall be sent to the following persons: The judge who committed the person; The defense attorney; The prosecutor; The law enforcement agency that investigated the case; The victim or next of kin, where he or she has filed a request for such notice with the board. Each of these parties will have the right to submit written statements to the board at least 10 days prior to the hearing. The presiding officer of the hearing shall state the findings and supporting reasons for the board's decision which will be reduced to writing and open for public inspection within 30 days of the hearing.

Urgency measure: Took effect September 21, 1981

SUPPORT: CPOA; Juvenile Justice Committee of the State Bar; Commission on Aging; Attorney General; Coordinating Council of United Seniors for Action; CYA; Calif. Probation, Parole and Correctional Assn.

OPPOSITION: Calif. Attorneys for Criminal Justice; Calif. Child, Youth, and Family Coalition; State Public Defender; Ventura County Bar Assn.

AB 66 (Lockyer)--(CHAPTER 476)--Youth Authority

AB 66 prohibits persons convicted of first degree murder who where 18 years or older when the murder was committed from being committed to the Youth Authority. AB 66 provides that such persons may be transferred to the authority by the Department of Corrections. The transfer would be for the purpose of housing the inmate and allowing participation in programs available at the institution. The Department of Corrections would retain jurisdiction over the inmate, the duration of the transfer would extend until the Director of the Youth Authority orders the inmate returned to the Department of Corrections, the inmate is ordered paroled by the Board of Prison Terms, the inmate's term of imprisonment is completed as otherwise provided by law, or the inmate reaches the age of 25, whichever occurs first.

Urgency measure: Took effect September 16, 1981

AB 66 (Lockyer) Continued:

SUPPORT: Calif. Youth Authority; Calif. Federation of Rep. Women; Citizens Committee to Stop Crime; Los Angeles County; Attorney General; Peace Officers Research Assn.; State Bar Committee on Juvenile Justice

OPPOSITION: Friends Committee on Legislation; Calif. Attorneys for Criminal Justice; State Public Defender; ACLU; Calif. Psychiatric Assn.; Calif. Probation, Parole, and Correctional Assn.; Catholic Charities of Oakland

AB 187 (Johnson)--(CHAPTER 138)--Deceptive I.D.

Current law prohibits the selling or offering for sale of deceptive identification (purporting to be issued by a government agency) unless there is at the bottom in not less than 14-point type the following statement: NOT A GOVERNMENT DOCUMENT. AB 187 would instead provide that this statement be printed in permanent ink diagonally across the face of the document.

Urgency measure: Took effect July 1, 1981.

SUPPORT: Department of Justice; La Habra Police Department

OPPOSITION: None Known

AB 189 (Cortese)--(CHAPTER 1171)--Courts

AB 189 increases the surcharge on criminal fines in San Francisco and Los Angeles Counties and authorizes a surcharge on criminal fines in all other counties. The money will be used to finance a County Criminal Justice Facility Temporary Fund which will be used for the construction, reconstruction, expansion or improvement of jails, women's centers, detention facilities, juvenile halls, courtrooms and criminal justice computor data systems.

The bill provides that any new jail, or any addition to an existing jail that provides new cells and beds which is constructed with monies from the Criminal Justice Facility Temporary Fund must comply with the "Minimum Standards for Local Dentention Facilities" promulgated by the Board of Corrections.

SOURCE: Santa Clara County

AB 189 (Cortese)-Continued:

SUPPORT: CSAC; Various counties, county agencies and police departments; California Judges Association

OPPOSITION: State Public Defender; Auto Club of So. California; Calif. State Auto Association; Friends Committee on Legislation

AB 208 (Maxine Waters)--(CHAPTER 527)--Sexual Assault Investigation Advisory Committee

Under current law, the sexual assault training advisory committee under the Office of Criminal Justice Planning consists of 11 members including a representative of a city police department.

AB 208 provides that the law enforcement representative may be a member of either the city police or county sheriff's department.

SUPPORT: CPOA; Calif. State Sheriffs Association

OPPOSITION: None known

AB 251 (Vasconcellos)--(CHAPTER 102)--Victim Indemnity Fund

Existing law provides for the imposition of assessments on specified fines, penalties, and forfeitures and for the transfer of a certain percentage of the revenue collected thereby to the Indemnity Fund for appropriation by the Legislature in equal amounts to indemnify victims of violent crimes and to provide funding for local programs for assistance to victims and witnesses of all types of crimes for a specified period.

AB 251, eliminates the requirement that these funds be divided equally, provides for the levy of additional assessments, and provides for appropriation by the Legislature of an unspecified portion of these funds for assistance to local rape victim counseling centers. AB 251 also extends indefinitely the authority to provide funding for local programs for assistance to victims and witnesses of crimes.

Urgency measure: Took effect June 28, 1981.

SOURCE: This is a trailer bill to the 1981 budget bill.

AB 303 (Sher)--(CHAPTER 909)--Statute of Limitations for Sex Crimes

AB 303 will extend from three to six years the statute of limitations for rape and from five to six years the statute of limitations for child molesting.

SUPPORT: CPOA; Calif. Women Lawyers; City & County of San Francisco; Women Lawyers of Sacramento County; NOW; Calif. Fed. of Business & Prof. Womens Clubs; Calif. Probation, Parole and Correctional Assn.; Women in Politics; Palo Alto Chief of Police; Santa Clara Co. Board of Supervisors; Calif. Democratic Council

OPPOSITION: State Public Defender; CACJ

AB 322 (Wyman)--(CHAPTER 105)--Registered Sex Offender

Under existing law, any person convicted of a specified sex offense (felony or misdemeanor) or any person adjudicated to be a mentally disordered sex offender is required to register as a sex offender with the local police. Under existing law, the expungement of the conviction or the issuance of a certificate of rehabilitation by the court relieves the offender of the duty to register.

AB 322 provides that a person convicted of a felony sex offense shall not be released from the duty to register as a sex offender unless he or she has obtained a certificate of rehabilitation.

SUPPORT: Attorney General; Calif. DA's Assn.; CPOA

OPPOSITION: State Public Defender; Calif. Attorneys for Criminal Justice; CPPCA; Human Rights Comm. of the State Bar

AB 326 (Levine)--(CHAPTER 211)--Vandalism

Under current law, vandalism is a misdemanor if the damage is under $1000. If the damage or destruction is $1000 or more, the offense is a felony/misdemeanor with a possible state prison sentence of one year and a day, or six months in the county jail.

AB 326 makes vandalism to a church, synagogue, or other place of worship a felony/misdemeanor punishable by up to one year in state prison or county jail irrespective of the amount of damage.

Current law provides for misdemeanor penalties for vandalizing or interfering with cemeteries. Included is the malicious

destruction or injury to a tomb, monument, marker, memorial, or any post or railing, or any enclosure of the cemetery; obliteration of a grave; destruction of plants, shrubs, trees; injury to buildings; and interference with any person carrying human remains.

AB 326 would expand the items protected and raise the penalties for these offenses to a felony/misdemeanor with a sentence of not more than 1 year in state prison or county jail.

Urgency measure: Took effect July 19, 1981.

SUPPORT: Los Angeles City Council; Los Angeles County; Congregation Beth David; CPOA; California Advocates, Inc.; Jewish Public Affairs Committee; Santa Monica Chamber of Commerce; Dept. of Consumer Affairs, Cemetery Board

OPPOSITION: Calif. Attorneys for Criminal Justice; American Civil Liberties Union; Friends Committee on Legislation

AB 338 (McAlister)--(CHAPTER 74)--Financial Records-Privacy

Under current law disclosure of financial records and information of financial institutions to public agencies must be in conformity with the provisions of the California Right to Financial Privacy Act. An exception to the requirements of this act is made for a formal request by law enforcement agencies seeking the information in conjunction with a criminal investigation. AB 338 extends the exception to savings and loan associations.

Urgency measure: Took effect June 21, 1981.

SUPPORT: California Savings and Loan League; CPOA

OPPOSITION: None known

AB 347 (McAlister)--(CHAPTER 1103)--Summary Criminal History Information; Public Utilities

Under existing law, various persons and agencies may receive state and local summary criminal history information. Generally, dissemination of this information is limited to persons in law enforcement, the courts, and various agencies that need the information for licensing, certifying, and employing persons. A public utility may receive this information if it operates a nuclear facility and it needs the information in order to assist in employing persons to work at such facility (a requirement of federal law).

AB 347 (McAlister)-Continued:

AB 347 would additionally authorize public utilities to receive the record of convictions and those arrests for which a person is presently on bail or their own recognizance when access is needed in order to assist in employing persons who will be seeking entrance to private residences. A copy of the data shall be furnished to the subject. AB 347 provides that no disciplinary action or adverse employment consequences may occur on the basis of an arrest that did not lead to a conviction. The utility may take action based upon an arrest that has led to a pending criminal action. AB 347 requires the utility to destroy all copies of the record 30 days after the employment is denied or granted. A violation of these requirements is punishable as a misdemeanor and an injured party may civilly recover. The Attorney General or local agency supplying the information shall furnish a copy to the person to whom it relates.

SUPPORT: Attorney General; San Diego Gas & Electric Co.; General Telephone Co. of Calif.

OPPOSITION: ACLU; State Public Defender; Calif. Attorneys for Criminal Justice

AB 348 (Levine)--(CHAPTER 941)--Drunk Driving Sentences

This bill makes several changes relative to driving under the influence of liquor/drugs (DUI) and reckless driving. Specifically, the bill:

1. Provides that, whenever a misdemeanor DUI allegation is dismissed or a lessor charge is substituted, or when a prior conviction is striken, the court is required to state on the record whether the court action was requested by the prosecution and whether the prosecution concurred in or opposed the court's action, and the court's reasons for the action.

2. Requires the prosecution to submit a statement, on the record, to become part of the court records, when he/she makes a motion for dismissal, substitution, or striking of a prior conviction. The statement would specify the reasons for such a motion.

3. Requires prosecution in a plea bargain to state for the record whether there was consumption of alcohol or drugs, and if so, the conviction for reckless driving is treated as a prior drunk driving offense for purposes of sentencing in subsequent DUI convictions.

AB 348 (Levine)-Continued:

4. Provides for impoundment of auto in certain circumstances.

SUPPORT: CPOA; Dept. of Alcohol & Drug Programs; CPPCA; MADD; Los Angeles City Council; Natl. Council on Alcoholism

OPPOSITION: California Judges Association

AB 359 (Papan)--(CHAPTER 1112)--Peace Officers-Sales of Firearms/Emergency Vehicles

AB 359 extends to specified peace officers exemptions to the 15 day waiting period and other provisions of existing law governing the purchase of concealable weapons, and permits California State Police to use steady or flashing blue warning lights on emergency vehicles.

SUPPORT: CPOA; PORAC; Coalition of Associations & Unions of State Employees; CSEA; University Police Assn.

OPPOSITION: None Known

AB 383 (Cramer)--(CHAPTER 1108)--Sentences

Existing law imposes an additional term of 3 or 5 years for the infliction of great bodily injury, as specified, in felony cases. Existing law also imposes an additional 3 year, 5 year or 10 year prison term for each prior violent felony upon a subsequent violent felony conviction.

AB 383 would additionally impose a life term concurrent to any other term in specified felony cases involving infliction of great bodily injury or use of force likely to produce great bodily injury. The offender would be designated as a habitual offender. A person so sentenced would not be eligible for release on parole for a period of at least 20 years, as specified, subject only to reduction for good behavior and participation credit. A commitment to the CYA after a conviction for a felony would constitute a prior prison term for the purposes of imposing a life term under these provisions.

SUPPORT: PORAC; Mayor of San Francisco; LA County Police Chiefs Assn.; Calif. Chamber of Commerce; CDAA; County of LA; City of San Diego; Governor; Signal Hill Chamber of Commerce; Citizens for Law & Order

OPPOSITION: Friends Committee on Legislation; State Public Defender; CACJ

AB 421 (Ivers)--(CHAPTER 284)--Probation

AB 421 permits a court to require a defendant as a condition of probation to pay the costs of conducting the presentence investigation and presentence report and the cost of the probation.

Requires the court, in making a determination of whether a defendant has the ability to pay, to take into account the amount of any fine imposed and any amount the defendant has been ordered to pay in restitution; requires a payment schedule for reimbursement of the costs of presentence investigation based on income to be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts; earmarks all such funds paid by defendants for allocation for the operating expenses of the county probation department; limits the applicability of these payments to cases where the defendant is convicted; and, makes the provisions applicable contingent on adoption of an ordinance by the county board of supervisors.

SOURCE: Los Angeles County Probation Department

SUPPORT: Los Angeles County; San Diego County; CSAC; CPPCA

OPPOSITION: LA County Muni Court Judges Assn.; Calif. Public Defenders Assn.; State Public Defender

AB 434 (Hannigan)--(CHAPTER 1135)--Infractions

AB 434 makes conforming and technical changes to the pilot program of administrative adjudication of traffic violations.

SOURCE: Traffic Adjudication Board

SUPPORT: None

OPPOSITION: None

AB 499 (McAlister)--(CHAPTER 135)--Child Abuse Reporting

Current law requires certain persons to report suspected incidents of child abuse. Failure to so report constitutes a misdemeanor. Current law generally exempts from all civil and criminal liability persons who are complying with the mandatory reporting requirements. Although employees of child protective agencies must report child abuse under current law, they are not absolutely exempted from civil and criminal immunity.

AB 499 (McAlister)-Continued:

AB 499 would extend the absolute exemption from civil and criminal liability to include employees of child protective agencies. The bill would make other technical changes.

Urgency measure: Took effect July 1, 1981.

SOURCE: County of Alameda

SUPPORT: Alameda Co. Board of Supervisors

OPPOSITION: None Known

AB 500 (Wright)--(CHAPTER 269)--Criminal Records

AB 500 authorizes the Department of Justice (DOJ) to provide updated criminal history information to various agencies which previously received information on certain individuals from the DOJ for employment, licensing, and certification purposes. The DOJ would be allowed to deny this subsequent arrest notification service to agencies if they fail to follow procedures established in the bill. The DOJ would be allowed to charge a fee to cover cost incurred due to the furnishing of the updated criminal history information.

SOURCE: Attorney General

SUPPORT: CHP; CPOA; DMV; 48 individual sheriffs and chiefs of police; 7 probation departments; various cities, counties, and district attorneys

OPPOSITION: None known

AB 511 (Ivers)--(CHAPTER 753)--Dependent Children

Under current law, a dependent child of the juvenile court is generally an abused or neglected child (Section 300). A ward of the juvenile court is either a status offender, ie. runaway, truant, etc. (Section 601) or a criminal violator (Section 602). Current law requires that dependent children be detained in facilities in which they do not come into direct contact with wards and that the facilities be nonsecure. Current law does not define nonsecure.

AB 511 would provide that a facility shall not be considered secure if the sole restriction on the movements of the dependent children housed therein is that their movements within, and their

AB 511 (Ivers)-Continued:

ingress and egress to the facility are subject to regulations adopted by the person in charge of the facility.

SOURCE: Los Angeles County

SUPPORT: Calif. Judges Assn.; CPOA; Office of Public Defender; County Superivsors Assn. of Calif.

OPPOSITION: Calif. Attorneys for Criminal Justice; State Public Defender

AB 515 (Floyd)--(CHAPTER 840)--Work Release Programs

This bill provides for work release of county jail inmates, as follows:

1. Authorizes a county board of supervisors to authorize prisoners serving a sentence of less than seven days in jail to be required to perform 10 hours of manual labor on public facilities' maintenance or improvement in lieu of one day of confinement.

2. Authorizes the board to prescribe reasonable rules and regulations under which the labor would be performed and to require that the prisoners wear distinctive clothing while working.

3. Provides that the law shall not be interpreted to require the sheriff to assign labor to a person if the records indicate that the person has refused to satisfactorily perform assigned labor in the past or has not satisfactorily complied with the rules and regulations established by the board.

4. A person cannot be released under this law if the sheriff or other official in charge of the county correctional facilities concludes the person is not a fit subject.

5. These provisions would be repealed January 1, 1985.

SUPPORT: Calif. Judges Assn.; State Public Defender; San Diego County Board of Supervisors

OPPOSITION: None Known

AB 518 (Kapiloff)--(CHAPTER 435)--Reporting of Child Abuse

Under existing law, child care custodians, medical practitioners, nonmedical practitioners, and employees of a child protective agency are required to report instances of suspected child abuse, as specified. All of the foregoing persons are exempted from all civil and criminal liability in connection with the reports. However, any other person reporting an instance of child abuse is immune from such liability only insofar as it cannot be proven that a false report was made and he or she knew or should have known that the report was false.

AB 518 specifies that the reporting requirements and immunity from civil and criminal liability with regard to such reports, are applicable to known as well as suspected instances of child abuse. It also provides for liability in the case of a false report by a person not required to make a report only if the person knew that the report was false. In addition, the bill expands the definition of child abuse, as specified. It also makes a related change with regard to the regulations concerning investigation of child abuse in group homes or institutions required by existing law to be adopted by the Department of Justice, in cooperation with the State Department of Social Services.

Under existing law, the identity of all persons reporting instances of child abuse is confidential and may be disclosed only by court order or between child protective agencies or the probation department. AB 518 also authorizes disclosure when specified civil and criminal proceedings are initiated.

SOURCE: Advocate for Children (Don Fibush)

SUPPORT: Contra Costa Social Services Dept.; Calif. Assn. of Marriage & Family Therapists; Contra Costs Child Abuse Prevention Program; State Bar of Calif.; Comm. on Juvenile Justice of the Calif. State Bar; CPOA; Calif. Psychiatric Assn.; County Welfare Directors Assn.; Calif. Personnel & Guidance Assn; Calif. State Psychological Assn.; San Diego City Schools; State Public Defender's Office; NOW; Natl. Assn. of Social Workers, Inc.; Calif. Atty for Criminal Justice; Calif. School Nurses Org.; Comm. Congress of San Diego; San Diego Youth & Comm. Services, Inc.; Venice Family Clinic; Elk Grove Unified School District; Beach Area Community Clinic, San Diego; Our House, Chula Vista

OPPOSITION: None Known

AB 533 (Moore)--(CHAPTER 436)--Tear Gas Training for Peace Officers

Under current law, a peace office is permitted to possess tear gas for use in the course of official duties if the officer has taken an approved course and the tear gas is of a type certified by the Department of Justice. AB 533 provides that a peace officer who has been trained in the use of tear gas could possess and use tear gas while off-duty without having to take another training course.

Urgency measure: Took effect September 12, 1981.

SOURCE: City of Los Angeles

SUPPORT: CPOA; Attorney General; PORAC; Dept. of Forestry Employees Association

OPPOSITION: None Known

AB 541 (Moorhead)--(CHAPTER 940)--Reorganizes Drunk Driving Laws

This bill recasts and reorganizes existing law relating to driving motor vehicles while under the influence of intoxicating beverages and/or drugs, and changes penalties for the first and subsequent offenses. Specifically, the bill:

1. Increases the minimum fine and provides that $20 of each such fine shall be transferred to the Indemnity Fund for indemnification of crime victims as specified.

2. Prohibits the courts from issuing a stay of the proceedings before acquittal, conviction, or dismissal of the proceedings because the accused participates in a driver improvement program or treatment program for habitual users of alcohol and drugs.

3. Increases penalties and provides for minimum mandatory jail sentences as a condition of probation for felony driving under the influence and for misdemeanor driving under the influence with prior DUI offenses.

4. Requires, on conviction, that the court sentence the offender and not stay or suspend imposition of sentences.

5. Reorganizes provision relative to restricting alcoholic beverages in vehicles.

	PENALTIES UNDER PRESENT LAW		PENALTIES UNDER AB 541	
	Minimum	Maximum	Minimum	Maximum
Misdemeanor DUI	48 hours in jail; may be suspended	48 hours to 6 months in jail and $355 to $500 fine	48 hours in jail or 90-day license restriction; and $375 fine; and completion of treatment program; and 3 years probation	4 days to 6 months in jail and $375 to $500 fine and 6 months license suspension
Misdemeanor DUI with one prior	48 hours in jail; sentence may be suspended	48 hours to one year in jail and $355 to $1000 fine	10 days in jail and $375 fine and 3 years probation; and one year license suspension; or 2 days in jail and $375 fine and one year treatment program and three years probation and one year restricted license	90 days to one year in jail and $375 to $1000 fine and one year license suspension
Misdemeanor DUI with two or more priors	5 days in jail; may suspend sentence in unusual cases and when complete treatment program	48 hours to one year in jail and $355 to $1000 fine	120 days in jail and $375 fine and 3 years probation and 3 years license revocation	120 days to one year in jail and $375 to $1000 fine and three years license suspension
Felony DUI	90 days in jail; may be suspended	90 days to one year in jail or 16 months two or three years in prison and $355 to $5000 fine	5 days in jail and $375 fine and 3 years probation and one year license suspension	90 days to one year in jail or 16 months, 2 or 3 years in prison and $375 to $5000 fine
Felony DUI with 1 prior	5 days in jail and $355 fine; may be suspended in unusual cases	90 days to one year in jail or 16 months 2 or 3 years in prison and $355 to $5000 fine	120 days in jail and $375 fine and 3 year license revocation or 30 days jail and $375 fine and 3 years restricted license and 1 year treatment program; and 3 years probation	Two, three or four years in prison and $1000 fine and five years license revocation
Felony DUI with 2 or more priors	90 days jail and $355 fine; may be suspended in unusual cases	90 days to one year in jail, 2 or 3 years in prison and $355 to $5000 fine	One year in jail and $375 fine and 3 years probation and 5 years license revocation	Two, three or four years in prison and $1000 fine and 5 years license revocation

6. Changes the conditions under which the Department of Motor Vehicles is requested to suspend or revoke the driver's license of persons convicted of specified driving-under- the-influence offenses.

7. Requires the courts to report to the Department of Motor Vehicles any determination upholding or overturning a conviction on constitutional grounds.

8. Creates a "First Offender Program Task Force" of nine members appointed by the Governor. The task force would be required, on or before April 30, 1982, to determine and report to the Legislature on, statewide advisory guidelines for first offender programs and define first offender for such purposes. The task force would serve without compensation or reimbursement of expenditures. Necessary staff services would be provided by the Department of Alcohol and Drug Programs.

AB 541 (Moorhead)-Continued:

9. Declares that a specified pilot project related to the Drunk Driver Warning System is excepted from certain provision of law affected by this bill.

SOURCE: Mothers Against Drunk Drivers

SUPPORT: CDAA; County of LA; City of LA & San Diego; CPOA; CMA; Calif. Trucking Assn.; Calif. Fed. of Republican Women; Calif. Optimetric Assn.; Natl. Council on Alcholism; Golden Empire Health Systems Agency; Calif. Assn. of the Physically Handicapped, Inc.

OPPOSITION: State Public Defender; ACLU; CACJ; Calif. Public Defenders Assn.; Judicial Council

AB 551 (Katz)--(CHAPTER 572)--Robbery: Controlled Substances

AB 551 specifies that robbery or attempted robbery of any controlled substance from a pharmacist, pharmacy employee or other person lawfully possessing the controlled substance is to be considered a circumstance in aggravation of the crime in imposing sentence.

SOURCE: Calif. Pharmacists Association

SUPPORT: CPOA; Society of Anesthesiologists; Calif. Dental Assn.; Calif. Deputy Sheriffs Assn.; Pharmacists Planning Service; Attorney General; Calif. Org. of Police & Sheriffs; Calif. Medical Assn.; Calif. Veterinary Medical Assn.

OPPOSITION: State Public Defender; ACLU; Friends Committee on Legislation; Calif. Attorneys for Criminal Justice

AB 582 (Ryan)--(CHAPTER 155)--Reckless Driving Fines

Under existing law, it is unlawful to drive recklessly, and until July 1, 1982, the minimum fine is $130 for reckless driving and $205 for reckless driving causing bodily injury, and the maximum fine is $500 for all reckless driving. After that date, the fines will revert to $95, $170 and $250 respectively.

AB 582 deletes the July 1, 1982, termination date for higher fines. The fines will remain $130 to $500 for reckless driving and $205 to $500 for reckless driving causing bodily injury.

SUPPORT: CPOA; Dept. of Justice OPPOSITION: None Known

AB 632 (Papan)--(CHAPTER 759)--Plea Bargaining

Existing law does not require the prosecutor to state the reasons for seeking the dismissal of charges or recommending the punishment the court should impose, nor is the record in the case required to contain a statement of the reason for a dismissal of a charge or an amendment of an accusatory pleading.

AB 632 requires the prosecuting attorney to state the reasons in open court in each felony case in which a dismissal is sought, or upon a specified plea when the punishment is recommended. AB 632 also requires that the record in each felony case in which the original charges in the acusatory pleading are amended or dismissed contain a statement of the reasons for the amendment or dismissal.

SUPPORT: Governor; CPOA; California Highway Patrol

OPPOSITION: LA County Superior Court

AB 633 (Papan)--(CHAPTER 918)--Sureties for Witness

Under existing law, a provision exists by which a magistrate who conducts a preliminary hearing may require a witness to post sureties to insure the witness' presence at trial. If the witness refuses to promise to appear and post the surety, the witness may be incarcerated. This provision applies only to material witnesses where there is proof by oath that future appearance is unlikely. This provision has been interpreted by an appellate court to apply only to those witnesses who have actually testified at the preliminary hearing before the magistrate.

AB 633 extends the availability of this procedure to insure a witness' attendance at all stages of a criminal procedure proceeding or analogous juvenile proceedings. Under AB 633, it will not be required that the witness have testified at the preliminary hearing. The court will be able to require a witness to provide sureties for his appearance if the court has reason to believe, after proof of oath, that the witness would not appear at future proceedings unless sureties were required.

SUPPORT: Attorney General; CDAA; CPOA

OPPOSITION: None Known

AB 658 (Martinez)--(CHAPTER 339)--Appeals:C.R.C. Commitments

Under current law, a criminal defendant may appeal a conviction after sentence is imposed or the execution of sentence is suspended after a grant of probation. If the person is committed as a narcotics addict to the Department of Corrections, the appeal may not be taken until after 90 days of the commitment.

AB 658 repeals the 90 day waiting period for appeals from commitment for narcotics addiction.

SOURCE: Los Angeles County Bar Association

SUPPORT: State Public Defender; CPOA

OPPOSITION: LA County Municipal Court Judges Assn.

AB 659 (Cramer)--(CHAPTER 110)--Crimes: Punishment

AB 659 deletes the provision of current law which provides for a jury to recommend whether the punishment of a person convicted of vehicular manslaughter or unlawful sexual intercourse shall be a state prison or county jail term.

SOURCE: Calif. District Attorneys Assn.

SUPPORT: CPOA

OPPOSITION: None Known

AB 667 (Wright)--(CHAPTER 209)--Gifts to Prisoners

Under current law, officers or employees of the State Department of Corrections, and contractors or employees of contractors are prohibited from making, presenting or receiving any gift from any prisoner. A violation of such prohibition by officers or employees of the Department of Corrections would result in termination of employment.

AB 667 extends the above prohibitions to officers and employees of police departments, members and employees of sheriff's departments, and employees of jails or other local governmental custodial correctional facilities; and will impose the same penalty for a violation of the prohibition.

SOURCE: City of Los Angeles

SUPPORT: Department of Corrections

OPPOSITION: None Known

AB 673 (La Follette)--(CHAPTER 318)--Criminal Prosecution

Existing law provides that when property taken in one jurisdictional territory by burglary, robbery, theft, or embezzelment has been brought into another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory.

AB 673 provides that the crime of receiving stolen property may be prosecuted either in the jurisdiction in which it was received or the jurisdiction in which it was stolen or embezzled.

SOURCE: CPOA

SUPPORT: California Highway Patrol; CDAA

OPPOSITION: None Known

AB 698 (Thurman)--(CHAPTER 166)--Victim & Witness Centers

Under existing law, victim and witness assistance centers are funded by the state and local governments as specified. On and after January 1, 1983, funding for the continuation of any such center is at the election of the local government served thereby, and state responsibility therefor ceases.

This bill would require a specified report to the Legislature by January 1, 1985, concerning the effectiveness of the centers.

Under existing law, provisions for increases in assessments on fines and forfeitures which are equally divided to assist local victim and witness programs and to indemnify victims of violent crimes when appropriated by the Legislature, and provisions relative to the collection of such increased assessments, terminate January 1, 1982.

This bill would continue such provisions indefinitely, would eliminate the requirement that these funds be divided equally, and would provide for appropriation by the Legislature of an unspecified portion of these funds for the training of sexual assault investigators and prosecutors and assistance to local rape victim counseling centers.

Urgency measure: Took effect July 12, 1981.

SUPPORT: Los Angeles City Attorney; Judicial Council; State Public Defender; Department of Finance; Office of Criminal Justice Planning; Victim-Witness Assistance Programs in Orange, San Bernardino and Los Angeles Counties

OPPOSITION: Automobile Club of Southern California

AB 754 (Cramer)--(CHAPTER 854)--Criminal Actions

Present law requires a complaint be dismissed when the defendant is in custody and the preliminary hering is set or continued beyond 10 court days from the date of arraignment or plea unless the defendant waives the 10 day rule or the prosecution establishes good cause.

AB 754 adds the requirement to the 10 day rule that the defendant has remained in custody for 10 or more court days solely on that compalint which is to be dismissed.

Present law requires a defendant be released on his or her own recognizance if the preliminary hearing is continued beyond the 10 court days. AB 754 makes an exemption from this rule in the following situations:

a) The defendant requested continuance.
b) The charge is for a nonbailable capitol offense.
c) The defendant caused the unavailability of a necessary witness.
d) Counsel was ill.
e) Counsel was unexpectedly engaged in a jury trial.
f) There were unforeseen conflicts of interest which require appointment of new counsel.

AB 754 makes changes relative to subsequent prosecutions of an offense to provide that a previous dismissal would not be a bar to prosecution if good cause is shown as to why the preliminary examination was not held within 60 days of arraignment or submittal of a plea, or if a motion to set aside the indictment or information was granted because of present insanity of the defendant, or because of lack of counsel after the defendant elected to represent himself/herself.

AB 754 makes minor changes in the procedure to seek reinstatement of a complaint.

SUPPORT: Attorney General

OPPOSITION: ACLU; CACJ

AB 779 (Greene)--(CHAPTER 1111)--Parole

AB 779 requires the Board of Prison Terms to notify the judge, the DA, the defense counsel, the defendant, and the Judicial Council when it makes a determination that a sentence is disparate. It authorizes the sentencing court to resentence the defendant within 120 days of receipt of the information. Requires the court clerks to mail various court documents to the prison or other institution to which the convicted person is

AB 779 (Greene)-Continued:

delivered. It provides that parole for a person convicted of first or second degree murder may not exceed 5 years. It also provides that, except for escapees, parole supervision of a prisoner subject to 3 years parole may not exceed 4 years and for a prisoner subject to 5 years on parole, parole supervision may not exceed 7 years.

AB 779 will provide that the board hear each case annually after refusing to set a parole date except the board may schedule the next hearing no later than 3 years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

AB 779 requires the Department of Corrections and the Youth Authority to make available to a chief of police or sheriff within 10 days, upon request, information concerning persons on parole who are or may be residing in their jurisdictions.

SOURCE: Sacramento City Police Chief

SUPPORT: Sacramento Police Department

OPPOSITION: None Known

AB 788 (Martinez)--(CHAPTER 1030)--Gang Violence

Existing law provides for an Office of Criminal Justice Planning (OCJP) to develop a statewide plan for the improvement of criminal justice activity, to define, develop and correlate programs and projects, and for various related purposes.

AB 788 establishes the Gang Violence Supression Program within the OCJP to provide for financial and technical assistance for district attorneys' offices, as specified. This act becomes operative only if federal funds are made available for its implementation.

SUPPORT: Calif. Gang Investigation Association; LA County Housing Authority Police

OPPOSITION: State Public Defender

AB 825 (Wright)--(CHAPTER 208)--Court Commissioners and Magistrates

Under current law municipal court commissioners in the County of Los Angeles are authorized by statute to conduct arraignment proceedings if directed to do so by the presiding judge of the court. AB 825 specifies this power includes the issuance of bench warrants.

SOURCE: LA Municipal Court Judge, Paul Metzler

SUPPORT: Orange Co. Juvenile Court; California Judges Assn.; LA Court Municipal Court Judges Assn.

OPPOSITION: State Public Defender

AB 1016 (McCarthy)--(CHAPTER 1026)--Preliminary Examinations

AB 1016 authorizes a finding of sufficient cause to be based in whole or in part upon written hearsay evidence introduced under penalty of perjury by the prosecuting attorney in lieu of a witness' live testimony.

The prosecuting attorney shall file the statement and notice to rely on hearsay testimony at the time of the arraignment or at least 10 court days prior to date set for the preliminary hearing. The defendant will be able to call the witness and cross examine the witness on material contained in the statement. If the defendant cannot secure attendance of the witness after making reasonable efforts, the court shall grant a short continuance at the defendant's request and require the prosecutor to produce the witness. Failure to produce the witness will result in the written statement not being considered at the examination.

AB 1016 will have no application where the witness is a victim of a crime against his or her person or where the testimony of the witness includes eyewitness identificaion of a defendant or the prosecuting attorney has not filed with the court and furnished to the defendant a copy of the statement 10 or more days prior to the date set for the preliminary hearing.

SOURCE: CDAA

SUPPORT: CPOA; Attorney General

OPPOSITION: ACLU; Calif. Attorneys for Criminal Justice; Calif. Public Defenders Assn.; Calif. Trial Lawyers Assn.; LA County Municipal Court Judges Assn.; State Bar Criminal Law Section; State Public Defender

AB 1025 (Thurman)--(CHAPTER 483)--Parole Hearings

Where there is a parole hearing for a prisoner convicted of murdering a peace officer, AB 1025 requires the Board of Prison Terms to notify the law enforcement agency that employed the murdered peace officer of the hearing.

SOURCE: California Assn. of Highway Patrolmen

SUPPORT: CPOA; Attorney General

OPPOSITION: None Known

AB 1027 (Levine)--(CHAPTER 1084)--Victim Indemnification

AB 1027 repeals the sunset date on the emergency awards to victims of violent crimes program, except for the provision permitting the Board of Control to require forebearance of collection of a vitim's debts. This provision will sunset as of January 1, 1985.

SUPPORT: State Public Defender; CPOA

OPPOSITION: None Known

AB 1091 (Costa)--(CHAPTER 1009)--Public Inebriates

Under current law, being under the influence of alcohol in a public place is defined as disorderly conduct, a misdemeanor.

AB 1091 provides that a public inebriate with a prior conviction of public intoxication shall be sentenced to a minimum of 90 days in jail suspended only on the condition that such person spend 60 days in a designated alcohol recovery program as specified. AB 1091 requires that the triggering prior conviction be affirmatively pled and proved. The bill provides that these provisions will become operative in a county only upon adoption of an ordinance adopting the mandatory penalties after a finding that sufficient facilities exist or will exist to accomodate these persons.

SUPPORT: Fresno County Chamber of Commerce; Fresno County Sheriff; CPOA

OPPOSITION: ACLU

AB 1131 (Bates)--(CHAPTER 351)--Peace Officers

AB 1131 prevents a peace officer from being employed as a private security guard at the site of a strike, lockout or other physical demonstration of a labor dispute. AB 1131 contains an intent clause which states that the bill is designed to ensure the neutrality of peace officers during labor disputes. AB 1131 will sunset as of January 1, 1988.

SUPPORT: Calif. Teamsters Public Affairs Council; CPOA; PORAC; Sacramento City Council; Calif. Labor Federation, AFL-CIO; Calif. Org. of Police & Sheriffs; Sac. Co. Deputy Sheriffs' Assn.

OPPOSITION: Calif. Farm Bureau Federation; Transamerica Delaval Inc.; Calif. Conference of Employer Assn.; American Electronics Assn.; Calif. Restaurant Assn.; Pacific Coast Tire Dealers Assn.; Calif. Manufacturers Assn.

AB 1148 (McAlister)--(CHAPTER 447)--Juvenile Court: Victim Notification

An existing provision of the juvenile court law requires the probation officer to inform the victim of a crime of the final disposition of the case, upon request, as defined.

This bill would make a clarifying change in the definition of the term "final disposition" and would specify that details of an order for restitution, as specified, shall be included in the information so provided.

SUPPORT: California Judges Association

OPPOSITION: Calif. Congress of Parents, Teachers & Students, Inc.

AB 1151 (Levine)--(CHAPTER 849)--Rape

AB 1151 adds to the current definition of rape, an act of sexual intercourse to which the victim submits because she reasonably believes the defendant will carry out threats of future retaliation against her or others. Threats of future retaliation are defined as threats to falsely imprison, kidnap, or to inflict extreme pain, serious bodily injury or death.

SUPPORT: Women Lawyers of Sacramento; Santa Monica Rape Crisis Center

OPPOSITION: None Known

AB 1161 (Moore)--(CHAPTER 1142)--Probation

AB 1161 modifies existing laws relating to probation and probation officers. Specifically, the bill:

Requires the county probation officer to notify the presiding judge and the board of supervisors when available staff and financial resources are insufficient to meet the officer's statutory or court-ordered responsibilities.

Authorizes a person convicted of a felony, or a crime in another state which would have been a felony in California, who has been granted a full and unconditional pardon, to be employed as a county probation officer.

Extends peace officer status to persons having custodial responsibilities for adults in institutions operated by a probation department and provides that such persons are included within the term "county peace officer" for the purposes of the Public Employee's Retirement System.

Makes a legislative declaration that probation services are an essential element in the administration of criminal justice, and further specifies that public safety, the nature of the offense, the loss to the victim, the needs of the defendant and the interests of justice be primary considerations in the decision to grant probation.

Specifies that persons placed on probation by a court are under the supervision of the county probation officer, who shall determine the level of supervision;

Replaces summary probation, for misdemeanor and infractions, with the power to suspend sentence and grant conditional and revocable release.

Authorizes the filing of a supplemental petition to remove from parental custody a minor who is on probation but is not a ward of the court.

SOURCE: Calif. Probation Parole & Correctional Assn.

SUPPORT: Calif. Probation Officers Assn.

OPPOSITION: CPOA

AB 1190 (Katz)--(CHAPTER 332)--Juvenile Court Proceedings

Under current law, a proceeding in juvenile court to declare a minor a ward of the court on the basis of criminal conduct commences by the prosecuting attorney filing a petition. If the petition is sustained, the probation officer prepares a social study for considering the disposition of the minor.

In cases where a minor is alleged to have committed an act which would have been a felony if committed by an adult, AB 1190 requires the probation officer to obtain a statement from the victim concerning the offense. The statement will be included in the social study. The bill does not provide reimbursement to local agencies for the cost of implementing this requirement. The bill contains a 6 year sunset clause (January 1, 1988).

SOURCE: Calif. Probation & Parole Officers Association

SUPPORT: CPOA; Attorney General; Shasta Co. Probation Dept.

OPPOSITION: None known

AB 1207 (Kelley)--(CHAPTER 349)--Trespass

AB 1207 adds to the crime of trespass the act of refusing or failing to leave a hotel or motel where accomodations are obtained, the person refuses to pay for the accomodations, and the proprietor or manager requests the person to leave.

SUPPORT: California Motel Assn.; CPOA

OPPOSITION: Calif. Attorneys for Criminal Justice

AB 1246 (M. Waters)--(CHAPTER 978)--Traffic Offense Warrants --Bail

AB 1246 provides that where a person is taken into custody for bail to be collected on four or fewer outstanding warrants for failure to appear on a citation for a parking offense or a traffic infraction, the person shall be entitled to post an ascertainable amount of bail without being booked, photographed, fingerprinted, searched or having an arrest record made before having adequate opportunity to post bail. If the person has sufficient cash, he must be permitted to post bail immediately. The person must, at a minimum, be given two hours and three completed phone calls in an attempt to raise bail. He can have up to $.50 advanced against bail and have his own funds converted to change to be used for phone calls. AB 1246 will sunset on January 1, 1984.

AB 1246 (M. Waters)-Continued:

SOURCE: State Bar of California

SUPPORT: Former Senator Bob Wilson; Judge William McVittie; State Public Defender; ACLU; Amish Church; Calif. Attorneys for Criminal Justice

OPPOSITION: City of Oakland; Oakland Chief of Police

AB 1265 (Cramer)--(CHAPTER 1022)--School Hazing

Existing law prohibits initiation activities which cause or are likely to case bodily danger or physical harm.

AB 1265 extends the prohibitions against hazing to pre-initiation activites, and expands the definition of hazing to include any method which causes, or is likely to cause, personal degradation or disgrace resulting in physical or mental harm to any student or other person. AB 1265 increases the maximum fine from $500 to $5,000 and increases the maximum imprisonment term from six monthes to not more than one year in the county jail. AB 1265 requires the governing board of any public education institution or agency, on or after January 1, 1988 and until January 1, 1994, to adopt necessary rules and regulations, and requires that these rules and regulations be published in all campus general catalogs.

SOURCE: Calif. State Student Association

SUPPORT: Calif. Community Colleges Student Government Assn.; Calif. Federation of Republican Women; Calif. Teachers Assn.; Super. of San Diego City School Dist.; Biddle, Waters and Bukey

OPPOSITION: None Known

AB 1284 (Rogers)--(CHAPTER 328)--Making Keys for Residences

When a key is made for opening a door or other means of entrance to a residence after an onsite inspection of the door or entrance, AB 1284 requires the person making the key to obtain and place on a work order form the date, address, and signature of the person for whom the key was made, and the name, address, telephone number, if any, date of birth, and drivers license number, if any, of the person requesting the key.

AB 1284 (Rogers)-Continued:

AB 1284 requires these records to be kept for one year, and that they be open to inspection by any peace officer. A violation of these provisions is a misdemeanor.

SUPPORT: CPOA; Calif. Locksmiths Association

OPPOSITION: None Known

AB 1297 (Levine)--(CHAPTER 1153)-Training Programs for Local Correctional and Probation Personnel

AB 1297 authorizes the Board of Corrections to develop and present training courses for local corrections and probation officers. Funding for these training programs is allocated from the Corrections Training Fund (Penal Code §1464, Chapter 1047, Statutes of 1980). Revenue for the Corrections Training Fund is derived from a 12.23% monthly transfer from the Drivers' Penalty Assessment Fund. AB 1297 extends the funding of the Corrections Training Fund from the Drivers' Penalty Assessment Fund to January 1, 1983.

SOURCE: Calif. Probation Parole and Correctional Assn.

SUPPORT: CPOA; Dept. of Corrections

OPPOSITION: Southern Calif. Automobile Club

AB 1303 (Moore)--(CHAPTER 205)--Time for Filing Complaints: Misrepresentation of Age

Under current law, when a minor is taken into custody by a peace officer or probation officer, and the minor wilfully misrepresents himself or herself to be 18 years or older and this misrepresentation delays the filing of a detention petition or criminal complaint against the minor beyond 48 hours, the time for filing the petition or criminal complaint becomes 48 hours from the time the true age is determined.

AB 1303 provides the time for filing a complaint against an adult taken into custody who wilfully misrepresents himself or herself to be a minor is within 48 hours of the time the true age is determined.

SOURCE: City of Los Angeles

SUPPORT: CPOA

OPPOSITION: None Known

AB 1401 (Baker)--(CHAPTER 645)--Crime & Punishment

AB 1401 requires the Youthful Offender Parole Board to give written notice to the following persons at least 30 days prior to a parole hearing for a ward under the age of 18 years who was committed to the Department of the Youth Authority for committing one or more specified violent offenses:

(1) The judge who committed the person to the Youth Authority;
(2) The district attorney from the county from which the person was committed;
(3) The attorney for the person;
(4) The law enforcement agency that investigated the case; and,
(5) The victim or next of kin, where he or she has filed a request for such notice with the board.

Under the bill, these persons may submit written statements to the board at least 10 days prior to the scheduled hearing.

SUPPORT: Law & Order Campaign; CPOA; CYA; City & Co. of San Francisco

OPPOSITION: State Public Defender; ACLU; Judicial Council; Calif. Attorneys for Criminal Justice; Calif. Child, Youth, and Family Coalition; Commission on Corrections

AB 1405 (Baker)--(CHAPTER 945)--Concealed Weapon Permit

AB 1405 increases from a misdemeanor to a felony the crime of knowingly giving false information on an application for a permit to carry a concealed weapon.

SOURCE: Law and Order Campaign Committee

SUPPORT: CPOA; Assn. of Licensed Investigators; Attorney General

OPPOSITION ACLU; State Public Defender

AB 1409 (Baker)--(CHAPTER 644)--Peace Officers-Traffic Offenses

Under current law, it is unlawful to refuse to comply with a lawful order of a traffic officer. A traffic officer is defined as a member of the CHP or a peace officer who is on duty for the exclusive or main purpose of enforcing vehicle code provisions regarding accidents and other rules of the road. AB 1409 extends

AB 1409 (Baker)-Continued:

the crime to encompass a refusal to comply with the lawful order of any peace officer who is in uniform when the peace office is performing duties under any provision of the vehicle code.

SUPPORT: CPOA; Calif. Highway Patrol; East Bay Muni Utilities District; City of San Diego; Attorney General

OPPOSITION: Calif. Attorneys for Criminal Justice

AB 1422 (Bergeson)--(CHAPTER 896)--Sexaul Assault

AB 1422 would expand the definitions of object rape, oral copulation and sodomy to include acts committed upon a victim who at the time is unable to give legal consent because of temporary or permanent lunancy or unsoundness of mind, and the defendant knew or reasonably should have known of the victim's mental deficiencies. These crimes are punishable by up to 3 years in prison or one year in county jail, the same penalty currently provided for sodomy and oral copulation upon an unconscious victim.

SUPPORT: LA County District Attorney

OPPOSITION: None Known

AB 1463 (Hart)--(CHAPTER 897)--Boats and Vessels:Intoxication

Under current law, it is unlawful for any person to use any boat, vessel or water skis or similar devices while under the influence of intoxicating liquor or any narcotic or dangerous drug. AB 1463 would make the following changes in existing law:

1) For purposes of increasing punishment, AB 1463 makes it unlawful to use any boat, vessel or water skis while under the influence of intoxicating liquor, any drug as defined, or the combined influence of intoxicating liquor and any drug, or to do any act or neglect any duty imposed by law while under these influences, which causes death or bodily injury to any person other than oneself.

2) Provides that if serious bodily injury or death results, the offense is a felony/misdemeanor (state prison for 16 months, two or three years, or county jail for not less than 90 days nor more than one year and a fine of not less than $250 nor more than $5000). Further

AB 1463 (Hart)-Continued:

requires that if probation is granted to a person convicted of this offense within five years of a prior conviction which included serious bodily injury or death, the person shall be confined in county jail for not less than 90 days nor more than one year and pay a mandatory minimum fine. If the prior conviction did not involve death or serious boidly injury, the person shall be confined in county jail for not less than five days nor more than one year, and pay a mandatory minimum fine.

3) Precludes the court from striking a prior conviction except if it is an unusual case where the interest of justice demands an exception, and when the court strikes a prior conviction for purposes of sentencing, the court shall specify the reasons.

4) Redefines "operator" to mean the person steering the vessel not the person in control or charge of the vessel.

SOURCE: Dept. of Boating and Waterways

SUPPORT: Attorney General; Calif. Highway Patrol; CPOA; Calif. District Attorneys Assn.; Los Angeles Co. District Attn; Calif. Boating Safety Officers Association

OPPOSITION: None Known

AB 1493 (Wray)--(CHAPTER 775)--Vehicles: Parking Offenses

Existing law provides that an owner who has made a bona fide sale or transfer of a vehicle, delivered it to the purchaser, and complied with stated provisions, is not thereafter subject to civil liability for operation of the vehicle. AB 1493 provides that such person is not criminally liable for operation of the vehicle.

Existing law prohibits the driving, stopping, or parking of any vehicle or animal on specified types of publicly owned or maintained property, except as may be permitted, conditioned, and regulated by the governing board or officer having jurisdiction over the property. AB 1493 makes these provisions applicable to any property under the control of a harbor district.

Under existing law, it is an infraction for the driver of a vehicle to fail to obey a sign or signal erected or maintained to carry out the provisions of the Vehicle Code or a local traffic

AB 1493 (Wray)-Continued:

ordinance or resolution. Existing law also makes it an infraction to violate various stopping, standing, and parking statutes or ordinances. AB 1493 repeals the duplication by excepting the specific stopping, standing, and parking violations from the general prohibition against failing to obey signs and signals.

Existing law authorizes the deposit of bail by a person who promised to appear, and permits that deposit by personal check, before specified dates. AB 1493 also authorizes deposit of bail before the time to appear contained in a notice of a parking violation and permits that bail to be deposited by personal check.

Existing law provides for a notice of violation for parking offenses to be issued to owners of unattended vehicles, and prescribes the procedure for giving that notice to the person charged before a warrant for arrest may be issued. AB 1493 adds a procedure to require dismissal if a mailed notice is returned and the person charged has sold or transferred the vehicle. It also provides that, upon return of the notice to the court with any indication that the notice was not delivered to the person charged, the court shall inquire of the department, before issuing a warrant of arrest for a resident of this state, whether or not the person has sold or transferred the vehicle. For parking violations, the bill requires a copy of a certificate of adjudication of the matter to be provided the person charged or that person's representative in addition to filing the certificate with the Department of Motor Vehicles.

SUPPORT: Automobile Club of Southern California

OPPOSITION: None Known

AB 1583 (Kapiloff)--(CHAPTER 744)--Peace Officers-Port Districts

AB 1583 grants general peace officers powers to police officers of the San Diego Unified Port District Harbor Police.

SOURCE: PORAC

SUPPORT: CPOA; San Diego Harbor Police Association

OPPOSITION: None Known

AB 1587 (Imbrecht)--(CHAPTER 746)--Access to School Premises

Under current law, it is unlawful for any person to remain on, or reenter within 72 hours of being asked to leave, school grounds or adjacent areas without lawful business thereon and whose presence or acts interfer with the peaceful conduct of, or disrupt the activities at the school.

AB 1587 makes it unlawful for a person to be on school grounds without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of, or disrupt the activities at the school, when on at least two prior occassions in the same school year upon any school grounds the defendant was asked to leave because of his or her illegal behavior.

SOURCE: Balboa Junior High School, Ventura

SUPPORT: Calif. Teachers' Assn.; LA City Unified School Dist.; County of Los Angeles; Simi Valley Unified School Dist.; Assn. of Calif. School Administrators; CPOA; San Diego Unified School District; Fresno Unified School Dist.

OPPOSITION: None Known

AB 1595 (Moorhead)--(CHAPTER 984)--Traffic Infractions

AB 1595 is cleanup legislation related to a pilot program to test the administrative adjudication of traffic offenses. The bill makes numerous and technical changes to the original legislation establishing the test program in order to streamline the program's operations.

SOURCE: Traffic Adjudication Board

SUPPORT: California Highway Patrol; CPOA

OPPOSITION: Automobile Club of Southern California

AB 1613 (Berman)--(CHAPTER 795)--Paramilitary Activities

AB 1613 makes it a misdemeanor, to teach the use of any weapon, or technique capable of causing injury, while knowing, having reason to know or intending that such weapon or technique will be unlawfully employed for use in, or in furtherance of a civil disorder; or, to assemble with another person to practice with weapons, or techniques capable of causing injury or death with the intent to cause or further a civil disorder.

AB 1613 (Berman)-Continued:

SOURCE: Anti-Defamation League

SUPPORT: Attorney General; City and County of San Francisco

OPPOSITION: None Known

AB 1645 (Farr)--(CHAPTER 204)--Bench Warrants

Under existing law, various provisions and case law provide for the instances when a bench warrant of arrest may be issued upon failure of a defendant to appear in court.

AB 1645 would add a single section to the Penal Code that summarizes the circumstances under which a bench warrant may be issued.

SOURCE: Richard Iglehart (Alameda Co. Deputy DA)

SUPPORT: CDAA; LA County Muni Court Judges Assn; and various judges

OPPOSITION: None Known

AB 1675 (Alatorre)--(CHAPTER 1125)--Aerosol Paint Containers

This bill creates new crimes regarding the sale, purchase, and possession of aerosol containers of paint. Specifically, the bill:

1) Prohibits the sale or furnishing of aerosol containers of paint larger than six ounces to persons under the age of 18, except by a parent or guardian. It also prohibits the purchase of such paint by persons under the age of 18.

2) Requires retail sellers of aerosol containers of paint to display a sign indicating the criminal penalties for defacing property with paint.

3) Makes it illegal for any person to carry on his or her person and in plain view an aerosol container of paint larger than six ounces while in any public place

AB 1675 (Alatorre)-Continued:

unless he or she has first received authorization from the governmental entity which has jurisdiction over the area.

4) Makes it illegal for any person under age of 18 to possess an aerosol container of paint larger than six ounces for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

5) Makes it a misdemanor, punishable by a fine and/or up to six months in county jail, to violate any of the above new crimes.

SOURCE: City of Los Angeles

SUPPORT: City of San Diego, Parks & Recreation Dept.

OPPOSITION: ACLU

AB 1678 (Young)--(CHAPTER 650)--Shoplifters

AB 1678 changes the law concerning merchant's or library personnel's rights relative to shoplifters. The bill permits the merchant or his agent to request from the person detained a surrender of the stolen property and proof of identity. If the property is not surrendered, AB 1678 authorizes a limited search of the person's possessions, but not a body search. AB 1678 expands the defense in civil actions to include all civil actions which arise from a detention or arrest of a suspected shoplifter, provided the merchant had probable cause to detain or arrest and acted reasonably under all the circumstances.

SUPPORT: Calif. Retailers Assn.; Calif. Grocers Assn.; Calif. Chamber of Commerce; CPOA; Mervyn's Dept. Stores; City of Los Angeles; Calif. Assn. of Licensed Investigators; various individual Chambers of Commerce

OPPOSITION: Calif. Attorneys for Criminal Justice

AB 1790 (Moore)--(CHAPTER 226)--Penalty Assessments

Under current law, in addition to levying penalty assessments and fines, $3.00 shall be levied for every $10.00 or fraction thereof of penalty or forfeiture imposed. AB 1790 specifies that

AB 1790 (Moore)-Continued:

when any bail bond is forfeited and a judgment is entered against the bondsman, the judgment shall not exceed the amount of the bond with costs and no penalty assessment shall be levied upon or added to the judgement.

SUPPORT: Surety Producers Assn. of California

OPPOSITION: None Known

AB 2009 (Elder)--(CHAPTER 732)--Minors-Handguns

Existing law prohibits possession of a concealable firearm by a minor without parental or guardian consent.

AB 2009, prohibits a minor to possess live ammunition without parental or guardian consent except while going to or from a lawful shooting activity.

SUPPORT: PTA

OPPOSITION: None Known

AB 2109 (Harris)--(CHAPTER 188)--Juvenile Court Law

AB 2109 makes the father, mother, spouse, or other persons liable for the support of a minor, and the estate of any such person, liable for any cost of legal services rendered directly to them in a child dependency proceeding.

SOURCE: Alameda Co. Public Defender

SUPPORT: Alameda Co. Public Defender; Alameda Co. Board of Supervisors

OPPOSITION: None Known

AB 2173 (Campbell)--(CHAPTER 727)--Restitution & Fines

AB 2173 provides that when an adult court orders restitution, the board of supervisors may collect fees, to be added to the restitution, to cover the actual administrative cost of collection.

AB 2173 (Campbell)-Continued:

Existing law permits a court adjudging a minor to be a ward of the court to levy a fine up to $250 provided the minor has the ability to pay. AB 2173 applies the penalty assessment provisions of Penal Code §1464 to such fine.

SOURCE: Calif. Probation Parole, and Correctional Assn.

SUPPORT: CPOA; Attorney General; Orange Co. Victim-Witness Assistance Program; Co. Supervisors Assn. of California

OPPOSITION: None Known

APPENDIX

SENATE BILLS

Senate Bill No. 23

CHAPTER 726

An act to amend Sections 782 and 1103 of the Evidence Code, relating to evidence.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 23, Watson. Evidence: exclusion: sexual activity.

Existing law provides that in a prosecution for rape or rape by acting in concert with another person or for an assault with intent to commit or attempt or conspiracy to commit such offenses evidence of the sexual conduct of an alleged victim, if offered to attack the credibility of the alleged victim, is admissible upon complying with a specific detailed procedure.

This bill, in addition, would require the same specific detailed procedure if evidence of the sexual conduct of an alleged victim is offered to attack the credibility of the alleged victim in a prosecution for specified acts involving sodomy, oral copulation, or the penetration of the genital or anal openings by a foreign object, except when it occurred in a local detention facility or in a state prison.

Existing law provides that evidence of the character of the victim of a crime for which a defendant is being prosecuted is admissible if offered by the defense to prove conduct of the victim conforming to such character evidence. It further provides that in a prosecution for rape, or rape by acting in concert with another person, or for an attempt or conspiracy to commit such offenses, character evidence of the alleged victim's sexual conduct with others, not including the defendant, is inadmissible to prove consent by the alleged victim, except as specified.

This bill would provide, in addition, that in a prosecution for sodomy, oral copulation, or the penetration of the genital or anal openings by a foreign object, or for an attempt or conspiracy to commit such offenses, except when it occurred in a local detention facility or in a state prison, character evidence of the alleged victim's sexual conduct with others than the defendant shall be inadmissible to prove consent by the alleged victim, except in limited, specified circumstances.

The people of the State of California do enact as follows:

SECTION 1. Section 782 of the Evidence Code is amended to read:

782. (a) In any prosecution under Section 261, 264.1, 286, 288a, or

289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any such section, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

SEC. 2. Section 1103 of the Evidence Code is amended to read:

1103. (a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if such evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with such character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

(b) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261 or 264.1 of the Penal Code, or under Section 286, 288a, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any such section, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion

evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct, or any of such evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(2) Paragraph (1) shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(3) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and such evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence introduced by the prosecutor or given by the complaining witness.

(4) Nothing in this subdivision shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in Section 782.

(5) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this subdivision.

O

Senate Bill No. 39

CHAPTER 588

An act to amend Section 3042 of the Penal Code, and to amend Section 1781 of, and to add Section 1767 to, the Welfare and Institutions Code, relating to parole hearings.

[Approved by Governor September 20, 1981. Filed with Secretary of State September 20, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 39, Marks. Parole hearings.

Existing law provides for 30 days' notice of a parole hearing of a person committed to state prison for a life term to be given by the Board of Prison Terms to the judge of the superior court before which the person was tried and convicted, the person's attorney, the district attorney of the county from which the person was sentenced, and the law enforcement agency which investigated the case.

This bill would add to those persons who receive notice, the next of kin of the victim of first degree murder if he or she requests notice from the board. The requester is required to apprise the board of his or her current address.

The bill would also provide for 30 days' written notice to be sent by the Youthful Offender Parole Board to the judge of the court by whom a person was committed to the Youth Authority, the person's attorney, the district attorney of the county from which the person was committed, the law enforcement agency which investigated the case, and the victim of specified forms of rape or the next of kin of the victim of a murder when a person committed to the Youth Authority for the rape or murder is to be given a parole hearing by the board. When a petition is filed by the board with the court to have such a person committed to state prison, notice would be sent by the court to the same persons except the judge of the court. The victim or next of kin would be required to request notice and to apprise the board of his or her current address.

This bill would incorporate additional changes in Section 3042 of the Penal Code proposed by AB 1025, to become operative if AB 1025 and this bill are both chaptered and become effective on or before January 1, 1982, and this bill is chaptered after AB 1025.

The people of the State of California do enact as follows:

Not operative section

SECTION 1. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the

judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced, the law enforcement agency that investigated the case. In the case of a prisoner sentenced to a life sentence for first degree murder, the board shall also send written notice to the next of kin of the person murdered where a request for such notice has been filed with the Board of Prison Terms by the next of kin. The burden shall be on the requesting party to keep the board apprised of the party's current mailing address.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his conduct since his last hearing.

operative section.

SEC. 1.5. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder. In the case of a prisoner sentenced to a life sentence for first degree murder, the board shall also send written notice to the next of kin of the person murdered where a request for such notice has been filed with the Board of Prison Terms by the next of kin. The burden shall be on the requesting party to keep the board apprised of the party's current mailing address.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days

from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

SEC. 2. Section 1767 is added to the Welfare and Institutions Code, to read:

1767. In the case of any person under the control of the Youth Authority for the commission of any offense of rape in violation of subdivision (2) or subdivision (3) of Section 261 of the Penal Code, or murder, written notice of any hearing to consider the release on parole of the person shall be sent by the Youthful Offender Parole Board to the following persons at least 30 days before the hearing: the judge of the court by whom the person was committed to the authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency which investigated the case. The board shall also send written notice to the victim of the rape or the next of kin of the person murdered if he or she requests notice from the board and keeps it apprised of his or her current mailing address.

SEC. 3. Section 1781 of the Welfare and Institutions Code is amended to read:

1781. Upon the filing of a petition under this article, the court shall notify the person whose liberty is involved, and if he is a minor his parent or guardian if practicable, of the application and shall afford him an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When he is unable to provide his own counsel, the court shall appoint counsel to represent him.

In the case of any person who is the subject of such a petition and who is under the control of the Youth Authority for the commission of any offense of rape in violation of subdivision (2) or subdivision (3) of Penal Code Section 261, or murder, the Youthful Offender Parole Board shall send written notice of the petition and of any hearing set for the petition to each of the following persons: the attorney for the person who is the subject of the petition, the district attorney of the county from which the person was committed, and the law enforcement agency which investigated the case. The board shall also send written notice to the victim of the rape or the next of kin of the person murdered if he or she requests notice from the board and keeps it apprised of his or her current mailing address.

Notice shall be sent at least 30 days before the hearing.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 1025 are both chaptered and become effective January 1, 1982, both bills amend Section 3042 of the Penal Code, and this bill is chaptered after Assembly Bill 1025, that the amendments to Section 3042 proposed by both bills be given effect and incorporated in Section 3042 in the form set forth in Section 1.5 of this act. Therefore, Section 1.5 of this act shall become operative only if this bill and Assembly Bill 1025 are both chaptered and become effective January 1, 1982, both amend Section 3042, and this bill is chaptered after Assembly Bill 1025, in which case Section 1 of this act shall not become operative.

O

Senate Bill No. 54

CHAPTER 404

An act to amend Sections 21, 22, 26, 188, and 189 of, and to add Sections 28 and 29 to, the Penal Code, relating to criminal law.

[Approved by Governor September 10, 1981. Filed with Secretary of State September 10, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 54, Roberti. Criminal law.

Existing law authorizes a jury to consider intoxication in determining the existence of a purpose, motive or intent.

This bill would delete such provision and prohibit or allow use of evidence of voluntary intoxication for specified purposes.

Existing law relating to crimes provides that intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. It also provides that all persons are of sound mind who are neither idiots or lunatics, nor affected with insanity.

This bill would delete such provisions and provide instead that intent or intention is manifested by the circumstances connected with the offense.

Under existing decisional law it may be shown that a defendant was suffering from an abnormal mental condition (diminished capacity) which prevented the defendant from forming a specific intent or other mental element of a crime.

This bill would abolish the defense of diminished capacity and related defenses and would authorize evidence of mental disease, defect, or disorder to show whether the defendant actually formed a mental state.

Under existing law lunatics and insane persons are incapable of committing crimes or manifesting sound minds.

This bill would delete such reference to lunatics, and insane persons.

Existing law defines the terms malice, and deliberate and premeditated, for purposes of murder.

This bill would redefine these terms.

The people of the State of California do enact as follows:

SECTION 1. Section 21 of the Penal Code is amended to read:

21. The intent or intention is manifested by the circumstances connected with the offense.

SEC. 2. Section 22 of the Penal Code is amended to read:

22. (a) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in

such condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental state including, but not limited to, purpose, intent, knowledge, or malice aforethought, with which the accused committed the act.

(b) Whenever the actual existence of any mental state, including, but not limited to, purpose, intent, knowledge, or malice aforethought, is a necessary element to constitute any particular species or degree of crime, evidence that the accused was voluntarily intoxicated at the time of the commission of the crime is admissible on the issue as to whether the defendant actually formed any such mental state.

(c) Voluntary intoxication includes the voluntary ingestion, injection, or taking by any other means of any intoxicating liquor, drug, or other substance.

SEC. 3. Section 26 of the Penal Code is amended to read:

26. All persons are capable of committing crimes except those belonging to the following classes:

One—Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

Two—Idiots.

Three—Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.

Four—Persons who committed the act charged without being conscious thereof.

Five—Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence.

Six—Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

SEC. 4. Section 28 is added to the Penal Code, to read:

28. (a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible on the issue as to whether the criminal defendant actually formed any such mental state.

(b) As a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action.

(c) This section shall not be applicable to an insanity hearing pursuant to Section 1026 or 1429.5.

SEC. 5. Section 29 is added to the Penal Code, to read:

29. In the guilt phase of a criminal action, any expert testifying

about a defendant's mental illness, mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states, which include, but are not limited to, purpose, intent, knowledge, or malice aforethought, for the crimes charged. The question as to whether the defendant had or did not have the required mental states shall be decided by the trier of fact.

SEC. 6. Section 188 of the Penal Code is amended to read:

188. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. An awareness of the obligation to act within the general body of laws regulating society is not included within the definition of malice.

SEC. 7. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, or any act punishable under Section 288, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

O

Senate Bill No. 73

CHAPTER 599

An act to amend, repeal, and add Section 10751 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1981. Filed with Secretary of State September 22, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 73, Speraw. Vehicles: component parts: seizure.

(1) Under existing law, it is, generally, unlawful to intentionally deface, destroy, or alter the motor number or identification mark or number used for registration purposes of motor vehicles or component parts thereof. It is also unlawful for any person to knowingly buy, sell, receive, or have in his possession a vehicle or component part from which the manufacturer's serial or identification number has been removed, defaced, altered, or destroyed. When a vehicle or component part on which the identifying number has been defaced, altered, or obliterated comes into the custody of a peace officer, it is required to be destroyed, sold, or otherwise disposed of in accordance with an order of a court having jurisdiction.

Existing law also prohibits issuance of a court order providing for disposition, unless the person from whom the property was seized and all other claimants have been provided a postseizure hearing within 60 days of the seizure and that the burden of establishing that the identification number has been removed, defaced, altered, or destroyed is on the agency which seized the property. Existing law further provides that, if the court finds at the hearing that either the identifying mark has not been removed, altered, or destroyed or that the identifying mark has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented, the property shall be released to the person entitled thereto.

This bill would require any seized vehicle or component part to be returned to a good faith purchaser following presentation of satisfactory evidence of ownership and, if required, upon the assignment of an identification number by the department. The bill would provide that if, at the hearing, the evidence reveals the identification number or manufacturing number has not been removed, altered, defaced, or destroyed, the court may require the seizing agency to pay all storage and towing charges incurred.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in

certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

(3) This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1988, the provisions contained in the bill for which state reimbursement is required.

The people of the State of California do enact as follows:

SECTION 1. Section 10751 of the Vehicle Code is amended to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his possession, any vehicle, or component part thereof, from which the manufacturer's serial or identification number has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle or component part described in subdivision (a) comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as provided in an order by the court having jurisdiction. No court order providing for disposition shall be issued, unless the person from whom the property was seized and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles are provided a postseizure hearing by the court having jurisdiction within 60 days after the seizure. This subdivision shall not apply with respect to a seized vehicle or component part used as evidence in any criminal action or proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle or component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vehicle or component part by the department.

(c) Whenever a vehicle or component part described in subdivision (a) comes into the custody of a peace officer, the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (b). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vehicle or component part

as provided in subdivision (b), the person from whom the property was seized shall be provided a notice of impoundment of the vehicle or component part which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vehicle or component part seized has been impounded for investigation of a violation of Section 10751 of the California Vehicle Code and that the property will be released upon a determination that the identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vehicle or component part, provided that no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vehicle or component part shall take place in the proper court.

(3) A statement that the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vehicle or component part may be presented.

(5) A statement of the contents of Section 10751 of the Vehicle Code.

(e) A hearing on the disposition of the property shall be held by the municipal or justice court within 60 days after the seizure. The hearing shall be before the court without a jury.

(1) If the evidence reveals either that the identification number has not been removed, altered, or destroyed or that the identification number has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or the court, the property shall be released to the person entitled thereto. Any vehicle or component part seized pursuant to this section shall be returned to a good faith purchaser following presentation of satisfactory evidence of ownership thereof and, if required, upon the assignment of an identification number to the vehicle or component part by the department.

(2) If the evidence reveals that the identification number or manufacturing number has not been removed, altered, defaced, or destroyed, the court may require the seizing public agency to pay all towing and storage charges incurred pursuant to the seizure of the vehicle or component part.

(3) If the evidence reveals that the identification number has been removed, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the property shall be destroyed, sold, or otherwise disposed of as provided by court order.

(4) At the hearing, the seizing agency shall have the burden of establishing that the identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) This section shall not apply to a scrap metal processor engaged primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk dealers as scrap metal for the purpose of recycling the dismantled vehicles for their metallic content, the end product of which is the production of material for recycling and remelting purposes for steel mills, foundries, smelters, and refiners.

(g) This section shall remain in effect only until January 1, 1988, and as of that date is repealed unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 10751 is added to the Vehicle Code, to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his possession, any vehicle, or component part thereof, from which the manufacturer's serial or identification number has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle or component part described in subdivision (a) comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as provided in an order by the court having jurisdiction. No court order providing for disposition shall be issued, unless the person from whom the property was seized and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles are provided a postseizure hearing by the court having jurisdiction within 60 days after the seizure. This subdivision shall not apply with respect to a seized vehicle or component part used as evidence in any criminal action or proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle or component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vehicle or component part by the department.

(c) Whenever a vehicle or component part described in subdivision (a) comes into the custody of a peace officer, the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (b). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vehicle or component part

as provided in subdivision (b), the person from whom the property was seized shall be provided a notice of impoundment of the vehicle or component part which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vehicle or component part seized has been impounded for investigation of a violation of Section 10751 of the California Vehicle Code and that the property will be released upon a determination that the identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vehicle or component part, provided that no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vehicle or component part shall take place in the proper court.

(3) A statement that the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vehicle or component part may be presented.

(5) A statement of the contents of Section 10751 of the Vehicle Code.

(e) A hearing on the disposition of the property shall be held by the municipal or justice court within 60 days after the seizure. The hearing shall be before the court without a jury.

(1) If the evidence reveals either that the identification number has not been removed, altered, or destroyed or that the identification number has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto. Nothing in this section shall preclude the return of the vehicle or component part to a good faith purchaser following presentation of satisfactory evidence of ownership thereof upon the assignment of an identification number to the vehicle or component part by the department.

(2) If the evidence reveals that the identification number has been removed, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the property shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency shall have the burden of establishing that the identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) This section shall not apply to a scrap metal processor engaged

primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk dealers as scrap metal for the purpose of recycling the dismantled vehicles for their metallic content, the end product of which is the production of material for recycling and remelting purposes for steel mills, foundries, smelters, and refiners.

(g) This section shall become operative on January 1, 1988.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

O

Senate Bill No. 132

CHAPTER 32

An act to amend Sections 830.31, 12027, and 12403.7 of the Penal Code, and to add Section 22659 to the Vehicle Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 13, 1981. Filed with Secretary of State May 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 132, Presley. Peace officers.

Existing law provides that harbor police regularly employed and paid as such by a county, city, or district, except as specified, are peace officers with specified duties and powers.

This bill would provide that port police regularly employed and paid as such by a county, city, or district, except as specified, are peace officers with specified duties and powers.

Existing law permits a retired peace officer to carry a concealed weapon and requires him to petition the agency issuing the authorization every 5 years for renewal of the privilege to carry a concealed weapon.

This bill would impose the petition requirement only with respect to peace officers who retired after January 1, 1981.

Existing law exempts peace officers from the requirement of completing a course certified by the Department of Justice in the use of tear gas and tear gas weapons in order to purchase, possess, or transport any tear gas weapon for official use if they have received a course of instruction approved by the Commission on Peace Officers Standards and Training in the use of tear gas.

This bill would exempt retired peace officers from the requirement of completing such a certified course in order to purchase, possess, or transport any tear gas weapon if they have received a course approved by the commission in the use of tear gas.

Existing law permits peace officers to remove motor vehicles from highways and public or private property for specified purposes.

This bill would provide that any officer of the California State Police or any person duly authorized by the state agency in possession of property owned, rented, or leased by the state may, after giving notice to the city police or county sheriff, cause removal of a vehicle from such property or property of a district agricultural association policed by the state police to the nearest garage under specified circumstances.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 830.31 of the Penal Code is amended to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency.

(a) Members of an arson-investigating unit, regularly employed and paid as such, of a fire protection agency of the state, of a county, city, or district, and members of a fire department or fire protection agency of the state, or a county, city, or district regularly paid and employed as such, provided that the primary duty of arson investigators shall be the detection and apprehension of persons who have violated any fire law or committed insurance fraud, and the primary duty of fire department or fire protection agency members other than arson investigators when acting as peace officers shall be the enforcement of laws relating to fire prevention and fire suppression.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid as such, provided that the primary duty of any such peace officer shall be the protection of park property and the preservation of the peace therein.

(c) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as prescribed in Section 72330 of the Education Code.

(d) A welfare fraud or child support investigator or inspector, regularly employed and paid as such by a county, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of the Welfare and Institutions Code and Section 270 of this code.

(e) The coroner and deputy coroners, regularly employed and paid as such, of a county, provided that the primary duty of any such peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

(f) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(g) Harbor or port police regularly employed and paid as such by

a county, city or district other than peace officers authorized under Section 830.1, and the port warden and special officers of the Harbor Department of the City of Los Angeles, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(h) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, provided that the primary duty of any such officer shall be the protection of the properties of the utility district and the protection of the persons thereon.

SEC. 2. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) Peace officers listed in Section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this subdivision.

A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a concealed firearm every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this subdivision and where the officer retired after January 1, 1981, the date when the endorsement is to be reviewed again.

(b) The possession or transportation by any merchant of unloaded firearms as merchandise.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Members of any club or organization organized for the purpose of collecting and displaying antique or historical pistols, revolvers or other firearms, while such members are displaying such weapons at meetings of such clubs or organizations or while going to and from such meetings, or individuals who collect such firearms not designed to fire, or incapable of firing fixed cartridges or fixed shot shells, or other firearms of obsolete ignition type for which ammunition is not readily available and which are generally recognized as collector's items, provided such firearm is kept in the trunk. If the vehicle is not equipped with a trunk, such firearm shall be kept in a locked container in an area of the vehicle other than the utility or glove compartment.

SEC. 3. Section 12403.7 of the Penal Code is amended to read:

12403.7. (a) Notwithstanding any other provision of law, any person may purchase, possess or use tear gas and tear gas weapons for the projection or release of tear gas if such tear gas and tear gas weapons are approved by the Department of Justice and are used solely for self-defense purposes, subject to the following requirements:

(1) No person convicted of a felony or any crime involving an assault under the laws of the United States, of the State of California, or any other state, government, or country or convicted of misuse of tear gas under paragraph (8) shall purchase, possess, or use tear gas or tear gas weapons.

(2) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas or tear gas weapons.

(3) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(4) No person who is a minor shall purchase, possess, or use tear gas or tear gas weapons.

(5) (A) No person shall purchase, possess or use any tear gas weapon which expels a projectile, or which expels the tear gas by any method other than an aerosol spray, or which is of a type, or size of container, other than authorized by regulation of the Department of Justice.

(B) The department, with the cooperation of the State Department of Health Services, shall develop standards and promulgate regulations regarding the type of tear gas and tear gas weapons which may lawfully be purchased, possessed, and used pursuant to this section.

(C) The regulations of the department shall include a requirement that every tear gas container and tear gas weapon which may be lawfully purchased, possessed, and used pursuant to this section have a label which states: "WARNING: The use of this substance or device for any purpose other than self-defense is a felony under the law. The contents are dangerous—use with care."

(6) (A) No person shall purchase, possess, or use any tear gas or any tear gas weapon who has not completed a course certified by the Department of Justice in the use of tear gas and tear gas weapons pursuant to which a card is issued identifying the person who has completed such a course. Such a course shall be taken under the auspices of any institution approved by the Department of Justice to offer tear gas training. Such a training institution is authorized to charge a fee covering the actual cost of such training. The requirements of this paragraph shall not apply to a person who is a retired peace officer, as peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, if the person prior to retirement had satisfactorily completed a course of instruction approved by the Commission on Peace Officer Standards and Training in the use of tear gas and tear gas weapons.

(B) The Department of Justice, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the use of tear gas and tear gas weapons.

(7) If the purchase of tear gas or any tear gas weapon is denied, the vendor denying such purchase shall inform the person in writing of the reason for such denial. The valid identification card specified in paragraph (6) shall be carried on the person when carrying tear gas or tear gas weapons and shall be presented for examination to the vendor from whom any tear gas or tear gas weapons are purchased. The sale of tear gas or tear gas weapons by a vendor to a person who fails to present a valid identification card specified in paragraph (6) is a violation of Section 12420.

(8) Any person who has a valid identification card as specified in paragraph (6), who uses tear gas or tear gas weapons except in self-defense or as authorized for training purposes by the department is guilty of a public offense and is punishable by imprisonment in a state prison for 16 months, or two or three years or in a county jail not to exceed one year or by fine not to exceed one thousand dollars ($1,000) or by both such fine and imprisonment.

(b) Such identification card as specified in paragraph (6) of subdivision (a) shall be valid so long as the person meets the requirements in subdivision (a), and shall be nontransferable.

All forms, cards, and other documentation necessary to administer the provisions of this section shall be uniform throughout the state as prescribed by the Department of Justice.

The Department of Justice may adopt and promulgate such regulations concerning the purchase and disposal of self-defense tear gas weapons, the standards for tear gas training courses, and the

approval of facilities at which such training shall occur as are necessary to insure the safe use and possession of such tear gas weapons.

(c) Any person who successfully completes training under this section for which the course and training facility must be approved by the Department of Justice is entitled to receive a certificate of completion issued by the Department of Justice. A fee shall be charged by the Department of Justice for the certificate. The fee shall be no more than is necessary to reimburse the Department of Justice for the costs of approving the courses, the facilities, maintaining control of the quality of the courses, and issuing the certificate of completion. The Department of Justice may provide by regulation the manner in which the fee is collected and paid.

SEC. 4. Section 22659 is added to the Vehicle Code, to read:

22659. Any officer of the California State Police or any person duly authorized by the state agency in possession of property owned by the state, or rented or leased from others by the state and any officer of the California State Police providing policing services to property of a district agricultural association may, subsequent to giving notice to the city police or county sheriff, whichever is appropriate, cause the removal of a vehicle from such property to the nearest public garage, under any of the following circumstances:

(a) When the vehicle is illegally parked in locations where signs are posted giving notice of violation and removal.

(b) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is by this code or other law required to take the person arrested before a magistrate without unnecessary delay.

(c) When any vehicle is found upon such property and report has previously been made that the vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When the person or persons in charge of a vehicle upon such property are by reason of physical injuries or illness incapacitated to such an extent as to be unable to provide for its custody or removal.

The person causing removal of such vehicle shall comply with the requirements of Sections 22852 and 22853 relating to notice.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The powers granted in this bill are essential to enable peace officers to perform their function of protecting public safety. It is therefore necessary that this act go into immediate effect.

O

Senate Bill No. 149

CHAPTER 28

An act to amend Sections 853.6, 853.6a, and 853.9 of the Penal Code, relating to prosecution of crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 7, 1981. Filed with Secretary of State May 8, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 149, Rains. Prosecutions.

Under existing law, with respect to certain misdemeanor prosecutions and certain prosecutions of persons under the age of 18, the arresting officer files a copy of a written notice to appear in court or juvenile court with the prosecuting attorney. The prosecuting attorney may initiate prosecution by filing the notice or formal complaint with the magistrate within 5 days of the arrest, or with respect to juvenile court by filing a notice of a formal petition with the clerk or other officer of the juvenile court.

This bill would provide that the arresting officer shall file the duplicate notice with the magistrate or officer of the juvenile court where the offense is an infraction or where the officer has been so directed by the prosecuting attorney, and in other cases it would be filed with the prosecuting attorney. It would also provide that where the duplicate notice is filed with the prosecuting attorney, the prosecuting attorney may initiate prosecution by filing the notice or a complaint with the magistrate within 25 days of the arrest. If the notice or complaint is not filed within 25 days, further prosecution of the misdemeanor charged in the notice to appear would be barred. The bill would provide for the issuance of a notice to appear before the juvenile court or specified officers where the offense is driving a vehicle upon the real property of another and the person arrested appears to be a minor. The bill would make related changes.

The bill would also specify that neither the bill nor Chapter 1094 of the Statutes of 1980 is intended to affect provisions of the Vehicle Code governing a written notice to appear.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor and does not demand to be taken before a magistrate, such person may, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the arresting officer or his or her superior determines

that the person should be released, such officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court. If the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, such officer or superior shall prepare such written notice to appear in a court.

(b) Unless waived by the person, the time specified in the notice to appear must be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate, and at least 30 days after arrest if the duplicate notice is to be filed by the officer with the prosecuting attorney.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his or her written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified therein within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of arrest shall bar further prosecution of the misdemeanor charged in the notice to appear.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail which in his or her judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him or her

in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his or her discretion order that no further proceedings shall be had in such case, unless the defendant has been charged with violation of Section 374b or 374e of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of such section or punishable under such section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he or she has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer shall indicate on the notice to appear whether he or she desires the arrested person to be booked as defined in subdivision 21 of Section 7 of this code. In such event, the magistrate shall, before the proceedings are finally concluded, order the defendant to be booked by the arresting agency.

(h) A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking the arresting officer, the officer in charge of such booking or his or her superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he or she should be released pursuant to the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his or her release pursuant to the provisions of this chapter.

(j) Whenever any person is arrested by a peace officer for a misdemeanor, other than an offense described in subdivision (b) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code, and is not released with a written notice to appear in court pursuant to this chapter, the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for such nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested for one or more of the offenses listed in Section 40302 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) Any other reason, which shall be specifically stated on the form by the arresting officer.

Such form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her for custody before trial.

SEC. 2. Section 853.6a of the Penal Code is amended to read:

853.6a. If the person arrested appears to be under the age of 18 years, and the arrest is for a violation of the Fish and Game Code not declared to be a felony, or a violation of subdivision (m) of Section 602, the notice under Section 853.6 shall instead provide that such person shall appear before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, and the officer shall instead, as soon as practicable, file the duplicate notice with the prosecuting attorney unless the prosecuting attorney directs the officer to file the duplicate notice with the clerk of the juvenile court, the juvenile court referee, or the juvenile traffic hearing officer. If the notice is filed with the prosecuting attorney, within 48 hours before the date specified on the notice to appear, the prosecutor, within his or her discretion, may initiate proceedings by

filing the notice or a formal petition with the clerk of the juvenile court, or the juvenile court referee or juvenile traffic hearing officer, before whom the person is required to appear by the notice.

SEC. 3. Section 853.9 of the Penal Code is amended to read:

853.9. (a) Whenever written notice to appear has been prepared, delivered, and filed by an officer or the prosecuting attorney with the court pursuant to the provisions of Section 853.6 of this code, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "guilty" or "nolo contendere."

If, however, the defendant violates his or her promise to appear in court, or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed.

SEC. 4. Neither this bill nor Chapter 1094 of the 1980 Statutes is intended to affect procedures governing a written notice to appear which are set forth in the Vehicle Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Some counties are unable to comply with the provisions of Chapter 1094 of the Statutes of 1980 because of a lack of funding for staff.

O

Senate Bill No. 153

CHAPTER 273

An act to add Chapter 12 (commencing with Section 7100) to Title 7 of Part 3 of the Penal Code, relating to providing for the preparation, issuance, and sale of bonds of the State of California to create a fund for construction of state prisons; and providing for the submission of the measure to a vote of the people; and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1981. Filed with Secretary of State August 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 153, Presley. Correctional facilities; bonds.

This bill would enact the New Prison Construction Bond Act of 1981, which, if adopted would authorize the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of $495,000,000 for the construction, renovation, remodeling and deferred maintenance of state correctional facilities.

The bill would provide for the submission of the bond act to the voters and the provisions concerning bonds would take effect upon adoption by the voters.

The provisions of the bill relating to the submission of the bond act to the voters would take effect immediately.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12 (commencing with Section 7100) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 12. NEW PRISON CONSTRUCTION BOND ACT OF 1981

7100. This chapter shall be known and may be cited as the New Prison Construction Bond Act of 1981.

7101. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of the bonds shall not exceed 20 years from the date of each respective series. The maturity of each respective series shall be calculated from the date of such series.

7102. There is in the State Treasury the New Prison Construction Fund, which fund is hereby created.

7103. The New Prison Construction Committee is hereby

created. The committee shall consist of the Controller, the State Treasurer, and the Director of Finance. Such committee shall be the "committee," as that term is used in the State General Obligation Bond Law.

7104. The committee is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate of four hundred ninety-five million dollars ($495,000,000), in the manner provided in this chapter. Such debt or debts, liability or liabilities, shall be created for the purpose of providing the fund to be used for the object and work specified in Section 7106.

7105. The committee may determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter, and if so, the amount of bonds then to be issued and sold. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

7106. The moneys in the fund shall be used for the construction, renovation, remodeling, and deferred maintenance of state correctional facilities.

7107. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on such bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of such revenue to do and perform each and every act which shall be necessary to collect such additional sum.

All money deposited in the fund which has been derived from premium and accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

All money deposited in the fund pursuant to any provision of law requiring repayments to the state which are financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund such money shall be applied as a reimbursement to the General Fund on account of principal and interest on the bonds which has been paid from the General Fund.

7108. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the

provisions of this chapter.

(b) Such sum as is necessary to carry out the provisions of Section 7109, which sum is appropriated without regard to fiscal years.

7109. For the purpose of carrying out the provisions of this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the committee in accordance with this chapter. Any money made available under this section to the board shall be returned by the board to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this chapter. Such withdrawals from the General Fund shall be returned to the General Fund with interest at the rate which would otherwise have been earned by those sums in the Pooled Money Investment Fund.

7110. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 7106 but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as herein provided.

7111. Money in the fund may only be expended for projects specified in this chapter pursuant to appropriations by the Legislature.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the people of California of the New Prison Construction Bond Act of 1981, as set forth in Section 1 of this act.

SEC. 3. Except as otherwise provided in this act, all of the provisions of law relating to the submission of measures and bond acts proposed by the Legislature shall apply to the measure submitted pursuant to this act.

SEC. 4. Notwithstanding any provision of law including Section 3525 of the Elections Code, Section 1 of this act shall be submitted to the voters at the next statewide election, pursuant to provisions of the Elections Code governing submission of statewide measures to the voters at a statewide election.

SEC. 5. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "For the New Prison Construction Bond Act of 1981" and in the same square under those words, the following in eight-point type: "This act provides for a bond issue of four hundred ninety-five million dollars ($495,000,000) to be used for the construction of the state prisons." In the square immediately below the square containing such words, there shall be printed on the ballot the words, "Against the New Prison Construction Bond Act of 1981," and in the same square immediately below those words, in eight-point type: "This act provides for a bond issue of four hundred ninety-five

million dollars ($495,000,000) to be used for the construction of the state prisons. Opposite the words "For the New Prison Construction Bond Act of 1981" and "Against the New Prison Construction Bond Act of 1981," there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act. Where the voting of the election is done by means of voting machines used pursuant to law in such manner as to carry out the intent of this section, such use of such voting machines and the expression of the voters' choice by means thereof, shall be deemed to comply with the provisions of this section. The Governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for the election.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the people may consider the New Prison Construction Bond Act of 1981 at the earliest possible time, it is necessary that this act take effect immediately.

O

Senate Bill No. 166

CHAPTER 283

An act to repeal and add Section 1203.05 of the Penal Code, relating to probation.

[Approved by Governor August 28, 1981. Filed with Secretary of State August 31, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 166, Holmdahl. Probation.

Existing law provides for public and other inspection of probation officer reports as specified. New reports are available until 30 days after judgment is pronounced or probation is granted, while reports from a previous arrest are available until final disposition of the case after an accusatory pleading is filed.

This bill would generally recast such provisions. The bill would specify that new reports are available from the date judgment is pronounced or probation is granted, and that previous reports are available until 60 days after judgment or the granting of probation as in the case of new reports.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.05 of the Penal Code is repealed.

SEC. 2. Section 1203.05 is added to the Penal Code, to read:

1203.05. Any report of the probation officer filed with the court, including any report arising out of a previous arrest of the person who is the subject of the report, may be inspected or copied only as follows:

(a) By any person, from the date judgment is pronounced or probation granted or, in the case of a report arising out of a previous arrest, from the date the subsequent accusatory pleading is filed, to and including 60 days from the date judgment is pronounced or probation is granted, whichever is earlier.

(b) By any person, at any time, by order of the court, upon filing a petition therefor by such person.

(c) By the general public, if the court upon its own motion orders that a report or reports shall be open or that the contents of the report or reports shall be disclosed.

(d) By any person authorized or required by law to inspect or receive copies of the report.

O

Senate Bill No. 169

CHAPTER 114

An act to amend Section 830.4 of the Penal Code, relating to peace officers.

[Approved by Governor June 29, 1981. Filed with Secretary of State June 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 169, Russell. Peace officers: airport officers.

Existing law provides that any person regularly employed as an airport officer by the city or county operating the airport is a peace officer with specified duties and powers.

This bill would provide that any person regularly employed as an airport law enforcement officer by a county, city, district, or joint powers agency operating an airport is a peace officer.

This bill would express the intent of the Legislature to not affect laws relating to employee benefits.

The people of the State of California do enact as follows:

SECTION 1. Section 830.4 of the Penal Code is amended to read:

830.4. The following persons are peace officers while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them. Such officers shall also have the authority of peace officers anywhere in the state as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of such officer or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense. Such peace officers may carry firearms only if authorized by and under such terms and conditions as are specified by their employing agency:

(a) Security officers of the California State Police Division.

(b) The Sergeant at Arms of each house of the Legislature.

(c) Bailiffs of the Supreme Court and of the courts of appeal.

(d) Guards and messengers of the Treasurer's office.

(e) Officers designated by the hospital administrator of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services pursuant to Section 4313 or 4493 of the Welfare and Institutions Code.

(f) Any railroad policeman commissioned by the Governor

pursuant to Section 8226 of the Public Utilities Code.

(g) Persons employed as members of a security department of a school district pursuant to Section 39670 of the Education Code.

(h) Security officers of the County of Los Angeles.

(i) Housing authority patrol officers employed by the housing authority of a city, district, county, or city and county.

(j) Transit police officers of a county, city, or district.

(k) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500), Chapter 5, Division 7, Title 1 of the Government Code, operating the airport.

SEC. 2. It is the intent of the Legislature that the changes effected by this act shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties, and that there be no change in the status of individual peace officers or classes of peace officers for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

O

Senate Bill No. 176

CHAPTER 540

An act to amend Sections 14155, 14254.5, and 14255 of the Government Code, to amend Sections 1203.06 and 2709 of, and to add Chapter 11 (commencing with Section 7000) to Title 7 of Part 3 of, the Penal Code, to amend Sections 1124, 3050, 3051, 3052, 3109, and 3201 of the Welfare and Institutions Code, and to amend Items 524-301-001 to 524-301-189, inclusive, of the Budget Act of 1981 (Chapter 99 of the Statutes of 1981) as amended by Chapter 169 of the Statutes of 1981, relating to correctional, treatment, or rehabilitation facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1981. Filed with Secretary of State September 17, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 176, Presley. Correction, commitment and treatment facilities: narcotic addicts.

(1) Under existing law, when a petition has been filed for commitment of a defendant convicted of any crime in a municipal or justice court to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility, he or she must be examined by 2 physicians.

This bill would, instead, authorize such examination to be conducted by 1 physician but would also require an examination by a second physician if the defendant so requests.

(2) This bill would also make corrective and conforming changes in legislation enacted in 1980 relating to narcotic addict commitment and treatment.

(3) Existing law contains provisions which make certain persons ineligible for probation or the suspension of sentence on the basis that the persons used or were armed with a firearm in the commission or attempted commission of certain crimes. Otherwise, existing law provides that civil commitment of these persons is not prohibited.

This bill would delete the civil commitment of persons who are narcotic addicts from the latter provisions.

(4) Existing law provides for investigation by the district attorney of suitability for commitment of persons to a narcotic addict treatment facility and recommendation to the court. Existing law also provides, as to persons convicted in a municipal or justice court, for commitment to a narcotic addict treatment facility of persons made ineligible by other provisions of law, upon the concurrence of the district attorney and the defendant.

This bill would delete these provisions.

(5) Existing law authorizes the criminal court to impose a period of parole on a convicted felon who has been returned to the court at the end of a period of confinement in a narcotic treatment facility.

This bill would require the committed felon to, instead, be released on parole under the supervision of the Narcotic Addict Evaluation Authority at the end of the confinement period.

(6) This bill would also authorize the Narcotic Addict Evaluation Authority to return to the custody at the California Rehabilitation Center parolees who violate the authority's rules or regulations or the conditions of parole.

(7) Existing law requires all articles, materials, and supplies produced or made by inmate labor in a prison work program shall be solely and exclusively for public use and not sold or furnished for private use or profit except that products and byproducts of agricultural and animal husbandry enterprises and automobiles and aircraft refurbished as byproducts of vocational training programs at specified institutions may be sold to private persons at private sale.

This bill instead would permit products and byproducts of agricultural and animal husbandry enterprises or of vocational training programs to be sold to private persons at public or private sale.

(8) Existing law permits institutions of the Department of the Youth Authority to manufacture supplies or furniture for their own use and to raise produce for their own use or use in other state institutions.

This bill would permit those institutions to manufacture, repair, and assemble products and raise produce which may also be sold to the public. Wards doing such work would be paid wages set by the Director of the Youth Authority.

(9) Under existing law, the planning and construction of state correctional facilities is generally done by the Department of General Services and the Office of the State Architect.

This bill would provide for the planning and construction of facilities pursuant to the master plan of the Department of Corrections to be done by the Department of Corrections, as specified.

(10) Existing law provides for, and limits, the construction of correctional facilities.

This bill would authorize the Department of Corrections to construct and establish correctional facilities in San Diego County.

The bill would delete from the Budget Act of 1981 the requirement that the design for the maximum security units at Tehachapi, and the initial facilities of other security levels, would be the prototype design for other facilities, as specified.

The bill would reappropriate the unencumbered balances of the appropriation contained in Chapter 789 of the Statutes of 1978 and would appropriate $25,000 from the General Fund to the Joint Rules Committee for the purpose of obtaining specified information on

housing of prisoners.

The bill would require reports from the Department of Corrections and the Legislative Analyst concerning the progress of adding beds to department facilities as specified.

The bill would take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 14155 of the Government Code is amended to read:

14155. "Department," as used in this article, means the Department of Transportation as to work within its jurisdiction, the Department of Water Resources as to work within its jurisdiction, the Department of Boating and Waterways as to any project under the jurisdiction of that department pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, and the Department of Corrections with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, and the Department of General Services with respect to the construction, alteration, repair, and improvement of state buildings.

SEC. 2. Section 14254.5 of the Government Code is amended to read:

14254.5. "Department," as used in this chapter, means (a) the Department of Water Resources as to any project under the jurisdiction of that department, (b) the Department of General Services as to any project under the jurisdiction of that department, (c) the Department of Boating and Waterways as to any project under the jurisdiction of that department pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, (d) the Department of Corrections with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, and (e) the Department of Transportation as to all other projects.

"Director," as used in this chapter, means the director of each department as defined herein respectively.

SEC. 3. Section 14255 of the Government Code is amended to read:

14255. Whenever provision is made by law for any project which is not under the jurisdiction of the Department of Water Resources, the Department of Boating and Waterways pursuant to Article 2.5 (commencing with Section 65) of Chapter 2 of Division 1 of the Harbors and Navigation Code, the Department of Corrections pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code, or the Department of General Services, the project shall be under the sole charge and direct control of the

Department of Transportation.

SEC. 4. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(i) Murder.

(ii) Assault with intent to commit murder, in violation of Section 217.

(iii) Robbery, in violation of Section 211.

(iv) Kidnapping, in violation of Section 207.

(v) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(vi) Burglary of the first degree, as defined in Section 460.

(vii) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(viii) Assault with intent to commit rape, the infamous crime against nature, or robbery, in violation of Section 220.

(ix) Escape, in violation of Section 4530 or 4532.

(2) Any person previously convicted of a felony specified in subparagraphs (i) through (ix) of paragraph (1), who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 5. Section 2709 of the Penal Code is amended to read:

2709. All articles, materials, and supplies, produced or manufactured under the provisions of this chapter shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this chapter shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever, except that any products and

byproducts of agricultural and animal husbandry enterprises or of prison vocational training programs may be sold to private persons, at public or private sale, under rules prescribed by the Director of General Services.

SEC. 6. Chapter 11 (commencing with Section 7000) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 11. MASTER PLAN CONSTRUCTION

7000. (a) The Department of Corrections shall prepare plans for, and construct facilities and renovations included within, its master plan for, which funds have been appropriated by the Legislature.

(b) "Master plan" means the department's "Facility Requirements Plan," dated April 7, 1980, and any subsequent revisions.

7001. Any power, function, or jurisdiction for planning or construction of facilities or renovations pursuant to the master plan which is conferred by statute upon the Department of General Services shall be deemed to be conferred upon the department.

7002. The department may transfer the responsibility for undertaking any aspect of the master plan to the Department of General Services or the Office of the State Architect which, upon such transfer, shall perform those functions with all deliberate speed.

7003. The department shall submit completed facility designs, proposed staffing patterns and proposed inmate work programs for the new maximum security units of Tehachapi and for all facilities included within its master plan, as defined in subdivision (b) of Section 7000, as soon as is practicable to the Judiciary Committee of the Senate and to the Criminal Justice Committee of the Assembly and the fiscal committees of the Senate and the Assembly for review and comment.

SEC. 7. Section 1124 of the Welfare and Institutions Code is amended to read:

1124. Each institution under this chapter may manufacture, repair, and assemble products or may raise produce, for use in the institution or in any other State institution or for sale to or pursuant to contract with the public. The primary purpose of all instruction, discipline and industries shall be to benefit the inmates of the several schools and to qualify them for honorable employment and good citizenship. Moneys received from sales or contracts made or entered into under this section shall be used first to defray the expenses of the industry, including wages paid to the wards working in the industry. The wages shall be set by the director. Moneys in excess of those used to support the industry shall be deposited in the "Benefit Fund" as defined in Section 1752.5.

SEC. 8. Section 3050 of the Welfare and Institutions Code is amended to read:

3050. Upon conviction of a defendant of any crime in a municipal

or justice court, or following revocation of probation previously granted, whether or not sentence has been imposed, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend the imposition or execution of the sentence, certify the defendant to the superior court and order the district attorney to file a petition for a commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

Upon the filing of such a petition, the superior court shall order the defendant to be examined by one physician. At the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the municipal or justice court which certified such defendant to the superior court for such further proceedings as the judge of such municipal or justice court deems warranted. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted thereto, and is not ineligible for the program under the application of Section 3052, he or she shall make an order committing such defendant to the custody of the Director of Corrections for confinement in the facility until such time as he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the municipal or justice court which certified the defendant to the superior court for such further proceedings as the judge of the municipal or justice court deems warranted.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may within 10 days after the making of such order, file a written demand for a jury trial in compliance with Section 3108.

SEC. 9. Section 3051 of the Welfare and Institutions Code is amended to read:

3051. Upon conviction of a defendant for any crime in any superior court, or following revocation of probation previously

granted, and upon imposition of sentence, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant's record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.

Upon the filing of such a petition, the court shall order the defendant to be examined by one physician; provided, that the examination may be waived by a defendant if the defendant has been examined in accordance with Section 1203.03 of the Penal Code and such examination encompassed whether defendant is addicted or is in imminent danger of addiction, and if the defendant is represented by counsel and competent to understand the effect of such waiver. At the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the department of the superior court which directed the filing of the petition for the ordering of the execution of the sentence. Such court may, unless otherwise prohibited by law, modify such sentence or suspend the imposition of such sentence. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted to narcotics, the judge shall make an order committing such person to the custody of the Director of Corrections for confinement in the facility until such time as he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the department of the superior court which directed the filing of the petition for the ordering of execution of sentence. Such court may, unless otherwise prohibited by law, modify such sentence or suspend the imposition of such sentence.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may within 10 days after the

making of such order file a written demand for a jury trial in compliance with Section 3108.

SEC. 10. Section 3052 of the Welfare and Institutions Code is amended to read:

3052. (a) Sections 3050 and 3051 shall not apply to any of the following:

(1) Persons convicted of any offense for which the provisions of Section 667.6 of the Penal Code apply, or any offense described in Chapter 1 (commencing with Section 450) of Title 13 of Part 1 of such code; or any person convicted of committing or attempting to commit any violent felony as defined in subdivision (c) of Section 667.5 of the Penal Code.

(2) Persons whose sentence is enhanced pursuant to subdivision (b) of Section 12022 of the Penal Code, or Section 12022.3, 12022.5, 12022.6, 12022.7, or 12022.8 of such code; or persons whose sentence is subject to the provisions of Section 3046 of the Penal Code; or persons whose conviction results in a sentence which, in the aggregate, exclusive of any credit that may be earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, exceeds six years' imprisonment in state prison; or persons found to come under the provisions of Section 1203.06 of the Penal Code.

(b) Notwithstanding the provisions of subdivision (a) of this section or Section 3053, the fact a person comes within Section 1203.07 of the Penal Code does not mean that he or she may not be committed and treated.

SEC. 11. Section 3109 of the Welfare and Institutions Code is amended to read:

3109. (a) If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that such person is not, because of excessive criminality or for other relevant reason, a fit subject for confinement or treatment in a facility of the Department of Corrections, the director may order such person discharged.

(b) A person committed pursuant to this article who is subsequently committed to the Director of Corrections pursuant to Section 1168 or 1170 of the Penal Code shall not be a fit subject for treatment pursuant to this article and shall be ordered discharged.

SEC. 12. Section 3201 of the Welfare and Institutions Code is amended to read:

3201. (a) Except as otherwise provided in subdivisions (b) and (c) of this section, if a person committed pursuant to this chapter has not been discharged from the program prior to expiration of 16 months, the Director of Corrections shall, on the expiration of such period, return him or her to the court from which he or she was committed, which court shall discharge him or her from the program and order him or her returned to the court in which criminal proceedings were adjourned, or the imposition of sentence

suspended, prior to his or her commitment or certification to the superior court.

(b) Any other provision of this chapter notwithstanding, in any case in which a person was committed pursuant to Article 3 (commencing with Section 3100), such person shall be discharged no later than 12 months after his or her commitment.

(c) Any person committed pursuant to Article 2 (commencing with Section 3050), whose execution of sentence in accordance with the provisions of Section 1170 of the Penal Code was suspended pending a commitment pursuant to Section 3051, who has spent, pursuant to this chapter, a period of time in confinement or in custody, excluding any time spent on outpatient status, equal to that which he or she would have otherwise spent in state prison had sentence been executed, including application of good behavior and participation credit provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, shall, upon reaching such accumulation of time, be released on parole under the jurisdiction of the Narcotic Addict Evaluation Authority subject to all of the conditions imposed by the authority and subject to the provisions of Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. A person on parole who violates the rules, regulations or conditions imposed by the authority shall be subject to being retaken and returned to the California Rehabilitation Center as prescribed in such rules, regulations, or conditions and in accordance with the provisions of Sections 3151 and 3152. At the termination of this period of parole supervision or of custody in the California Rehabilitation Center, the person shall be returned by the Director of Corrections to the court from which such person was committed, which court shall discharge him or her from the program and order him or her returned to the court which suspended execution of such person's sentence to state prison. Such court, notwithstanding any other provision of law, shall suspend or terminate further proceedings in the interest of justice, modify the sentence in the same manner as if the commitment had been recalled pursuant to subdivision (d) of Section 1170 of the Penal Code, or order execution of the suspended sentence. Upon the ordering of the execution of such sentence, the term imposed shall be deemed to have been served in full.

Except as otherwise provided in the preceding paragraph, or as otherwise provided in Section 3200, the period of commitment, including outpatient status, for persons committed pursuant to Section 3051, which commitment is subsequent to a criminal conviction for which execution of sentence to state prison is suspended, shall equal the term imposed under Section 1170 of the Penal Code, notwithstanding good time and participation credit provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of such code. Upon reaching such period of time, such person shall be released on parole under the jurisdiction of the

Narcotic Addict Evaluation Authority subject to all of the conditions imposed by the authority and subject to the provisions of Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. A person on parole who violates the rules, regulations, or conditions imposed by the authority shall be subject to being retaken and returned to the California Rehabilitation Center as prescribed in such rules, regulations, or conditions and in accordance with the provisions of Sections 3151 and 3152. At the termination of this period of parole supervision or of custody in the California Rehabilitation Center the person shall be returned by the Director of Corrections to the court from which he or she was committed, which court shall discharge such person from the program and order him or her returned to the court which suspended execution of the person's sentence to state prison. Such court, notwithstanding any other provision of law, shall suspend or terminate further proceedings in the interest of justice, modify the sentence in the same manner as if the commitment had been recalled pursuant to subdivision (d) of Section 1170 of the Penal Code, or order execution of the suspended sentence. Upon the ordering of the execution of such sentence, the term imposed shall be deemed to have been served in full.

Nothing in this section shall preclude a person who has been discharged from the program from being recommitted under the program, irrespective of the periods of time of any previous commitments.

SEC. 13. The Department of Corrections is authorized to:

(a) Construct and establish three work-based medium security institutions, together with a service facility of lesser security with a capacity not in excess of 200 inmates, in San Diego County.

(b) Plan, including architectural programming, master planning and schematics, security institutions and services facilities at sites which the department may designate using funds appropriated by subdivision (c) of Item 524-301-001 of the Budget Act of 1981 and Chapter 1135 of the Statutes of 1979 notwithstanding any other provision of law.

SEC. 14. Section 17 of Chapter 169 of the Statutes of 1981 is amended to read:

Sec. 17. Items 524-301-001 to 524-301-189, inclusive, of the Budget Act of 1981 (Chapter 99, Statutes of 1981) and the provisions applicable thereto, are amended to read:

524-301-001—For capital outlay, Department of Corrections, for construction of new facilities, statewide 24,953,000

Schedule:

(a) Southern Maximum Security Complex—Tehachapi—Partial working drawings, preliminary site work, utilities and partial con-

struction for one 500-bed unit (Unit IV A) 15,289,000

(1) Construct site development and utilities 1,650,000

(2) Unit IV A—construction (partial) 13,639,000

Provided, that notwithstanding any other provisions of law, the Department of Corrections is hereby authorized to award the construction contract for the total project with the understanding of the parties that the remaining funds required to complete the unit will be made available during the 1982–83 fiscal year.

Provided further, that in the course of designing the prepared new facilities at Tehachapi, the Department of Corrections shall identify project elements which may be deleted or downgraded to reduce project costs; these elements shall be submitted to the chairmen of the fiscal committees and the Chairman of the Joint Legislative Budget Committee by March 1, 1982, for review prior to legislative hearings on the 1982–83 Budget Bill. If the Legislature deletes or downgrades any project element during its review of the funds requested for the second 500-bed unit at Tehachapi, the department shall consider it legislative intent that these elements also be deleted from the project funded under this item.

(b) San Diego County—Medium security units and minimum security service unit-Site study and environmental study and site acquisition 5,200,000

Provided, that prior to expenditure of funds appropriated in category (b) of Item 524-301-001, the Department of Corrections, in consultation with state and local agencies, shall study and evaluate alternative sites in San Diego County for new correctional facilities. Upon completion of the studies and appropriate administrative reviews, the department shall on or before September 1, 1981, submit to the appropriate policy committee in each house, the appropriate subcommittee of each fiscal committee, and the Joint Legislative Budget Committee a site selection report for the

project. The report shall address mutually agreeable alternative sites recommended by the department in priority order.

The Legislature hereby expresses the legislative intent that prior to September 1, 1981, it would not favorably view the development of the existing state-owned site for a correctional facility. Further, it is the legislative intent that a proposal to develop an alternative site would receive strong preference by the Legislature.

Further, the department, in consultation with state and local agencies, shall include in the report a recommendation on the use of the existing state-owned property. If the final report to the specified legislative committees proposes construction of new correctional facilities on existing state-owned property, funds appropriated in category (b) may be used for site studies and environmental studies, architectural programming, master planning and schematics. Provided further, that an amount not to exceed $2,664,000 may be expended for site studies and environmental studies, architectural programming, master planning and schematics. The Director of Finance shall initiate an executive order to revert any funds in category (b) not required for site studies and environmental studies, architectural programming, master planning and schematics.

Should the final report indicate that funds related to the existing state-owned property are not required, then the department is authorized to select another site (unspecified) in southern California. Provided, that an amount not to exceed $5,200,000 may be expended for site acquisition and site study and environmental study related to a new site.

Provided further, that none of the funds appropriated in category (b) shall be allocated until the specified legislative committees have been provided a 30-day review of the department's alternative sites and state-owned site report.

Provided further, that the State Public Works Board shall not select or authorize negotiations for acquisition of a site funded under category (b), until such site is author-

ized by the Legislature.

Provided further, it is legislative intent that the state and local agencies work cooperatively and expeditiously to identify a mutually agreeable site.

The Legislature hereby expresses the legislative intent that if the state-owned property is not approved for the new correctional facility, the property will be declared surplus and all proceeds from the sale of the state-owned property will be made available for appropriation to the Department of Corrections for its prison capital outlay program.

(c) Folsom—Maximum security units and minimum security service unit—Architectural programming, master planning, and schematics 2,464,000

(d) Various—Acquisition and construction of temporary housing units 2,000,000

524-301-036—For capital outlay, Department of Corrections, payable from Special Account for Capital Outlay 7,159,100

Schedule:

California State Prison at Folsom:

(a) Construct Security Housing Unit, #1 Building—preliminary plans, working drawings, and construction 647,000

Deuel Vocational Institution:

(c) Remodel locking devices—preliminary plans and working drawings 125,200

(d) Construct milk processing facility —preliminary plans and working drawings 52,500

Correctional Training Facility:

(f) Construct visiting room—North facility—preliminary plans, working drawings and construction 493,400

California Correctional Center:

(i) Install emergency generator—preliminary plans, working drawings, and construction 241,550

(j) Increase electrical power—preliminary plans, working drawings, and construction 188,550

San Quentin State Prison:		
(k) Waste water treatment facilities—construction	150,000	
(*l*) Convert East block to MCU—preliminary plans, working drawings and construction	1,391,100	
(m) Construct condemned row exercise yard—preliminary plans, working drawings and construction	141,300	
(n) Hospital licensing standards—preliminary plans, working drawings, and construction	252,800	
(p) Construct family visiting units—preliminary plans, working drawings, and construction	266,100	
California Mens Colony:		
(q) Rebuild cell locking mechanism—Segregation—preliminary plans, working drawings, and construction	228,200	
(r) Fire and life safety structural improvements—preliminary plans and working drawings	74,800	
California Institution for Men:		
(u) Improve outside security—preliminary plans, working drawings, and construction	349,100	
(w) Construct milk processing facility—preliminary plans, working drawings, and construction	900,000	
(x) Minor capital outlay Statewide	849,900	
California Rehabilitation Center:		
(z) Fire and life safety structural improvements—buildings 103 and 104—construction	776,100	
Correctional Training Facility:		
(aa) Central and North—replace perimeter lighting—preliminary plans and working drawings	31,600	
524-301-189—For capital outlay, Department of Corrections, payable from the Energy Account, Energy and Resources Fund		2,494,700
Schedule:		
(a) Deuel Vocational Institution—cogeneration feasibility study	20,000	
(b) Deuel Vocational Institution—replace fuel burners—preliminary		

plans and working drawings 19,500
(c) Correctional Training Facility—cogeneration system—preliminary plans and working drawings 200,200
(d) Correctional Training Facility—replace main gas lines—preliminary plans, working drawings, and construction 233,100
(e) California Correctional Center—construct direct heat geothermal system—preliminary plans, working drawings, and construction 1,463,700
(f) Sierra Conservation Center—cogeneration feasibility study 20,000
(g) California Mens Colony—install boiler heat recovery system—preliminary plans, working drawings, and construction 318,000
(h) California Mens Colony—cogeneration feasibility study 20,000
(i) California Institution for Men—cogeneration system—preliminary plans and working drawings 200,200

Provisions applicable to Item 524-301-001 through 524-301-189:—for capital outlay, Department of Corrections

1. Provided that funds appropriated pursuant to category (aa) of Item 524-301-036 and category (d) of Item 524-301-189 shall be available for transfer to Item 524-001-001 to be expended as special repairs projects. The Department of Corrections shall expedite the design and construction of new correctional facilities and shall consider implementation of new design and construction techniques, such as fast-track construction and bid packages, to expedite the projects.
3. Prior to expenditure of any funds appropriated under category (x) of Item 524-301-036 for personal alarm systems, the Department of Finance shall first approve the department's plan for installation of these systems.
4. None of the funds appropriated in categories (b) and (g) of Item 524-301-189 may be expended if it is determined that a cogeneration facility is feasible at these institutions which will reduce or negate savings anticipated under the project funded in these appropriations. Prior to the ex-

penditure of construction funds appropriated in category (e) of Item 524-301-189, the Department of Finance shall submit a cost/benefit analysis for the proposed project, based on a finalized agreement for the purchase of geothermal energy from the City of Susanville, to the chairman of the fiscal committees and the Chairman of the Joint Legislative Budget Committee.

6. Provided, that the funds appropriated in Item 524-301-036, projects (d) and (w), are a loan to Correctional Industries and repayment shall be made from funds available in the Correctional Industries Revolving Fund. Payments on the loan shall be on an annual basis over a 20-year period with interest at the current rate earned on money deposited in the Pooled Money Investment Account.
7. Provided, that if legislation is enacted during the 1981–82 fiscal year which establishes a bond fund or other special fund for the construction, renovation, or replacement of correctional institutions, the amounts appropriated in this act for site and environmental study, architectural programming, master planning, schematics, site acquisition, or construction of any correctional facility shall be deemed a loan from the General Fund and shall be repaid from funds made available by that legislation if that legislation so provides.

SEC. 15. Notwithstanding any other provisions of law, the unencumbered balances, on the effective date of this act, of the appropriation contained in Chapter 789 of the Statutes of 1978, are reappropriated for the purposes provided for in that appropriation, and shall be available for expenditure until June 30, 1984.

SEC. 16. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Joint Rules Committee of the California Legislature for the purpose of obtaining updated information on population projections and the Department of Corrections classification system for the Report on Alternative Methods of Housing Convicted Felons submitted to the Joint Rules Committee in May 1980.

SEC. 17. (a) The Department of Corrections shall submit quarterly reports to the Legislature commencing March 31, 1982 to the Senate Judiciary and Finance Committees and the Assembly Criminal Justice and Ways and Means Committees on the progress of efforts to add lower security beds to facilities and camps under the

jurisdiction of the department, the times and locations such beds are scheduled to be added, and any reasons for delay.

(b) The Legislative Analyst shall report to the Senate Judiciary and Finance Committees and Assembly Criminal Justice and Ways and Means Committees annually and during budget hearings on the progress of the Department of Corrections to add lower security beds to facilities and camps and reasons for delay. The reports shall include comments on the sites, beds, and schedules identified by the department in its report on the expansion of the camp program as required in supplemental language of the 1980 Budget Act.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Department of Corrections estimates that by 1985 the current capacity of the state prisons to house inmates will have been exceeded. To avoid or minimize serious overcrowding, as well as to rectify unsafe conditions in existing state prisons, it is necessary that this act take effect immediately. Furthermore, in order to implement at the earliest possible time the changes made by this act in the civil commitment and parole of narcotic addicts convicted of a crime, it is necessary that this act take effect immediately.

O

Senate Bill No. 181

CHAPTER 678

An act to amend Sections 241 and 243 of the Penal Code, relating to assault and battery.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 181, Beverly. Assault and battery.

Existing law provides misdemeanor punishment for assault or battery generally, but an increased penalty for assault, and alternative felony-misdemeanor punishment for battery, is authorized where the victim is a peace officer or fireman or any person who is inflicted with great bodily injury.

This bill would authorize such increased penalty for assault and alternative felony-misdemeanor punishment for battery where the victim is an emergency medical technician, mobile intensive care paramedic, nurse, or physician, as specified.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 241 of the Penal Code is amended to read:

241. (a) An assault is punishable by a fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When an assault is committed against the person of a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by

imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) As used in this section:

(1) Peace officer means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" refers to those persons who meet the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) When a battery is committed against a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on such victim, the battery is punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious

bodily injury is inflicted on the person, the battery is punishable by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 193

CHAPTER 115

An act to repeal and add Section 1700 of the Welfare and Institutions Code, relating to the California Youth Authority.

[Approved by Governor June 29, 1981. Filed with Secretary of State June 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 193, Presley. California Youth Authority.

Existing law provides that the purpose of the provisions of law establishing the California Youth Authority is to "protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses."

This bill would repeal this statement of purpose and provide instead that the purpose of the provisions is to "protect society from the consequences of criminal activity and to such purpose training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

The people of the State of California do enact as follows:

SECTION 1. Section 1700 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 1700 is added to the Welfare and Institutions Code, to read:

1700. The purpose of this chapter is to protect society from the consequences of criminal activity and to such purpose training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.

O

Senate Bill No. 201

CHAPTER 710

An act to amend Section 13510 of, and to add Section 13524 to, the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 201, Richardson. Peace officers: inspectors and investigators.

Existing law requires the Commission on Peace Officer Standards and Training to adopt minimum standards for the recruitment and training of peace officer members of certain local agencies.

This bill would require the adoption of such standards by the commission for regularly employed and paid inspectors and investigators of a district attorney's office, as defined, who conduct criminal investigations and would require any county wishing to receive aid for the training of such inspectors and investigators to make application to the commission.

This bill also makes additional changes proposed by SB 210, to be operative only if SB 210 and this bill are both chaptered and become effective on January 1, 1982, and this bill is chaptered after SB 210.

Appropriation: yes.

The people of the State of California do enact as follows:

operative section

SECTION 1. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined

in Section 830.1 who conduct criminal investigations, and peace officer members of a district which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards, to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) Nothing in this section shall prohibit a local law enforcement agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 2. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, and peace officer members of a district which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards, to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research

shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) Nothing in this section shall prohibit a local law enforcement agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 3. Section 13524 is added to the Penal Code, to read:

13524. Any county wishing to receive state aid pursuant to this chapter for the training of regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1 who conduct criminal investigations, shall include such request for aid in its application to the commission pursuant to Sections 13522 and 13523.

SEC. 4. It is the intent of the Legislature, if this bill and Senate Bill 210 are both chaptered and become effective January 1, 1982, both bills amend Section 13510 of the Penal Code, and this bill is chaptered after Senate Bill 210, that the amendments to Section 13510 proposed by both bills be given effect and incorporated in Section 13510 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Senate Bill 210 are both chaptered and become effective January 1, 1982, both amend Section 13510, and this bill is chaptered after Senate Bill 210, in which case Section 1 of this act shall not become operative.

O

Senate Bill No. 209

CHAPTER 895

An act to amend Section 800 of the Penal Code, relating to commencing of criminal actions.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 209, Marks. Commencing of criminal actions: rape.

Existing law provides that the prosecution of felonies, other than murder, embezzlement of public moneys, kidnapping for ransom, and falsification of public records, must be commenced within specified times.

Prosecutions for rape, rape in concert with another person, sodomy, oral copulation, and penetration of anal or genital openings with a foreign object against the victim's will must be commenced within 3 years of their commission. Prosecutions for lewd and lascivious acts upon the body of a child under 14 must be commenced within 5 years after their commission.

This bill would provide that a prosecution for rape, rape in concert with another person, specified offenses of sodomy or oral copulation, penetration of anal or genital openings with a foreign object against the victim's will, or lewd and lascivious acts upon the body of a child under 14 must be commenced within 6 years of their commission.

The bill would become operative only if SB 276 and AB 303 are chaptered on or before January 1, 1982, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Penal Code is amended to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286 or subdivision (c), (d), or (f) of Section 288a, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f), of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information

filed, or case certified to the superior court within six years after its commission.

(c) An indictment for grand theft, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery.

SEC. 2. Section 1 of this act shall become operative only if both Senate Bill No. 276 and Assembly Bill No. 303 are chaptered on or before January 1, 1982, and amend Section 800 of the Penal Code in the form set forth in Section 1 of this act.

O

Senate Bill No. 210

CHAPTER 966

An act to amend Section 1464, as amended by Section 7 of Chapter 166 of the Statutes of 1981, to amend Section 13510 of, to amend and repeal Section 1464, as amended by Section 8 of Chapter 166 of the Statutes of 1981, and to add Section 1464 to, the Penal Code, relating to training, and making an appropriation therefor.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 210, Presley. Peace officer training: penalty assessments.

(1) Existing law imposes certain penalty assessments on fines, penalties, and bail forfeitures which are deposited in the Assessment Fund in the State Treasury and then transferred to various funds each month. Until July 1, 1982, 24.17% of the Assessment Fund is transferred to the Peace Officers' Training Fund and 40.69% to the Driver Training Penalty Assessment Fund for reimbursement of the General Fund, as specified. After July 1, 1982, 24.17% is transferred to the Peace Officers' Training Fund and 50.83% is transferred to the Driver Training Penalty Assessment Fund for that reimbursement.

This bill would increase the percentage transferred to the Peace Officers' Training Fund to 30.83% until January 1, 1986, with corresponding reduction in the amount transferred to the Driver Training Penalty Assessment Fund.

(2) Existing law requires the Commission on Peace Officer Standards and Training to establish and enforce minimum standards relating to peace officer members of specified entities.

This bill would add marshals and deputy marshals of a municipal court to the specified peace officers for those purposes.

(3) The bill would make an appropriation by increasing the allocation to the Peace Officers' Training Fund, a continuously appropriated fund, and expanding the purpose for which those funds may be expended.

(4) The bill also makes additional changes proposed by Senate Bill 201, to be operative only if Senate Bill 201 and this bill are both chaptered and become effective on January 1, 1982, and this bill is chaptered after Senate Bill 201.

The bill also makes additional changes in Section 1464 of the Penal Code proposed by Assembly Bill 1297, to be operative only if Assembly Bill 1297 and this bill are both chaptered and become effective on January 1, 1982, and this bill is chaptered after Assembly Bill 1297.

Appropriation: yes.

The people of the State of California do enact as follows:

operative section

SECTION 1. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the

provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall remain in effect only until July 1, 1982, and as of that date is repealed.

Not operative section

SEC. 1.5. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

operative section

SEC. 2. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount

to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on July 1, 1982, and shall remain in effect only until January 1, 1986, and as of that date is repealed.

Not operative section

SEC. 2.5. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or

registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1983, and shall remain in effect only until January 1, 1986, and as of that date is repealed.

SEC. 3. Section 1464 is added to the Penal Code, to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians, or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the

provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1986.

not operative section

SEC. 4. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, and peace officer members of a district which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards, to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) Nothing in this section shall prohibit a local law enforcement agency from establishing selection and training standards which exceed the minimum standards established by the commission.

operative section

SEC. 5. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards

relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, and peace officer members of a district which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1, of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards, to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) Nothing in this section shall prohibit a local law enforcement agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 5.5. It is the intent of the Legislature, if this bill and Assembly Bill 1297 are both chaptered and become effective January 1, 1982, both bills amend Section 1464 of the Penal Code, and this bill is chaptered after Assembly Bill 1297, that the amendments to Section 1464 proposed by both bills be given effect and incorporated in Section 1464 in the form set forth in Sections 1.5 and 2.5 of this act. Therefore, Sections 1.5 and 2.5 of this act shall become operative only if this bill and Assembly Bill 1297 are both chaptered and become effective January 1, 1982, both amend Section 1464, and this bill is chaptered after Assembly Bill 1297, in which case Sections 1 and 2 of this act shall not become operative.

SEC. 6. It is the intent of the Legislature, if this bill and Senate Bill 201 are both chaptered and become effective January 1, 1982, both bills amend Section 13510 of the Penal Code, and this bill is

chaptered after Senate Bill 201, that the amendments to Section 13510 proposed by both bills be given effect and incorporated in Section 13510 in the form set forth in Section 5 of this act. Therefore, Section 5 of this act shall become operative only if this bill and Senate Bill 201 are both chaptered and become effective January 1, 1982, both amend Section 13510, and this bill is chaptered after Senate Bill 201, in which case Section 4 of this act shall not become operative.

O

Senate Bill No. 262

CHAPTER 839

An act to amend Section 777 of the Welfare and Institutions Code, relating to juvenile offenders.

[Approved by Governor September 26, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 262, Robbins. Juvenile offenders.

Existing law requires a supplemental petition and hearing for the commitment of a juvenile offender who violates a condition of probation after stay of an order imposing time in custody.

This bill would delete the requirement for the supplemental petition and hearing in specified cases.

The people of the State of California do enact as follows:

SECTION 1. Section 777 of the Welfare and Institutions Code is amended to read:

777. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer, where a minor has been declared a ward of the court under Section 601, and by the prosecuting attorney at the request of the probation officer where a minor has been declared a ward under Section 602, in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(b) Notwithstanding the provisions of subdivision (a), if the petition alleges a violation of a condition of probation and is for the commitment of a minor to a county juvenile institution for a period of 15 days or less, it is not necessary to allege and prove that the previous disposition has not been effective in the rehabilitation or protection of the minor. In order to make such a commitment the court must, however, find that such commitment is in the best interest of the minor. The provisions of this subdivision may not be utilized more than twice during the time the minor is a ward of the court.

(c) Upon the filing of such supplemental petition, the clerk of the

juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 658 and 660.

(d) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of this chapter.

(e) The filing of a supplemental petition and the hearing thereon shall not be required for the commitment of a minor to a county institution for a period of 30 days or less pursuant to an original or a previous order imposing such specified time in custody and staying the enforcement of such order subject to subsequent violation of a condition or conditions of probation, provided that in order to make such commitment, the court finds at a hearing that the minor has violated a condition or conditions of probation.

O

Senate Bill No. 264

CHAPTER 1076

An act to amend Section 1203 of the Penal Code, and to amend Section 828 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 264, Nielsen. Crimes.

Existing law does not require a court to consider for sentencing purposes the previous taking into custody of a person as a minor.

This bill would require such consideration for specified sentencing purposes.

This bill also makes additional changes proposed by AB 398 to be operative only if AB 398 and this bill are both chaptered and become effective on January 1, 1982, and this bill is chaptered after AB 398.

The people of the State of California do enact as follows:

Operative section

SECTION 1. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer.

(b) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his findings and recommendations, including his recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in his report his determination of whether the defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government

Code. The probation officer shall also include in his report for the court's consideration whether the court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorney at least nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place him on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily grant or deny probation. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning him which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him to answer or controvert it. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless he had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence,

murder, assault with intent to commit murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless he has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he committed any of the following acts:

(i) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his arrest for such previous crime, he was armed with such weapon at either of such times.

(ii) He used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

(iii) He willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly manufactures phencyclidine. Should the court grant probation, it shall specify the reason or reasons for such order. On appeal by the people from such a grant of probation, it shall be conclusively presumed that such order was made only for the reasons specified in such order, and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the

interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge may, in his discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person. Upon such referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his findings.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (a) or (g), the probation officer shall obtain and include in such report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain such a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

Not operative section

SEC. 2. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer.

(b) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in his or her report his or her determination of whether the defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in the report for the court's consideration whether the

court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorney at least nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily grant or deny probation. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning him or her which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert it. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless he or she had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to

commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of the foregoing crimes and was armed with such weapon at either of the times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless he or she has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of the foregoing crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(i) Unless he or she had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his arrest for the previous crime, he or she was armed with a weapon at either of the times.

(ii) He or she used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(iii) He or she willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly manufactures phencyclidine. Should the court grant probation, it shall specify the reason or reasons for the order. On appeal by the people from such a grant of probation, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of the reasons.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the

interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge may, in his or her discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person. Upon such a referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings.

(h) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

SEC. 3. Section 828 of the Welfare and Institutions Code is amended to read:

828. Except as provided in Sections 389 and 781 of this code or 1203.45 of the Penal Code, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it must be included with any information disclosed.

A court shall consider any information relating to the taking of a minor into custody, if the information is not contained in a record which has been sealed, for purposes of determining whether adjudications of commission of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 of the Penal Code or to deny probation.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 398 are both chaptered and become effective January 1, 1982, both bills amend Section 1203 of the Penal Code, and this bill is chaptered after Assembly Bill 398, that the amendments to Section 1203 proposed by both bills be given effect and incorporated in Section 1203 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 398 are both chaptered and become effective January 1, 1982, both amend Section 1203, and this bill is chaptered after Assembly Bill 398, in which case Section 1 of this act shall not become operative.

O

Senate Bill No. 271

CHAPTER 600

An act to amend Section 409.5 of the Penal Code and to amend Section 2800.1 of the Vehicle Code, relating to state police.

[Approved by Governor September 22, 1981. Filed with Secretary of State September 22, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 271, Rains. State police.

Existing law permits specified peace officers to seal off areas due to calamities such as floods, earthquakes, and explosions, for specified purposes.

This bill would add the California State Police to those peace officers permitted to exercise this authority.

Existing law provides that it is a misdemeanor while operating a motor vehicle, to flee from pursuit by specified peace officers.

This bill would provide that it would also be a misdemeanor to flee from pursuit of a California State Police officer while operating a motor vehicle.

The people of the State of California do enact as follows:

SECTION 1. Section 409.5 of the Penal Code is amended to read:

409.5. (a) Whenever a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident or other disaster, officers of the California Highway Patrol, California State Police, police departments or sheriff's office, any officer or employee of the Department of Forestry designated a peace officer by subdivision (f) of Section 830.3, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (i) of Section 830.3, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by such officer to enter or remain within the closed area. If such a calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

(b) Officers of the California Highway Patrol, California State Police, police departments, or sheriff's office or officers of the Department of Forestry designated as peace officers by subdivision (f) of Section 830.3 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all

unauthorized persons pursuant to the conditions which are set forth in this section whether or not such field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within such area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

SEC. 2. Section 2800.1 of the Vehicle Code is amended to read:

2800.1. Every person who, while operating a motor vehicle, hears a siren and sees at least one lighted lamp exhibiting a red light emanating from a vehicle which is distinctively marked and operated by a member of the California Highway Patrol, a member of the California State Police, or any peace officer of any sheriff's department or police department wearing a distinctive uniform and who, with the intent to evade the officer, willfully disregards such siren and light, and who flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor.

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Senate Bill No. 276

CHAPTER 901

An act to amend Section 800 of the Penal Code, relating to limitation of actions.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 276, Rains. Limitation of actions: sexual assaults.

Existing law provides that the prosecution of felonies, other than murder, embezzlement of public moneys, kidnapping for ransom, and falsification of public records, must be commenced within specified times.

Prosecutions for rape, rape in concert with another person, sodomy, oral copulation, and penetration of anal or genital openings with a foreign object against the victim's will must be commenced within 3 years of their commission. Prosecutions for lewd and lascivious acts upon the body of a child under 14 must be commenced within 5 years after their commission.

This bill would provide that a prosecution for rape, rape in concert with another person, specified offenses of sodomy or oral copulation, penetration of anal or genital openings with a foreign object against the victim's will, or lewd and lascivious acts upon the body of a child under 14 must be commenced within 6 years of their commission.

The bill would become operative only if SB 209 and AB 303 are chaptered on or before January 1, 1982, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Penal Code is amended to read:

800. An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, or 288 of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission. An indictment for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission. An indictment for grand theft, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or

27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery. An indictment for a violation of Section 288 of the Penal Code shall be found, an information filed, or case certified to the superior court within six years after its commission.

SEC. 2. Section 800 of the Penal Code is amended to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286 or subdivision (c), (d), or (f) of Section 288a, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f), of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission.

(c) An indictment for grand theft, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery.

SEC. 3. This act shall become operative only if both Senate Bill No. 209 and Assembly Bill No. 303 are chaptered on or before January 1, 1982, and both bills amend Section 800 of the Penal Code in the form set forth in Section 2 of this act, in which case Section 1 of this act shall not become operative.

O

Senate Bill No. 277

CHAPTER 681

An act to add Section 11105.2 to the Penal Code, relating to criminal records.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 277, Rains. Criminal records.

Existing law specifies the persons and entities that may receive state summary criminal history information under specified circumstances.

This bill would additionally provide for the furnishing of conviction records relating to sex crimes, as defined, concerning persons who apply for employment or volunteer for a position which involves supervisory or disciplinary power over a minor.

The bill would also require the request for such records to include the applicant's fingerprints which may be taken by the employer and other data specified by the Department of Justice.

In addition the bill would require the department to furnish both the employer, as defined, and the applicant, a copy of the information and would authorize the department to assess a fee for the actual cost of processing the request to be paid by the employer requesting the information. The bill would also require the department to destroy an application within 6 months after the requested information is furnished to the employer and the applicant.

This bill would include within the definition of sex crimes offenses which would be created by SB 586 if that bill is chaptered and becomes effective on or before January 1, 1982.

The people of the State of California do enact as follows:

SECTION 1. Section 11105.2 is added to the Penal Code, to read:

11105.2. (a) Notwithstanding any other provision of law, an employer may request from the Department of Justice records of all convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the employer, and any other data specified by the department. The request shall be on a form approved by the department, and the department may

charge a fee to be paid by the employer for the actual cost of processing the request. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) The department shall adopt regulations to implement the provisions of this section.

(d) As used in this section "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(e) As used in this section "sex crime" means a conviction for a violation or attempted violation of Section 220, 261, 261.5, 264.1, 267, 272, 273a, 273d, 285, 286, 288, 288a, 289, 314, 647a, or subdivision (d) of Section 647, or commitment as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime if such offense would have been a crime in California under one of the above sections if committed in California.

SEC. 2. Section 11105.2 is added to the Penal Code, to read:

11105.2. (a) Notwithstanding any other provision of law, an employer may request from the Department of Justice records of all convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the employer, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer for the actual cost of processing the request. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) The department shall adopt regulations to implement the provisions of this section.

(d) As used in this section "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(e) As used in this section "sex crime" means a conviction for a violation or attempted violation of Section 220, 261, 261.5, 264.1, 267, 272, 273a, 273d, 285, 286, 288, 288a, 289, 293, 294, 295, 314, 647a, or subdivision (d) of Section 647, or commitment as a mentally

disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime if such offense would have been a crime under one of the above sections if committed in California.

SEC. 3. Section 1 of this act shall become operative only if Senate Bill No. 586 of the 1981–82 Regular Session of the Legislature is not chaptered and not effective on or before January 1, 1982.

Section 2 of this act shall become operative only if Senate Bill No. 586 is chaptered and becomes effective on or before January 1, 1982, in which case Section 1 of this act shall not become operative.

O

Senate Bill No. 278

CHAPTER 928

An act to add Chapter 5.5 (commencing with Section 1364) to Title 10 of Part 2 of the Penal Code, and to repeal Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, relating to sex offenders.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 278, Rains. Sex offenders.

Existing law provides that upon conviction of a person of any sex offense the trial judge, upon his or her own motion, or that of the prosecuting attorney, or on application by or for the defendant, may certify the person for hearing and examination to determine whether the person is a mentally disordered sex offender. After examination and recommendations by court-appointed psychologists or psychiatrists concerning the person's ability to benefit from treatment, a hearing is held and the court determines whether the person is a mentally disordered sex offender and if so whether he or she could benefit from treatment in a state hospital. If the court determines the person could benefit from treatment the court commits the person to a state hospital.

If not, the person is returned for disposition under the criminal process. Extended commitment beyond the maximum term of imprisonment which could have been imposed requires another hearing.

This bill would provide that, notwithstanding any other provisions of law, any person convicted of a sex offense against a person under the age of 14 years or of a sex offense accomplished against the will of the victim by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall not have a hearing to determine whether he or she is a mentally disordered sex offender. After imposition of sentence, the person would be delivered to the Department of Corrections. A person having no more than 2 prior felony convictions for non-sex crimes and a sentence of 3 or more years who consents to evaluation shall at the beginning of the third year be transferred to a state hospital for evaluation for treatment. If the director of the state hospital recommended such treatment, the Director of Corrections would, with the consent of the convicted person, place the person in such a program in a state hospital designated by the Director of Mental Health not to exceed the term of imprisonment. If uncooperative, unamenable to treatment, or upon his or her request, the person would be returned to prison for the remainder of his or

her term. The program could not include placing the person on outpatient status except as a condition of parole. The person would be returned to the state prison if not placed in a treatment program.

Existing law prescribes procedures whereby persons who have been convicted of any sex offense may be judicially determined to be a mentally disordered sex offender and committed to a state hospital where the court finds that such treatment would be beneficial. Procedures are also set forth for commitment beyond the maximum term, certification of recovery, and other aspects of the commitment process for mentally disordered sex offenders.

This bill would repeal the provisions relating to mentally disordered sex offender commitment procedures. The bill would also provide that the provisions of the bill shall not be construed to affect any person under commitment prior to the effective date of the bill.

The bill would further provide that the Secretary of the Health and Welfare Agency and the Secretary of the Youth and Adult Correctional Agency are required to establish a task force to develop an implementation plan for transfer of mentally ill prisoners in need of acute psychiatric care to state hospitals and to recommend future utilization of mental health and correctional facilities that may be affected by the termination of the mentally disordered sex offender program. The task force would be required to submit to the Legislature by April 1, 1982, a report containing the implementation plan and their recommendations.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.5 (commencing with Section 1364) is added to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 5.5. SEX OFFENDERS

1364. Notwithstanding any other provision of law, when any person is convicted of a sex offense against a person under the age of 14 years or of a sex offense accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person there shall be no hearing to determine whether the person is a mentally disordered sex offender.

The court after imposing sentence for such a conviction shall order the delivery of the convicted person to the Department of Corrections. The Department of Corrections shall inform such convicted persons of the state hospital program established pursuant to this section.

If the convicted person has no more than two prior felony convictions for a non-sex crime, consents to evaluation, and has a sentence of three or more years, the Department of Corrections at the beginning of the third year prior to release shall transfer the

person to an appropriate state hospital for an evaluation of up to thirty (30) days duration. At any time during the thirty (30) day evaluation the director of the state hospital shall provide a diagnostic report to the Director of Corrections with a recommendation for or against placement of the person in a treatment program.

The Director of Corrections shall, if he or she receives a recommendation for such treatment, and with the consent of the convicted person, transfer the person to an appropriate state hospital designated by the Director of Mental Health for treatment. In no event shall the person be placed on outpatient status pursuant to such treatment. In no event shall the person be released prior to his or her determinate sentence date, nor shall treatment pursuant to this section exceed the term of imprisonment imposed. The Director of Mental Health shall make a recommendation prior to the person's release date whether the person should receive outpatient treatment as a condition of parole. If outpatient treatment is provided in a county Short-Doyle Program, then treatment shall be funded as provided in Section 5710.1 of the Welfare and Institutions Code.

If the person refuses to cooperate in his or her treatment while in the state hospital, or is found unamenable to treatment, or if the person requests a return to the Department of Corrections, the Director of the state hospital shall cause the person to be returned to the Department of Corrections.

Physical transfer of the inmate from the Department of Corrections to the state hospital and return shall be the responsibility of the Department of Corrections.

If the recommendation is against placement of the person in a treatment program, the person shall be returned to the Department of Corrections for incarceration for the remainder of his or her term of imprisonment.

All days of confinement in a state hospital for testing and treatment shall be credited to the person's term of imprisonment and the provisions of Section 2931 shall apply.

1365. It is the intent of the Legislature that persons committing sex offenses specified in Section 1364 have the opportunity during their time of incarceration to participate voluntarily in a state hospital program. The program shall be established according to a valid experimental design in order that the most effective, newest, and promising methods of treatment of sex offenders may be rigorously tested. The program established pursuant to Section 1364 shall terminate January 1, 1991.

SEC. 2. Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code is repealed.

SEC. 3. Nothing in this act shall be construed to affect any person under commitment under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code prior to the effective date of this act. It is the

Legislature's intent that persons committed as mentally disordered sex offenders and persons whose terms of commitment are extended under the provisions of Section 6316 of the Welfare and Institutions Code shall remain under these provisions until the commitments are terminated and the persons are returned to the court for resumption of the criminal proceedings.

The Legislature finds and declares that the purposes of the mentally disordered sex offender commitment have been to provide adequate treatment of these offenders, adequate controls over these persons by isolating them from a free society, and to protect the public from repeated commission of sex crimes. In making the repeal of the mentally disordered sex offender commitment procedures prospective only, the Legislature finds and declares that it is necessary to retain persons under this commitment who committed their crimes before the effective date of this enactment in order to have proper control over these persons and to protect society against repeated commission of sex crimes and that other enactments in the 1979–80 Regular Session of the Legislature and the 1981–82 Regular Session of the Legislature would yield prison terms which would provide this protection to society without the need to retain the mentally disordered sex offender commitment.

SEC. 4. In repealing the mentally disordered sex offender commitment, the Legislature recognizes and declares that the commission of sex offenses is not in itself the product of mental diseases. It is the intent of the Legislature that persons convicted of a sex offense after the effective date of this section, who are believed to have a serious, substantial, and treatable mental illness, shall be transferred to a state hospital for treatment under the provisions of Section 2684 of the Penal Code.

SEC. 5. The Secretary of the Health and Welfare Agency and the Secretary of the Youth and Adult Correctional Agency shall jointly establish a task force to include, at minimum, representatives of the State Department of Corrections, the State Department of Mental Health, and the Conference of Local Mental Health Directors.

By April 1, 1982, the task force shall submit a report to the Legislature as follows:

(1) The report shall contain an implementation plan for transfer of mentally ill prisoners in need of acute psychiatric care to state hospitals in accordance with Section 2684 of the Penal Code. The implementation plan shall include criteria for eligibility as mentally ill, procedures for identifying mentally ill prisoners, procedures for referring mentally ill prisoners, and criteria for termination of treatment in a state hospital.

(2) The report shall contain recommendations for future utilization of mental health and corrections facilities that may be affected by the termination of the mentally disordered sex offender program. The utilization plan shall include any projected changes in departmental jurisdiction, types of staffing, levels of staffing, and

licensure.

It is the intent of the Legislature in establishing the task force to provide a program of appropriate mental health care to prisoners who are mentally ill and who could benefit from such treatment.

O

Senate Bill No. 283

CHAPTER 1002

An act to amend, repeal, and add Section 51260 of the Education Code, and to add and repeal a heading immediately preceding Section 11960 of, and to add Article 2 (commencing with Section 11965) to Chapter 2 of Part 3 of Division 10.5 of, the Health and Safety Code, relating to drugs.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 283, Garamendi. Drugs.

Existing law requires specified drug education in public elementary and secondary schools, and requires drug abuse services as part of the county Short-Doyle program.

In addition, this bill would establish the School-Community Primary Prevention Program, which would affect only those counties in which the board of supervisors and the county board of education have each adopted a resolution electing to apply for available funds under the program. The bill would establish, as the highest priority for funding, programs which emphasize a joint School-Community Primary Prevention Program and would generally authorize school and classroom-oriented drug abuse prevention programs, school- or community-based nonclassroom alternative programs, or both, and family-oriented programs.

Procedures would be instituted for funding application and for planning at the state and local levels. Approved programs would be administered and implemented jointly by the county board of education and the county drug program coordinator, except that either of these parties could assume full or partial responsibilities for the other pursuant to interagency agreement.

The State Department of Education would be required to approve the plan for county offices of education, and the State Department of Alcohol and Drug Programs would be required to approve the plan for the county drug program coordinators. The bill would require that each of these plans be combined into a coordinated master plan prior to submission to the state. Approval of both state departments would be required in order for a county to receive funding. Review and comment of the master plan would be required, prior to submission to the state, by a primary prevention advisory committee, with specified membership under the bill.

The bill would provide for an evaluation on a representative sampling basis, and a report to the Legislature, by the Department of Education and the State Department of Alcohol and Drug Programs, regarding implementation of the School-Community

Primary Prevention Program.

The people of the State of California do enact as follows:

SECTION 1. Section 51260 of the Education Code is amended to read:

51260. (a) Instruction shall be given in the elementary and secondary schools on drug education and the effects of the use of tobacco, alcohol, narcotics, dangerous drugs, as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

In grades 1 through 6, instruction on drug education should be conducted in conjunction with courses given on health pursuant to subdivision (f) of Section 51210.

In grades 7 to 12, instruction on drug education shall be conducted in conjunction with courses given on health or in any appropriate area of study pursuant to Section 51220.

Such instruction shall be sequential in nature and suited to meet the needs of students at their respective grade level.

(b) Services provided under this section shall be in addition to, but shall not be duplicative of, services provided pursuant to Article 2 (commencing with Section 11960) of Part 3 of Division 10.5 of the Health and Safety Code.

This section shall remain in effect only until July 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1985, deletes or extends such date.

SEC. 2. Section 51260 is added to the Education Code, to read:

51260. Instruction shall be given in the elementary and secondary schools on drug education and the effects of the use of tobacco, alcohol, narcotics, dangerous drugs, as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

In grades 1 through 6, instruction on drug education should be conducted in conjunction with courses given on health pursuant to subdivision (f) of Section 51210.

In grades 7 to 12, instruction on drug education shall be conducted in conjunction with courses given on health or in any appropriate area of study pursuant to Section 51220.

Such instruction shall be sequential in nature and suited to meet the needs of students at their respective grade level.

This section shall become operative July 1, 1985.

SEC. 3. An article heading is added immediately preceding Section 11960 of the Health and Safety Code, to read:

Article 1. Coordination of Services

SEC. 4. The heading of Article 1 (commencing with Section 11960) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety

Code is repealed.

SEC. 5. Article 2 (commencing with Section 11965) is added to Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, to read:

Article 2. The School-Community Primary Prevention Program

11965. The Legislature makes the following findings and declarations of intent:

(a) A statewide drug abuse primary prevention program is essential in order to address the continuing problem of drug abuse throughout the state, which often exists in combination with other problems such as crime and juvenile delinquency. The program is labeled as "primary" prevention because it is intended to prevent drug abuse before it begins or before it has reached later stages requiring treatment.

(b) The program necessarily emphasizes a continuing partnership between education agencies, drug abuse agencies, and community service agencies. In order to facilitate this partnership, the Legislature finds and declares that it is of vital importance that fiscal and management responsibilities for the program be shared equitably by education and drug agencies at both the state and county levels, and that this cooperation is a major tool in efforts to achieve the successful prevention of drug abuse.

(c) The program established pursuant to this article is intended by the Legislature to delegate primary responsibility for program planning to local school and local drug abuse authorities. These agencies are best suited for dealing with lifetime drug using patterns, which are formed during youth and in the family setting.

(d) This article places primary emphasis on youth, families, and communitywide drug abuse prevention planning. Therefore, information or training to acquaint professionals serving youth and family, community representatives, parents, and youth with the skills and strategies needed for program implementation is an important aspect of the total program.

11965.3. In view of the purposes and intent of this article as expressed in Section 11965, highest priority for program funding under this article shall be designated to programs which emphasize joint school-community program drug abuse prevention planning and implementation, and which focus on children and their families.

It is the intent of the Legislature that, to the maximum extent possible, funds made available for the purposes of this article be used for support programs which will meet the needs of children and families.

11965.5. This article shall affect only those counties in which the board of supervisors and the county board of education have each adopted a resolution electing to apply for available funds pursuant to Section 11966. Programs may be funded, planned, and

implemented under this article for any of the following:

(a) School and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among teachers, counselors, and students, and furtherance of cooperative efforts of school- and community-based personnel.

(b) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(c) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

11965.7. In those counties electing to apply for funds under this article, both the county drug program coordinator and the county office of education shall designate units with primary responsibility for administering the School-Community Primary Prevention Program. These units shall work together on a cooperative basis to review local school and community program applications for funds, and to submit their respective plans to the Department of Education and the State Department of Alcohol and Drug Programs. The plans of the county drug program coordinator and the county office of education shall be combined into a single master plan, which shall be submitted to the primary prevention advisory committee, as established pursuant to subdivision (b) of Section 11966, for review and comment. After this review, the plan shall be submitted to the respective state agencies charged with administering each aspect of the program. The State Department of Alcohol and Drug Programs shall have review authority over the county drug office section of the plan, and the Department of Education shall have review authority over the county office of education section. The State Department of Alcohol and Drug Programs and the Department of Education shall enter into an interagency agreement in order to carry out the provisions of this chapter.

11966. The planning process at the county level shall include all of the following, which shall be incorporated into each local school-community primary drug abuse prevention plan submitted to the Department of Education and the State Department of Alcohol and Drug Programs:

(a) A copy of the resolutions of the board of supervisors and the county board of education electing to apply for funding under this

article, and documentation of public notice as required by Section 11967.

(b) Incorporation of comments on program plans provided by the primary prevention advisory committee. This committee may be the existing drug abuse advisory committee unless the county board of supervisors and the county board of education have each adopted a resolution requiring the formation of an independent committee. Independent committees so established shall consist of 10 members, five members being appointed by the board of supervisors and five by the county board of education.

(c) Certification of each other's plans by the county drug coordinator and the county office of education, emphasizing public notice and nonduplication of programing, especially with respect to nonduplication of the drug abuse portion of the county Short-Doyle plan, and of any services provided pursuant to Section 51260 of the Education Code.

(d) Submission of the coordinated master plan as required under Section 11965.7.

(e) Evidence that there has been coordination with existing successful programs in the development of the county plans, and assurance of maintenance of current efforts in order to preclude the use of funds to support existing programs.

(f) Provision for no more than 5 percent of the county level program funds being used for program administration, and specification of measurable goals and objectives for each program to be funded pursuant to the plan.

(g) Evidence that any program funded for two years or more under this article has substantially achieved its measurable goals and objectives as specified in its approved plan. The county agencies allocating funds to individual applicants or programs pursuant to the county plan shall have responsibility to institute monitoring systems to insure compliance with this requirement.

(h) In counties in which the board of education is appointed by the board of supervisors, the board of supervisors shall have final authority for application, planning, and implementation of programs funded under this article.

11966.5. The plan from each county shall be submitted, with appropriate documentation as provided in Section 11966, on or before the existing deadline for the county Short-Doyle plan upon certification that the plan meets requirements specified in Sections 11965 and 11966, and joint approval by the Department of Education and the State Department of Alcohol and Drug Programs shall be given on or before the existing deadlines for state approval of the county Short-Doyle plan.

11967. Upon receiving letters from the Department of Education and the State Department of Alcohol and Drug Programs, respectively, specifying the eligible county allocation, as required under subdivision (c) of Section 11967.5, both the county drug

program coordinator and the county office of education shall announce the availability of funds locally under the School-Community Primary Prevention Program pursuant to Section 6061.3 of the Government Code, and shall also disseminate such information to the public media, to school districts within the county, and to community nonprofit organizations providing preventive services services to youth. This public notice shall specify the nature and intent of the program as provided in this article, and shall inform agencies and organizations concerning the details of applying for funds.

11967.5. Funds provided for purposes of this article shall be administered and allocated as follows:

(a) One-half of the total funds available shall be allocated to the Department of Education, and the other half shall be allocated to the State Department of Alcohol and Drug Programs. No more than 5 percent of the total amount for each state department and no more than 5 percent of the total amount for each county office shall be used for administrative costs. The maximum amount shall be inclusive of administrative costs at the state and county levels. An appropriate portion of such maximum amount shall be used by the state departments to work together on a cooperative basis to develop program guidelines. Both departments shall develop program guidelines that are consistent with the legislative intent prescribed in Section 11965.5. Both departments shall adopt rules and regulations to provide procedures for counties which desire to apply for participation in the program established by this article, and each such department shall submit copies of the rules and regulations to the Legislature on or before March 1, 1982.

(b) Not more than 3 percent, of the total annual program funds under this article shall be expended by the Department of Education and the State Department of Alcohol and Drug Programs to evaluate local implementation of this article on a representative sampling basis. The evaluation of programs conducted by county offices of education shall be conducted by the Department of Education, and evaluations of programs conducted by county drug program coordinators shall be conducted by the State Department of Alcohol and Drug Programs. In either case the evaluation shall include, but not be limited to, an assessment of program effectiveness and the identification of successful model programs for statewide replication.

(c) The balance of program funds provided under this article shall be allocated to counties on the basis of each of the following conditions:

(1) The total number of counties eligible for funding shall be the total number of counties which have submitted their School-Community Primary Prevention Program plans to the Department of Education with respect to portions involving the county office of education, and to the State Department of Alcohol and Drug Programs for those portions involving the county drug

program coordinator.

(2) Prior to such submission of county plans, the specific amount available to each county shall be determined on the basis of county population, except that a minimum of five thousand dollars ($5,000) shall be made available to each county drug program coordinator and each county office of education in any county with an approved plan, regardless of the county's population. On or before January 15th of each year the Department of Education and the State Department of Alcohol and Drug Programs, respectively, shall send written notification to each county of the anticipated allocation it would be eligible to receive from state approval of its local School-Community Primary Prevention Program plan, for the ensuing fiscal year.

Funds allocated to counties that do not apply for funding on or before the deadline for such application under this article, shall be subsequently divided among the remaining counties according to population.

(d) In addition to any state funds provided for purposes of this article, all state, local, and private entities shall endeavor to obtain any available federal funds or other grants for such purposes.

11968. Once state approval of a county allocation of funds has been obtained, and upon review and acceptance of applications for funds under this article, the county drug program coordinator or the county office of education may allocate funds on a grant or contract basis to public or private nonprofit agencies to carry out primary prevention programs. These may include, but need not be limited to, agencies or organizations at the county, school district, or community level, including county drug offices and offices of education which meet the requirements of Section 11968.5.

11968.5. Neither the county drug coordinator nor the county office of education may retain more than 30 percent of its respective allocation of funds, exclusive of administrative funds, unless either no applications for available funds are received after notification of the availability of funds has been given pursuant to this article, or the county agencies have consulted the full membership of the Primary Prevention Advisory Committee in allocating more than 30 percent of the total funds to themselves, and have received approval of the committee.

11969. The county drug program coordinator and the county office of education may enter into interagency agreements between themselves which will allow any of the management or fiscal tasks, or both, created pursuant to this article and assigned to both the county office and the coordinator, to be performed by one of them only. In this event, the funds involved shall be transferred by the Controller as appropriate upon proper documentation of the arrangement. Any such arrangement may be renewed on an annual basis.

11969.5. The Department of Education and the State Department of Alcohol and Drug Programs shall establish mutually

cooperative arrangements for sharing reports on the implementation of this article. These departments shall jointly submit an annual program report to the Legislature. The report shall inform the Legislature regarding the status of the program throughout the state, outstanding or exemplary programs, practices and concepts developed within the context of the program, and the extent to which individual local programs and the School-Community Primary Prevention Program as a whole have met their respective goals and objectives within the preceding year. In addition, evaluations conducted pursuant to subdivision (b) of Section 11967.5 shall be included as an appendix to the annual program report.

There shall be a close correlation between the annual report and the program evaluation specified in subdivision (b) of Section 11967.5.

11969.7. This article shall remain in effect only until July 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1985, deletes or extends such date.

SEC. 6. Section 4 of this act shall become operative July 1, 1985.

O

Senate Bill No. 287

CHAPTER 948

An act to amend Sections 11055 and 11550 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 287, Davis. Controlled substances: phencyclidine.

(1) Existing law includes any material, compound, mixture, or preparation which contains any quantity of phencyclidine having a potential for abuse in Schedule II of the California Uniform Controlled Substance Act but does not include analogs of phencyclidine.

This bill would include analogs of phencyclidine, as prescribed, in Schedule II of this act. The bill would authorize the Attorney General to add additional analogs of phencyclidine by rule or regulation. The bill would further require the Attorney General to submit in the year of the regular session in which the rule or regulation was adopted a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into the Health and Safety Code. The rules and regulations would remain in effect only until January 1st after the calendar year of the regular session in which the proposed bill was submitted or until January 1st of the following calendar year, as specified.

(2) Existing law makes any person who uses or is under the influence of certain controlled substances which have not been dispensed, prescribed, or administered by a person licensed by the state to do so guilty of a misdemeanor. Existing law does not make use or being under the influence of phencyclidine or its analog a misdemeanor.

This bill would make any person who uses or is under the influence of phencyclidine or its analog guilty of a misdemeanor, as prescribed.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl- 14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(i) Raw opium.
(ii) Opium extracts.
(iii) Opium fluid extracts.
(iv) Powdered opium.
(v) Granulated opium.
(vi) Tincture of opium.
(vii) Apomorphine.
(viii) Codeine.
(ix) Ethylmorphine.
(x) Hydrocodone.
(xi) Hydromorphone.
(xii) Metopon.
(xiii) Morphine.
(xiv) Oxycodone.
(xv) Oxymorphone.
(xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.

(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphon.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone—intermediate, 4-cyano-2(N,N-dimethylamino)-4,4-diphenylbutane.
(13) Moramide—intermediate, 3-methyl-4-morpholino-2,2-diphenylbutanoic acid.
(14) Pethidine.
(15) Pethidine—intermediate—A, 4-cyano-N-methyl-4-phenylpiperidine.
(16) Pethidine—intermediate—B, ethyl 4-phenylpiperidine-4-carboxylate.
(17) Pethidine—intermediate—C, N-methyl-4-phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Phenmetrazine and its salts.
(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
(4) Methylphenidate.

(e) Any material, compound, mixture, or preparation which contains any quantity of phencyclidine or the following analog or analogs determined by the Department of Justice to have a potential for abuse associated with a depressant effect on the central nervous system:

(1) 1-(1-phenylcyclohexyl) pyrolidine.
(2) 1-(1(2-thienyl) cyclohexyl) piperidine.
(3) 1-(1-phenylcyclohexyl) morpholine.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this subdivision after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft

of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1st after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house, unless the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, in which event the rule or regulation shall be effective until January 1st after the next calendar year.

SEC. 2. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, excepting when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in the county jail.

(b) No person shall use, or be under the influence of, any controlled substance which is specified in subdivision (e) of Section 11055, excepting when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 30 days nor more than one year in the county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that the person be confined in the county jail for at least 30 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 30 days in confinement in the county jail.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act

creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 289

CHAPTER 742

An act to amend Section 11377 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 289, Davis. Controlled substances: fines.

(1) Existing law makes unauthorized persons, as specified, who possess certain controlled substances classified in Schedule III, IV, or V, except methaqualone, guilty of a crime punishable by imprisonment in the county jail for a period of not more than a year or imprisonment in the state prison.

Existing law also makes unauthorized persons, as specified, who possess methaqualone and its salts, guilty of a crime punishable by a fine of up to $500 or by imprisonment in the county jail for a period of not more than 6 months, or both.

This bill would make possession of methaqualone, as specified, a crime punishable by imprisonment in the county jail for a period not to exceed 1 year or imprisonment in the state prison.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as otherwise provided in Article 8 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug or (2) which is specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) or (e) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section

429.70) of Chapter 2 of Part 1 of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 licensed to practice in this state, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 303

CHAPTER 988

An act to amend Section 886 of, to add Section 871.5 to, and to add and repeal Section 886.5 of, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 303, Davis. Juveniles.

There is no provision of existing law specifically prohibiting a person from bringing or sending controlled substances, alcoholic beverages, firearms, weapons, or explosives, as defined, into any county juvenile hall, home, ranch, camp, or forestry camp.

This bill would provide that such conduct is a crime punishable, in the case of alcoholic beverages as a misdemeanor, and in other cases either as a felony or a misdemeanor.

Existing law limits the number of children that may be received or contained in a juvenile home or camp to 100.

This bill would increase the maximum allowable number of children to 130 upon approval of the county's request for expanded capacity by the Department of the Youth Authority, as specified. This provision would be operative only until January 1, 1983, and on that date would be repealed.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 871.5 is added to the Welfare and Institutions Code, to read:

871.5. (a) Except as authorized by law, or when authorized by the person in charge of any county juvenile hall, home, ranch, camp, or forestry camp, or by an officer of any such juvenile hall, home, or camp empowered by the person in charge thereof to give such an authorization, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, home, ranch, camp, or forestry camp, any controlled

substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, or any firearm, weapon, or explosive of any kind shall be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(b) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, home, ranch, camp, or forestry camp, any alcoholic beverage shall be guilty of a misdemeanor.

(c) A sign shall be posted at the entrance of each county juvenile hall, home, ranch, camp, or forestry camp specifying the conduct prohibited by this section and the penalties therefor.

SEC. 2. Section 886 of the Welfare and Institutions Code is amended to read:

886. No juvenile home, ranch, camp, or forestry camp established pursuant to the provisions of this article shall receive or contain more than 100 children at any one time.

SEC. 3. Section 886.5 is added to the Welfare and Institutions Code, to read:

886.5. Notwithstanding the provisions of Section 886, a juvenile home, ranch, camp, or forestry camp may receive or contain a maximum of 130 children at any one time if the county has submitted a request for approval for expanded capacity to the Department of the Youth Authority demonstrating a need for juvenile home, ranch, camp, or forestry camp placements which exceeds the beds available in the county, and the department has approved that request.

The provisions of this section shall be operative until January 1, 1984, and on that date are repealed unless a statute effective on or before that date extends or limits that date.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 311

CHAPTER 1017

An act to amend, repeal, and add Section 800 to, and to add and repeal Section 802.5 of, the Penal Code, relating to limitations of actions.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 311, Holmdahl. Limitations of actions.

Under existing law, with respect to felonies other than certain specified felonies, an indictment must be found, and information filed, or a case certified to the superior court within 3 years after its commission, or for certain sex crimes against minors, 5 years after its commission. With respect to other specified felonies such time period is 6 years after the commission of the felony, and with respect to still other specified felonies, such time period is 3 years after the discovery of the felony.

This bill would revise such provisions by deleting the requirement that an information be filed or case certified to the superior court within the specified time limits, and would instead require that an indictment be found, or an arrest warrant be issued in the municipal or justice court within those time limits.

The bill would also specify that felony welfare fraud is an offense for which an indictment must be found or an arrest warrant issued within 3 years after its discovery.

Under existing law, a period of time that a defendant is not within the state is not part of a limitation of time for commencing a criminal action.

This bill would also provide that a time limitation for commencing a criminal action shall be tolled upon the issuance of an arrest warrant or finding of an indictment, and the time during which a criminal action is pending is not part of any time limitation for recommencing a criminal action in the event of a dismissal, as specified.

The bill would provide that the changes providing that an indictment must be found, or an arrest warrant issued within certain time limits, and providing for the tolling of time limitations upon the issuance of an arrest warrant or finding of an indictment, would remain in effect only until a decision of a court of appeal or the California Supreme Court, or an amendment to the California Constitution, provides that a person charged by indictment is not entitled to a preliminary hearing, as specified.

This bill would incorporate additional changes in Section 800 of the Penal Code proposed by Senate Bills 209 and 276 and Assembly Bill

303 to become operative if this bill and those bills are all chaptered and become effective January 1, 1982, and this bill is chaptered last.

The people of the State of California do enact as follows:

Not operative section

SECTION 1. Section 800 of the Penal Code is amended to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, or 288 of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its commission.

(b) An indictment for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within six years after its commission.

(c) An indictment for grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its discovery.

(d) An indictment for a violation of Section 288 of the Penal Code shall be found, or an arrest warrant issued by the municipal, or where appropriate, the justice court within five years after its commission.

operative section unless conditions of Sec. 4 occur.

SEC. 1.5. Section 800 of the Penal Code is amended to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286, or subdivision (c), (d), or (f) of Section 288a, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public

official or a public employee, a felony, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within six years after its commission.

(c) An indictment for grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its discovery.

not operative section

SEC. 2. Section 800 is added to the Penal Code, to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, or 288 of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission.

(b) An indictment for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission.

(c) An indictment for grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery.

(d) An indictment for a violation of Section 288 of the Penal Code shall be found, an information filed, or case certified to the superior court within five years after its commission.

operative section only if conditions of Sec. 4 occur

SEC. 2.5. Section 800 is added to the Penal Code, to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286, or subdivision (c), (d), or (f) of Section 288a, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an

information filed, or case certified to the superior court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission.

(c) An indictment for grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery.

SEC. 3. Section 802.5 is added to the Penal Code, to read:

802.5. The time limitations provided in this chapter for the commencement of a criminal action shall be tolled upon the issuance of an arrest warrant or the finding of an indictment, and no time during which a criminal action is pending is a part of any limitation of the time for recommencing that criminal action in the event of a prior dismissal of that action, subject to the provisions of Section 1387.

SEC. 4. Section 800 of the Penal Code as amended by Section 1 or 1.5 of this act and Section 802.5 of the Penal Code as added by Section 3 of this act shall remain in effect only until a decision of a court of appeal or of the California Supreme Court becomes final, or an amendment to the California Constitution takes effect, whichever occurs first, which decision or amendment provides that a person charged by indictment with a felony is not entitled to a preliminary hearing, and as of such date Section 800 as amended by Section 1 or 1.5 of this act and Section 802.5 as added by Section 3 of this act shall be repealed, and Section 800 shall be added to the Penal Code in the form set forth in Section 2 or 2.5 of this act.

As used in this section, a decision of a court of appeal is final if not reviewed by the California Supreme Court or United States Supreme Court, and a decision of the California Supreme Court is final if not reviewed by the United States Supreme Court.

SEC. 5. It is the intent of the Legislature, if this bill and Senate Bills 209 and 276 and Assembly Bill 303 are all chaptered and become effective January 1, 1982, all bills amend Section 800 of the Penal Code, and this bill is chaptered after Senate Bills 209 and 276 and Assembly Bill 303, that the amendments to Section 800 proposed by all bills be given effect and incorporated in Section 800 in the form set forth in Sections 1.5 and 2.5 of this act.

Therefore, Sections 1.5 and 2.5 of this act shall become operative only if this bill and Senate Bills 209 and 276 and Assembly Bill 303 are all chaptered and become effective January 1, 1982, all amend

Section 800, and this bill is chaptered after Senate Bills 209 and 276 and Assembly Bill 303, in which case Sections 1 and 2 of this act shall not become operative.

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Senate Bill No. 319

CHAPTER 937

An act to amend Sections 21651 and 40000.13 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 319, Ellis. Motor vehicles: wrong-way drivers.

(1) Under existing law, it is unlawful to drive any vehicle upon any highway which has been divided into 2 or more roadways by means of intermittent barriers or by means of a dividing section of not less than 2 feet in width either unpaved or delineated by curbs, lines, or other markings on the roadway except to the right of the barrier or dividing section.

Under existing law, a violation of this provision is an infraction, punishable upon a first conviction by a fine not exceeding $50, upon a second conviction within a 1-year period by a fine not exceeding $100, and upon a third or any subsequent conviction within a 1-year period by a fine not exceeding $250.

This bill would make it a misdemeanor, punishable upon conviction by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months, or by both fine and imprisonment, to so drive a vehicle upon any freeway which has been so divided into 2 or more roadways.

(2) The bill would incorporate changes to Section 40000.13 of the Vehicle Code proposed by SB 494, to be operative only if both this bill and SB 494 are chaptered and this bill is chaptered last.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 21651 of the Vehicle Code is amended to read:

21651. (a) It is unlawful to drive any vehicle upon any highway which has been divided into two or more roadways by means of intermittent barriers or by means of a dividing section of not less

than two feet in width either unpaved or delineated by curbs, lines, or other markings on the roadway except to the right of the barrier or dividing section, or to drive any vehicle over, upon, or across the dividing section, or to make any left turn or semicircular or U-turn on the divided highway, except through an opening in the barrier designated and intended by public authorities for the use of vehicles or through a plainly marked opening in the dividing section.

(b) It is unlawful to drive any vehicle upon any freeway which has been divided into two or more roadways by means of intermittent barriers or by means of a dividing section of not less than two feet in width either unpaved or delineated by curbs, lines, or other markings on the roadway except to the right of the barrier or dividing section. Any person who violates this subdivision is guilty of a misdemeanor.

Operative section

SEC. 2. Section 40000.13 of the Vehicle Code is amended to read:

40000.13. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21651, subdivision (b), relating to wrong-way driving on freeways.

Not operative section

SEC. 3. Section 40000.13 of the Vehicle Code is amended to read:

40000.13. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21651, subdivision (b), relating to wrong-way driving on freeways.

(d) Section 22520.5, a second or subsequent offense relating to vending on freeways.

SEC. 4. It is the intent of the Legislature, if this bill and Senate Bill 494 are both chaptered and become effective January 1, 1982, both bills amend Section 40000.13 of the Vehicle Code, and this bill is chaptered after Senate Bill 494, that the amendments to Section 40000.13 of the Vehicle Code proposed by both bills be given effect and incorporated in Section 40000.13 of the Vehicle Code in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Senate Bill 494 are both chaptered and become effective January 1, 1982, both amend Section 40000.13 of the Vehicle Code, and this bill is chaptered after Senate Bill 494, in which case Section 2 of this act shall not become operative.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may e incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or

eliminates a crime or infraction.

O

Senate Bill No. 322

CHAPTER 29

An act to amend Section 11165 of the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 7, 1981. Filed with Secretary of State May 8, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 322, Rains. Child abuse.

Existing law generally requires a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency, as those terms are defined, to report to a child protective agency a child whom the person knows, observes, or reasonably suspects has been the victim of child abuse. A person who fails to report an instance of child abuse which is known or reasonably should be known is guilty of a misdemeanor and is punishable by a fine or imprisonment, or both.

Child abuse, as defined, includes the sexual assault of a child. For purposes of the reporting requirements, sexual assault includes, among other things, conduct in violation of Section 261.5 of the Penal Code (unlawful sexual intercourse with a female not the wife of the perpetrator, where the female is under the age of 18 years).

This bill would delete from the definition of sexual assault the reference to Section 261.5 of the Penal Code.

This bill would take effect immediately as an urgency statute.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a

genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent failure of a person having the care or custody of any child to protect a child from severe malnutrition or medically diagnosed nonorganic failure to thrive. For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such situation that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of suspected physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other

condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The existing provisions of law are causing the overreporting of various acts unrelated to child abuse pursuant to Chapter 1071 of the Statutes of 1980, which is creating a detrimental impact upon the efforts of the Legislature to deal with the problem of child abuse. In order to remedy this situation as soon as possible, it is necessary that this act become effective immediately.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 325

CHAPTER 297

An act to amend Section 476a of the Penal Code, relating to forgery.

[Approved by Governor September 2, 1981. Filed with Secretary of State September 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 325, Ayala. Checks: insufficient funds.

Existing law prohibits writing a check or other specified instrument without sufficient funds, knowingly and with intent to defraud.

This bill would specify, for purposes of prosecution under such law, information that would constitute prima facie evidence of the identity of the drawer of the instrument.

The people of the State of California do enact as follows:

SECTION 1. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check, or draft or order upon any bank or depositary, or person, or firm, or corporation, for the payment of money, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with said bank or depositary, or person, or firm, or corporation, for the payment of such check, draft, or order and all other checks, drafts, or orders upon such funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in the county jail for not more than one year, or in the state prison.

(b) However, if the total amount of all such checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed one hundred dollars ($100), the offense is punishable only by imprisonment in the county jail for not more than one year, except that this subdivision shall not be applicable if the defendant has previously been convicted of a violation of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty

theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where such check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible as proof of presentation, nonpayment and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with such bank or depositary, or person, or firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if:

(1) At the time of the acceptance of such check, draft or order from the drawer by the payee there is obtained from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. Such information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means; and

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depositary or person or firm or corporation for the payment of such check, draft or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

O

Senate Bill No. 331

CHAPTER 1056

An act to add Section 311.3 to the Penal Code, relating to pornography.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 331, Stiern. Pornography.

Existing law prohibits as felonies various acts relating to the commercial exhibition and distribution of obscene matter which depicts a person under the age of 18 years engaged in or simulating various sexual acts.

This bill would make it unlawful for any person to knowingly develop, duplicate, print, or exchange any film, photograph, video tape, negative, or slide in which a person under the age of 14 years is engaged in an act of sexual conduct, as defined. A first violation would be a misdemeanor punishable by a fine of not more than $2,000, or imprisonment in the county jail for not more than one year, or both. A subsequent violation or a violation after a prior violation of other obscenity laws would be a felony punishable by imprisonment in the state prison for 16 months or 2 or 3 years.

The activities of law enforcement and prosecution agencies, medical, scientific, and educational and other specified activities, and lawful conduct between spouses would be exempted.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 311.3 is added to the Penal Code, to read:

311.3. (a) A person is guilty of sexual exploitation of a child when he or she knowingly develop, duplicate, print, or exchange any film, photograph, video tape, negative, or slide in which a person under the age of 14 years engaged in an act of sexual conduct.

(b) As used in this section "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital,

anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) is punishable by a fine of not more than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. If such person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she is punishable by imprisonment in the state prison.

(e) The provisions of this section shall not apply to an employee of a commercial film developer who is acting within the scope of his employment and in accordance with the instructions of his employer, provided that the employee has no financial interest in the commercial developer by which he is employed.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 356

CHAPTER 875

An act to amend Sections 328 and 328.5 of the Welfare and Institutions Code, relating to minors.

[Became law without Governor's signature. Filed with Secretary of State September 27, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 356, Sieroty. Minors: investigations.

Under existing law, a probation officer or social worker is required to make an investigation whenever he or she has cause to believe that there is a minor in the county who could be adjudged a dependent child of the court.

This bill would require the probation officer or social worker, as a part of the investigation, to interview the minor, if the minor is 4 years of age or older and is in juvenile hall or in another custodial facility, or has been removed to a foster home, and report thereon as specified.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 328 of the Welfare and Institutions Code is amended to read:

328. Whenever the probation officer has cause to believe that there was or is within the county, or residing therein, a person within the provisions of Section 300, the probation officer shall immediately make such investigation as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced.

The probation officer shall interview any minor four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the minor's view of the home environment. If proceedings are commenced, the probation officer shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the probation officer shall include the substance of the interview in the

social study required by Section 358.

SEC. 2. Section 328.5 of the Welfare and Institutions Code is amended to read:

328.5. Whenever the probation officer or social worker in a county welfare department of a demonstration county designated pursuant to Section 272 has cause to believe that there is within the county or residing therein, a person within the provisions of Section 300, the probation officer or social worker shall immediately make such investigation as he or she deems necessary to determine what services should be offered to the family and whether proceedings in the juvenile court should be commenced. If any such services are deemed appropriate, the probation officer or social worker shall make a referral to state protective services for children pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9.

The probation officer or social worker shall interview any minor four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the minor's view of the home environment. If proceedings are commenced, the probation officer or social worker shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the probation officer or social worker shall include the substance of the interview in the social study required by Section 358.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

O

Senate Bill No. 374

CHAPTER 935

An act to amend Section 13353 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 374, Russell. Vehicles: blood alcohol testing.

Existing law provides that any person who drives a motor vehicle upon a highway or in public areas shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle while under the influence of intoxicating liquor. The arrested person is required to decide which test is to be performed and the arresting officer is required to inform the person that he or she has a choice.

This bill would provide, if a person is lawfully arrested for driving under the influence of intoxicating liquor or the combined influence of intoxicating liquor and any drug and is first transported to a medical facility because of the need for medical treatment, that the person would only have the choice of those tests which are available at the facility and shall be so advised of that choice by the officer.

The bill would make other conforming changes.

The bill would incorporate changes to Section 13353 of the Vehicle Code proposed by AB 7 if both bills are chaptered and this bill is chaptered last, and would conform that section to the provisions of AB 541, if it is chaptered.

The people of the State of California do enact as follows:

Not operative section 1

SECTION 1. Section 13353 of the Vehicle Code is amended to read:

13353. (a) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while

under the influence of intoxicating liquor. The person shall be told that failure to submit to or complete such a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

If the person is lawfully arrested for driving under the influence of an intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and the tests may be administered whether or not the person is told that his or her failure to submit to or complete the test will result in the suspension of his or her privilege to operate a motor vehicle.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, the department, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor and that the person had refused to submit to, or failed to complete, the test after being requested by the officer, shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of the request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor, whether the person was placed under arrest, whether the person refused to submit to, or failed to complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or failed to complete, the test.

An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department fails to afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as hereinafter provided. However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension herein provided shall not become effective until five days after receipt by the person of the department's notification of the suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of the person's blood, and, if so requested, the arresting officer shall have the test performed.

Operative Section

SEC. 2. Section 13353 of the Vehicle Code is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to

the general public shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153. The person shall be told that failure to submit to or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for driving under the influence of an intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn

statement that the officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford him or her an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in paragraph (4) of subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

NOT operative Section

SEC. 3. Section 13353 of the Vehicle Code is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or in violation of Section 23102.6. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6. The person shall be told that failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for driving under the influence of an intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test,

the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any such person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23103.6 whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be

continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or for violation of Section 23102.6 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of the person's blood, and, if so requested, the arresting officer shall have the test performed.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 7 or Assembly Bill 541, or both, are chaptered and become effective January 1, 1982, and Assembly Bill 7, if chaptered, and this bill amend Section 13353 of the Vehicle Code and this bill is chaptered last, that this bill will make further conforming changes to the Vehicle Code to implement the changes proposed by Assembly Bill 541, if chaptered, and to give effect to, and incorporate, the amendments proposed by both this bill and Assembly Bill 7, if chaptered, as follows:

(1) If this bill and Assembly Bill 541 are both chaptered, whether Assembly Bill 7 is or is not chaptered, Section 2 of this act shall become operative and Sections 1 and 3 shall not become operative.

(2) If this bill and Assembly Bill 7 are both chaptered and become effective January 1, 1982, both bills amend Section 13353 of the Vehicle Code but Assembly Bill 541 is not chaptered, and this bill is chaptered after Assembly Bill 7, the amendments proposed by both bills shall be given effect and incorporated in Section 13353 of the Vehicle Code in the form set forth in Section 3 of this act. Therefore, if this bill and Assembly Bill 7 are both chaptered and become effective January 1, 1982, both bills amend Section 13353 of the Vehicle Code, this bill is chaptered after Assembly Bill 7 and Assembly Bill 541 is not chaptered, Section 3 of this act shall become operative and Sections 1 and 2 shall not become operative.

O

Senate Bill No. 379

CHAPTER 1054

An act to add Sections 1026.4 1370.5, and 1370.6 to the Penal Code, and to amend Sections 6330 and 7326 of, and to repeal Section 7330 of, the Welfare and Institutions Code, relating to criminal offenders.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 379, Russell. Criminal offenders.

Under existing law it is unlawful (1) for any person to assist any judicially committed or remanded patient of a state hospital to escape, attempt to escape, or to resist being returned after a leave of absence; (2) for a person committed to a public or private institution as a mentally disordered sex offender to escape from the institution or while being conveyed to or from the institution; or (3) for a person who has been committed to a state hospital as not competent to stand trial to escape between the time he or she becomes competent but prior to his or her return to the custody of the sheriff.

This bill would delete (3) above, and make it unlawful for a person committed to a state hospital or other public or private mental health facility, after being found not guilty by reason of insanity or being found not competent to stand trial, to escape from the facility or to escape while being conveyed to or therefrom. It would specify that the term of imprisonment imposed for a violation of the aforementioned provisions as well as for a violation of (2) above, shall be served consecutively to any other sentence or commitment.

It would also make it a crime for any person to assist any judicially committed or remanded patient of any public or private mental health facility to escape, attempt to escape, or to resist being returned after a leave of absence.

It would require the person in charge of any facilities from which any such persons escape to notify designated law enforcement agencies, as specified.

It also would make technical changes.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1026.4 is added to the Penal Code, to read:

1026.4. (a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1026, who escapes from or who escapes while being conveyed to or from the state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in a state prison not to exceed one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1026 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 2. Section 1370.5 is added to the Penal Code, to read:

1370.5. (a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1370 or 1370.1, who escapes from or who escapes while being conveyed to or from a state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in the state prison not to exceed one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1370 or 1370.1 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

Not operative Section

SEC. 3. Section 6330 of the Welfare and Institutions Code is amended to read:

6330. (a) Every person committed to a state hospital or other public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from such state hospital or other public or private mental health facility, is punishable by imprisonment in the state prison; or in the

county jail not to exceed one year. The term imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed as a mentally disordered sex offender shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

Operative Section

SEC. 4. Section 4536 is added to the Penal Code, to read:

4536. (a) Every person committed to a state hospital or other public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from such state hospital or other public or private mental health facility, is punishable by imprisonment in the state prison or in the county jail not to exceed one year. The term imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed as a mentally disordered sex offender shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 5. Section 7326 of the Welfare and Institutions Code is amended to read:

7326. Any person who willfully assists any judicially committed or remanded patient of a state hospital or other public or private mental health facility to escape, to attempt to escape therefrom, or to resist being returned from a leave of absence shall be punished by imprisonment in the state prison, a fine of not more than five thousand dollars ($5,000), or both such imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine.

SEC. 6. Section 7330 of the Welfare and Institutions Code is repealed.

SEC. 7. The provisions of Section 3 of this act shall not be effective if any bill that repeals Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code is

passed by the Legislature and signed into law on or before January 1, 1982. The provisions of Section 4 of this act shall only become operative if a bill that repeals Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code is passed by the Legislature and signed into law on or before January 1, 1982.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 412

CHAPTER 987

An act to amend Sections 831 and 831.5 of, and to repeal and add Section 831 to, the Penal Code, relating to custodial officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 412, Johnson. Custodial officers.

Existing law defines and prescribes the authority of custodial officers as employees of a city or county, or of a county having a population of 250,000 or less, who are required to complete specified training prior to actual assignment.

This bill would authorize the performance of duties under specified supervision prior to completion of training.

Under existing law, custodial officers of a county having a population of 250,000 or less have specified authority to carry firearms.

This bill would limit this authority to trained custodial officers, as specified.

Under existing law, custodial officers of other counties and cities have no right to carry or possess firearms in the performance of their duties.

This bill would provide specified emergency authority for the carrying of firearms by custodial officers of other counties and cities prior to July 1, 1983.

Existing law provides as specified for assistance to counties from the County Jail Capital Expenditure Fund.

This bill would exempt Monterey County from specified control language and regulations relative to that fund.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 831 of the Penal Code is amended to read:

831. (a) A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A custodial officer shall have no right to carry or possess firearms in the performance of his prescribed duties, except that

where the Chief of Police and the County Board of Supervisors declare an emergency to exist with regard to the transportation of prisoners caused by closing existing detention facilities before completion of detention facilities under current construction, custodial officers may, under the direction of the sheriff or chief of police, carry or possess firearms while engaged in transporting prisoners prior to July 1, 1983.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to such position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within 180 days following the date of the initial assignment as a custodial officer, satisfactorily complete the jail operations course prescribed by the Board of Corrections pursuant to Section 6030. Persons designated as custodial officers, before the expiration of the 90- and 180-day periods described in this subdivision, who have not yet completed the required training, may perform the duties of a custodial officer only while under the direct supervision of a peace officer as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

This section shall remain in effect only until July 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1983, deletes or extends such date.

SEC. 2. Section 831 is added to the Penal Code, to read:

831. (a) A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A custodial officer shall have no right to carry or possess firearms in the performance of his prescribed duties.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to such position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within 180 days following the date of the initial assignment as a custodial officer, satisfactorily complete the jail operations course prescribed by the Board of Corrections pursuant to Section 6030. Persons designated as custodial officers, before the expiration of the 90- and 180-day periods described in this subdivision, who have not yet completed the required training, may perform the duties of a custodial officer only while under the direct supervision of a peace officer as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

SEC. 3. Section 831.5 of the Penal Code is amended to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a county having a population of 250,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of custodial officer may include the serving of warrants, court orders, writs and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer shall have no right to carry or possess firearms in the performance of his prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes or rescues in or about a detention facility falling under the care and custody of the sheriff or

chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to such position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within 180 days following the date of the initial assignment as a custodial officer, satisfactorily complete the jail operations course prescribed by the Board of Corrections pursuant to Section 6030. Persons designated as custodial officers, before the expiration of the 90- and 180-day periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

SEC. 4. Notwithstanding any other provision of law, the Board of Corrections is authorized to disregard the control language of Item Number 543-101-001 of the Budget Act of 1981 as it may apply to Monterey County. Further, the Board of Corrections may grant Monterey County a variance from the County Jail Capital Expenditure Fund regulations and criteria so that Monterey County may compete in the County Jail Capital Expenditure Fund's 1981–82 funding period in order to help remedy design problems in the Monterey County jail.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The current requirement that persons complete training prior to actual assignment as a correctional officer is unnecessary and has resulted in recruiting problems and unfairness to persons taking the training without assurance of employment or means to pay for the

training.

SEC. 6. Section 2 of this act shall become operative July 1, 1983.

O

Senate Bill No. 434

CHAPTER 687

An act to add Chapter 19 (commencing with Section 22435) to Division 8 of the Business and Professions Code, relating to shopping and laundry carts.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 434, Presley. Shopping carts and laundry carts.

Existing law does not specifically prohibit the removal and abandonment of shopping carts or laundry carts from the premises or parking area of a retailer's establishment.

This bill would make it unlawful to remove a shopping cart or laundry cart, as defined, from the premises or parking area, as defined, of a retail establishment if the cart has a specified permanently affixed sign. It would make it unlawful, among other things, to be in possession of, or to abandon, alter or tamper with, any cart so identified with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart, or to remove, obliterate, or alter serial numbers on carts and would impose misdemeanor penalties therefor.

Existing law does not impose specific requirements on persons engaged in the business of shopping cart or laundry cart retrieval.

This bill would require any person who engages in the business of shopping cart or laundry cart retrieval, as defined, to retain records showing written authorization to retrieve shopping carts or laundry carts and for the possession of shopping carts or laundry carts retrieved, to maintain a copy of the written authorization in each vehicle used for shopping cart or laundry cart retrieval, and to display on each service vehicle a sign that clearly identifies the service. This bill would also impose misdemeanor penalties for a violation thereof.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 19 (commencing with Section 22435) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 19. SHOPPING AND LAUNDRY CARTS

Article 1. Identification of Shopping and Laundry Carts

22435. As used in this article:

(a) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(b) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

22435.1. The provisions of Section 22435.2 shall apply when a shopping cart or a laundry cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

22435.2. It is unlawful to do any of the following acts, if a shopping cart or laundry cart has a permanently affixed sign as provided in Section 22435.1:

(a) To remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(c) To be in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart or laundry

cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

22435.3. Any person who violates any of the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

22435.4. This article shall not apply to the owner of a shopping cart or laundry cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 22435.2.

Article 2. Shopping Cart or Laundry Cart Retrieval Services

22435.10. As used in this article:

(a) "In the business of shopping cart or laundry cart retrieval" means to search for, gather, and restore possession to the owner, or an agent thereof, for compensation or in expectation of compensation, of shopping carts or laundry carts located outside the premises or parking area of a retail establishment.

(b) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(c) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(d) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

22435.11. (a) Any person who engages in the business of shopping cart or laundry cart retrieval shall retain records showing written authorization from the cart owner, or an agent thereof, to retrieve the cart or carts and to be in possession of the cart or carts retrieved.

(b) A copy of the record showing written authorization shall be maintained in each vehicle used for shopping cart or laundry cart retrieval.

22435.12. Each vehicle employed for the retrieval of shopping carts or laundry carts shall display a sign that clearly identifies the retrieval service.

22435.13. Any person who violates the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 439

CHAPTER 1051

An act to amend Section 12001 of, and to add Section 12031.1 to, the Penal Code, relating to weapons.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 439, Davis. Weapons.

Existing law prohibits the carrying of concealed or loaded firearms, as defined, except as specified.

This bill would include in these prohibitions any rocket, rocket propelled projectile launcher or similar device containing any explosive or incendiary material whether or not such device is designed for emergency or distress signaling purposes, except as specified.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12001 of the Penal Code is amended to read:

12001. (a) "Pistol," "revolver," and "firearm capable of being concealed upon the person" as used in this chapter shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 12 inches in length. "Pistol," "revolver," and "firearm capable of being concealed upon the person" as used in Sections 12021, 12072, and 12073 include the frame or receiver of any such weapon.

(b) For the purpose of Sections 12025 and 12031 the term "firearm" shall also include any rocket, rocket propelled projectile launcher or similar device containing any explosive or incendiary material whether or not such device is designed for emergency or distress signaling purposes.

SEC. 2. Section 12031.1 is added to the Penal Code, to read:

12031.1. Nothing in Section 12031 shall prevent any person from storing aboard any vessel or aircraft any loaded or unloaded rocket,

rocket propelled projectile launcher, or similar device designed primarily for emergency or distress signaling purposes, or from possessing such a device while in a permitted hunting area or traveling to or from such area and carrying a valid California permit or license to hunt.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 494

CHAPTER 936

An act to amend Section 40000.13 of, and to add Section 22520.5 to, the Vehicle Code, relating to freeways.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 494, Montoya. Freeways: vending.

(1) Existing law does not specifically prohibit any person from soliciting, displaying, selling or offering to sell, or vending or attempting to vend any merchandise or service while being wholly or partly within the boundaries of a freeway.

This bill would, with specified exceptions, make any of these acts an infraction for the first offense and a misdemeanor for second and subsequent offenses.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 22520.5 is added to the Vehicle Code, to read:

22520.5. (a) Any person who solicits, displays, sells, offers for sale, or otherwise vends or attempts to vend any merchandise or service while being wholly or partly within the right-of-way of any freeway, including any on-ramp, off-ramp, or roadway shoulder which lies within the right-of-way of the freeway, is guilty of an infraction. Any person guilty of a second or subsequent offense under this section is guilty of a misdemeanor.

(b) Subdivision (a) of this section shall not apply to a tow car or service vehicle rendering assistance to a disabled vehicle or to a person issued a permit to vend upon the freeway.

SEC. 2. Section 40000.13 of the Vehicle Code is amended to read:

40000.13. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 22520.5, a second or subsequent offense relating to vending on freeways.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 586

CHAPTER 1064

An act to amend Sections 288 and 1203.065 of, and to add Sections 667.51 and 1203.066 to, the Penal Code, relating to sex offenders.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 586, Joint Committee for Revision of the Penal Code. Crimes: sex offenders.

(1) Existing law specifies a term of imprisonment in a state prison of 3, 5, or 7 years for a person who, by use of force, violence, duress, menace, or threat of great bodily harm, and against the will of the victim, willfully and lewdly commits any lewd or lascivious act, as specified, upon a child under 14 years.

This bill would specify a term of imprisonment for such crime of 3, 6, or 8 years and would delete the requirement that the act, when accompanied by force, violence, duress, menace, or threat of great bodily harm, be against the will of the victim.

(2) Existing law prohibits as crimes the commission of various acts of sexual conduct and sexual assault peformed upon children.

The bill would define terms and make related changes in provisions concerning punishment for sexual offenses. The bill would prohibit the granting of probation for persons convicted of certain sexual crimes against children in specified circumstances.

(3) The bill would incorporate additional changes proposed in Section 1203.065 of the Penal Code by Senate Bill 776 which would become operative if this bill and Senate Bill 776 are both chaptered and become effective on or before January 1, 1982, and this bill is chaptered last.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 288 of the Penal Code is amended to read:

288. (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other

crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or threat of great bodily harm, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six or eight years.

(c) In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

SEC. 2. Section 667.51 is added to the Penal Code, to read:

667.51. (a) Any person who is found guilty of violating Section 288 shall receive a five-year enhancement for each prior conviction of an offense listed in subdivision (b) provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Section 261, 264.1, 285, 286, 288, 288a, or 289.

(c) A violation of Section 288 by a person who has served two or more prior prison terms as defined in Section 667.5 for a violation of an offense listed in subdivision (b) is punishable as a felony by imprisonment in the state prison for 15 years to life. For purposes of this subdivision a conviction for a violation of an offense listed in subdivision (b) in which the person was committed to a state hospital shall be the equivalent of a sentence to state prison. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

SEC. 3. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of violating subdivision (2) of Section 261, or Section 264.1 or 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm.

(b) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit rape, sodomy, oral copulation or any violation of Section 264.1, subdivision (b) of Section 288, or Section

289.

When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(c) This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 3.5. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of violating subdivision (2) of Section 261, or Section 264.1, or Section 266h where the person engaged in prostitution is under 14 years of age or Section 266i where the other person is under 14 years of age, or Section 266j, or 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace or threat of great bodily harm or subdivision (c) of Section 311.4.

(b) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit rape, sodomy, oral copulation or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289.

When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(c) This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 4. Section 1203.066 is added to the Penal Code, to read:

1203.066. (a) Notwithstanding the provisions of Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken pursuant to Section 1385 for any of the following persons:

(1) A person convicted of violating Section 288 when the act is committed by the use of force, violence, duress, menace or threat of bodily harm.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288.

(3) A person convicted of a violation of Section 288 and who was a stranger to the child victim or made friends with the child victim for the purpose of committing an act in violation of Section 288, unless the defendant honestly and reasonably believed the victim was 14 years old or older.

(4) A person who used a weapon during the commission of a

violation of Section 288.

(5) A person convicted of committing a violation of Section 288 and who has had a prior conviction of Section 261, 264.1, 267, 285, 288, or 289, of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or threat of great bodily harm, of assaulting another with intent to commit a crime specified in this paragraph in violation of Section 220, or a violation of Section 266.

(6) A person convicted of kidnapping the child victim in violation of either Section 207 or 209 and who kidnapped the victim for the purpose of committing a violation of Section 288.

(7) A person who is convicted of committing a violation of Section 288 on more than one victim at the same time or in the same course of conduct.

(8) A person who in violating Section 288 has substantial sexual conduct with a victim under the age of 11 years.

(9) A person who occupies a position of special trust and commits an act of substantial sexual conduct. "Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by a natural parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), and (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the household.

(2) Imprisonment of the defendant is not in the best interest of the child.

(3) Rehabilitation of the defendant is feasible in a recognized treatment program designed to deal with child molestation, and if the defendant is to remain in the household, a program that is specifically designed to deal with molestation within the family.

(4) There is no threat of physical harm to the child victim if there is no imprisonment. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

(d) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open

court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 5. This act shall be known and may be cited as the Roberti-Imbrecht-Rains-Goggin Child Sexual Abuse Prevention Act.

SEC. 5.5. It is the intent of the Legislature, if this bill and Senate Bill 776 are both chaptered and become effective on or before January 1, 1982, both bills amend Section 1203.065 of the Penal Code, and this bill is chaptered after Senate Bill 776, that Section 1203.065 of the Penal Code, as amended by Section 5 of Senate Bill 776, be further amended on the effective date of this act in the form set forth in Section 3.5 of this act to incorporate the changes in Section 1203.065 proposed by this bill. Therefore, if this bill and Senate Bill 776 are both chaptered and become effective on or before January 1, 1982, and Senate Bill 776 is chaptered before this bill and amends Section 1203.065, Section 3.5 of this act shall become operative on the effective date of this act and Section 3 of this act shall not become operative.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that, the duties, obligations, or responsibilities imposed on local agencies or school districts by this act are such that related costs are incurred as part of their normal operating procedures.

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Senate Bill No. 588

CHAPTER 1062

An act to amend Sections 13516, 13836, and 13837 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 588, Rains. Crimes: investigation and prevention.

Under existing law, the Commission on Peace Officer Standards and Training is required to prepare guidelines establishing standard procedures which may be followed by police agencies in the investigation of sexual assault cases and to prepare and implement a course for the training of specialists in the investigation of these cases. The Office of Criminal Justice Planning also is required to establish an advisory committee to develop a course of training for district attorneys in the investigation of such cases, and to provide grants to proposed and existing local rape victim counseling centers, as specified.

This bill would make the foregoing provisions relating to the development of investigation procedures and training also applicable to cases involving the sexual exploitation or sexual abuse of children. It also would require the Office of Criminal Justice Planning to provide grants to proposed and existing local child sexual exploitation and child abuse victim counseling centers.

It would state that it is the intent of the Legislature that the costs incurred as a result of the enactment of the bill shall not be funded by General Fund moneys.

The people of the State of California do enact as follows:

SECTION 1. Section 13516 of the Penal Code is amended to read:

13516. (a) The commission shall prepare guidelines establishing standard procedures which may be followed by police agencies in the investigation of sexual assault cases, and cases involving the sexual exploitation or sexual abuse of children, including, police response to, and treatment of, victims of such crimes.

(b) The course of training leading to the basic certificate issued by the commission shall, on and after July 1, 1977, include adequate instruction in the procedures described in subdivision (a). No reimbursement shall be made to local agencies based on attendance on or after such date at any such course which does not comply with the requirements of this subdivision.

(c) The commission shall prepare and implement a course for the training of specialists in the investigation of sexual assault cases, child

sexual exploitation cases, and child sexual abuse cases. Officers assigned as investigation specialists for these crimes shall successfully complete their training within six months of the date the assignment was made.

(d) It is the intent of the Legislature in the enactment of this section to encourage the establishment of sex crime investigation units in police agencies throughout the state, which units shall include, but not be limited to, investigating crimes involving the sexual exploitation and sexual abuse of children.

SEC. 2. Section 13836 of the Penal Code is amended to read:

13836. The Office of Criminal Justice Planning shall establish an advisory committee which shall develop a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases and shall approve grants awarded pursuant to Section 13837. The courses shall include training in the unique emotional trauma experienced by victims of these crimes.

It is the intent of the Legislature in the enactment of this chapter to encourage the establishment of sex crime prosecution units, which shall include, but not be limited to, child sexual exploitation and child sexual abuse cases, in district attorneys' offices throughout the state.

SEC. 3. Section 13837 of the Penal Code is amended to read:

13837. The Office of Criminal Justice Planning shall provide grants to proposed and existing local rape, child sexual exploitation, and child sexual abuse victim counseling centers. The centers shall maintain a 24-hour telephone counseling service for sex crime victims, appropriate in-person counseling and referred service during normal business hours, and maintain other standards or services which shall be determined to be appropriate by the advisory committee established pursuant to Section 13836 as grant conditions. The advisory committee shall identify the criteria to be utilized in awarding the grants provided by this chapter before any funds are allocated.

In order to be eligible for funding pursuant to this chapter, the centers shall demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state funds appropriated for purposes of this chapter. Each center receiving funds pursuant to this chapter shall make every attempt to qualify for any available federal funding.

State funds provided to establish centers shall be utilized when possible, as determined by the advisory committee, to expand the program and shall not be expended to reduce fiscal support from other public or private sources. The centers shall maintain quarterly and final fiscal reports in a form to be prescribed by the administering agency. In granting funds, the advisory committee shall give priority to centers which are operated in close proximity to medical treatment facilities.

SEC. 4. It is the intention of the Legislature that the costs incurred as a result of the enactment of the provisions of this act shall not be funded by General Fund moneys.

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Senate Bill No. 589

CHAPTER 566

An act to add Section 243.5 to the Penal Code, and to add Section 729 to the Welfare and Institutions Code, relating to assault and battery.

[Approved by Governor September 18, 1981. Filed with Secretary of State September 19, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 589, Rains. Assault and battery on school grounds.

Existing law makes assault and battery, as defined, misdemeanors. If committed against a peace officer, custodial officer, or security officer in the performance of his duties, assault or battery may be punished more severely.

This bill would provide that a person who is convicted of assault or battery on school property during hours when school activities are being conducted would be required to make restitution as specified as a condition of probation unless the court concludes restitution is inappropriate.

The bill would also provide for the conditions of probation of minors who commit such an offense, as specified.

Existing law provides that a peace officer may, without a warrant, arrest a person whom he has reasonable cause to believe has committed a public offense in his presence, or whom he has reasonable cause to believe has committed a felony whether or not a felony has been committed.

This bill would permit a peace officer to arrest, without a warrant, a person who has committed assault or battery on school property whether or not in the officer's presence or a person whom the officer has reasonable cause to believe committed such an assault or battery, whether or not it has been committed.

The people of the State of California do enact as follows:

SECTION 1. Section 243.5 is added to the Penal Code, to read:

243.5. (a) When a person is convicted of committing an assault or battery on school property during hours when school activities are being conducted , and the court grants probation, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such a condition would be inappropriate, shall require that the person make restitution to the victim. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such a condition would be inappropriate, that the

defendant perform specified community service. Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(b) Notwithstanding subdivision (2) or (3) of Section 836, a peace officer may, without a warrant, arrest a person who commits an assault or battery described in subdivision (a):

(1) Whenever the person has committed the assault or battery, although not in his presence.

(2) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(c) School as used in this section means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code, and any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, or technical school.

SEC. 2. Section 729 is added to the Welfare and Institutions Code, to read:

729. If a minor is found to be a person described in Section 602 by reason of the commission of a battery on _____ described in Penal Code Section 243.5, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, shall require the minor to make restitution to the victim of the battery. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, shall require the minor to perform specified community service. Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Senate Bill No. 590

CHAPTER 787

An act to amend Section 1027 of the Penal Code, relating to insanity.

[Approved by Governor September 25, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 590, Rains. Insanity.

Existing law provides for examination and investigation of the sanity of a defendant who pleads not guilty by reason of insanity, and for testimony relative thereto.

This bill would require the examination and investigation of specified matters relative to the mental status of the defendant, would state that a psychiatrist or psychologist is not presumed able to determine sanity or insanity, and would provide for the admission or exclusion of evidence by the court.

The people of the State of California do enact as follows:

SECTION 1. Section 1027 of the Penal Code is amended to read:

1027. (a) When a defendant pleads not guilty by reason of insanity the court must select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his mental status. It is the duty of the psychiatrists or psychologists so selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. The psychiatrists or psychologists so appointed by the court shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seems just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.

(b) Any report on the examination and investigation made pursuant to subdivision (a) shall include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his examination of the defendant, and the present psychological or psychiatric symptoms of the defendant, if any.

(c) This section does not presume that a psychiatrist or psychologist can determine whether a defendant was sane or insane

at the time of the alleged offense. This section does not limit a court's discretion to admit or exclude, pursuant to the Evidence Code, psychiatric or psychological evidence about the defendant's state of mind or mental or emotional condition at the time of the alleged offense.

(d) Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant; where expert witnesses are called by the district attorney in such action, they shall only be entitled to such witness fees as may be allowed by the court.

(e) Any psychiatrist or psychologist so appointed by the court may be called by either party to the action or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court, or by either party, to the action, the court may examine the psychiatrist, or psychologist as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist or psychologist is called and examined by the court the parties may cross-examine him in the order directed by the court. When called by either party to the action the adverse party may examine him the same as in the case of any other witness called by such party.

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Senate Bill No. 627

CHAPTER 697

An act to add Section 207.5 to the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 627, Presley. Juvenile court law.

Existing law does not provide that a person who misrepresents or falsely identifies himself or herself to secure admission to the premises or grounds of a juvenile hall, home, ranch, or camp or to gain access to any minor detained therein, is guilty of a misdemeanor, as specified.

This bill would so provide.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 207.5 is added to the Welfare and Institutions Code, to read:

207.5. Every person who misrepresents or falsely identifies himself or herself either verbally or by presenting any fraudulent written instrument to any probation officer, or to any superintendent, director, counselor, or employee of a juvenile hall, home, ranch, or camp for the purpose of securing admission to the premises or grounds of any such juvenile hall, home, ranch, or camp, or to gain access to any minor detained therein, and who would not otherwise qualify for admission or access thereto, is guilty of a misdemeanor.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or

eliminates a crime or infraction.

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Senate Bill No. 628

CHAPTER 1065

An act to amend Section 12031 of the Penal Code, relating to firearms.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 628, Presley. Firearms: loaded.

Existing law authorizes the carrying of a loaded firearm by a person who reasonably believes it is necessary for the preservation of a person or property which is in immediate danger.

This bill would define "immediate" as the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance, and would also require the danger to be grave.

This bill would incorporate additional changes in Section 12031 of the Penal Code proposed by AB 846 if both bills are chaptered and become effective on or before January 1, 1982, and this bill is chaptered last.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or

preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this paragraph. A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm in public every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this paragraph and the date when the endorsement is to be reviewed again.

(2) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(3) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(4) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code.

(5) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a Firearms Qualification Card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the

Civil Code, while actually engaged in the performance of their duties pursuant to such section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators, private patrol operators, and alarm company operators who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated as such by persons engaged in any lawful business, while actually engaged in protecting and preserving the property of their employers and uniformed alarm agents employed by an alarm company operator while on duty. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and uniformed employees of private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for

violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or another is in immediate, grave danger and that the carrying of such weapon is necessary for the preservation of such person or property. As used in this subdivision "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his place of residence, including any temporary residence or campsite.

SEC. 2. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

Every person convicted under this section who has previously been convicted of an offense involving the use of a firearm shall serve a minimum three-month period in the county jail, or, if granted probation, or the execution or imposition of sentence is suspended,

it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this paragraph. A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm in public every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this paragraph and the date when the endorsement is to be reviewed again.

(2) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(3) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(4) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(5) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a Firearms Qualification Card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police

commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators, private patrol operators, and alarm company operators who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated as such by persons engaged in any lawful business, while actually engaged in protecting and preserving the property of their employers and uniformed alarm agents employed by an alarm

company operator while on duty. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and uniformed employees of private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of such weapon is necessary for the preservation of such person or property. As used in this subdivision "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(k) Nothing in this section is intended to preclude the carrying of

a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 3. It is the intent of the Legislature, if this bill and Assembly Bill 846 are both chaptered and become effective on or before January 1, 1982, both bills amend Section 12031 of the Penal Code, and this bill is chaptered after Assembly Bill 846, that Section 12031 of the Penal Code, as amended by Section 9 of Assembly Bill 846, be further amended on the effective date of this act in the form set forth in Section 2 of this act to incorporate the changes in Section 12031 proposed by this bill. Therefore, if this bill and Assembly Bill 846 are both chaptered and become effective on or before January 1, 1982, and Assembly Bill 846 is chaptered before this bill and amends Section 12031, Section 2 of this act shall become operative on the effective date of this act and Section 1 of this act shall not become operative.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 647

CHAPTER 387

An act to amend Section 146c of the Penal Code, relating to nongovernmental organizations.

[Approved by Governor September 8, 1981. Filed with Secretary of State September 9, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 647, Ellis. Law enforcement.

Existing law prohibits designations of nongovernmental organizations which, among other things, imply that the organization is composed of peace officers when, in fact, less than 90% of the voting members are peace officers.

This bill would substitute the term "law enforcement personnel" for "peace officers" for these purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 146c of the Penal Code is amended to read:

146c. Every person who designates any nongovernmental organization by any name, including, but not limited to any name which incorporates the term "peace officer," "police," or "law enforcement," which would reasonably be understood to imply that the organization is composed of law enforcement personnel, when, in fact, less than 90 percent of the voting members of the organization are law enforcement personnel or firemen, active or retired, is guilty of a misdemeanor.

Every person who solicits another to become a member of any organization so named, of which less than 90 percent of the voting members are law enforcement personnel or firemen, or to make a contribution thereto or subscribe to or advertise in a publication of the organization, or who sells or gives to another any badge, pin, membership card, or other article indicating membership in the organization, knowing that less than 90 percent of the voting members are law enforcement personnel or firemen, active or retired, is guilty of a misdemeanor.

As used in this section, "law enforcement personnel" includes those mentioned in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, plus any other officers in any segment of law enforcement who are employed by the state or any of its political subdivisions.

O

Senate Bill No. 648

CHAPTER 837

An act to amend Section 502 of the Penal Code, relating to computer crime.

[Approved by Governor September 26, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 648, Ellis. Computer crime.

Existing law provides that it is a crime to intentionally access or cause to be accessed any computer system or network for the purpose of (1) devising or executing any fraudulent or extortive scheme or (2) obtaining money, property, or services with false or fraudulent intent, representations, or promises, or to maliciously access, alter, delete, damage, or destroy any computer system, network, program, or data.

This bill would also make it a crime for any person to maliciously access or cause to be accessed any computer system or network for the purpose of obtaining unauthorized information concerning the credit information of another person or to introduce or cause to be introduced false information into that system or network for the purpose of wrongfully damaging or enhancing the credit rating of any person.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 502 of the Penal Code is amended to read:

502. (a) For purposes of this section:

(1) "Access" means to instruct, communicate with, store data in, or retrieve data from a computer system or computer network.

(2) "Computer system" means a machine or collection of machines, excluding pocket calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs and data, that performs functions, including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(3) "Computer network" means an interconnection of two or more computer systems.

(4) "Computer program" means an ordered set of instructions or statements, and related data that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions.

(5) "Data" means a representation of information, knowledge, facts, concepts, or instructions, which are being prepared or have been prepared, in a formalized manner, and are intended for use in a computer system or computer network.

(6) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computer system representation thereof.

(7) "Property" includes, but is not limited to, financial instruments, data, computer programs, documents associated with computer systems and computer programs, or copies thereof, whether tangible or intangible, including both human and computer system readable data, and data while in transit.

(8) "Services" includes, but is not limited to, the use of the computer system, computer network, computer programs, or data prepared for computer use, or data contained within a computer system, or data contained within a computer network.

(b) Any person who intentionally accesses or causes to be accessed any computer system or computer network for the purpose of (1) devising or executing any scheme or artifice to defraud or extort or (2) obtaining money, property, or services with false or fraudulent intent, representations, or promises shall be guilty of a public offense.

(c) Any person who maliciously accesses or causes to be accessed any computer system or computer network for the purpose of obtaining unauthorized information concerning the credit information of another person or who introduces or causes to be introduced false information into that system or network for the purpose of wrongfully damaging or wrongfully enhancing the credit rating of any person shall be guilty of a public offense.

(d) Any person who maliciously accesses, alters, deletes, damages, or destroys any computer system, computer network, computer program, or data shall be guilty of a public offense.

(e) Any person who violates the provisions of subdivision (b), (c), or (d) is guilty of a felony and is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both such fine and imprisonment, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(f) This section shall not be construed to preclude the

applicability of any other provision of the criminal law of this state which applies or may apply to any transaction.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 672

CHAPTER 792

An act to amend Section 68751 of the Government Code, to add Section 5076.3 to the Penal Code, and to add Sections 1727 and 3157 to the Welfare and Institutions Code, relating to subpoenas.

[Approved by Governor September 25, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 672, Sieroty. Subpoenas.

(1) Under existing law, a person is not obliged to attend as a witness in any investigation or proceeding of the Commission on Judicial Qualifications at a place out of the county in which he resides unless the distance is less than 150 miles from his place of residence.

This bill would require such attendance if the person is a resident within the state at the time of service.

(2) Under existing law, the head of a department of state government has authority to issue a subpoena for the attendance of witnesses and the production of things for any inquiry, investigation, hearing, or proceeding. Existing law permits the delegation of this authority and specifies procedures.

This bill would provide that the Chairman of the Board of Prison Terms, the Chairman of the Youthful Offender Parole Board, and the Chairman of the Narcotic Addict Evaluation Authority have that authority. The bill would require these agencies to adopt specified regulations.

The people of the State of California do enact as follows:

SECTION 1. Section 68751 of the Government Code is amended to read:

68751. In any investigation or formal proceeding in any part of the State, the process extends to all parts of the State. A person is not obliged to attend as a witness in any investigation or proceeding under this chapter unless the person is a resident within the state at the time of service.

SEC. 2. Section 5076.3 is added to the Penal Code, to read:

5076.3. The Chairman of the Board of Prison Terms shall have the authority of a head of a department set forth in subdivision (e) of Section 11181 of the Government Code to issue subpoenas as provided in Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2 of the Government Code. The board shall adopt regulations on the policies and guidelines for the issuance of subpoenas.

SEC. 3. Section 1727 is added to the Welfare and Institutions

Code, to read:

1727. The Chairman of the Youthful Offender Parole Board shall have the authority of a head of a department set forth in subdivision (e) of Section 11181 of the Government Code to issue subpoenas as provided in Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2 of the Government Code. The board shall adopt regulations on the policies and guidelines for the issuance of subpoenas.

SEC. 4. Section 3157 is added to the Welfare and Institutions Code, to read:

3157. The Chairman of the Narcotic Addict Evaluation Authority shall have the authority of a head of a department set forth in subdivision (e) of Section 11181 of the Government Code to issue subpoenas as provided in Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2 of the Government Code. The authority shall adopt regulations on the policies and guidelines for the issuance of regulations.

O

Senate Bill No. 674

CHAPTER 488

An act to amend Sections 781, 826, 826.5, and 826.6 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 15, 1981. Filed with Secretary of State September 16, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 674, Sieroty. Juvenile court law.

Existing law delineates procedures for the adjudgment of persons as wards of the juvenile court on the basis of noncriminal (so-called "status" offenders) and criminal conduct. A person may petition the juvenile court for sealing of his or her records, as specified; the court is required to order the destruction of sealed records when the person who is the subject of the records reaches the age of 38, except as specified; and any other agency in possession of sealed records is required to destroy its records when the person who is the subject of the particular record reaches the age of 38. Nonsealed juvenile court records are required to be destroyed when the person who is the subject of the record reaches the age of 38.

This bill would require the destruction of sealed juvenile court records, except as specified, as follows: 5 years after the record is ordered sealed if the person was alleged or adjudged to be a person coming within the juvenile court law on the basis of noncriminal conduct, or when the person reaches the age of 38 if he or she was alleged or adjudged to be a person coming within the juvenile court law on the basis of criminal conduct. Juvenile court records that have not been sealed would be required to be destroyed when the person who is the subject of the record reaches the age of 28 if he or she was alleged to be or adjudged a dependent child of the court or a ward of the court on the basis of noncriminal conduct, or when the person reaches the age of 38 if he or she was alleged to be or adjudged a ward of the court on the basis of criminal conduct.

It would authorize a probation officer to destroy all records and papers in a proceeding after 5 years from the date on which the jurisdiction of the juvenile court over the minor is terminated.

It also would make technical changes.

The people of the State of California do enact as follows:

SECTION 1. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before

a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order. Thereafter, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. Each such agency and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it, he, or she received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the

records sealed.

(c) (1) The provisions of subdivision (a) shall not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requester code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(2) This subdivision shall not be construed as preventing the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(3) This subdivision shall not be construed as affecting the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that were sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602. Any other agency in possession of sealed records shall destroy its records in accordance with this section.

SEC. 2. Section 826 of the Welfare and Institutions Code is amended to read:

826. (a) After five years from the date on which the jurisdiction of the juvenile court over a minor is terminated, the probation officer may destroy all records and papers in the proceedings concerning the minor. The juvenile court record, which includes all records and papers, any minute book entries, dockets and judgment dockets, shall

be destroyed by order of the court as follows: when the person who is the subject of the record reaches the age of 28, if the person was alleged or adjudged to be a person described by Section 300 or 601; or when the person reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602, unless for good cause the court determines that the juvenile record shall be retained, or unless the juvenile court record is released to the person who is the subject of the record pursuant to this section. Any person who is the subject of a juvenile court record may by written notice request the juvenile court to release the court record to his or her custody. Wherever possible, the written notice shall include the person's full name, the person's date of birth, and the juvenile court case number. Any juvenile court receiving the written notice shall release the court record to the person who is the subject of the record five years after the jurisdiction of the juvenile court over the person has terminated, unless for good cause the court determines that the record shall be retained. Exhibits shall be destroyed as provided under Sections 1418, 1418.5, and 1419 of the Penal Code. For the purpose of this section "destroy" means destroy or dispose of for the purpose of destruction. The proceedings in any case in which the juvenile court record is destroyed or released to the person who is the subject of the record pursuant to this section shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events in the case.

(b) If an individual whose juvenile court record has been destroyed or released under subdivision (a) discovers that any other agency still retains a record, the individual may file a petition with the court requesting that the records be destroyed. The petition will include the name of the agency and the type of record to be destroyed. The court shall order that such records also be destroyed unless for good cause the court determines to the contrary. The court shall send a copy of the order to each agency and each agency shall destroy records in its custody as directed by the order, and shall advise the court of its compliance. The court shall then destroy the copy of the petition, the order, and the notice of compliance from each agency. Thereafter, the proceedings in such case shall be deemed never to have occurred.

(c) Juvenile court records, which include, all records and papers, any minute book entries, dockets and judgment dockets in juvenile traffic matters may be destroyed after five years from the date on which the jurisdiction of the juvenile court over a minor is terminated. Prior to such destruction the original record may be microfilmed or photocopied. Every such reproduction shall be deemed and considered an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed and considered a transcript, exemplification or certified copy, as the case may be, of the original.

SEC. 3. Section 826.5 of the Welfare and Institutions Code is

amended to read:

826.5. (a) Notwithstanding the provisions of Section 826, at any time before a person reaches the age when his or her records are required to be destroyed, the judge or clerk of the juvenile court or the probation officer may destroy all records and papers, the juvenile court record, any minute book entries, dockets, and judgment dockets in the proceedings concerning the person as a minor if the records and papers, juvenile court record, any minute book entries, dockets, and judgment dockets are microfilmed or photocopied prior to destruction. Exhibits shall be destroyed as provided under Sections 1418, 1418.5, and 1419 of the Penal Code.

(b) Every reproduction shall be deemed and considered an original. A transcript, exemplification, or certified copy of any reproduction shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

SEC. 4. Section 826.6 of the Welfare and Institutions Code is amended to read:

826.6. (a) Any minor who is the subject of a petition that has been filed in juvenile court to adjudge the minor a dependent child or a ward of the court shall be given written notice by the clerk of the court upon disposition of the petition or the termination of jurisdiction of the juvenile court of all of the following:

(1) The statutory right of any person who has been the subject of juvenile court proceedings to petition for sealing of the case records.

(2) The statutory provisions regarding the destruction of juvenile court records and records of juvenile court proceedings retained by state or local agencies.

(3) The statutory right of any person who has been the subject of juvenile court proceedings to have his or her juvenile court record released to him or her in lieu of its destruction.

(b) In any juvenile case where a local welfare department, probation department, or district attorney is responsible for notifying the minor of the dismissal, release, or termination of the case, the agency shall provide written notice to the minor of the information specified in subdivision (a) upon the dismissal, release, or termination of the case.

(c) A written form providing the information described in this section shall be prepared by the clerk of the court and shall be made available to juvenile court clerks, probation departments, welfare departments, and district attorneys.

O

Senate Bill No. 689

CHAPTER 973

An act to amend Sections 830.3 and 830.31 of the Penal Code, and to amend Section 165 of the Vehicle Code, relating to peace officers.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 689, Presley. Peace officers.

(1) Existing law specifies that various persons are peace officers, including those persons regularly employed and paid by a county as welfare fraud or child support investigators or inspectors and arson investigators of a fire protection agency or fire department of the state.

This bill would instead provide that welfare fraud investigators and inspectors regularly employed and paid as such by a county and child support investigators and inspectors regularly employed and paid as such by a district attorney's office are peace officers. The bill would specify that members of the Arson-Bomb Investigating Unit in the Office of the State Fire Marshal are peace officers. The bill would also specifically make port police peace officers.

(2) Existing law designates various vehicles used by governmental agencies as authorized emergency vehicles.

This bill would additionally specify that any vehicle owned or operated by any department or agency of the United States government when actively engaged in law enforcement work is an authorized emergency vehicle.

(3) The bill would incorporate additional changes in Section 165 of the Vehicle Code, made by AB 1683, to be operative only if both this bill and AB 1683 are chaptered and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of the provisions of Division 9

(commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any such peace officer shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs, and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, and designated by the Director of Consumer Affairs, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees or classes of employees of the Department of Forestry and voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of such code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 1655 of such code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, and members of the Arson-Bomb Investigating Unit in the Office of the State Fire Marshal, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 13104 of such code.

(g) Inspectors of the Food and Drug Section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 216 of such code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of any such peace officer shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, provided that the primary duty of any such peace officer shall be the enforcement of the law relating to the duties of

his department, or office.

(j) Marshals and police appointed by the Director of Parks and Recreation pursuant to Section 3324 of the Food and Agricultural Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as prescribed in Section 3324 of the Food and Agricultural Code.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and such investigators as designated by him, provided that the primary duty of such investigators shall be enforcement of the provisions of Section 556 of the Insurance Code.

SEC. 2. Section 830.31 of the Penal Code is amended to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency.

(a) Members of an arson-investigating unit, regularly employed and paid as such, of a fire protection agency of the state, of a county, city, or district, and members of a fire department or fire protection agency of the state, or a county, city, or district regularly paid and employed as such, provided that the primary duty of arson investigators shall be the detection and apprehension of persons who have violated any fire law or committed insurance fraud, and the primary duty of fire department or fire protection agency members other than arson investigators when acting as peace officers shall be the enforcement of laws relating to fire prevention and fire suppression.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid as such, provided that the primary duty of any such peace officer shall be the protection of park property and the preservation of the peace therein.

(c) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as prescribed in Section 72330 of the Education Code.

(d) A welfare fraud investigator or inspector, regularly employed and paid as such by a county, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of the Welfare and Institutions Code.

(e) A child support investigator or inspector, regularly employed and paid as such by a district attorney's office, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of the Welfare and Institutions Code and Section 270.

(f) The coroner and deputy coroners, regularly employed and paid as such, of a county, provided that the primary duty of any such peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

(g) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(h) Harbor or port police regularly employed and paid as such by a county, city or district other than peace officers authorized under Section 830.1, and the port warden and special officers of the Harbor Department of the City of Los Angeles, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(i) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, provided that the primary duty of any such officer shall be the protection of the properties of the utility district and the protection of the persons thereon.

operative section

SEC. 3. Section 165 of the Vehicle Code is amended to read:

165. An authorized emergency vehicle is:

(a) Any publicly owned ambulance, lifeguard or lifesaving equipment or any privately owned ambulance used to respond to emergency calls and operated under a license issued by the Commissioner of the California Highway Patrol.

(b) Any publicly owned vehicle operated by the following persons, agencies, or organizations:

(1) Any federal, state, or local agency or department employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by such officers in the performance of their duties.

(2) Any forestry or fire department of any public agency or fire department organized as provided in the Health and Safety Code.

(c) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.

(d) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Office of Emergency Services or by any public agency or industrial fire department to which the Office of Emergency Services has assigned such vehicle.

(e) Any vehicle owned or operated by any department or agency

of the United States government when such vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work.

(f) Any vehicle for which an authorized emergency vehicle permit has been issued by the Commissioner of the California Highway Patrol.

Not operative section

SEC. 4. Section 165 of the Vehicle Code is amended to read:

165. An authorized emergency vehicle is:

(a) Any publicly owned and operated ambulance, lifeguard or lifesaving equipment or any privately owned or operated ambulance licensed by the Commissioner of the California Highway Patrol to operate in response to emergency calls.

(b) Any publicly owned vehicle operated by the following persons, agencies, or organizations:

(1) Any federal, state, or local agency or department employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by such officers in the performance of their duties.

(2) Any forestry or fire department of any public agency or fire department organized as provided in the Health and Safety Code.

(c) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.

(d) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Office of Emergency Services or by any public agency or industrial fire department to which the Office of Emergency Services has assigned such vehicle.

(e) Any vehicle owned or operated by any department or agency of the United States government when such vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work.

(f) Any vehicle for which an authorized emergency vehicle permit has been issued by the Commissioner of the California Highway Patrol.

SEC. 5. It is the intent of the Legislature, if this bill and Assembly Bill 1683 are both chaptered and become effective January 1, 1982, both bills amend Section 165 of the Vehicle Code, and this bill is chaptered after Assembly Bill 1683, that the amendments to Section 165 proposed by both bills be given effect and incorporated in Section 165 in the form set forth in Section 4 of this act. Therefore, Section 4 of this act shall become operative only if this bill and Assembly Bill 1683 are both chaptered and become effective January 1, 1982, both amend Section 165, and this bill is chaptered after Assembly Bill 1683, in which case Section 3 of this act shall not become operative.

O

Senate Bill No. 776

CHAPTER 1043

An act to amend Sections 266h, 266i, 311.4, and 1203.065 of, and to add Section 266j to, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 776, Ellis. Crimes.

Under existing law, pimping and pandering are felonies punishable by imprisonment for 2, 3, or 4 years. Certain conduct with respect to the use of a minor under the age of 16 in connection with designated commercial activity involving sexual conduct is also a felony, punishable by imprisonment for 3, 4, or 5 years.

This bill would increase the punishment for pimping and pandering in cases involving persons under 14 years of age to 3, 6, or 8 years, as specified. It also would provide that the use of minors under the age of 14 in connection with designated commercial activity involving sexual conduct is a felony punishable by imprisonment for 3, 6, or 8 years. It would prohibit probation or suspension of sentence with regard to any person convicted of such an offense involving a person under the age of 14.

It also would make it a felony to give, transport, provide, or make available a child under 14 for the purpose of any lewd or lascivious act, as specified, and prohibit the probation or suspension of the sentence of a person convicted thereof.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

It also would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 266h of the Penal Code is amended to read:

266h. Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper

or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and is punishable by imprisonment in the state prison for two, three, or four years, or, where the person engaged in prostitution is under 14 years of age, is punishable by imprisonment in the state prison for three, six, or eight years.

SEC. 2. Section 266i of the Penal Code is amended to read:

266i. Any person who: (a) procures another person for the purpose of prostitution; or (b) by promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute; or (c) procures for another person a place as inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state; or (d) by promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate; or (e) by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution; or (f) receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution, is guilty of pandering, a felony, and is punishable by imprisonment in the state prison for two, three, or four years, or, where the other person is under 14 years of age, is punishable by imprisonment in the state prison for three, six, or eight years.

SEC. 3. Section 266j is added to the Penal Code, to read:

266j. Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 14 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 14 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

SEC. 4. Section 311.4 of the Penal Code is amended to read:

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is guilty of a misdemeanor.

(b) Every person who, with knowledge that a person is a minor under the age of 16 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person

is a minor under the age of 16 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 16 years, or any parent or guardian of a minor under the age of 16 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor under the age of 16 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who, with knowledge that a person is a minor under the age of 14 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 14 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 14 years, or any parent or guardian of a minor under the age of 14 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor under the age of 14 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

SEC. 5. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of violating subdivision (2) of Section 261, or Section 264.1, or Section 266h where the person engaged in prostitution is under 14 years of age, or Section 266i where the other person is under 14 years of age, or Section 266j, or subdivision (b) of Section 288, or Section 289, or of committing sodomy or oral copulation in violation of Section 286 or Section 288a by force, violence, duress, menace or threat of great bodily harm, or subdivision (c) of Section 311.4.

(b) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit rape, sodomy, oral copulation or any violation of Section 264.1, subdivision (b) of Section 288, or Section

289.

When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(c) This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act shall achieve their maximum impact, it is necessary that this act shall be effective at the earliest possible date.

O

Senate Bill No. 862

CHAPTER 1070

An act to amend Section 537e of the Penal Code, relating to computer parts.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 862, O'Keefe. Computer parts.

Existing law makes it a misdemeanor to knowingly buy, sell, receive, dispose of, conceal, or possess various items from which the manufacturer's nameplate, serial number, or other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed.

This bill would add integrated chips and panels, printed circuits and other computer parts to the items from which it is an offense to remove or otherwise alter such marks and would make the offense a felony punishable by imprisonment in the county jail or state prison when the value of any integrated chip exceeds $400.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 537e of the Penal Code is amended to read:

537e. (a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his possession a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, a safe or vacuum cleaner, dictaphone, watch, watch movement, watch case, or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, or any integrated chip or panel, printed circuit, or any other part of a computer, from which the manufacturer's nameplate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed, is guilty of a misdemeanor. If the value of any integrated chip from which the nameplate, serial number, or other distinguishing number or identification mark is removed, defaced,

covered, altered, or destroyed exceeds four hundred dollars ($400), the offense is a felony punishable by imprisonment in the county jail not to exceed one year or in the state prison.

(b) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407), Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(c) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his duly appointed direct representative, or under specific authorization from the original manufacturer.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Senate Bill No. 887

CHAPTER 766

An act to amend Section 1463.11 of, to add Section 640 to, and to repeal Section 1463.15 of, the Penal Code, and to repeal Sections 28766.5, 28766.6, and 30276 of the Public Utilities Code, relating to crimes against transit districts.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 887, Ayala. Crimes: transit districts.

Under existing law, a violation of an ordinance, rule, or regulation of the Bay Area Rapid Transit District relating to smoking or evasion of fare, or of any ordinance, rule, or regulation of the Southern California Rapid Transit District relating to playing sound equipment is an infraction.

This bill would, instead, provide that the evasion of fares, misuse of transfers, playing sound equipment in a clearly audible manner, smoking, eating, or drinking in areas where those activities are prohibited, expectorating, or willfully disturbing others by boisterous or unruly behavior, on or in the facilities or vehicles of a public transit system, is an infraction.

Existing law provides for distribution of fines and forfeitures generally to counties and cities as specified, or in certain cases to other specified entities.

This bill would distribute a portion of the revenues from specified violations of law to transit districts as specified.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 640 is added to the Penal Code, to read:

640. Any of the following acts committed on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code is an infraction punishable by a fine not to exceed fifty dollars ($50):

(a) Evasion of the payment of the fares of the system.

(b) Misuse of transfers, passes, tickets, or tokens with the intent to evade the payment of fares.

(c) Playing sound equipment on or in system facilities or vehicles.

(d) Smoking, eating, or drinking in or on system facilities or vehicles in those areas where those activities are prohibited by that system.

(e) Expectorating upon system facilities or vehicles.

(f) Willfully disturbing others on or in system facilities or vehicles by engaging in boisterous or unruly behavior.

SEC. 2. Section 1463.11 of the Penal Code is amended to read:

1463.11. Notwithstanding the provisions of Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, an amount equal to 85 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested or notified by a member of the police or security department of a transit district and charged with a violation of any law that occurs on or about transit vehicles or transit property, shall be transferred first, once a month, to the transit district and an amount equal to the remaining 15 percent shall be transferred into the general fund of the county.

A transit district and any county in which property is located which is under the possession or control of the district may by mutual agreement adjust the percentages of fines and forfeitures to be received by the district and county respectively. In the absence of any such agreement, the percentages fixed by this section shall prevail.

SEC. 3. Section 1463.15 of the Penal Code is repealed.

SEC. 4. Section 28766.5 of the Public Utilities Code is repealed.

SEC. 5. Section 28766.6 of the Public Utilities Code is repealed.

SEC. 6. Section 30276 of the Public Utilities Code is repealed.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Senate Bill No. 959

CHAPTER 610

An act to amend Sections 650, 654.1, and 655.5 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 22, 1981. Filed with Secretary of State September 22, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 959, Garamendi. Healing arts.

Existing law provides that it is unlawful for any person licensed under the healing arts division of the Business and Professions Code to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration as compensation or inducement for referring patients, clients, or customers to any person. A violation of the provision is a misdemeanor.

This bill would provide, instead, that a violation of the above provision is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than 1 year or by imprisonment in state prison or a fine not exceeding $10,000 or by both fine and imprisonment and upon a second conviction, by imprisonment in the state prison.

Existing law prohibits a licensee of the Dental Practice Act, the Medical Practice Act, and the initiative act relating to osteopaths from referring patients, clients, or customers to any clinical laboratory in which the licensee has a financial interest, as specified, unless the licensee discloses in writing the interest to the patient, client, or customer.

This bill would provide, instead, that a violation of the provision is a public offense punishable upon a first conviction by imprisonment in the county jail for not more than 1 year or by imprisonment in the state prison or by a fine not exceeding $10,000 or by both imprisonment and fine and by imprisonment in the state prison for subsequent convictions.

Existing law prohibits any person licensed under the healing arts division of the Business and Professions Code, or under any initiative act referred to in that division, or any clinical laboratory from charging any patient for any clinical laboratory service not actually rendered by that person or clinical laboratory unless the patient is apprised at the time of the first charging of the name, address and charge of the clinical laboratory performing the service. The law provides that a violation of the provision is a misdemeanor which is punishable by imprisonment in the county jail for not more than 6 months or a fine not exceeding $500 or both imprisonment and fine.

This bill would provide, instead, that a violation of the provision is

a public offense punishable upon a first conviction by imprisonment in the county jail for not more than 1 year or by imprisonment in the state prison or by a fine not to exceed $10,000 or by both fine and imprisonment and upon a second conviction, by imprisonment in the state prison.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 650 of the Business and Professions Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code the offer, delivery, receipt or acceptance, by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom such patients, clients or customers are referred is unlawful.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Section 654.1 it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic, or health care facility solely because such licensee has a proprietary interest or coownership in such laboratory, pharmacy, clinic, or health care facility; but such referral shall be unlawful if the prosecutor proves that there was no valid medical need for such referral.

"Health care facility" means a hospital, nursing home, medical care facility, or private mental institution licensed by the State Department of Health Services.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 2. Section 654.1 of the Business and Professions Code is amended to read:

654.1. Persons licensed under Chapter 4 (commencing with Section 1600) of this division or licensed under Chapter 5 (commencing with Section 2000) of this division or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or coownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of making such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

This section shall not apply to persons who are members of a medical group which contracts to provide medical care to members of a group practice prepayment plan registered under the Knox-Keene Health Care Service Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

This section shall not apply to any referral to a clinical laboratory which is owned and operated by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, providing the report indicates clearly the laboratory performing the test.

"Proprietary interest" does not include ownership of a building where space is leased to a clinical laboratory at the prevailing rate under a straight lease arrangement.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

SEC. 3. Section 655.5 of the Business and Professions Code is amended to read:

655.5. It is unlawful for any person licensed under this division or under any initiative act referred to in this division or for any clinical laboratory to charge, bill, or otherwise solicit payment from any patient, client or customer for any clinical laboratory service not actually rendered by such person or clinical laboratory or under his or her or its direct supervision unless the patient, client, or customer is apprised at the first time of such charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges

of the clinical laboratory concerned and shall clearly show whether or not such charge is included in the total of the account, bill, or charge.

This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if such services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Senate Bill No. 964

CHAPTER 967

An act to amend Section 11105 of the Penal Code, relating to criminal records.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 964, O'Keefe. Criminal records: summary criminal history information.

Existing law requires that the Department of Justice maintain summary criminal history information and requires or authorizes the department to furnish this information to designated agencies, officers, or officials of state or local government, public utilities, or any entity when needed in the course of their duties in specified circumstances. Criminal history information includes information pertaining to the identification and criminal history of any person, such as the name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data.

This bill would authorize the Department of Justice to furnish this information to any campus of the California State University and Colleges, the University of California, or any 4-year college or university which has been accredited in a specified manner, when needed in conjunction with an application for admission by a convicted felon to any special education program, as specified. This bill would specify that only conviction information shall be furnished and would authorize the fingerprinting of the convicted felon. This bill would specify that any inquiry to the department under these provisions shall include the convicted felon's fingerprints and any other information specified by the department.

The people of the State of California do enact as follows:

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer

to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c), of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the

Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) To any campus of the California State University and Colleges

or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, when needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished pursuant to this section, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. Any state agency required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

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Senate Bill No. 1015

CHAPTER 611

An act to amend Section 1372 of the Penal Code, relating to competency of defendants.

[Approved by Governor September 22, 1981. Filed with Secretary of State September 22, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1015, Sieroty. Competency of defendants.

Existing law requires that a defendant who has been certified to have regained mental competency by the director of a facility or his or her conservator shall have a hearing to determine whether the person is entitled to be admitted to bail or other release status pending conclusion of the court proceedings.

This bill would provide that a defendant who is not admitted to bail or other release may at the discretion of the court and upon recommendation of the director of the facility be returned to the facility of his or her original commitment or other appropriate secure facility, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1372 of the Penal Code is amended to read:

1372. (a) (1) If the medical director of the state hospital or other facility to which the defendant is committed, or the county mental health director or regional center director providing outpatient services under Title 15 (commencing with Section 1600) of Part 2 or Section 1370.4 or 1374.1, determines that the defendant has regained mental competence, such director shall immediately certify that fact to the court.

(2) Upon the filing of a certificate of restoration, the defendant shall be returned to the committing court in the following manner: A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person to the court for further proceedings. The patient who is on outpatient status shall be returned to court through arrangements made by the outpatient treatment supervisor.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the county mental health director and the Director of Mental Health or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) Where the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. Where the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. Where the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by either the county mental health director or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

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APPENDIX

ASSEMBLY BILLS

Assembly Bill No. 5

CHAPTER 140

An act to amend Section 676 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor July 1, 1981. Filed with Secretary of State July 1, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 5, Felando. Juvenile court law.

Existing law provides that although as a general proposition juvenile court hearings are not open to the public, members of the public shall be admitted to juvenile court wardship hearings concerning minors charged with certain enumerated offenses, such as murder, arson of an inhabited building, and armed robbery.

This bill would expand the classes of offenses that would require a public hearing. It would, however, require a closed hearing if the minor is charged with certain sex offenses, (1) on motion of the district attorney at the victim's request and (2) during the victim's testimony if the victim was under 16 years of age at the time of the offense.

The people of the State of California do enact as follows:

SECTION 1. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in Section 289 of the Penal Code.

(8) Kidnapping for ransom.
(9) Kidnapping for purpose of robbery.
(10) Kidnapping with bodily harm.
(11) Assault with intent to murder or attempted murder.
(12) Assault with a firearm or destructive device.
(13) Assault by any means of force likely to produce great bodily injury.
(14) Discharge of a firearm into an inhabited or occupied building.
(15) Any offense described in Section 1203.09 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

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Assembly Bill No. 7

CHAPTER 939

An act to amend Sections 11110, 12810, 13201, 13209, 13210, 13352, 13353, 13354, 14601, 23126, and 40000.15 of, and to add Section 23102.6 to, the Vehicle Code, relating to public offenses.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 7, Hart. Driving with specified blood alcohol level.

(1) Under existing law, it is unlawful to drive a vehicle on or off the highway while under the influence of intoxicating liquor or under the combined influence of intoxicating liquor and any drug. Any person convicted of such offense is subject to prescribed punishment which includes a fine or imprisonment, or both, and suspension of the driving privilege.

Existing law also provides that any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his consent to a chemical test of his blood, breath, or urine for determining the alcoholic content of his blood, if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle while under the influence. If any person refuses an arresting officer's request to submit to, or fails to complete, such test, the Department of Motor Vehicles is required to suspend his driving privilege for 6 months. Under existing law, it is unlawful for any person to drive a motor vehicle upon a highway when his driving privilege has been suspended or revoked for specified reasons, including driving while under the influence.

This bill would make it unlawful for any person having 0.10% or more, by weight, of alcohol in his blood to drive a vehicle on any highway or upon other than a highway in areas which are open to the general public, make the above existing provisions of law regarding punishment, driver's license suspension, consent to a chemical test, and driving with a suspended license, applicable to a person convicted of such an offense, and repeal the presumption established by law which provides that, if there was 0.10% or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

The bill would also make related, conforming, and technical changes.

The bill includes a legislative finding that enactment would result in cost savings to local agencies.

(2) The bill would incorprate changes to Section 13353 of the Vehicle Code proposed by SB 374 if both bills are chaptered and this

bill is chaptered last and, also, would conform the provisions of this bill to AB 541 if both or all three bills are chaptered.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

Not operative Section

SECTION 1. Section 11110 of the Vehicle Code is amended to read:

11110. The department may cancel, suspend, revoke, or refuse to renew any license under the provisions of this chapter:

(a) Whenever the department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) Whenever the licensee fails to keep the records required by this chapter.

(c) Whenever the licensee permits fraud or engages in fraudulent practices either with reference to the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license.

(d) Whenever the holder fails to comply with any provisions of this chapter or any of the regulations or requirements of the department made pursuant thereto.

(e) Whenever the licensee represents himself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises in any manner or means whatever any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) Whenever the licensee or any employee or agent of the licensee solicits driver training or instruction in an office of the department or within 200 feet of any office of the department.

(g) Whenever the licensee is convicted of driving an automobile while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23102.6, 23103, or 23104 of this code or Section 192 of the Penal Code. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(h) Whenever the licensee does any act or series of acts, or is guilty of conduct, which action or conduct manifests a disability or unfitness to perform properly the licensee's occupational duties. The department, in proceeding pursuant to this subdivision, shall conform its procedures to the provisions of Division 1.5 (commencing with Section 475) of the Business and Professions Code. Whenever disability or unfitness to perform properly the occupational duties of the licensee is the basis of suspension or revocation, the referee, hearing officer, or board shall make a specific finding as to the manner in which the action or conduct manifests such disability or unfitness, which finding is to be incorporated in the order suspending or revoking the license.

(i) Whenever, contrary to provisions of this code or of regulations established by the department, the licensee teaches or permits a student to be taught the specific tests administered by the department through use of the department's forms or testing facilities.

(j) Whenever the licensee conducts driver training, or permits driver training by any employee, in an unsafe manner or contrary to safe driving practices.

(k) Whenever the driving school owner or driving school operator teaches or permits an employee to teach driving instruction without a valid driving instructor's license.

(*l*) Whenever a driving school owner does not have in effect a good and sufficient bond with corporate surety, as provided in Section 11102.

Operative Section

SEC. 1.5. Section 11110 of the Vehicle Code is amended to read:

11110. The department may cancel, suspend, revoke, or refuse to renew any license under the provisions of this chapter:

(a) Whenever the department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) Whenever the licensee fails to keep the records required by this chapter.

(c) Whenever the licensee permits fraud or engages in fraudulent practices either with reference to the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license.

(d) Whenever the holder fails to comply with any provisions of this chapter or any of the regulations or requirements of the department made pursuant thereto.

(e) Whenever the licensee represents himself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises in any manner or means whatever any statement which is untrue or misleading, and which is known, or which by the exercise

of reasonable care should be known, to be untrue or misleading.

(f) Whenever the licensee or any employee or agent of such licensee solicits driver training or instruction in an office of the department or within 200 feet of any such office.

(g) Whenever the licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or Section 192 of the Penal Code. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(h) Whenever the licensee does any act or series of acts, or is guilty of conduct, which action or conduct manifests a disability or unfitness to perform properly the licensee's occupational duties. The department, in proceeding pursuant to this subdivision, shall conform its procedures to the provisions of Division 1.5 (commencing with Section 475) of the Business and Professions Code. Whenever disability or unfitness to perform properly the occupational duties of the licensee is the basis of suspension or revocation, the referee, hearing officer, or board shall make a specific finding as to the manner in which the action or conduct manifests such disability or unfitness, which finding is to be incorporated in the order suspending or revoking the license.

(i) Whenever contrary to provisions of this code or of regulations established by the department, the licensee teaches or permits a student to be taught the specific tests administered by the department through use of the department's forms or testing facilities.

(j) Whenever the licensee conducts driver training, or permits driver training by any employee, in an unsafe manner or contrary to safe driving practices.

(k) Whenever the driving school owner or driving school operator teaches or permits an employee to teach driving instruction without a valid driving instructor's license.

(*l*) Whenever a driving school owner does not have in effect a good and sufficient bond with corporate surety, as provided in Section 11102.

Not operative Section

SEC. 2. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, any conviction for failure to stop in the event of an accident resulting in damage to property or otherwise failing to comply with the requirements of Section 20002, for driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, for reckless driving, or for violation of Section 23102.6, shall be given a value of two points and any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point; provided, however, that conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

Any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months, shall be prima facie presumed to be a negligent operator of a motor vehicle.

Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

In applying the provisions of this section to a driver, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

operative section

SEC. 2.5. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, any conviction of failure to stop in the event of an accident resulting in damage to property or otherwise failing to comply with the requirements of Section 20002, of a violation of Section 23152 or 23153, or of reckless driving shall be given a value of two points and any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point; provided, however, that conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

Any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months, shall be prima facie presumed to be a negligent operator of a motor vehicle.

Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

In applying the provisions of this section to a driver, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

not operative section

SEC. 3. Section 13201 of the Vehicle Code is amended to read:

13201. A court may suspend the privilege of any person to operate a motor vehicle, for a period not exceeding six months, upon conviction of any of the following offenses:

(a) Failure of the driver of a vehicle involved in an accident to stop or otherwise comply with the provisions of Section 20002.

(b) Reckless driving proximately causing bodily injury to any person under Section 23104.

(c) Failure of the driver of a vehicle to stop at a railway grade crossing as required by Section 22452.

(d) Driving while addicted to the use, or under the influence of, any drug under subdivision (a) or (c) of Section 23105.

(e) Driving a motor vehicle in violation of Section 23102.6, as it relates to driving while having a specified blood alcohol level.

Not operative section

SEC. 4. Section 13209 of the Vehicle Code is amended to read:

13209. Before sentencing a person upon a conviction of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, or in violation of

Section 23102.6, the court shall obtain from the department a record of any prior convictions of that person for traffic violations. The department shall furnish that record upon the written request of the court.

Notwithstanding the provisions of Section 1449 of the Penal Code, in any such criminal action, the time for pronouncement of judgment shall not commence to run until the time that the court receives the record of prior convictions from the department.

Operative section

SEC. 4.5. Section 13209 of the Vehicle Code is amended to read:

13209. Before sentencing a person upon a conviction of a violation of Section 23152 or 23153, the court shall obtain from the department a record of any prior convictions of that person for traffic violations. The department shall furnish that record upon the written request of the court.

Notwithstanding the provisions of Section 1449 of the Penal Code, in any such criminal action the time for pronouncement of judgment shall not commence to run until the time that the court receives the record of prior convictions from the department.

Not operative section

SEC. 5. Section 13210 of the Vehicle Code is amended to read:

13210. Notwithstanding any other provision of this code, whenever any person is convicted for the first time of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, or in violation of Section 23102.6, the court shall order the department to suspend the person's driving privilege unless the person shows good cause why that order should not be made. If the court does not order the suspension, the court may limit the person's driving privilege as a condition of probation without notifying the department of that condition.

Not operative section

SEC. 6. Section 13352 of the Vehicle Code is amended to read:

13352. Except for a conviction or finding described in subdivision (a) where the court does not order the department to suspend, the department shall immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of Section 23102.6 or subdivison (c) of Section 23105, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the juvenile has been found to have committed the offense of operating a vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of Section 23102.6 or subdivision (c) of Section 23105. The suspension or revocation shall be as follows:

(a) Upon a first such conviction or finding, other than under

Section 23101 or 23106, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege.

(b) Upon a first such conviction or finding under Section 23101 or 23106, the privilege shall be suspended for one year and shall not be reinstated until the person gives proof of ability to respond in damages, as defined in Section 16430.

(c) Upon a second conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of Section 23102.6 or subdivision (c) of Section 23105, or any combination of such convictions or findings of an offense which occurred within five years of the date of a prior offense which resulted in a conviction, the privilege shall be suspended and shall not be reinstated in less than one year and until the person gives proof of ability to respond in damages as defined in Section 16430.

(d) Upon a second conviction or finding under Section 23101 or 23106 within three years, the privilege shall be revoked and shall not be reinstated in less than five years, until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license, and the person gives proof of ability to respond in damages as defined in Section 16430.

(e) Upon a third or subsequent conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of Section 23102.6 or subdivision (c) of Section 23105, or any combination of such convictions or findings of an offense which ocurred within seven years of the date of a prior offense which resulted in a conviction, the privilege shall be revoked and shall not be reinstated for a period of three years and until such person files proof of ability to respond in damages as defined in Section 16430.

For the purpose of subdivisions (c), (d), and (e), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court, specified in the first paragraph of this section shall also be considered a conviction.

Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report such findings to the department.

Not operative Section

SEC. 7. Section 13353 of the Vehicle Code is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or in violation of Section 23102.6. The test shall be incidental to a lawful

arrest and administered at the direction of a peace officer having reasonable cause to believe such person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6. Such person shall be told that his refusal to submit to, or the noncompletion of, a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his blood, breath, or urine, and he or she shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, he or she shall then have the choice of submitting to and completing any of the remaining tests or test, and he or she shall be advised by the officer that he or she has such choice.

(3) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, such refusal may be used against him or her in a court of law.

(4) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her refusal to submit to or the noncompletion of the test will result in the suspension of his privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his consent and such a test may be administered at the direction of a peace officer.

(b) If any such person refuses the officer's request to submit to, or does not complete, a chemical test, upon receipt of the officer's sworn statement that he or she had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify such person in writing of the action taken and, upon his or her request in writing and within 15 days from the date of receipt of that request, shall afford him or her an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3 of this division. For the purposes of

this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6, whether the person was placed under arrest, whether he or she refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in paragraph (4) of subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or for violation of Section 23102.6 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of such person's blood; and, if so requested, the arresting officer shall have the test performed.

Not operative

SEC. 7.5. Section 13353 of the Vehicle Code is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe

the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153. The person shall be told that his failure to submit to or the noncompletion of, a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his blood, breath, or urine, and he or she shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, he or she shall then have the choice of submitting to and completing any of the remaining tests or test, and he or she shall be advised by the officer that he or she has such choice.

(3) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(4) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to the noncompletion of the test will result in the suspension of his privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any such person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that he or she had reasonable cause to believe such person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon his or her request in writing and within 15 days from the date of receipt of that request, shall afford him or her an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the

scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153, whether the person was placed under arrest, whether he or she refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in paragraph (4) of subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

Not operative Section

SEC. 7.6. Section 13353 of the Vehicle Code, as amended by Chapter 675 of the Statutes of 1980, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or in violation of Section 23102.6. The test shall be incidental to a lawful

arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6. The person shall be told that failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of the person blood, breath, or urine, and the person shall be advised by the officer that the person has such a choice. If the person arrested either is incapable, or states that the person is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person the person has that choice.

(3) If the person is lawfully arrested for driving under the influence of an intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23102.6

and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public while under the influence of intoxicating liquor or in violation of Section 23103.6 whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor or for violation of Section 23102.6 may request the arresting officer to have a chemical test made of the arrested person's

blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

Operative section

SEC. 7.7. Section 13353 of the Vehicle Code is amended to read:

13353. (a) (1) Any person who drives a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153. The person shall be told that his failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for driving under the influence of an intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the

suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway or upon other than a highway in areas which are open to the general public in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt

by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

operative Section

SEC. 8. Section 13354 of the Vehicle Code is amended to read:

13354. (a) Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens. An emergency call for paramedic services shall take precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his own expense, have a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in his or her blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person's attorney.

(d) No physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the physician, registered nurse, licensed vocational nurse, duly licensed laboratory technologist or clinical laboratory bioanalyst, or certified paramedic, owning or leasing the premises on which such tests are performed, shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under Section 13353 is a chemical test of urine,

the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Department of the California Highway Patrol, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(g) As used in this section, "certified paramedic" does not include any employee of a fire department.

Not operative section

SEC. 9. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person, who has knowledge of the suspension or revocation, shall drive a motor vehicle upon a highway at any time when his driving privilege is suspended or revoked for any of the following:

(1) Reckless driving.

(2) Driving while under the influence of alcohol or any drug, or under the combined influence of alcohol and any drug.

(3) Driving in violation of Section 23102.6.

(4) Any reason listed in subdivisions (b) through (f) of Section 12805 requiring the department to refuse to issue a license.

(5) Negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809.

(6) Negligent operation as prescribed in Section 12810.

The knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting burden of proof.

(b) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than five days nor more than six months and by fine of not more than five hundred dollars ($500), and upon a second or any subsequent conviction, within seven years of a prior conviction, by imprisonment in the county jail for not less than 10 days nor more than one year and by fine of not more than one thousand dollars ($1,000).

(c) If any person is convicted of a second or subsequent offense under this section within seven years of a prior conviction and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 10 days.

Not operative section

SEC. 10. Section 23102.6 is added to the Vehicle Code, to read:

23102.6. (a) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle upon a highway or upon other than a highway in areas which are open to the general public and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes death or bodily injury to any person other than himself or herself.

Any person convicted under this subdivision shall be punished in

accordance with the provisions of Section 23101.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle upon a highway or upon other than a highway in areas which are open to the general public.

Any person convicted under this subdivision shall be punished in accordance with the provisions of Section 23102.

(c) A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 23101, 23102, 23105, or 23106.

(d) For purposes of this section, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

Not operative Section

SEC. 11. Section 23126 of the Vehicle Code is amended to read:

23126. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of his blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) The provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor at the time of the alleged offense.

Not operative section

SEC. 12. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 23102, relating to driving under the influence.

Section 23102.6, relating to driving with a specified blood alcohol level.

Sections 23103 and 23104, relating to reckless driving.

Section 23105, relating to driving under the influence.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.
Section 27150.1, relating to sale of exhaust systems.
Section 28050, relating to true mileage driven.
Section 28050.5, relating to nonfunctional odometers.
Section 28051, relating to resetting odometer.
Section 28051.5 relating to device to reset odometer.

Operative section

SEC. 13. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Operative section

SEC. 14. The Legislature finds that the enactment of this act will decrease costs to local goverments by reducing the number of trials for driving under the influence of intoxicating liquor, increasing the number of fines collected, and resulting in more offenders participating in programs to address their problem drinking.

Operative Section

SEC. 15. It is the intent of the Legislature, if this bill and Assembly Bill 541 or Senate Bill 374, or both, are chaptered and become effective January 1, 1982, and Senate Bill 374, if chaptered, and this bill amends Section 13353 of the Vehicle Code and this bill is chaptered last, that this bill will make further conforming changes to the Vehicle Code to implement the changes proposed by Assembly Bill 541, if chaptered, and to give effect to, and incorporate, the amendments proposed by both this bill and Senate Bill 374, if chaptered, as follows:

(1) If this bill and Assembly Bill 541 are both chaptered and become effective January 1, 1982, but Senate Bill 374 is not chaptered, or as chaptered does not amend Section 13353 of the Vehicle Code, and this bill is chaptered last, then the provisions of Assembly Bill 541 shall prevail over Sections 3, 5, 6, 9, 10, 11, and 12 of this bill, Sections 1.5, 2.5, 4.5, 7.5, and 8 of this bill shall become operative on January 1, 1982, and Sections 1, 2, 4, 7, 7.6, and 7.7 of this bill shall not become operative, whether Assembly Bill 541 is chaptered prior to or subsequent to this bill.

(2) If this bill and Senate Bill 374 are both chaptered and become effective January 1, 1982, both bills amend Section 13353 of the Vehicle Code, but Assembly Bill 541 is not chaptered, and this bill is chaptered after Senate Bill 374, the amendments proposed by both bills be given effect and incorporated in Section 13353 of the Vehicle Code in the form set forth in Section 7.6 of this act. Therefore, if this bill and Senate Bill 374 are both chaptered and become effective January 1, 1982, both bills amend Section 13353 of the Vehicle Code, this bill is chaptered after Senate Bill 374, and Assembly Bill 541 is not chaptered, Section 7.6 shall become operative and Sections 7, 7.5, and 7.7 shall not become operative.

(3) If this bill and Assembly Bill 541 and Senate Bill 374 are all chaptered and become effective January 1, 1982, and Senate Bill 374 and this bill both amend Section 13353 of the Vehicle Code, and this bill is chaptered last, then the provisions of Assembly Bill 541 shall prevail over Sections 3, 5, 6, 9, 10, 11, and 12 of this bill, Sections 1.5, 2.5, 4.5, 7.7, and 8 of this bill shall become operative on January 1, 1982, and Sections 1, 2, 4, 7, 7.5, and 7.6 of this bill shall not become operative, whether Assembly Bill 541 is chaptered prior to or subsequent to this bill.

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Assembly Bill No. 13

CHAPTER 591

An act to add Section 1767 to the Welfare and Institutions Code, relating to juveniles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1981. Filed with Secretary of State September 21, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 13, Moorhead. Juveniles: parole hearings.

Under existing law the Youthful Offender Parole Board may grant parole to a person committed to the Youth Authority under specified conditions.

This bill would require the board to notify interested persons, as specified, of any meeting to review or consider the parole of any person over the age of 18 if the person was committed to the Youth Authority on the basis of his or her commission of any of certain designated offenses. It also would authorize such interested persons to submit a written statement to the board. It would require the presiding officer to state findings and supporting reasons for the decision of the board which would be required to be in writing and made available to the public as specified.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1767 is added to the Welfare and Institutions Code, to read:

1767. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person over 18 years of age who has been committed to the control of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, the board shall send written notice thereof to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, the law enforcement agency that investigated the case, and, where he or she has filed a request for such notice with the board, the victim or next of kin of the victim of the offense for which the person was committed to the authority. The burden shall be on the requesting party to keep the board apprised of his or her current mailing address.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this

subdivision shall be construed to permit any person so notified to attend the hearing.

At the hearing the presiding officer shall state findings and supporting reasons for the decision of the board. Such findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to insure immediate public input into the Youthful Offender Parole Board decisions, it is necessary for this act to take effect immediately.

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Assembly Bill No. 66

CHAPTER 476

An act to amend Section 1731.5 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1981. Filed with Secretary of State September 16, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 66, Lockyer. Crimes.

Under existing law a person under 21 years of age at the time of apprehension for an offense which results in a conviction of first-degree murder is eligible for commitment to the Youth Authority.

This bill would provide that any person 18 years or older when the murder was committed who is convicted of first-degree murder would not be eligible for commitment to the Youth Authority.

The bill would authorize persons not committed to the Youth Authority to be housed by, and to participate in the programs of, the authority as specified.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1731.5 of the Welfare and Institutions Code is amended to read:

1731.5. (a) After certification to the Governor as provided in this article a court may commit to the authority any person convicted of a public offense who comes within paragraphs (1), (2), and (3), or paragraphs (1), (2), and (4), below:

(1) Is found to be less than 21 years of age at the time of apprehension.

(2) Is not convicted of first-degree murder, committed when such person was 18 years of age or older, or sentenced to death, imprisonment for life, imprisonment for 90 days or less, or the payment of a fine, or after having been directed to pay a fine, defaults in the payment thereof, and is subject to imprisonment for more than 90 days under the judgment.

(3) Is not granted probation.

(4) Was granted probation and probation is revoked and terminated.

(b) The Youth Authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide such care.

(c) Any person under the age of 21 who is not committed to the authority pursuant to this section may be transferred to the authority by the Director of Corrections with the approval of the Director of the Youth Authority. The transfer shall be solely for the purposes of housing the inmate and allowing participation in the programs available at the institution by the inmate, who, in all other aspects shall be deemed to be committed to the Department of Corrections and shall remain subject to the jurisdiction of the Director of Corrections and the Board of Prison Terms.

The Director of the Youth Authority shall have the same powers with respect to an inmate transferred pursuant to this subdivision as if the inmate had been committed or transferred to the Youth Authority either under the provisions of the Arnold-Kennick Juvenile Court Law or subdivision (a).

The duration of the transfer shall extend until the Director of the Youth Authority orders the inmate returned to the Department of Corrections, the inmate is ordered paroled by the Board of Prison Terms, the inmate's term of imprisonment is completed as otherwise provided by law, or the inmate reaches the age of 25, whichever first occurs.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary in order to prevent adults convicted of first-degree murder from being prematurely released.

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Assembly Bill No. 187

CHAPTER 138

An act to amend Section 22430 of the Business and Professions Code, relating to identification cards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 1981. Filed with Secretary of State July 1, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 187, Johnson. Identification cards.

Under existing law every deceptive identification document, as defined, must have printed at the bottom the words "NOT A GOVERNMENT DOCUMENT."

This bill would require the words "NOT A GOVERNMENT DOCUMENT" to (1) appear diagonally across the face of the document instead of at the bottom of the document, and (2) be printed in permanent ink.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 22430 of the Business and Professions Code is amended to read:

22430. (a) No deceptive identification document shall be manufactured, sold, or offered for sale unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) As used in this section, "deceptive identification document" means any document not issued by a governmental agency of this state, another state, or the federal government, which purports to be, or which might deceive an ordinary reasonable person into believing that it is, a document issued by such an agency, including, but not limited to, a driver's license, identification card, birth certificate, passport, or Social Security card.

(c) Any person who violates or proposes to violate this section may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon

the complaint of any person.

(d) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that such deceptive identification document will be used for fraudulent purposes is guilty of a misdemeanor.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is estimated that a minimum of 1,000 false identification documents are manufactured every month which are used primarily for illegal purposes. In order to stop this proliferation of false identification documents as soon as possible, it is necessary that this act take effect immediately.

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CHAPTER 1171

An act to amend Sections 68073.1 and 68073.2 of, and to add Section 68073.4 to, the Government Code, and to amend and repeal Section 1464 of, to add Section 1206.8 to, and to repeal Sections 1206.5 and 1206.6 of, the Penal Code, relating to counties.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 189, Cortese. Courts.

Existing law, operative upon the adoption of a specified resolution of the board of supervisors thereof, establishes a surcharge of limited duration on criminal fines in the County of Los Angeles or in the City and County of San Francisco and provides for the deposit of specified amounts into the Courthouse Temporary Construction Fund to be established in their county treasuries, as specified.

This bill would revise the surcharge authorized, and provide for an increased penalty assessment, to be collected under such provisions, and would enact similar provisions with respect to a surcharge, and increased penalty assessment, for the construction, reconstruction, expansion, or improvement of county criminal justice and court facilities, and the improvement of criminal justice automated information systems, as specified.

The bill would also provide that any new jail, or any addition to an existing jail that provides new cells or beds, which is constructed with moneys from the Criminal Justice Facility Temporary Construction Fund must comply with the "Minimum Standards for Local Detention Facilities" promulgated by the Board of Corrections. The bill would make related changes.

The bill would also incorporate changes to Section 1464 of the Penal Code proposed by SB 210 and AB 1297, contingent upon their respective enactment.

The people of the State of California do enact as follows:

SECTION 1. Section 68073.1 of the Government Code is amended to read:

68073.1. (a) All courtroom construction in the County of Los Angeles which utilizes moneys from the Courthouse Temporary Construction Fund or moneys borrowed against the Courthouse Temporary Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, until such time as the County of Los Angeles has spent a total of at least forty-three million dollars ($43,000,000) on courthouse construction within the San Fernando

Valley Statistical Area.

(b) All courtroom construction in the County of Los Angeles which utilizes moneys from the Courthouse Temporary Construction Fund or moneys borrowed against the Courthouse Temporary Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the East Los Angeles Municipal Court District, within the boundaries of the Los Cerritos Municipal Court District, or within the Downey Municipal Court District, until such time as the County of Los Angeles has fulfilled the requirements of subdivision (a) and has additionally spent at least sixteen million five hundred thousand dollars ($16,500,000) on courthouse construction within the East Los Angeles Municipal Court District, and at least eight million dollars ($8,000,000) on courthouse construction within the Los Cerritos Municipal Court District, and at least ten million dollars ($10,000,000) on courthouse construction within the Downey Municipal Court District.

(c) For purposes of this section, the San Fernando Valley Statistical Area includes all land within the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093) as well as the City of San Fernando, the City of Hidden Hills, and the unincorporated areas of Los Angeles County located west of the City of Los Angeles, east and south of the Ventura County line, and north of a line extended westerly from the southern boundary of the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093).

(d) Notwithstanding any other provision of law, to assist the County of Los Angeles in the funding of courtroom construction, the Board of Supervisors of Los Angeles County shall establish in the county treasury a Courthouse Temporary Construction Fund. Deposits shall be made to the fund, as follows:

(1) The county treasurer shall place in the fund one dollar ($1) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(2) Each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each violation which is not filed in court to the county treasurer. Such payments to the county treasurer shall be made monthly, and the treasurer shall deposit all such sums in the fund.

(3) The county treasurer shall place all additional assessment amounts collected on nonparking offenses pursuant to subdivision (b) of Section 1206.8 of the Penal Code in the fund.

(e) The fund moneys shall be held by the treasurer separate from

any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys of the Courthouse Temporary Construction Fund shall be payable only for courtroom construction as authorized in subdivision (a) and, after the requirement of subdivision (a) has been met, shall be payable only for courtroom construction as authorized in subdivision (b).

(f) Deposits to the fund in accordance with subdivision (d) shall continue through and including either (1) the 20th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings made by the county to expend the minimum sums on construction provided for in this section, whichever time shall be longer.

SEC. 2. Section 68073.2 of the Government Code is amended to read:

68073.2. (a) Notwithstanding any other provision of law, for the purpose of assisting the City and County of San Francisco in the acquisition, rehabilitation, construction and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidential to the operation of the justice system, the Board of Supervisors of the City and County of San Francisco shall establish in the city and county treasury a San Francisco Courthouse Temporary Construction Fund into which shall be deposited the amounts collected pursuant to subdivisions (d), (e), and (f). The moneys of the San Francisco Courthouse Temporary Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor.

(b) In conjunction with the acquisition, rehabilitation, construction or financing of courtrooms or of a courtroom building or buildings referred to in subdivision (a), the City and County of San Francisco may use the moneys of the San Francisco Courthouse Temporary Construction Fund (1) to rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if new courtrooms or a courtroom building or buildings are acquired, constructed or financed or (2) to acquire, rehabilitate, construct or finance excess courtrooms or an excess courtroom building or buildings if such excess is anticipated to be needed at a later time.

(c) Any excess courtrooms or excess courtroom building or buildings that are acquired, rehabilitated, constructed or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until such time as such excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amounts received as lease or rental payments pursuant to this subdivision shall be deposited in the San Francisco Courthouse Temporary Construction Fund.

(d) The county treasurer shall place in the fund one dollar ($1) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with

the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(e) Each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each violation which is not filed in court to the county treasurer. Such payments to the county treasurer shall be made monthly, and the treasurer shall deposit all such sums in the fund.

(f) The county treasurer shall place all additional assessment amounts collected on nonparking offenses pursuant to subdivision (b) of Section 1206.8 of the Penal Code in the fund.

The fund moneys shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

Deposits to the fund in accordance with subdivisions (d), (e), and (f) shall continue through and including the 20th year after the initial calendar year in which the surcharge is collected.

(g) Subdivisions (a) to (f), inclusive, of this section shall become operative upon the adoption of a resolution by the Board of Supervisors of the City and County of San Francisco stating that the provisions of this act are necessary to the establishment of adequate courtroom facilities in the City and County of San Francisco, setting forth the surcharge or surcharges to be levied, the amount of such surcharge or surcharges, and the manner in which such surcharge or surcharges shall be collected, and instructing the Clerk of the City and County of San Francisco to transmit, on the next business day following the adoption of said resolution, a copy of said resolution to the Clerk of the Municipal Court of the City and County of San Francisco.

SEC. 3. Section 68073.4 is added to the Government Code, to read:

68073.4. Notwithstanding any other provision of law , to assist a county in the funding of county criminal justice facilities construction and the improvement of criminal justice automated information systems, the board of supervisors, operative upon the adoption of a resolution stating that the provisions of this section and Section 1206.8 of the Penal Code are necessary to the establishment of adequate county criminal justice facilities in the county, may establish in the county treasury a County Criminal Justice Facility Temporary Construction Fund. Deposits shall be made to the fund, as follows:

(a) The county treasurer shall place in the fund one dollar ($1) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(b) Each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each bail violation which is not filed in court to the county treasurer. Such payments to the county treasurer shall be made monthly, and the treasurer shall deposit all such sums in the fund.

(c) The county treasurer shall place all additional assessment amounts collected on nonparking offenses pursuant to subdivision (b) of Section 1206.8 of the Penal Code in the fund.

The fund moneys shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys in the County Criminal Justice Facility Temporary Construction Fund shall be payable only for construction, reconstruction, expansion, or improvement of county criminal justice and court facilities, and for improvement of criminal justice automated information systems. For purposes of this section, "county criminal justice facilities" includes, but is not limited to jails, women's centers, detention facilities, juvenile halls, and courtrooms. Any new jail, or any addition to an existing jail that provides new cells or beds, which is constructed with moneys from the County Criminal Justice Facility Temporary Construction Fund shall comply with the "Minimum Standards for Local Detention Facilities" promulgated by the Board of Corrections.

Deposits to the fund in accordance with subdivisions (a), (b), and (c) shall continue through and including the 20th year after the initial calendar year in which the surcharge is collected.

SEC. 4. Section 1206.5 of the Penal Code is repealed.

SEC. 5. Section 1206.6 of the Penal Code is repealed.

SEC. 6. Section 1206.8 is added to the Penal Code, to read:

1206.8. (a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 68073.1, 68073.2, or 68073.4 of the Government Code are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected:

(1) With respect to each fund established, for every parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents ($1.50) shall be included in the fine or forfeiture.

The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this subdivision.

In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court

reflecting the surcharge provided for by this section.

(b) With respect to each fund established, there shall be levied an additional amount of one dollar ($1) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 68073.1, 68073.2 or 68073.4 of the Government Code.

(c) The surcharge and assessment increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant to Section 68073.1, 68073.2, or 68073.4 of the Government Code.

SEC. 7. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge

may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until July 1, 1982, and as of that date is repealed.

SEC. 8. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle

Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on July 1, 1982.

SEC. 9. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines

collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until July 1, 1982, and as of that date is repealed.

SEC. 10 Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be

based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on July 1, 1982, shall remain in effect only until January 1, 1986, and as of that date is

repealed.

SEC. 11. Section 1464 of the Penal Code, as added by Section 3 of Senate Bill 210, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which

fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1986.

SEC. 12. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate

family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

SEC. 13. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses

by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace

Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1983.

SEC. 14. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

SEC. 15. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be

based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1983, and shall remain in effect only until January 1, 1986, and as of that date

is repealed.

SEC. 16. The resolution adopted by the Board of Supervisors of the County of Los Angeles on September 2, 1980, stating that the provisions of Chapter 578 of the Statutes of 1980 are necessary to the establishment of adequate courtroom facilities in the County of Los Angeles shall be deemed a resolution stating that the provisions of Section 1206.8 of the Penal Code, as added by this act, and Section 68073.1 of the Government Code, as amended by this act, are necessary to the establishment of adequate courtroom facilities in the county, and shall satisfy the requirement of Section 1206.8 of the Penal Code.

SEC. 17. Section 2 of this act shall become operative upon the adoption of a resolution by the Board of Supervisors of the City and County of San Francisco stating that the provisions of this act are necessary to the establishment of adequate courtroom facilities in the City and County of San Francisco.

SEC. 18. It is the intent of the Legislature, if this bill, and Senate Bill 210 or Assembly Bill 1297, are chaptered and become effective on or before January 1, 1982, and this bill amends Section 1464 of the Penal Code, and Senate Bill 210 amends and adds Section 1464, or Assembly Bill 1297 amends Section 1464, and this bill is chaptered last, that the changes to Section 1464 proposed by the bills which are chaptered be given effect and incorporated in Section 1464 as follows:

(a) If this bill, Senate Bill 210, and Assembly Bill 1297 are all chaptered and become effective on or before January 1, 1982, and this bill is chaptered last, Sections 11, 14, and 15 shall become operative, and Sections 7, 8, 9, 10, 12, and 13, shall not become operative.

(b) If this bill and Senate Bill 210 are both chaptered and become effective on or before January 1, 1982, this bill is chaptered last, and Assembly Bill 1297 is not chaptered, Sections 9, 10, and 11 shall become operative, and Sections 7, 8, 12, 13, 14, and 15 shall not become operative.

(c) If this bill and Assembly Bill 1297 are both chaptered and become effective on or before January 1, 1982, this bill is chaptered last, and Senate Bill 210 is not chaptered, Sections 12 and 13 shall become operative, and Sections 7, 8, 9, 10, 11, 14, and 15 shall not become operative.

(d) If this bill is chaptered, and neither Assembly Bill 1297 nor Senate bill 210 are chaptered, then Sections 7 and 8 shall become operative, and Sections 9, 10, 11, 12, 13, 14, and 15 shall not become operative.

O

Assembly Bill No. 208

CHAPTER 527

An act to amend Section 13836.1 of the Penal Code, relating to sexual assault investigation.

[Approved by Governor September 16, 1981. Filed with Secretary of State September 16, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 208, M. Waters. Sexual assault investigation advisory committee.

Existing law provides for the establishment by the Office of Criminal Justice Planning of an advisory committee for the purposes of developing a course of training for district attorneys in the investigation and prosecution of sexual assault cases and awarding grants for local rape victim counseling centers.

The committee consists of 11 members, 5 of whom are appointed by the executive director of the Office of Criminal Justice Planning. One of those 5 appointees is a representative of a city police department.

This bill would provide that this appointee shall be a representative of a city police department or a sheriff or a representative of a sheriff's department.

The people of the State of California do enact as follows:

SECTION 1. Section 13836.1 of the Penal Code is amended to read:

13836.1. Such committee shall consist of 11 members. Five shall be appointed by the executive director of the Office of Criminal Justice Planning, and shall include three district attorneys or assistant or deputy district attorneys, one representative of a city police department or a sheriff or a representative of a sheriff's department, and one public defender or assistant or deputy public defender of a county. Six shall be public members appointed by the Commission on the Status of Women, and shall include one representative of a rape crisis center, and one medical professional experienced in dealing with sexual assault trauma victims. The committee members shall represent the points of view of diverse ethnic and language groups.

Members of the committee shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties. Staff support for the committee shall be provided by the Office of Criminal Justice Planning.

O

CHAPTER 102

An act to amend Sections 8020, 8021, 8022, 8023, 8221, 17764, 41902, 48412, 49531, 49552, 68044, and 90500 of, and to add Chapter 4 (commencing with Section 59300) to Part 32 of, the Education Code, to amend Sections 12016, 12412.1, 13300, 13337, 13338, and 13339 of, to amend and repeal Section 13967 (as amended by Section 3 of Chapter 530 of the Statutes of 1980) of, to amend Sections 13967 (as added by Section 3.5 of Chapter 530 of the Statutes of 1980), 16113, and 68203 of, to add Sections 6517, 11712, and 11713 to, and to repeal Sections 12016, 13339 and 13967 (as amended by Section 3.1 of Chapter 530 of the Statutes of 1980) of the Government Code, to amend and repeal Sections 1505 (as amended by Section 157 of Chapter 676 of the Statutes of 1980), and 1505 (as amended by Section 157.5 of Chapter 676 of the Statutes of 1980) of, to amend Sections 1529 and 50740 of, to add Sections 1505, 1528.1, 1528.3, 1529.1, and 50740.7 to, to add Chapter 3.6 (commencing with Section 1597.50) to Division 2 of, and to repeal Section 1528.5 of, the Health and Safety Code, to amend Sections 7314, 7316, and 7721 of, and to add Section 7722 to, the Labor Code, to amend and repeal Sections 1464 (as amended by Section 1 of Chapter 1047 of the Statutes of 1980), 1464 (as amended by Section 2 of Chapter 1047 of the Statutes of 1980), and 1464 (as added by Section 3 of Chapter 1047 of the Statutes of 1980) of the Penal Code, to add Section 700.1 to the Probate Code, to add Section 25008 to the Public Resources Code, to amend Section 97.1 of the Revenue and Taxation Code, as added by Senate Bill No. 102 of the 1981–82 Regular Session, to amend Sections 406, 409, 411, 412, 413, 4201, 4227, 4250, 4327, 4357, and 4405 of the Water Code, to amend and repeal Sections 5075 (as amended by Section 5 of Chapter 1133 of the Statutes of 1979), to amend Sections 10020, 14005.12, 14005.8, 14005.9, 14017, 14023, 14050.1, 14132, 14171, 14172, 16700, 16701, 16702, 16703, 16704, 16705, 16707, 16708, 16710, 16712, and 16715 of, to add Sections 14009.5, 14016.2, 14016.3, 14016.4, 14016.9, 14017.5, 14018.2, 14101.7, 14105.1, 14109.5, 14124.80, 14124.81, 14124.82, 14124.83, 14124.84, 14124.85, 14124.86, 14124.87, 14124.88, 14134, 14134.2, 14172.5, and 16716 to, to add Chapter 8.8 (commencing with Section 14600) to Part 3 of Division 9 of, to repeal and add Sections 12306 and 14016 of, to repeal Sections 14018.4 and 16709 of, and to repeal Article 2 (commencing with Section 12525) of Chapter 4 of Part 3 of Division 9 of, Article 4 (commencing with Section 14640), and Article 5 (commencing with Section 14660) of Chapter 8.8 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 28, 1981. Filed with Secretary of State June 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 251, Vasconcellos. Fiscal affairs.

(1) Existing law makes extensive provisions for the creation and administration of regional adult and vocational education councils, and requires that each community college district, high school district, unified school district, county office of education, and specified adult continuing education coordinating councils shall participate in a regional adult and vocational education council.

This bill would remove the mandate that these districts and specified councils participate in the regional adult and vocational education council, and would make participation optional.

(2) Under existing law, the State Lands Commission is required, with certain exceptions, to deposit revenues, moneys, and remittances in the State Treasury, and to apply such moneys to specified obligations in a specified order. Until the operative date of the Budget Act of 1984 or the operative date of a subsequent Budget Act, as specified, the commission is required to allocate to the State School Building Lease-Purchase Fund, a continuously appropriated fund, the amount of $100,000,000 for fiscal year 1980–81, and the amount of $200,000,000, for each subsequent fiscal year.

This bill would require the commission to allocate $200,000,000 to the State School Building Lease-Purchase Fund for the 1984–85 fiscal year, as specified, and would provide for the apportionment of these funds to school districts for that year.

(3) Existing law requires school districts maintaining a high school or high schools to provide driver training programs for all eligible pupils. School districts are further required to provide driver training in a statutorily prescribed manner of instruction.

This bill would eliminate the requirement that school districts provide driver training programs and would make the programs optional. This bill would also transfer $17,844,067 during the 1981–82 fiscal year from the Driver Training Penalty Assessment Fund to Section A of the State School Fund for driver training programs, as specified.

(4) Existing law authorizes any person 16 years of age or older to receive a certificate of proficiency based on an examination administered by the State Department of Education. The department may charge a fee for the examination, but the fee cannot exceed $10.

This bill would increase the maximum fee to $20.

(5) Under existing law, the state provides reimbursement for certain child nutrition programs.

This bill would limit state reimbursement for these programs to meals provided to needy children, as defined.

(6) Existing law establishes special state schools for deaf, blind, and neurologically handicapped pupils and requires that all pupils be

maintained at the expense of the state, except as provided.

This bill would require the school district of residence of a parent or guardian of a pupil attending a special state school, except day pupils, to pay the school of attendance 10% of the average cost of education per pupil.

(7) Existing law requires public institutions of higher education to apply uniform rules in determining whether a student is to be classified as a resident or a nonresident.

This bill would require certain factors, as specified, to be considered in making this determination.

(8) Existing law requires the Trustees of the California State University and Colleges to seek approval from the Department of General Services with regard to printing and binding required by the trustees.

This bill would give the trustees authority, in specified circumstances, to select binders for library volumes on the basis of competitive bidding.

(9) Under existing law, public agencies, as defined, may enter into joint powers agreements for various purposes. Any entity provided for by a joint powers agreement may issue revenue bonds to pay the cost of acquiring or constructing a project if the entity has the power to construct, maintain, or operate the projects specified in provisions of existing law.

This bill would specifically authorize the Department of General Services to enter into a joint powers agreement for the purpose of acquiring land and constructing state office buildings and parking facilities. The bill would authorize the joint powers agency created thereby to issue revenue bonds for these purposes and would authorize the department to enter into certain agreements with this agency. The bill would also provide for review by the Legislature.

(10) Existing law contains no express provision for the existence of a revolving fund for the purpose of funding the purchase of leased electronic data-processing equipment.

This bill would establish, in the State Treasury, the Equipment Management Revolving Fund consisting of specified moneys which would be continuously appropriated for that purpose. The bill would authorize the Director of Finance to allocate moneys from the fund to state agencies as a loan for the purchase of equipment under specified conditions and would provide for repayment, as specified.

(11) Under existing law, accounting and budgeting systems of state entities, and the nature, style, and format of the budgets for state entities and appropriations for state entities contained in the annual Budget Bill are required to be revised in a prescribed manner, which includes a program budget format and a common coding system. These provisions apply to certain designated departments commencing with the 1982–83 fiscal year, and to all other state entities commencing with the 1983–84 fiscal year.

This bill would make the above provisions applicable to all other

state entities commencing with the second fiscal year immediately following the fiscal year for which funds are appropriated by the Legislature to implement the provisions. The bill would also make related, conforming changes.

(12) Existing law provides for annual adjustments in the amount of reimbursement to local jurisdictions for revenue loss by reason of certain personal property exemptions.

This bill would revise these adjustments, as specified, commencing with the 1982–83 fiscal year.

(13) Existing law provides for the imposition of assessments on specified fines, penalties, and forfeitures and for the transfer of a certain percentage of the revenue collected thereby to the Indemnity Fund for appropriation by the Legislature in equal amounts to indemnify victims of violent crimes and to provide funding for local programs for assistance to victims and witnesses of all types of crimes for a specified period.

This bill would eliminate the requirement that these funds be divided equally, would provide for the levy of additional assessments, and would provide for appropriation by the Legislature of an unspecified portion of these funds for assistance to local rape victim counseling centers. This bill would also extend indefinitely the authority to provide funding for local programs for assistance to victims and witnesses of crimes.

(14) Existing law provides that the salaries of the Chief Justice and Associate Justices of the Supreme Court, the presiding and associate justices of the court of appeal, and judges of the superior and municipal courts shall be increased by the average increase in state employee salaries, not to exceed 5%, as specified.

This bill would eliminate the 5% limitation but provide a dollar limitation, as specified.

(15) Under existing law, there are special provisions in the California Community Care Facility Act respecting family day care homes, including expedited licensing procedures for family day care homes for children, special limitations on regulations governing licensure of family day care homes, and a pilot project for simplified regulation (rather than licensure) of all the family day care homes which care for 6 or fewer children.

This bill would extend the pilot project until January 1, 1983, and enact simplified licensure provisions for family day care homes for children until July 1, 1984.

The bill would also appropriate $4,100,000 from the General Fund for these purposes.

(16) There is in existing law the California Community Care Facilities Act, which contains specified provisions respecting day care facilities for children.

This bill would, in addition, grant such day care facilities after an onsite inspection 60 days to make a report, as defined, to the department documenting records found to be incomplete.

The bill would require the department to simplify its review and inspection of infant and day care centers.

The bill would also require the department to supply a copy of all applicable regulations without charge to a day care facility upon initial licensure.

Existing law also requires licenses or special permits for day care facilities to be issued for a period of 2 years.

This bill would require the issuance of such licenses or special permits for a period of 3 years.

(17) Existing law requires the Department of Housing and Community Development to use a specified portion of the money in the Rental Housing Construction Fund to assist rental housing developments financed by the department.

This bill would eliminate this requirement. The bill would also authorize the department to allocate previously committed, but unexpended, funds, as specified.

(18) Existing law permits the Division of Occupational Safety and Health in the Department of Industrial Relations to fix and collect fees not to exceed specified maximums for inspection of elevators, tanks, and boilers, and to cover the cost of processing an elevator permit.

This bill would eliminate the specified maximums and authorize the division to fix and collect fees necessary to cover the actual costs of the division and would require these fees to be deposited in the Elevator Safety Account and the Pressure Vessel Account, respectively, which would be created thereby.

(19) Existing law does not permit the state to make recovery of Medi-Cal payments from decedent's estates.

This bill would provide that recovery may be made from estates of decedent's estates who are 65 years of age or older, under specified circumstances. The bill would provide that the department shall have 4 months after receiving notice of a Medi-Cal recipient's death to perfect its claims, and that notice shall be given within 30 days of the recipient's death by the executor or other representative of the recipient.

(20) This bill would make a declaration regarding legislative intent and policy with respect to the Warren-Alquist State Energy Resources Conservation and Development Act.

(21) Existing law requires a permit from the Department of Water Resources for any person to engage in weather management, and specifies the amount of various fees in this connection.

This bill would eliminate the amounts of the fees, providing instead that the amount of these fees shall be as fixed by the Director of Water Resources.

(22) Existing law provides for the creation of watermaster service areas and generally provides for one-half the cost of administration of a service area by the state and one-half by the owners of the rights to divert or store water within the service area.

This bill would, instead, change the state's share of these costs to one-third, requiring the owners to pay the balance of two-thirds.

(23) Under existing law, the state funds 90% and a county funds 10% of certain programs under the Short-Doyle Act.

This bill would require the waiver of the county matching requirement if certain conditions are met.

(24) Existing law provides for loan assistance for recipients under the Supplemental Security Income/State Supplementary Payment program whose Supplemental Security Income/State Supplementary Payment or Social Security Disability Insurance check is lost or stolen.

This bill would abolish these provisions.

(25) Under the Medi-Cal program, health care services are provided to public assistance recipients and persons determined to be medically indigent or medically needy.

This bill would provide for more stringent standards for becoming eligible for Medi-Cal benefits as a medically indigent or medically needy person.

(26) Existing law requires the counties to determine the eligibility of persons for Medi-Cal benefits as public assistance recipients or medically indigent or medically needy persons.

This bill would require the State Department of Health Services to institute an eligibility quality control program covering every county and to audit one or more county eligibility departments.

(27) Existing law does not provide that persons eligible for services under the Medi-Cal program shall be required to pay any cost of the services which they receive.

This bill would provide, with certain exceptions, that specified amounts shall be paid by Medi-Cal recipients for receipt of services under this chapter.

(28) Existing law provides that persons, who must, in order to be eligible for services under the Medi-Cal program pay a specified amount, shall have a monthly determination made as to the amount of money which must be paid.

This bill would require determinations to be made on a 3-month basis, except for persons in long-term care.

(29) The bill would require the State Director of Health Services to contract for assistance, as specified, to recover payments to the Medi-Cal program where there is third-party liability.

(30) Existing law provides that an interest rate of 7% per annum may be charged against providers of services under the Medi-Cal program when a provider has failed to repay an overpayment within a specified period of time and that the rate may be charged from a period commencing 30 days after the service of notice of an overpayment as specified.

This bill would, instead, provide that the rate shall be equal to the rate received on investments in the Pooled Money Investment Fund, that the interest may accrue from the date that the audit or

examination finding which showed the overpayment is mailed, and that the same rate shall apply to payment of providers by the state when providers prevail in appeals for improperly disallowed payments, with the interest to accrue from the date the appeal is formally accepted.

(31) Senate Bill 633 of the 1981–82 Regular Session, which is before the Governor, contains provisions which would amend existing law to eliminate acupuncture from the schedule of benefits under the Medi-Cal program.

This bill would restore the provisions for acupuncture benefits if Senate Bill 633 is chaptered before this bill.

(32) Under existing law, the Medi-Cal schedule of benefits covers physicians' services, laboratory services, and hospital services.

This bill would specify requirements concerning formulation of reimbursement rates for these services.

(33) The bill would provide for limited and experimental development of alternative methods for managing Medi-Cal care, including reimbursement of hospitals on a prospectively negotiated contractual basis, reimbursement of primary care providers under a risk-sharing or capitated contract, budget-managed county health care systems, and consolidated mental health programs.

(34) Existing law requires the governing body of each county to adopt a county health services plan and budget, and to submit the plan and budget to the State Director of Health Services in the form and in accordance with the procedures established by the director.

This bill would extend this requirement to the City of Berkeley and each existing local health district, and subjects that city and local health district to the same requirements and benefits now applicable to counties.

This bill would also require each county receiving specified financial assistance to prepare and submit certain reports to the State Department of Health Services to be submitted to the Legislature.

(35) This bill would reappropriate $4,723,464 in the 1980 Budget Act for child care services to Section B of the State School Fund for apportionment to community college districts.

(36) The bill would appropriate $1,650,000 to the State Department of Health Services for support subject to certain conditions.

(37) The bill would revert $17,000,000 from the Local Agency Indebtedness Fund to the General Fund.

(38) The bill would require the Department of Food and Agriculture to conduct a demonstration project, as specified, in Sonoma County.

(39) The Personal Income Tax Law provides for tax credits for solar energy systems, energy conservation measures, and solar pumping systems.

This bill would provide that notwithstanding any other provision of law, there shall be no appropriation for refunds for these tax

credits during the 1981–82 fiscal year.

(40) Existing law permits the state to contract, upon negotiations with employee organizations, with carriers for dental care plans for employees and annuitants, subject to appropriation of funds for a dental care plan for state employees.

This bill would provide that on January 1, 1982, any dental care plan contracted for by an employee organization authorized for payroll deductions under Section 1156 of the Government Code may be eligible to receive any state contribution towards dental care coverage for employees and annuitants of the state civil service, the California State University and Colleges System, and the Regents of the University of California and the eligible dependents of those employees.

(41) Assembly Bill 11 of the 1981–82 Regular Session would provide for a tax credit under the Personal Income Tax Law and the Bank and Corporations Tax Law to any qualified 1978–79 tax year unsecured roll property taxpayer in the amount of the property tax paid by the taxpayer attributable to that portion of the property tax rate levied on the unsecured roll for the 1978–79 tax year, less the rate for voter-approved debt, which is in excess of $4 per $100 of assessed valuation.

This bill would appropriate $125,000,000 from the General Fund to the Unsecured Property Tax Credit Fund, created by this bill, for purposes of that tax credit, to be distributed pursuant to the provisions of AB 11, but the appropriation would be operative only if AB 11 is chaptered and makes provision for that tax credit.

(42) The bill would appropriate $254,000 to the Department of General Services for specified purposes.

Existing law provides for distribution to cities and counties, pursuant to prescribed formulas, of specified amounts of money contained in the Alcohol Beverage Control Fund, the Highway Carriers' Uniform Business License Tax Account, and the Financial Aid to Local Agencies Fund.

This bill would express the intent of the Legislature that cities which did not levy a property tax in 1977–78 shall receive an in-lieu appropriation from the state for their loss of revenue if those subventions are reduced or eliminated for the 1981–82 fiscal year.

(43) This bill would additionally provide that $5,000,000 of the amount appropriated by Chapter 1043 of the Statutes of 1979 and allocated for use by the California Housing Finance Agency pursuant to former subdivision (b) of Section 50740 of the Health and Safety Code shall revert to the General Fund, and is appropriated for the 1981–82 fiscal year to the County of Los Angeles for purposes of state assistance payments.

(44) This bill authorizes the Department of Corrections to award a construction contract for a prison facility at Tehachapi, as specified.

(45) The bill would provide for severability of any invalid provisions.

(46) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

(47) This bill would take effect immediately as an urgency statute but would not become operative unless and until the Budget Act of 1981 becomes effective.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 8020 of the Education Code is amended to read:

8020. There shall be created within the state, regional adult and vocational education councils, which shall have boundaries as may be determined by local school districts, and approved by the Superintendent of Public Instruction and the Chancellor of the California Community Colleges. Regional boundaries shall be coterminous with the boundaries of community college districts, and a region may consist of one or more adjacent community college districts. The superintendent and chancellor shall jointly publish guidelines for application by school districts and community college districts for the formation of regional adult and vocational councils.

SEC. 2. Section 8021 of the Education Code is amended to read:

8021. Any community college district, high school district, unified school district, or county office of education may be a participant in a regional adult and vocational education council.

SEC. 3. Section 8022 of the Education Code is amended to read:

8022. Notwithstanding any other provision of law, adult continuing education coordinating councils with an average daily attendance of over 700,000 or having boundaries which are coterminous with those of a city and county, may participate in regional adult and vocational education councils and all agreements, as to members, meetings, delineation of function, shall continue in force; and these councils shall comply with all other provisions of this article.

SEC. 4. Section 8023 of the Education Code is amended to read:

8023. The Superintendent of Public Instruction and Chancellor of the California Community Colleges shall prescribe and publish regulations for regional adult and vocational education councils.

The board shall also make recommendations as to any further legislation that may be necessary in order to further the objectives of this chapter.

In addition thereto, the advisory board shall review the budgeting and accounting process for the purpose of improving the preparation, legislative review and execution of the budget considering, but not limited to, such subjects as the budget cycle, adequate time for legislative review, increased public participation, and the basis of accounting revenues, expenditures, obligations, and encumbrances. The advisory board shall make a preliminary report of its recommendations by March 1, 1981, and a final report by January 1, 1983.

This section shall remain in effect only until such time as the provisions of Sections 12412.1, 13300, 13337, and 13338 become applicable to those state entities specified in subdivision (d) of Section 12016, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends such date.

SEC. 54. Section 13967 of the Government Code, as amended by Section 3 of Chapter 530 of the Statutes of 1980, is amended to read:

13967. (a) Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause the dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, of at least ten dollars ($10), but not to exceed ten thousand dollars ($10,000).

(b) The fine imposed pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article, to provide assistance to established local comprehensive programs for victims and witnesses, including but not limited to, pilot local assistance centers for victims and witnesses established pursuant to the provisions of Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4 of the Penal Code, and to provide funding for the programs provided pursuant to Article 4 (commencing with Section 13837) of Chapter 4 of Title 6 of Part 4 of the Penal Code.

(c) It is the intent of the Legislature that funds appropriated pursuant to this section for local assistance centers for victims and witnesses shall be in addition to any funds appropriated as provided in Section 13835.8 of the Penal Code.

(d) Funds appropriated pursuant to this section shall be made available through the Office of Criminal Justice Planning to those public or private nonprofit programs for the assistance of victims and

witnesses which:

(1) Provide comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type or types of crimes.

(2) Are recognized by the county board of supervisors as the major provider of comprehensive services to such victims and witnesses.

(3) Are selected by the county board of supervisors as the eligible program to receive such funds.

(4) Assist victims of violent crimes in the preparation and presentation of their claims to the State Board of Control for indemnification pursuant to this article.

(5) Cooperate with the State Board of Control in obtaining and verifying data required by this article.

(e) This section shall remain in effect only until January 1, 1983, and as of that date is repealed.

SEC. 55. Section 13967 of the Government Code, as amended by Section 3.1 of Chapter 530 of the Statutes of 1980, is repealed.

SEC. 56. Section 13967 of the Government Code, as added by Section 3.5 of Chapter 530 of the Statutes of 1980, is amended to read:

13967. (a) Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause the dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, of at least ten dollars ($10), but not to exceed ten thousand dollars ($10,000). In addition to any other penalty, upon a person being convicted of any felony or misdemeanor there shall be levied a penalty assessment of forty dollars ($40) for each felony conviction and twenty dollars ($20) for each misdemeanor conviction upon every fine, penalty, and forfeiture imposed and collected by the courts. Any fine or penalty assessment imposed pursuant to this section shall not be subject to any penalty assessment imposed pursuant to Section 13521 of the Penal Code.

(b) The fine or penalty assessment imposed pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, hereby continued in existence, the proceeds of which shall be available for appropriation by the Legislature for the following purposes:

(1) To indemnify persons filing claims pursuant to this article.

(2) To provide assistance to established local comprehensive programs for victims and witnesses, including but not limited to, pilot local assistance centers for victims and witnesses established

pursuant to the provisions of Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4 of the Penal Code.

(3) To provide funding for the programs provided pursuant to Article 4 (commencing with Section 13837) of Chapter 4 of Title 6 of Part 4 of the Penal Code.

(c) It is the intent of the Legislature that funds appropriated pursuant to this section for local assistance centers for victims and witnesses shall be in addition to any funds appropriated as provided in Section 13835.8 of the Penal Code.

(d) Funds appropriated pursuant to this section shall be made available through the Office of Criminal Justice Planning to those public or private nonprofit programs for the assistance of victims and witnesses which:

(1) Provide comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type or types of crimes.

(2) Are recognized by the county board of supervisors as the major provider of comprehensive services to such victims and witnesses.

(3) Are selected by the county board of supervisors as the eligible program to receive those funds.

(4) Assist victims of violent crimes in the preparation and presentation of their claims to the State Board of Control for indemnification pursuant to this article.

(5) Cooperate with the State Board of Control in obtaining and verifying data required by this article.

SEC. 57. Section 16113 of the Government Code is amended to read:

16113. (a) Each county auditor shall file a claim with the Controller on or before the last day of August of each year for reimbursement to local governmental agencies for the tax loss attributable to property on the unsecured roll by reason of the reduced assessment ratio of commercial passenger fishing vessels provided for in subdivision (c) of Section 227 of the Revenue and Taxation Code.

(b) Each county auditor shall file a claim with the Controller on or before October 31 of each fiscal year for reimbursement to local governmental agencies for the tax loss attributable to property on the secured roll by reason of the reduced assessment ratio of commercial passenger fishing vessels provided for in subdivision (c) of Section 227 of the Revenue and Taxation Code.

(c) For the 1980–81 fiscal year, and fiscal years thereafter, the amount the state shall reimburse local governmental jurisdictions for revenue loss by reason of the exemption for business inventories provided for in Section 219 of the Revenue and Taxation Code, and for livestock as provided for in Section 5523 of such code, shall be computed as follows:

section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his or her immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. The funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 27.50 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 37.36 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall remain in effect only until January 1, 1982, and as of that date is repealed.

SEC. 72. Section 1464 of the Penal Code, as amended by Section 2 of Chapter 1047 of the Statutes of 1980, is amended to read:

1464. There shall be levied an assessment in an amount equal to

four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding

month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall remain in effect only until July 1, 1982, and as of that date is repealed.

SEC. 73. Section 1464 of the Penal Code, as added by Section 3 of Chapter 1047 of the Statutes of 1980, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the

protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on July 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

SEC. 74. Section 700.1 is added to the Probate Code, to read:

700.1. Where a deceased person has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200), Part 3, Division 9, Welfare and Institutions Code, the heirs, the executor, the administrator, their representative, or the designated representative of the decedent shall give the Director of Health Services or his or her successor notice of the death no later than 30 days from the date of death. The director shall have four months after notice is given to the Sacramento office of the director to perfect a claim. In the event that assets of the estate have been distributed to the heirs, the director shall be entitled to a claim against an heir or heirs to the full extent of the director's claim or the distributed assets, whichever is less. The director's entitlement against heirs shall include interest and other accruing costs as in the case of other executions.

SEC. 75. Section 25008 is added to the Public Resources Code, to read:

25008. It is further the policy of the state and the intent of the Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources.

The Legislature finds and declares that the State of California has extensive physical and natural resources available to it at state-owned sites and facilities which can be substituted for traditional energy supplies or which lend themselves readily to the production of electricity. Due to increases in energy costs, the state's expenditures for energy have also increased, adding to the burden on California taxpayers and reducing the amount of funds available

Assembly Bill No. 303

CHAPTER 909

An act to amend Section 800 of the Penal Code, relating to crimes.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 303, Sher. Crimes: felonies.

Existing law provides that the prosecution of felonies, other than murder, embezzlement of public moneys, kidnapping for ransom, and falsification of public records, must be commenced within specified times.

Prosecutions for rape, rape in concert with another person, sodomy, oral copulation, and penetration of anal or genital openings with a foreign object against the victim's will must be commenced within 3 years of their commission. Prosecutions for lewd and lascivious acts upon the body of a child under 14 must be commenced within 5 years after their commission.

This bill would provide that a prosecution for rape, rape in concert with another person, specified offenses of sodomy or oral copulation, penetration of anal or genital openings with a foreign object against the victim's will, or lewd and lascivious acts upon the body of a child under 14 must be commenced within 6 years of their commission.

It would also require the California Law Revision Commission to conduct a study with regard to the statutes of limitations regarding felonies, as specified, and to report thereon to the Legislature on a priority basis.

The bill would become operative only if SB 209 and SB 276 are chaptered on or before January 1, 1982, as specified.

The people of the State of California do enact as follows:

Not operative Sec. 0.1 SECTION 1. Section 800 of the Penal Code is amended to read:

800. An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, or 288 of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission. An indictment for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission. An indictment for grand theft,

forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery. An indictment for a violation of Section 261 or Section 288 of the Penal Code shall be found, an information filed, or case certified to the superior court within six years after its commission.

SEC. 2. Section 800 of the Penal Code is amended to read:

800. (a) An indictment for any felony, except murder, voluntary manslaughter, involuntary manslaughter, the embezzlement of public money, the acceptance of a bribe by a public official or a public employee, grand theft, forgery, the falsification of public records, a violation of Section 72, 118, 118a, 132, 134, 209, 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286 or subdivision (c), (d), or (f) of Section 288a, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f), of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission.

(c) An indictment for grand theft, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72, 118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, an information filed, or case certified to the superior court within three years after its discovery.

SEC. 3. (a) It is the finding of the Legislature that since its enactment in 1872, California's basic three-year statute of limitations for felonies has been subjected to piecemeal amendment, with no comprehensive examination of the underlying rationale for the period of limitation, nor its continued suitability as applied to specific crimes or categories of crimes. In the estimation of the Legislature it is therefore desirable for the California Law Revision Commission, on a priority basis, to undertake an indepth study of the rationales for the statutes of limitations for various felonies and the justification for the revision of the period of limitations for specific crimes or categories of crime, and to make recommendations to the Legislature based on the study.

(b) The California Law Revision Commission shall make a study of the statutes of limitations applicable to felonies, and shall submit its findings and recommendations with regard to legislation with respect thereto to the Legislature, on a priority basis.

SEC. 4. This act shall become operative only if both Senate Bill No. 209 and Senate Bill No. 276 are chaptered on or before January 1, 1982, and amend Section 800 of the Penal Code in the form set forth in Section 2 of this act, in which case Section 1 of this act shall not become operative.

O

Assembly Bill No. 322

CHAPTER 105

An act to add Section 290.1 to the Penal Code, relating to crimes.

[Approved by Governor June 29, 1981. Filed with Secretary of State June 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 322, Wyman. Crimes: probation.

Existing law authorizes the dismissal of the accusations or information against the defendant following the period of probation. The defendant shall thereafter be released from all penalties and disabilities resulting from the offense, except with regard to the suspension or revocation of driving privileges.

This bill would add a further exception that such a person convicted of a felony sex offense shall not be released from the duty to register as a sex offender unless he or she has obtained a certificate of rehabilitation.

The people of the State of California do enact as follows:

SECTION 1. Section 290.1 is added to the Penal Code, to read:

290.1. Notwithstanding Section 1203.4 and except as provided in Section 290.5, a person convicted of a felony sex offense shall not be relieved from the duty to register under Section 290.

O

Assembly Bill No. 326

CHAPTER 211

An act to amend Section 8101 of the Health and Safety Code, and to add Section 594.3 to the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 1981. Filed with Secretary of State July 19, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 326, Levine. Vandalism: cemeteries, mortuaries, and places of worship: penalties.

(1) Existing law makes it a misdemeanor to maliciously commit prescribed destructive or damaging acts in a cemetery or to disturb, obstruct, detain, or interfere with any person carrying or accompanying human remains to a cemetery or funeral establishment or when engaged in a funeral service or interment. Existing law makes the penalty for such acts punishable by a fine of not less than $250 nor more than $1,000, or imprisonment in the county jail for not more than 1 year, or both.

This bill would revise the penalty to make such prescribed acts a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not more than 1 year. It would, additionally, make such penalty applicable to every person who destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any gate, door, fence, wall, post or railing, or any inclosure for the protection of a mortuary or any property in a mortuary and to every person who destroys, cuts, breaks, or injures any mortuary building.

(2) Existing law makes every person who maliciously defaces with paint or any other liquid, damages or destroys any real or personal property not his own, guilty of vandalism which is, if the amount of defacement, damage, or destruction is $1,000, or more, punishable by imprisonment for 6 months in the county jail, imprisonment in the state prison not to exceed 1 year and 1 day, a fine of $5,000, or both such fine and imprisonment, or if the amount of defacement, damage, or destruction is less than $1,000, punishable by imprisonment in the county jail for not more than 6 months, or by a fine of not more than $1,000, or by both such fine and imprisonment.

The bill would, additionally, make any person who knowingly commits acts of vandalism to a church, synagogue, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not more

than 1 year.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

(4) This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 8101 of the Health and Safety Code is amended to read:

8101. (a) Every person is guilty of a crime and punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or mortuary or any property in a cemetery or mortuary.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any mortuary building or any building, statuary, or ornamentation within the limits of a cemetery.

(4) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

(b) A court shall require as a condition of probation for any person convicted under this section, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, that such person wash, paint, repair, or replace the defaced, damaged, or destroyed property, or otherwise make restitution to the property owner. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, that the defendant perform specified community service. Nothing in this section shall be construed to limit the authority of a court to grant or deny probation or provide conditions of probation.

SEC. 2. Section 594.3 is added to the Penal Code, to read:

594.3. Any person who knowingly commits any act of vandalism to a church, synagogue, building owned and occupied by a religious educational institution, or other place primarily used as a place of

worship where religious services are regularly conducted is guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Vandalism in cemeteries and in places of worship is a growing problem which is of paramount concern to the people of California. In order to permit agencies which are presently confronted with situations involving vandalism in cemeteries and to places of worship to take immediate and stringent action, it is necessary that this act go into effect immediately.

O

Assembly Bill No. 338

CHAPTER 74

An act to amend Section 7480 of the Government Code, relating to financial records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 19, 1981. Filed with Secretary of State June 21, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 338, McAlister. Financial records: privacy.

The California Right to Financial Privacy Act makes provision for and conditions the disclosure of financial records and information of financial institutions to public agencies. The act makes an exception for a formal request by any police or sheriff's department or district attorney to a bank or credit union for specified information in connection with the filing of a crime report. This exception does not expressly apply to a savings and loan association.

This bill would expressly include as an exception to the act, formal requests to a savings and loan association by the law enforcement agencies specified above for information in connection with the filing of a crime report.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information which is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings and loan association in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks or other orders drawn upon any bank, credit union, or savings and loan association in this state, such police or sheriff's department or district attorney may request a bank, credit union, or savings and loan association to furnish, and a bank, credit union, or savings and loan association shall supply, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

(i) The number of items dishonored;

(ii) The number of items paid which created overdrafts;

(iii) The dollar volume of such dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings and loan association and customer to pay overdrafts;

(iv) The dates and amounts of deposits and debits and the account balance on such dates;

(v) A copy of the signature and any addresses appearing on a customer's signature card; and

(vi) The date the account opened and, if applicable, the date the account closed.

(c) The Attorney General, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Inheritance Tax Law (Part 8 (commencing with Section 13301), Division 2, Revenue and Taxation Code), or a police or sheriff's department or district attorney from requesting of an office or branch of a financial institution, and the office or branch from responding to such a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of such account or accounts.

(d) The examination by, or disclosure to, any supervisory agency of financial records which relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Superintendent of Banks by reference to Division 1 (commencing with Section 99), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Department of Savings and Loan by reference to Division 2 (commencing with Section 5000) of the Financial Code.

(3) With respect to the Corporations Commissioner by reference to Division 5 (commencing with Section 14000) and Division 7 (commencing with Section 18000) of the Financial Code.

(4) With respect to the State Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(5) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return required to be filed by the financial institution pursuant to Part 10, 11, or 18 of the

Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of:

(1) The information required by Sections 6702, 8954, 30313, 32383, 38502, and 40153 of the Revenue and Taxation Code; or

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Parts 1, 2, 3, 13, 14, and 17 of the Revenue and Taxation Code.

(g) The disclosure to the State Controller of the information required by Section 7853 of the Revenue and Taxation Code.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clearly authorize law enforcement officials to obtain information from a savings and loan association in connection with a crime report at the earliest possible time, it is necessary that this act take effect immediately.

O

Assembly Bill No. 347

CHAPTER 1103

An act to amend Section 432.7 of the Labor Code, and to amend Sections 11105 and 13300 of the Penal Code, relating to criminal history.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 347, McAlister. Summary criminal history information.

Existing law specifies various persons who may receive state and local summary criminal history information, as defined, including public utilities for nuclear energy facility employment purposes.

This bill would also include public utilities when access to such information is needed to assist in employing current or prospective employees who in the course of their employment may be seeking entry to private residences and would restrict the utilization of such information, as specified. The information provided would be limited to the record of convictions and any arrest for which a current or prospective employee is released on bail or on his or her own recognizance pending trial. A violation of such restrictions would be a misdemeanor. The bill would also require the Attorney General, if he or she supplies state summary criminal history information to a public utility for such purposes, to furnish a copy to the current or prospective employee to whom the information relates. The bill would make related changes.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

This bill also makes additional changes proposed by SB 964, to be operative only if SB 964 and this bill are both chaptered and become effective on January 1, 1982, and this bill is chaptered after SB 964.

The people of the State of California do enact as follows:

SECTION 1. Section 432.7 of the Labor Code is amended to read:

432.7. (a) No employer whether a public agency or private individual or corporation shall ask an applicant for employment to disclose, through any written form or verbally, information

concerning an arrest or detention which did not result in conviction, or information concerning a referral to and participation in any pretrial or posttrial diversion program, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention which did not result in conviction, or any record regarding a referral to and participation in any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) In any case where a person violates any provision of this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from such person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(c) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies which an applicant may have under any other law.

(d) Persons seeking employment as peace officers or for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(e) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(f) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any

pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, shall receive or possess such information.

(g) "A person authorized by law to receive such information", for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by such employment to receive, analyze, or process criminal offender record information.

(h) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(i) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201, 13201.5 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

Not operative section

SEC. 2. Section 11105 of the Penal Code, as amended by Chapter 269 of the Statutes of 1981, is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5

(commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing or certification purposes, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and

improvements to the systems from which the information is obtained. Any state agency required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections and for maintenance and improvements to the systems from which the information is obtained when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

Operative section

SEC. 3. Section 11105 of the Penal Code, as amended by Chapter 269 of the Statutes of 1981, is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county

jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The

state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University and Colleges or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, when needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing or certification purposes, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is

obtained. Any state agency required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections and for maintenance and improvements to the systems from which the information is obtained when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

SEC. 4. Section 13300 of the Penal Code is amended to read:

13300. (a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 of the Penal Code pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and

(j) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public

Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the local agency supplies such data, it shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the local summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing persons who will be seeking entrance to private residences in the course of their employment. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the local agency supplies the data pursuant to this paragraph, it shall furnish a copy of the data to the person to whom the data relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is

injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

Nothing in this section shall be construed as imposing any duty upon public utilities to request local summary criminal history information on any current or prospective employee.

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing such information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer, or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

SEC. 5. It is the intent of the Legislature, if this bill and Senate Bill 964 are both chaptered and become effective January 1, 1982, both bills amend Section 11105 of the Penal Code, and this bill is chaptered after Senate Bill 964, that the amendments to Section 11105 proposed by both bills be given effect and incorporated in Section 11105 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Senate Bill 964 are both chaptered and become effective January 1, 1982,

both amend Section 11105, and this bill is chaptered after Senate Bill 964, in which case Section 2 of this act shall not become operative.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

O

Assembly Bill No. 348

CHAPTER 941

An act to amend Sections 23102, 23105, 23165 as added by Section 32 of Assembly Bill 541, and 23200 as added by Section 32 of Assembly Bill 541 of, and to add Sections 23102.5, 23103.5, 23195, and 23212 to, the Vehicle Code, relating to driving offenses.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 348, Levine. Driving offenses.

(1) Existing law requires a court which strikes a prior conviction of specified driving offenses in a case of a subsequent offense to specify the reason or reasons for striking the prior conviction.

This bill would require a court to state on the record the reasons whenever it dismisses an allegation of a violation of the offense of driving a vehicle upon a highway while under the influence of intoxicating liquor or any drug, or the combined influence of intoxicating liquor and any drug, where death or injury is not proximately caused, whenever it dismisses or strikes a prior conviction, or whenever it substitutes the allegation of a different or lesser offense. The court would further be required to state whether the prosecution requested the dismissal, substitution, or striking, and whether the prosecution concurred in or opposed the dismissal, substitution, or striking. If the prosecution makes a motion for the dismissal, substitution, or striking, the prosecution would be required to submit a written statement of the reasons for the motion, as specified in the bill, and the statement would become part of the court record.

(2) Existing law also provides that any person convicted of the offense of driving under the influence of intoxicating liquor or any drug, or the combined influence thereof, who is convicted of a second offense within 5 years of the prior conviction and who is granted probation shall be punished by confinement in jail and by a fine of specified minimum and maximum duration and amount.

This bill would revise these provisions to require that the specified confinement and fine also apply when there was within 5 years a prior conviction of another offense of driving under the influence of alcohol, drugs, or the combination, or a conviction which occurred after January 1, 1982, of a reckless driving offense on a plea of guilty or nolo contendere in satisfaction or substitution for an offense which was originally charged as an offense of driving under the influence of alcohol, drugs, or the combination thereof, if the court accepts the plea and if the prosecutor states on the record of the prior reckless driving conviction that there had been consumption of intoxicating

liquor or ingestion or administration of a drug in connection with the offense. The bill would require the court to notify the Department of Motor Vehicles of each such conviction.

(3) Existing law authorizes the impounding from 1 to 30 days of a vehicle registered to a minor at the minor's expense if it is driven by the minor in violation of the prohibition against driving under the influence of intoxicating liquor, or drugs, or a combination thereof, not resulting in bodily injury or death to other than the driver.

This bill would authorize the impounding for 1 to 30 days of any vehicle which is used in a violation of the prohibition against driving while under the influence of intoxicating liquor or any drug, or a combination thereof, not resulting in bodily injury or death to other than the driver, and which is registered to the violator, at the violator's expense, upon a conviction of that offense.

(4) The bill would conform the provisions of this bill to, and incorporate them into, the provisions of AB 541, which contains substantially similar provisions to SB 372, to become effective if this bill and AB 541 are both chaptered, and this bill is chaptered last.

(5) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

Not operative section

SECTION 1. Section 23102 of the Vehicle Code, as amended by Section 4 of Chapter 1004 of the Statutes of 1980, is amended to read:

23102. (a) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by a fine of not less than three hundred fifty-five dollars ($355) nor more than five hundred dollars ($500) or by both such fine and imprisonment. If, however, any person so convicted consents to, and does participate in and successfully completes, a driver improvement program or treatment

program for persons who are habitual users of alcohol, or both such programs, as designated by the court, the court shall punish such person by a fine of not less than two hundred fifty-five dollars ($255) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(d) Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction of an offense under this section or Section 23105, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, shall be punished by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000). Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction of a violation of Section 23101 or 23106 shall be punished by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000).

(e) If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or under Section 23105, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least three hundred fifty-five dollars ($355) but not more than one thousand dollars ($1,000). If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under Section 23101 or 23106, and is granted probation, it shall be a condition of probation that such person be confined in jail for not less than five days nor more than one year and pay a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000).

(f) In no event shall the court have the power to absolve a person who is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23101, 23105, or 23106, or a conviction which occurred on or after January 1, 1982, of Section 23103 as specified in Section 23103.5, from the obligation of spending the minimum time in confinement in the county jail as provided in this section and of paying a fine of at least three hundred fifty-five dollars ($355), except as provided in subdivision (g).

(g) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an

offense under this section for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time in confinement in the county jail and the minimum fine, as provided in this section.

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction, it shall be conclusively presumed that such order was made only for the reasons specified in such order, and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(h) The court may order that any person convicted under this section, who is to be punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(i) If any person is convicted under this section and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(j) This section shall remain in effect only until July 1, 1982, and as of that date is repealed.

Not operative Section

SEC. 2. Section 23102 of the Vehicle Code, as amended by Section 5 of Chapter 1004 of the Statutes of 1980, is amended to read:

23102. (a) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by a fine of not less than three hundred twenty dollars ($320) nor more than five hundred dollars ($500) or by both such fine and imprisonment. If, however, any person so convicted consents to, and does participate in and successfully completes, a driver improvement program or treatment program for persons who are habitual users of alcohol, or both such programs, as designated by the court, the court shall punish such person by a fine of not less than two hundred twenty dollars ($220) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(d) Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which

resulted in a conviction of an offense under this section or Section 23105, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, shall be punished by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than three hundred twenty dollars ($320) nor more than one thousand dollars ($1,000). Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction of a violation of Section 23101 or 23106 shall be punished by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than three hundred twenty dollars ($320) nor more than one thousand dollars ($1,000).

(e) If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or under Section 23105, or a conviction which occurred on or after January 1, 1982, under Section 23103 as specified in Section 23103.5, and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least three hundred twenty dollars ($320) but not more than one thousand dollars ($1,000). If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under Section 23101 or 23106, and is granted probation, it shall be a condition of probation that such person be confined in jail for not less than five days nor more than one year and pay a fine of not less than three hundred twenty dollars ($320) nor more than one thousand dollars ($1,000).

(f) In no event shall the court have the power to absolve a person who is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23101, 23105, or 23106, or a conviction which occurred on or after January 1, 1982, of Section 23103 as specified in Section 23103.5, from the obligation of spending the minimum time in confinement in the county jail as provided in this section and of paying a fine of at least three hundred twenty dollars ($320), except as provided in subdivision (g).

(g) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time in confinement in the county jail and the minimum fine, as provided in this section.

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior

conviction, it shall be conclusively presumed that such order was made only for the reasons specified in such order, and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(h) The court may order that any person convicted under this section, who is to be punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(i) If any person is convicted under this section and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(j) This section shall become operative on July 1, 1982.

Not operative section

SEC. 3. Section 23102.5 is added to the Vehicle Code, to read:

23102.5. When an allegation of a violation of Section 23102 or Section 23105 is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of Section 23102 or Section 23105, or an allegation of a prior conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a prior conviction, the prosecution shall submit a written statement which shall become part of the court record and which gives the reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice", the written statement shall specify all of the factors which contributed to this conclusion.

Not operative section

SEC. 4. Section 23103.5 is added to the Vehicle Code, to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23102 or 23105, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of any intoxicating liquor or ingestion or administration of any drug, or both, by the defendant in connection with the offense.

(b) The court shall advise the defendant prior to the acceptance of a plea offered pursuant to a factual statement pursuant to subdivision (a) of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was a consumption of intoxicating liquor or the ingestion or administration

of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23102 or 23105, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 which shall be a prior offense for purposes of Sections 23102 and 23105, as provided in this section.

Operative section

SEC. 5. Section 23103.5 is added to the Vehicle Code, to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of any intoxicating liquor or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall be an offer of proof of the facts which show whether or not there was a consumption of intoxicating liquor or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a) of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of intoxicating liquor or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23165 or 23200, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 which shall be a prior offense for purposes of Section 23165 or 23200, as provided in this section.

Not operative section

SEC. 6. Section 23105 of the Vehicle Code, as amended by Section 8 of Chapter 1004 of the Statutes of 1980, is amended to read:

23105. (a) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) It is unlawful for any person who is addicted to the use of any drug, except such a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code, to drive a vehicle upon any highway.

(d) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less

than 48 hours nor more than six months or by a fine of not less than two hundred eighty-five dollars ($285) nor more than five hundred dollars ($500) or by both such fine and imprisonment. If, however, any person so convicted consents to participate, and does participate in and successfully completes, a driver improvement program or a treatment program for persons who are habitual users of drugs, or both such programs, as designated by the court, a court shall punish such person by a fine of not less than one hundred eighty-five dollars ($185) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(e) Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23102, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, shall be punished by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred eighty-five dollars ($285) nor more than one thousand dollars ($1,000). Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction of a violation of Section 23101 or 23106 shall be punished by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than two hundred eighty-five dollars ($285) nor more than one thousand dollars ($1,000).

(f) If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23102, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred eighty-five dollars ($285) but not more than one thousand dollars ($1,000). If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under Section 23101 or 23106, and is granted probation, it shall be a condition of probation that such person be confined in jail for not less than five days nor more than one year and pay a fine of not less than two hundred eighty-five dollars ($285) nor more than one thousand dollars ($1,000).

(g) In no event shall the court have the power to absolve a person who is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23101, 23102, or 23106, or a conviction which occurred on or after January 1, 1982, under Section 23103 as specified in Section 23103.5, from the obligation of spending

the minimum time in confinement in the county jail as provided in this section and of paying a fine of at least two hundred eighty-five dollars ($285), except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time in confinement in the county jail and the minimum fine, as provided in this section.

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction, it shall be conclusively presumed that such order was made only for the reasons specified in such order, and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(i) The court may order that any person convicted under this section, who is to be punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(j) If any person is convicted under this section and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(k) This section shall remain in effect only until July 1, 1982, and as of that date is repealed.

Not operative section

SEC. 7. Section 23105 of the Vehicle Code, as amended by Section 9 of Chapter 1004 of the Statutes of 1980, is amended to read:

23103. (a) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) It is unlawful for any person who is addicted to the use of any drug, except such a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code, to drive a vehicle upon any highway.

(d) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500) or by both such fine and imprisonment. If, however, any person so convicted consents to participate, and does participate in and successfully completes, a driver improvement program or a

treatment program for persons who are habitual users of drugs, or both such programs, as designated by the court, a court shall punish such person by a fine of not less than one hundred fifty dollars ($150) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(e) Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23102, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, shall be punished by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000). Any person convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction of a violation of Section 23101 or 23106 shall be punished by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(f) If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23102, or a conviction which occurred on or after January 1, 1982, of an offense under Section 23103 as specified in Section 23103.5, and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred fifty dollars ($250) but not more than one thousand dollars ($1,000). If any person is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under Section 23101 or 23106, and is granted probation, it shall be a condition of probation that such person be confined in jail for not less than five days nor more than one year and pay a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(g) In no event shall the court have the power to absolve a person who is convicted under this section of an offense which occurred within five years of the date of a prior offense which resulted in a conviction under this section or Section 23101, 23102, or 23106, or a conviction which occurred on or after January 1, 1982, under Section 23103 as specified in Section 23103.5, from the obligation of spending the minimum time in confinement in the county jail as provided in this section and of paying a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the

minimum time in confinement in the county jail and the minimum fine, as provided in this section.

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction, it shall be conclusively presumed that such order was made only for the reasons specified in such order, and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(i) The court may order that any person convicted under this section, who is to be punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(j) If any person is convicted under this section and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(k) This section shall become operative on July 1, 1982.

operative section

SEC. 8. Section 23165 of the Vehicle Code, as added by Section 32 of Assembly Bill No. 541 of the 1981–82 Regular Session, is amended to read:

23165. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, or a prior offense which occurred on or after January 1, 1982, which resulted in a conviction of a violation of Section 23103 as specified in Section 23103.5, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000).

operative section

SEC. 9. Section 23195 is added to the Vehicle Code, to read:

23195. If any person is convicted of a violation of Section 23152 or 23153 and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

Operative section

SEC. 10. Section 23200 of the Vehicle Code, as added by Section 32 of Assembly Bill No. 541 of the 1981–82 Regular Session, is amended to read:

23200. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred within five years of one or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, or one or more prior offenses which occurred on or after January 1, 1982, which resulted in convictions of violations of Section 23103 as specified in Section 23103.5, or any combination, or all, of those three provisions, the court shall not strike any prior conviction of those offenses for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum

time of imprisonment and the minimum fine, as provided in this chapter.

(b) In any case charging a violation of Section 23152 or 23153, the court shall obtain a copy of the driving record of the person charged from the Department of Motor Vehicles and may obtain any records from the Department of Justice or any other source to determine if one or more prior convictions of the person of offenses which resulted in convictions of Section 23152 or 23153 or both, or a prior conviction which occurred on or after January 1, 1982, of Section 23103 as specified in Section 23103.5, have occurred within five years of the charged offense.

(c) If any prior convictions of violations of Section 23152 or 23153 are reported to have occurred within five years of the charged offense, the court shall notify each court where any of the prior convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23207.

Operative section

SEC. 11. Section 23212 is added to the Vehicle Code, to read:

23212. When an allegation of a violation of Section 23152 is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of Section 23152, or an allegation of a prior conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a prior conviction, the prosecution shall submit a written statement which shall become part of the court record and which gives the reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice", the written statement shall specify all of the factors which contributed to this conclusion.

Operative section

SEC. 12. Notwithstanding any provision of Section 48 or 49 of Assembly Bill 541 of the 1981–82 Regular Session of the Legislature, Sections 36, 37, 38, 39, 40, and 41 of Assembly Bill 541 shall not become operative.

Operative section

SEC. 13. It is the intent of the Legislature, if this bill and Assembly Bill 541 are chaptered and become effective January 1, 1982, and both of the bills amend, amend and renumber, or repeal Sections 23102 and 23105 of the Vehicle Code, and this bill is chaptered last, that amendments proposed by both of the bills be given effect. Therefore, if this bill and Assembly Bill 541 are both chaptered and become effective January 1, 1982, both bills amend, amend and renumber, or repeal Sections 23102 and 23105 of the Vehicle Code, and this bill is chaptered after Assembly Bill 541,

Sections 5, 8, 9, 10, 11, and 12 of this act shall become operative and Sections 1, 2, 3, 4, 6, and 7 shall not become operative.

SEC. 14. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 359

CHAPTER 1112

An act to amend Section 12078 of the Penal Code, and to amend Section 25258 of the Vehicle Code, relating to peace officers.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 359, Papan. Peace officers.

Existing law provides for exemptions from laws pertaining to the sale of concealable weapons for various specified categories of peace officers.

This bill would provide that the exemption would also apply to other enumerated categories of peace officers.

Existing law permits the emergency vehicles operated by the California Highway Patrol to display a steady or flashing blue warning light in a specified manner.

This bill would also permit the California State Police Division to use these lights on emergency vehicles.

The people of the State of California do enact as follows:

SECTION 1. Section 12078 of the Penal Code is amended to read:

12078. The preceding provisions of this article do not apply to sales of concealable firearms made to persons properly identified as full-time paid peace officers as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2 and subdivision (a) of Section 830.3, nor to sales of concealable firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by such governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser is employed, identifying the purchaser and authorizing the purchase. The certification shall be delivered to the seller at the time of purchase and the purchaser shall identify himself as the person authorized in such certification. On the day the sale is made, the dealer shall forward by prepaid mail to the Department of Justice a report of such sale and the type of information concerning the buyer and the firearm sold as is indicated in Section 12077.

SEC. 2. Section 25258 of the Vehicle Code is amended to read:

25258. (a) An authorized emergency vehicle operating under the conditions specified in Section 21055 may display a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals.

(b) An authorized emergency vehicle used by the California

Highway Patrol, California State Police Division, or any sheriff's or municipal police department in the performance of its duties may in addition display a steady or flashing blue warning light visible from the front, sides or rear thereof.

O

Assembly Bill No. 383

CHAPTER 1108

An act to add and repeal Section 667.7 to the Penal Code, relating to sentences.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 383, Cramer. Sentences.

Existing law imposes an additional term of 3 or 5 years for the infliction of great bodily injury, as specified, in felony cases. Existing law also imposes an additional 3-year, 5-year or 10-year prison term for each prior violent felony upon a subsequent violent felony conviction.

This bill would additionally impose a life term concurrent to any other term in specified felony cases involving infliction of great bodily injury or use of force likely to produce great bodily injury. The offender would be designated as a habitual offender. A person so sentenced would not be eligible for release on parole for a period of at least 20 years, as specified, subject only to reduction for good behavior and participation credit. A commitment to the Department of the Youth Authority after a conviction for a felony would constitute a prior prison term for the purposes of imposing a life term under these provisions.

This bill would provide for the repeal of its provisions on January 1, 1987.

The people of the State of California do enact as follows:

SECTION 1. Section 667.7 is added to the Penal Code, to read:

667.7. Any person convicted of a felony in which such person inflicted great bodily injury as provided in Section 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; voluntary manslaughter; mayhem; rape by force or threat of great bodily harm; oral copulation by force, violence, duress, menace or threat of great bodily harm; sodomy by force, violence, duress, menace or threat of great bodily harm; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace or threat of great bodily harm; kidnapping for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, penetration of a vaginal or anal opening in

violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which such person inflicted great bodily injury as provided in Section 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time. This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

This section shall remain in effect only until January 1, 1987, and is repealed on such date, unless a later enacted statute which is chaptered before January 1, 1987, deletes or extends such date. However, the terms of those persons committed to terms of imprisonment pursuant to this section shall not be affected by the repeal of this section.

O

Assembly Bill No. 421

CHAPTER 284

An act to amend Section 1203.1b of the Penal Code, relating to probation.

[Approved by Governor August 29, 1981. Filed with Secretary of State August 31, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 421, Ivers. Probation.

Existing law permits the court to impose as a condition of probation the payment of the cost of probation not to exceed the monthly amount determined to be the actual average cost of probation and specifies the procedures relating to the conduct of hearings to require such payment.

This bill would also allow the court to impose as a condition of probation the payment of the cost of conducting the presentence investigation and preparing the presentence report, as specified.

It would require that all sums so paid by a defendant shall be allocated for the operating expenses of the county probation department.

It would also make the operation of the above provisions contingent upon adoption of an ordinance by the board of supervisors.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and granted probation, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation; and of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203. The reasonable cost of such services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court may, in its discretion, hold additional hearings during the probationary period. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At a hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court. If the court

determines that the defendant has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

If practicable, the court shall order payments to be made on a monthly basis as directed by the probation officer. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(b) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs.

(c) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

(d) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(e) The provisions of this section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

O

Assembly Bill No. 434

CHAPTER 1135

An act to amend Sections 40652, 40666, and 40692 of the Vehicle Code, relating to administrative adjudication of traffic infractions.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 434, Hannigan. Administrative adjudication of traffic infractions.

(1) Existing law provides for an administrative adjudication of traffic violations as an alternative to criminal prosecution in pilot programs through July 1, 1984. Existing law provides, with specified exceptions, for penalty assessments on fines and forfeitures imposed in criminal proceedings, including traffic infractions.

This bill would conform the penalty assessments in the pilot program to recent changes in the penalty assessments in criminal proceedings.

(2) Existing law authorizes a person cited to appear for an administrative adjudication of a traffic safety violation to request adjudication by the court as an infraction, and in that event the Traffic Adjudication Board is required to refer the matter to the proper authority for prosecution.

This bill would specify that the request be made by signing a written promise to appear on a specified form and would provide for filing of the promise to appear and the notice to appear for administrative hearing in the court in that event. The bill would also provide that the notice to appear for administrative hearing would constitute a complaint in the criminal proceeding upon which a warrant may be issued for failure to appear in court pursuant to the promise to appear.

The people of the State of California do enact as follows:

SECTION 1. Section 40652 of the Vehicle Code is amended to read:

40652. For the purpose of this chapter, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(a) "Admission" means that the party charged with a traffic safety violation admits to having committed the traffic safety violation.

(b) "Admission with explanation" means that the party charged with a traffic safety violation admits to having committed the traffic safety violation, but demands an informal hearing in order to explain the surrounding circumstances so as to mitigate the sanctions that

may be imposed pursuant to this chapter.

(c) "Board" means the Traffic Adjudication Board.

(d) "Denial" means that the person charged with a traffic safety violation denies all or part of the traffic safety violation alleged in the notice to appear and demands a full hearing.

(e) "Denial with waiver of full hearing" means that the person charged with a traffic safety violation dénies all or part of the traffic safety violation alleged in the notice to appear and demands an informal hearing.

(f) "Full hearing" is a hearing at which the person charged with a traffic safety violation, the citing officer, and any witnesses are present.

(g) "Hearing officer" means a person authorized by the board to conduct hearings pursuant to this chapter.

(h) "Informal hearing" means that the person charged with a traffic safety violation waives the right to confront the citing officer and any witnesses. The waiver shall include a stipulation by the person charged that the information appearing on the notice to appear, or on the complaint in the event of an arrest by a private person, may be received as evidence with the same effect as if the officer or such private person were present to testify.

(i) "Monetary sanction" is a sanction imposed for the purpose or modifying and improving driver behavior and traffic safety. "Monetary sanction" does not include moneys collected as a penalty assessment.

(j) "No contest" means the person charged with a traffic safety violation neither admits nor denies the traffic safety violation alleged in the notice to appear. For procedural purposes, a no contest answer shall have the same effect as an admission. The no contest answer may not be used as an admission in any subsequent civil action.

(k) "Penalty assessments" are moneys collected as provided in subdivision (k) of Section 40666.

(*l*) "Traffic adjudication office" is a location designated by the board for the conduct of administrative hearings pursuant to this chapter.

(m) "Traffic safety violation" includes any act or omission which constitutes an infraction, as specified in this code or under any local ordinance or resolution adopted pursuant to this code. A finding that a traffic safety violation has occurred is an administrative violation and shall not be deemed an adjudication of a crime. Nothing in this chapter shall be construed to mean that an act which constitutes a traffic safety violation is not also a crime.

SEC. 2. Section 40666 of the Vehicle Code is amended to read:

40666. The board shall do all of the following:

(a) Adopt rules and regulations, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, governing those matters which are within its jurisdiction and which may be necessary

to effectuate the purposes of this chapter.

(b) Arrange for the Office of Administrative Hearings to provide hearing officers necessary to hear and determine cases arising under this chapter. At least one-half of the hearing officers shall be attorneys with at least one year experience. The remainder shall have legal training, as a minimum, in the areas of evidence, constitutional law, criminal law, administrative law, and shall pass a written test accordingly. Additional minimum qualifications may be established by the State Personnel Board. The appointments shall conform to civil service regulations.

(c) Subject to civil service rules and regulations, the board shall appoint an executive director who shall be the chief administrative officer. The executive director shall appoint other persons necessary to discharge the functions of the board as provided in this chapter.

(d) Hear and consider, within the limitations of, and in accordance with, the procedures provided in this chapter, all appeals from decisions of hearing officers.

(e) The board may issue subpoenas and subpoenas duces tecum.

(f) After considering existing bail schedules, adopt a schedule of monetary and nonmonetary sanctions for traffic safety violations; provided, however, that no monetary sanction may exceed the maximum fine established for offenses declared to be infractions pursuant to Chapter 1 (commencing with Section 42000) of Division 18. The schedule of monetary sanctions shall include guidelines setting forth the circumstances under which the hearing officers, in the interest of traffic safety and equality of justice, may reduce the sanction for a traffic safety violation by as much as 50 percent or increase the sanction by as much as 25 percent. These increased or decreased sanctions shall be prescribed in an effort to improve the driving behavior of the person to whom the sanction is applied or to take into account mitigating circumstances. In addition, at the request of any county board of supervisors, the Traffic Adjudication Board may allow increases or decreases of not more than 25 percent from the monetary sanctions established in the schedule of sanctions for that county when the Traffic Adjudication Board has reasonable cause to believe that the deviation will further traffic safety efforts, including, but not limited to, accident reduction programs, better driving programs, or rewards for reduced accident or citation levels. No deviation may be calculated so as to permit a monetary sanction for a traffic safety violation to exceed the maximum fine established for an equivalent infraction or for the purpose of raising revenue.

(g) Give due consideration, in the establishment of the schedules of sanctions, to the amount of use or mileage traveled in the operation of a motor vehicle.

(h) Prescribe, by regulation, the form for the notice to appear to be used for all traffic safety violations pursuant to this chapter and to establish procedures for administrative controls over the disposition thereof.

(i) Submit an annual report to the Governor and the Legislature, including, but not limited to, the past year's accomplishments, identification of problems, and recommendations for future legislation.

(j) The board shall reimburse the department for all administrative staff services provided thereto and not exempted by another statute.

(k) Levy a penalty assessment on all monetary sanctions for traffic safety violations, except for violations relating to parking or registration or violations by pedestrians or bicyclists. The amount of the penalty assessment shall be determined pursuant to Section 42050 of this code or Section 1464 of the Penal Code.

SEC. 3. Section 40692 of the Vehicle Code is amended to read:

40692. (a) In addition to the answer options provided in Section 40691, the cited person may, prior to the commencement of the hearing, request that the matter be adjudicated as an infraction by a court by signing a written promise to appear on a form approved by the Judicial Council. If the cited person requests that the matter be adjudicated as an infraction by the court, the board shall file the promise to appear and the notice to appear with the court for prosecution. If the matter is adjudicated by the court as an infraction, the board shall take no action on the traffic safety violation.

(b) When a cited person requests court adjudication pursuant to subdivision (a), and an exact and legible duplicate copy of the notice to appear has been prepared in accordance with this chapter on a form approved by the Judicial Council and has been filed in the court of the judicial district in which the alleged violation occurred, the notice to appear constitutes a complaint to which the cited person may enter a plea. If the cited person has signed a promise to appear in court on a form approved by the Judicial Council, specifying the location and time for appearance, and if the cited person fails to appear or post bail within the time specified in the promise to appear, or any continuance thereof, a warrant may be issued on the notice to appear.

O

Assembly Bill No. 499

CHAPTER 135

An act to amend Section 11172 of the Penal Code, relating to child abuse reporting, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 1981. Filed with Secretary of State July 1, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 499, McAlister. Child abuse reporting.

Under existing law, child care custodians, medical practitioners, nonmedical practitioners, and employees of a child protective agency are required to report instances of suspected child abuse, as specified. All of the foregoing persons, except employees of a child protection agency, are exempted from all civil and criminal liability in connection with such reports. However, employees of a child protective agency are immune from liability for false reports only insofar as it cannot be proven that a false report was made and the person reporting knew or should have known that the report was false.

This bill would extend the absolute exemption from civil and criminal liability to include employees of child protective agencies.

It would also make technical changes.

It also would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew or should have known that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of the photographs.

(b) Any person who fails to report an instance of child abuse

which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars ($500) or by both.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to insure compliance with child abuse reporting laws it is imperative that this act shall take effect at the earliest possible date.

O

Assembly Bill No. 500

CHAPTER 269

An act to amend Section 11105 of, and to add Section 11105.2 to, the Penal Code, relating to criminal records.

[Approved by Governor August 25, 1981. Filed with Secretary of State August 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 500, Wright. Criminal records.

Existing law requires the Attorney General to furnish state summary criminal history information to specified persons and authorizes such furnishing to others. Existing law does not provide for subsequent reports after the initial furnishing of the information.

This bill would authorize the Department of Justice to furnish additional state summary criminal history information subsequent to an initial furnishing of the information, as specified, and would authorize the imposition of certain fees by the Department of Justice for the furnishing of the information, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished and is to be used for employment, licensing or certification purposes, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. Any state agency required to pay a fee to the

department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

SEC. 2. Section 11105.2 is added to the Penal Code, to read:

11105.2. (a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, or certification duties upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, or certification. Such notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent arrests for licensing, employment, or certification purposes.

(c) Any agency which submits the fingerprints of applicants for licensing, employment, or certification to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of such applicant is terminated, when the applicant's license or certificate is revoked, or when the applicant may no longer renew or reinstate the license or certificate. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, or certifying authority.

(d) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return such subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of such subsequent arrest notice.

(e) Any agency which submits the fingerprints of an applicant for employment, licensing, or certification to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing or certification.

(f) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

O

Assembly Bill No. 511

CHAPTER 753

An act to amend Section 206 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 511, Ivers. Juvenile court law.

Existing law requires that a person taken into custody solely upon the basis that he or she may be adjudged a dependent child of the juvenile court or a person who is adjudged to be such, on specified grounds, shall be housed only in nonsecure facilities.

This bill would define the terms "secure facility" and "nonsecure facility" for the purposes of the above provision.

The people of the State of California do enact as follows:

SECTION 1. Section 206 of the Welfare and Institutions Code is amended to read:

206. No person taken into custody solely upon the ground that he or she is a person described in Section 300 or adjudged to be such and made a dependent child of the juvenile court pursuant to this chapter solely upon that ground shall, in any detention under this chapter, be brought into direct contact or personal association with any person taken into custody on the ground that he or she is a person described by Section 601 or 602, or who has been made a ward of the juvenile court on either such ground.

Separate, segregated facilities for the persons alleged to be within the description of Section 300, or persons adjudged to be such and made dependent children of the court pursuant to this chapter solely upon that ground shall be provided by the board of supervisors. The separate, segregated facilities may be provided in the juvenile hall or elsewhere.

The facilities required by such section shall, with regard to minors alleged or adjudged to come within subdivision (a), (b), or (d) of Section 300 be nonsecure. The facilities provided to minors alleged or adjudged to come within subdivision (c) of Section 300 shall be secure.

For the purposes of this section, the term "secure facility" means a facility which is designed and operated so as to insure that all entrances to and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or

physical restraint in order to control behavior of its residents. The term "nonsecure facility" means a facility that is not characterized by the use of physically restricting construction, hardware, and procedures and which provides its residents access to the surrounding community with minimal supervision. A facility shall not be deemed secure solely due to any of the following conditions: (1) the existence within the facility of a small room for the protection of individual residents from themselves or others; (2) the adoption of regulations establishing reasonable hours for residents to come and go from the facility based upon a sensible and fair balance between allowing residents free access to the community and providing the staff with sufficient authority to maintain order, limit unreasonable actions by residents, and to insure that minors placed in their care do not come and go at all hours of the day and night or absent themselves at will for days at a time; and (3) staff control over ingress and egress no greater than that exercised by a prudent parent. The State Department of Social Services may adopt regulations governing the use of small rooms pursuant to this section.

No record of the detention of such a person shall be made or kept by any law enforcement agency or the Department of Justice as a record of arrest.

O

Assembly Bill No. 515

CHAPTER 840

An act to add and repeal Section 4024.2 to the Penal Code, relating to county jails.

[Approved by Governor September 26, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 515, Floyd. County jail.

Existing law provides for the release of county jail prisoners on work furlough.

This bill provides for additional work release of county prisoners. These provisions would be repealed on January 1, 1985.

The people of the State of California do enact as follows:

SECTION 1. Section 4024.2 is added to the Penal Code, to read:

4024.2. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to require that any person committed to such facility perform 10 hours of labor on the public works or ways in lieu of one day of confinement.

As used in this section "labor on the public works and ways" means manual labor to improve or maintain public facilities, including but not limited to, streets, parks, and schools.

(b) The board of supervisors may prescribe reasonable rules and regulations under which such labor is to be performed and may provide that such persons wear clothing of a distinctive character while performing such work.

(c) This section shall not apply to persons committed for a period longer than six days.

(d) Nothing in this section shall be construed to require the sheriff or other such official to assign labor to a person pursuant to this section if it appears from the record that such person has refused to satisfactorily perform labor as assigned or has not satisfactorily complied with the reasonable rules and regulations governing such assignment.

A person shall be eligible for work release under this section only if the sheriff or other such official concludes that such person is a fit subject therefor.

(e) This section shall remain in effect until January 1, 1985, and on that date is repealed.

O

Assembly Bill No. 518

CHAPTER 435

An act to amend Sections 11165, 11166, 11167, 11169, 11170, 11172, and 11174 of the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 518, Kapiloff. Child abuse.

Under existing law, child care custodians, medical practitioners, nonmedical practitioners, and employees of a child protective agency are required to report instances of suspected child abuse, as specified. All of the foregoing persons, are exempted from all civil and criminal liability in connection with the reports. However, any other person reporting an instance of child abuse is immune from such liability only insofar as it cannot be proven that a false report was made and he or she knew or should have known that the report was false.

This bill would specify that the reporting requirements and immunity from civil and criminal liability with regard to such reports, are applicable to known as well as suspected instances of child abuse. It also would provide for liability in the case of a false report by a person not required to make a report only if the person knew that the report was false. In addition, the bill would expand the definition of child abuse, as specified.

It also would make a related change with regard to the regulations concerning investigation of child abuse in group homes or institutions required by existing law to be adopted by the Department of Justice, in cooperation with the State Department of Social Services.

Under existing law, the identity of all persons reporting instances of child abuse is confidential and may be disclosed only by court order or between child protective agencies or the probation department.

This bill would also authorize disclosure when specified civil and criminal proceedings are initiated.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made

and no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual assault" means conduct in violation of the following sections of the Penal Code: Sections 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivisions (a) and (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), and Sections 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), and 647a (child molestation).

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, or shelter.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means situations of physical

injury on a child which is inflicted by other than accidental means, or of sexual assault or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

SEC. 2. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively

reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

(f) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of

subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Persons who may report pursuant to subdivision (c) of Section 11166 are not required to include their names. The identity of all persons who report under this article shall be confidential and disclosed only when needed for court action initiated under Section 232 of the Civil Code, or Section 300 of the Welfare and Institutions Code, or in a criminal prosecution arising from alleged child abuse, or by court order or between child protective agencies.

SEC. 4. Section 11169 of the Penal Code is amended to read:

11169. A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of known or suspected child abuse which it investigates, other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

SEC. 5. Section 11170 of the Penal Code is amended to read:

11170. The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169 of any information maintained pursuant to Section 11110 which is relevant to the known or suspected instance of child abuse reported by the agency. The indexed reports retained by the Department of Justice shall be continually updated and shall not contain any unfounded reports. A child protective agency shall make such information available to the reporting medical practitioner, child custodian, or guardian ad litem appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of known or suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

SEC. 6. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of the photographs.

(b) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars ($500) or by both.

SEC. 7. Section 11174 of the Penal Code is amended to read:

11174. The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (f) of Section 11165, in group homes or institutions and shall ensure that every investigation of alleged child abuse coming within that definition is conducted in accordance with the regulations and guidelines.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act shall achieve maximum implementation, it is necessary that this act take effect at the earliest possible date.

O

Assembly Bill No. 533

CHAPTER 436

An act to amend Section 12403 of the Penal Code, relating to tear gas weapons, declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 533, Moore. Tear gas weapons: peace officers.

Existing law authorizes peace officers to purchase, possess, or transport tear gas weapons for official use in the discharge of their duties, if the weapon has received a designated certification and if the peace officer has completed a designated course of instruction.

This bill would delete the requirement that the purchase, possession, or transportation of the weapon by a peace officer must be for official use in the discharge of the peace officer's duties.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 12403 of the Penal Code is amended to read:

12403. Nothing in this chapter shall prohibit any person who is a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 from purchasing, possessing, transporting, or using any tear gas weapon, if such weapon has been certified as acceptable under Article 5 (commencing with Section 12450) of this chapter and if such person has satisfactorily completed a course of instruction approved by the Commission on Peace Officers Standards and Training in the use of tear gas.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Permitting peace officers presently in training to receive immediate instruction in off-duty use of tear gas and tear gas weapons will avoid the need for later additional training and to facilitate such training as soon as possible it is necessary that this act go into immediate effect.

O

Assembly Bill No. 541

CHAPTER 940

An act to add Section 1463.18 to the Penal Code, and to amend Sections 13201, 13352, 13352.5, 14601, 14601.1, 40000.11, and 40000.15 of, to amend and renumber Sections 23101, as amended by Section 2 of Chapter 1004 of the Statutes of 1980, 23102, as amended by Section 4 of Chapter 1004 of the Statutes of 1980, 23102.2, 23102.3, 23102.4, 23107, 23121, 23121.5, 23122, 23122.5, 23123, 23123.5, 23123.6, 23125, and 23126 of, to add Section 14601.2 to, a heading immediately preceding Section 23100 of, and Article 2 (commencing with Section 23151) to Chapter 12 of Division 11 of, to add and repeal Article 3 (commencing with Section 23231) of Chapter 12 of Division 11 of, and to repeal Sections 13201.5, 13210, 23101, as amended by Section 3 of Chapter 1004 of the Statutes of 1980, 23102, as amended by Section 5 of Chapter 1004 of the Statutes of 1980, 23102.1, 23105, as amended by Section 8 of Chapter 1004 of the Statutes of 1980, 23105, as amended by Section 9 of Chapter 1004 of the Statutes of 1980, 23106, as amended by Section 10 of Chapter 1004 of the Statutes of 1980, and 23106, as amended by Section 11 of Chapter 1004 of the Statutes of 1980, of, the Vehicle Code, relating to offenses.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 541, Moorhead. Offenses: driving under the influence: penalties.

(1) Existing law prohibits driving a vehicle when under the influence of intoxicating liquor, any drug, or a combination of intoxicating liquor and any drug. Under existing law, $35 of each fine or forfeiture for a conviction of driving under the influence of intoxicating liquor, any drug, or a combination thereof, or for reckless driving is required to be used for criminalistics laboratory services for analysis of the content of alcohol in blood, breath, or urine or for the presence of controlled substances. Existing law provides minimum and maximum fines, imprisonment, or both for violations of this driving prohibition, varying in amount and time depending on the type of offense, the existence of a prior conviction of an offense which occurred within 5 years, and whether bodily injury or death occurred in conjunction with the offense. Existing law provides for minimum imprisonment in the county jail and minimum fines if probation is granted following conviction with a prior offense. Under existing law, the minimum fines will be reduced on July 1, 1982.

Existing law also provides for the suspension or revocation of a person's privilege to operate a motor vehicle for, among other things,

driving while under the influence of intoxicating liquor or drugs or the combined influence thereof.

Existing law also prohibits possession, drinking, and storage of alcoholic beverages in motor vehicles under specified circumstances.

This bill would recast and reorganize the provisions of law relating to driving under the influence to prohibit driving under the influence of an alcoholic beverage, as defined in the bill, any drug, or a combination thereof. The bill would eliminate the penalty difference dependent upon the type of prior offense, would increase the minimum fine to $375, and require $20 of this fine to be transferred to the Indemnity Fund in the State Treasury for the indemnification of victims of crime, as specified.

The bill would delete the general requirement for the court to suspend the privilege of any person to operate a motor vehicle for up to 6 months upon conviction of driving under the influence of an alcoholic beverage or any drug or the combined influence thereof, and would delete the general requirement to order the Department of Motor Vehicles to suspend the driving privilege for a violation of that offense not involving bodily injury or death of another person.

The bill would require the department to suspend, as ordered by the court, the privilege for 6 months for a first conviction of that violation not involving bodily injury or death. The bill would require the department to suspend that privilege for 1 year for a second conviction of that violation and to revoke it for 3 years for a third or subsequent conviction. The bill would require the department to suspend the privilege for 1 year for a first conviction of that violation involving bodily injury or death to another. The bill would require the department to revoke the privilege for 3 years for a second conviction and 5 years for a third or subsequent conviction of that violation involving bodily injury or death to another.

The bill would except from the suspension or revocation for second offenses those persons certified to treatment programs as specified.

The bill would prohibit a stay of proceedings before acquittal or conviction or a dismissal of the proceedings because the accused participates in a driver improvement program or treatment program for habitual users of alcohol or drugs.

The bill would require, on conviction, that the court sentence the offender and not stay or suspend imposition of sentence.

The bill would change the penalties for a conviction as follows:

(a) On a first conviction not involving bodily injury or death, the bill would require a sentence of imprisonment in the county jail for 48 hours to 6 months and a fine of $375 to $500. If the court grants probation, the bill would require participation and completion of a driver improvement or alcohol treatment program and either (1) a mandatory imprisonment in the county jail of at least 48 hours and a mandatory fine of at least $375, or (2) a fine of $375 and a restriction on driving for 90 days to permit driving only to and from, or in, the person's work. Weekend service of imprisonment would be allowed.

(b) On a second conviction not involving bodily injury or death within 5 years of a prior violation resulting in a conviction, the bill would require a sentence of imprisonment in the county jail for 90 days to 1 year and a fine of $375 to $1,000. If the court grants probation, the bill would require either (1) a mandatory imprisonment of at least 10 days in the county jail, a mandatory fine of at least 10 days in the county jail, a mandatory fine of at least $375, and revocation of the driving privilege for 1 year, or (2) imprisonment for at least 2 days, a fine of at least $375, the driving privilege restricted to permit driving only to work and for treatment, and participation for 1 year in a specified treatment program. The bill would, after conviction of second offenses involving alcohol and with a grant of probation of the second of those conditions, provide for revocation of probation or new specified terms of probation on failure in treatment, and the bill would also provide for early termination of the driving restriction.

(c) On a third conviction not involving bodily injury or death within 5 years of 2 or more prior violations resulting in convictions, the bill would require revocation of the driving privilege for 3 years by the department and a sentence of imprisonment in the county jail for 120 days to 1 year and a fine of $375 to $5,000. If the court grants probation, the bill would require mandatory imprisonment of at least 120 days in the county jail, a mandatory fine of at least $375, and, if the offender has not previously successfully completed a specified treatment program, that he or she participate in that specified treatment program.

(d) On a first conviction involving bodily injury or death, the bill would require a sentence of imprisonment in the state prison, or in the county jail for 90 days to 1 year, and a fine of $375 to $1,000, and revocation of the driving privilege for 1 year by the department. If the court grants probation, the bill would require mandatory imprisonment of at least 5 days in the county jail and a mandatory fine of $375.

(e) On a second conviction involving bodily injury or death within 5 years of a prior violation resulting in conviction, the bill would require a sentence of imprisonment in the state prison, or in the county jail for 90 days to 1 year, and a fine of $375 to $5,000. If the court grants probation, the bill would require either (1) revocation of the driving privilege for 3 years, mandatory imprisonment of at least 120 days in the county jail, and a mandatory fine of $375, or (2) imprisonment for at least 30 days in the county jail, a fine of at least $375, a 3-year restriction on driving only to work and for treatment, and participation for 1 year in a specified treatment program. The bill would, under the second of those conditions, provide for revocation of probation or new specified terms of probation on failure in treatment.

(f) On a third conviction involving bodily injury or death within 5 years of 2 or more prior violations resulting in convictions, the bill

would require revocation of the driving privilege for 5 years by the department and a sentence of imprisonment in the state prison for 2, 3, or 4 years and a fine of $1,000 to $5,000. If the court grants probation, the bill would require imprisonment of at least 1 year in the county jail, a fine of at least $375, restitution or reparation as specified, and, if the offender has not previously successfully completed a specified treatment program, that he or she participate in that specified treatment program.

The bill would prohibit a court from striking any prior conviction for the purpose of avoiding the minimum time of imprisonment and fines provided, and would require a court to obtain specified records relating to prior convictions. The bill would require the court to notify each court where a prior conviction occurred.

The bill would require, in any case where probation is granted, that the probationary term be 3 years and the bill would specify the marking and notice requirements for restricted licenses authorized under the bill. The bill would require, upon finding of a violation of probation, that the court revoke suspension of sentence and revoke or terminate probation, except as specified.

The bill would also reorganize certain other provisions of existing law restricting alcoholic beverages in vehicles.

(2) Under existing law, there is a State Advisory Board on Alcohol-Related Problems, but no First Offender Program Task Force.

This bill would create the First Offender Program Task Force with 10 members appointed by the Governor, as specified. Under the bill, that task force would be required, on or before April 30, 1982, to determine and report to the Legislature the statewide advisory guidelines for first offender programs and define first offender for such purposes. Under the bill, the task force would serve without compensation or reimbursement of expenses, and the State Department of Alcohol and Drug Programs would be required to provide necessary staff services. The bill would repeal the provisions relating to the First Offender Program Task Force on January 1, 1983.

(3) Under existing law, a pilot project conducted by Systems Technology, Inc. until January 1, 1983, under federal contract to test the Drunk Driver Warning System is excepted from certain provisions of law affected by this bill.

This bill would expressly declare that the provisions of law relating to that pilot project are not superseded, terminated, or otherwise affected by this bill.

(4) Existing law prohibits a person from driving a motor vehicle on the highway when that person's driving privilege is suspended or revoked for, among other things, driving under the influence of intoxicating liquor or any drug, or the combined influence thereof, with knowledge of the suspension or revocation. The punishment for a violation of that prohibition is 5 days to 6 months in jail and a fine of not more than $500, and, on a second conviction, a punishment of

10 days to 1 year in the county jail and a fine of not more than $1,000.

This bill would recast those provisions, adding driving with a restricted license except in compliance with the restriction to the prohibition. The bill would, if the court grants probation upon a violation of those provisions, require a mandatory imprisonment of at least 10 days in the county jail upon a first offense and at least 30 days for a second or subsequent offense within 5 years of a prior offense.

(5) The bill would incorporate additional changes in Sections 23101 and 23102 of the Vehicle Code and related provisions of law proposed by AB 7, AB 348, and AB 571, or any of them, and this bill, to be effective if this bill and any or all of AB 7, AB 348, and AB 571 are chaptered, whether this bill is chaptered before or after any or all of those bills.

(6) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1463.18 is added to the Penal Code, to read:

1463.18. (a) Notwithstanding the provisions of Section 1463, moneys which are collected for a conviction of a violation of Section 23152 or 23153 of the Vehicle Code and which are required to be deposited with the county treasurer pursuant to Section 1463 shall be allocated as follows:

(1) The first twenty dollars ($20) of any amount collected for a conviction shall be transferred to the Indemnity Fund. This amount shall be aggregated by the county treasurer and transferred to the State Treasury once per month for deposit in the Indemnity Fund.

(2) The balance of the amount collected, if any, shall be deposited by the county treasurer pursuant to Section 1463.

(b) The amount transferred to the Indemnity Fund pursuant to this section shall be in addition to any amount of any additional fine or assessment imposed pursuant to Section 13967 of the Government Code. The amount deposited to the Indemnity Fund pursuant to this section shall be used for the purpose of indemnification of victims pursuant to Section 13965 of the Government Code, with priority given to victims of alcohol-related traffic offenses.

SEC. 2. Section 13201 of the Vehicle Code is amended to read:

13201. A court may suspend the privilege of any person to operate a motor vehicle, for a period not exceeding six months, upon

conviction of any of the following offenses:

(a) Failure of the driver of a vehicle involved in an accident to stop or otherwise comply with the provisions of Section 20002.

(b) Reckless driving proximately causing bodily injury to any person under Section 23104.

(c) Failure of the driver of a vehicle to stop at a railway grade crossing as required by Section 22452.

SEC. 3. Section 13201.5 of the Vehicle Code is repealed.

SEC. 4. Section 13210 of the Vehicle Code is repealed.

SEC. 5. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall, immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153. For the purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(3) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(4) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages as defined in Section 16430.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds

exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (6), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153, as specified in subdivision (a), is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for the purposes of this section, and such a conviction of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction of Section 23153 for the purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of such a conviction.

SEC. 6. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend or revoke, pursuant to paragraph (3) or (4) of subdivision (a) of Section 13352, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152 or 23153 if the court has certified to the department that the person has consented to participate for at least one year, and is participating in a manner satisfactory to the court, in a public or private program for the supervision of those persons and the treatment of their problem drinking or alcoholism pursuant to the provisions of Article 5 (commencing with Section 11850) of Chapter 1 of Part 2 of Division 10.5 of the Health and Safety Code.

(b) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall indicate whether the person convicted has consented to participate, and is participating, in a specified treatment program.

SEC. 7. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle upon a highway at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivisions (b) through (f) of Section 12805 requiring the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810, and the person so driving has knowledge of the suspension or revocation. Knowledge shall be presumed if notice has

been given by the department to the person. The presumption established by this subdivision is a presumption affecting burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than five days nor more than six months and by fine of not more than five hundred dollars ($500).

(2) Upon a second or any subsequent conviction within seven years of a prior conviction, by imprisonment in the county jail for not less than 10 days nor more than one year and by fine of not more than one thousand dollars ($1,000).

(c) If any person is convicted of a second or subsequent offense under this section within seven years of a prior conviction and is granted probation, it shall be a condition of probation that the person be confined in the county jail for at least 10 days.

SEC. 8. Section 14601.1 of the Vehicle Code is amended to read:

14601.1. (a) No person shall drive a motor vehicle on a highway when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601 or 14601.2 when the person so driving has knowledge of either such fact. Knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not more than six months or by fine of not more than five hundred dollars ($500) or by both that fine and imprisonment, and upon a second or any subsequent conviction under this section or Section 14601 or 14601.2, within seven years of a prior conviction, by imprisonment in the county jail for not less than five days nor more than one year and by fine of not more than one thousand dollars ($1,000).

SEC. 8.5. Section 14601.2 is added to the Vehicle Code, to read:

14601.2. (a) No person shall drive a motor vehicle upon a highway at any time when that person's driving privilege is suspended or revoked for driving under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, and when the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle upon a highway at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23151) of Chapter 12 of Division 11, and when the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be presumed if notice has been given by the department to the person. The presumption established by this

subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days nor more than six months and by a fine of not more than five hundred dollars ($500).

(2) Upon a second or any subsequent conviction within seven years of a prior conviction, by imprisonment in the county jail for not less than 30 days nor more than one year and by a fine of not more than one thousand dollars ($1,000).

(e) If any person is convicted of a first offense under this section and is granted probation, it shall be a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If any person is convicted of a second or subsequent offense under this section within five years of a prior conviction of an offense under this section and is granted probation, it shall be a condition of probation that the person be confined in the county jail for at least 30 days.

SEC. 9. A heading is added immediately preceding Section 23100 of the Vehicle Code, to read:

Article 1. Driving Offenses

SEC. 10. Section 23101 of the Vehicle Code, as amended by Section 2 of Chapter 1004 of the Statutes of 1980, is amended and renumbered to read:

23153. It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes death or bodily injury to any person other than the driver. In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

SEC. 11. Section 23101 of the Vehicle Code, as amended by Section 3 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 12. Section 23102 of the Vehicle Code, as amended by Section 4 of Chapter 1004 of the Statutes of 1980, is amended and renumbered to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section

4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

SEC. 13. Section 23102 of the Vehicle Code, as amended by Section 5 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 14. Section 23102.1 of the Vehicle Code is repealed.

SEC. 15. Section 23102.2 of the Vehicle Code is amended and renumbered to read:

23208. (a) In any proceedings to have a prior judgment of conviction of a violation of Section 23152 or 23153 declared invalid on constitutional grounds, the defendant shall state in writing and with specificity wherein the defendant was deprived of the defendant's constitutional rights, which statement shall be filed with the clerk of the court and a copy served on the court that rendered the prior judgment and on the prosecuting attorney in the present proceedings at least five court days prior to the hearing thereon.

(b) The court shall, prior to the trial of any pending criminal action against the defendant wherein the prior conviction is charged as such, hold a hearing, outside of the presence of the jury, in order to determine the constitutional validity of the charged prior conviction issue. At the hearing the procedure, the burden of proof, and the burden of producing evidence shall be as follows:

(1) The burden of proof remains with the prosecution throughout and is that of beyond a reasonable doubt.

(2) The prosecution shall initially have the burden of producing evidence of the prior conviction sufficient to justify a finding that the defendant has suffered that prior conviction.

(3) After the production of evidence required by paragraph (2), the defendant then has the burden of producing evidence that the defendant's constitutional rights were infringed in the prior proceeding at issue.

(4) If the defendant bears this burden successfully, the prosecution shall have the right to produce evidence in rebuttal.

(5) The court shall make a finding on the basis of the evidence thus produced and shall strike from the accusatory pleading any prior conviction found to be constitutionally invalid.

SEC. 16. Section 23102.3 of the Vehicle Code is amended and renumbered to read:

23205. (a) Upon any conviction of a violation of Section 23152 or 23153, any judge of the court may order a presentence investigation to determine whether a person convicted of the violation would benefit from treatment for persons who are habitual users of alcohol or drugs, and the court may order suitable treatment for the person, in addition to imposing any penalties required by this code.

(b) In determining whether to require, as a condition of probation, the participation in a driver improvement program or a treatment program for persons who are habitual users of alcohol or drugs, pursuant to Section 23161, or the participation in an approved program pursuant to subdivision (b) of Section 23166, subdivision

(b) of Section 23171, subdivision (b) of Section 23186, or subdivision (b) of Section 23191, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required by subdivision (a), or other screening procedure. No such information shall be furnished to the court, however, by any person who also provides services in a privately operated, approved program or who has any direct interest in a privately operated, approved program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in an approved program pursuant to the provisions of this article.

SEC. 17. Section 23102.4 of the Vehicle Code is amended and renumbered to read:

23209. Only one challenge shall be permitted to the constitutionality of a prior conviction of a violation of Section 14601, 14601.2, 23152, or 23153. When a proceeding to declare a prior judgment of conviction constitutionally invalid has been held, a determination by the court that the prior conviction is constitutional precludes any subsequent attack on constitutional grounds in a subsequent prosecution in which the same prior conviction is charged. In addition, any determination that a prior conviction is unconstitutional precludes any allegation or use of that prior conviction in any judicial or administrative proceeding, and the department shall strike that prior conviction from its records. Pursuant to Section 1803, the court shall report to the Department of Motor Vehicles any determination upholding a prior conviction on constitutional grounds and any determination that a prior conviction is unconstitutional.

This section shall not preclude a subsequent challenge to a prior conviction if, at a later time, a subsequent statute or appellate court decision having retroactive application affords any new basis to challenge the constitutionality of the prior conviction.

SEC. 18. Section 23105 of the Vehicle Code, as amended by Section 8 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 19. Section 23105 of the Vehicle Code, as amended by Section 9 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 20. Section 23106 of the Vehicle Code, as amended by Section 10 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 21. Section 23106 of the Vehicle Code, as amended by Section 11 of Chapter 1004 of the Statutes of 1980, is repealed.

SEC. 22. Section 23107 of the Vehicle Code is amended and renumbered to read:

23201. The fact that any person charged with driving under the influence of any drug or the combined influence of alcoholic beverages and any drug in violation of Section 23152 or 23153 is or has been entitled to use the drug under the laws of this state shall not constitute a defense against any violation of the sections.

SEC. 23. Section 23121 of the Vehicle Code is amended and renumbered to read:

23220. No person shall drink any alcoholic beverage while driving a motor vehicle upon any highway.

SEC. 24. Section 23121.5 of the Vehicle Code is amended and renumbered to read:

23221. No person shall drink any alcoholic beverage while in a motor vehicle upon a highway.

SEC. 25. Section 23122 of the Vehicle Code is amended and renumbered to read:

23222. No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

SEC. 26. Section 23122.5 of the Vehicle Code is amended and renumbered to read:

23223. No person shall have in his or her possession on his or her person, while in a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

SEC. 27. Section 23123 of the Vehicle Code is amended and renumbered to read:

23225. It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, unless the container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

This section shall not apply to the living quarters of a housecar or camper.

SEC. 28. Section 23123.5 of the Vehicle Code is amended and renumbered to read:

23224. (a) No person under the age of 21 years shall knowingly drive any motor vehicle carrying any alcoholic beverage, unless the person is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code), and is driving the motor vehicle during regular hours and in the course of the person's employment.

(b) No passenger in any motor vehicle who is under the age of 21 years shall knowingly possess or have under that person's control any

alcoholic beverage, unless the passenger is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code), and the possession or control is during regular hours and in the course of the passenger's employment.

(c) If the vehicle used in any violation of subdivision (a) or (b) is registered to an offender who is under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(d) The driver's license of any person under 21 years of age convicted of a violation of this section shall also be suspended for not less than 15 days nor more than 30 days.

SEC. 29. Section 23123.6 of the Vehicle Code is amended and renumbered to read:

23226. It is unlawful for any person to keep in the passenger compartment of a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

This section shall not apply to the living quarters of a housecar or camper.

SEC. 30. Section 23125 of the Vehicle Code is amended and renumbered to read:

23229. (a) Sections 23221 and 23223 shall not apply to passengers in any bus, taxicab, or limousine for hire licensed to transport passengers pursuant to the Public Utilities Code or proper local authority, or the living quarters of a housecar or camper, nor shall Section 23225 apply to the driver or owner of a bus, taxicab, or limousine for hire licensed to transport passengers pursuant to the Public Utilities Code or proper local authority.

(b) Sections 23220, 23221, 23222, 23223, 23225, and 23226 shall not apply to any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes. These sections shall also not apply to any clergyman who carries alcoholic beverages in the clergyman's motor vehicle for religious purposes.

SEC. 31. Section 23126 of the Vehicle Code is amended and renumbered to read:

23155. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person

was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but such fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

SEC. 32. Article 2 (commencing with Section 23151) is added to Chapter 12 of Division 11 of the Vehicle Code, to read:

Article 2. Offenses Involving Alcohol and Drugs

23151. Unless the provisions or context otherwise requires, the following definitions shall govern the construction of this article:

(a) "Alcoholic beverage" includes any liquid or solid material intended to be ingested by a person which contains ethanol, also known as ethyl alcohol, drinking alcohol, or alcohol, including, but not limited to, alcoholic beverages as defined in Section 23004 of the Business and Professions Code, intoxicating liquor, malt beverage, beer, wine, spirits, liqueur, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one or more alcoholic beverages. For purposes of Section 23152 or 23153, alcoholic beverage includes a mixture of one or more alcoholic beverages ingested separately or as a mixture.

23160. (a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than four days nor more than six months and by a fine of not less than three hundred seventy-five dollars ($375) nor more than five hundred dollars ($500).

(b) The court may order that any person punished under this section, who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(c) The court shall order the department to suspend the privilege to operate a motor vehicle of a person punished under this section for six months pursuant to paragraph (1) of subdivision (a) of Section

13352.

23161. If the court grants probation to any person punished under Section 23160 in addition to the provisions of Section 23206, the court shall impose as conditions of probation that the driver shall participate in, and successfully complete, a driver improvement program or a treatment program for persons who are habitual users of alcohol or drugs, or both of these programs, as designated by the court, in any county where the county alcohol program administrator has certified and the board of supervisors has approved such a program or programs. The court shall also impose as a condition of probation that the person be subject to one of the following:

(a) Be confined in the county jail for at least 48 hours but not more than six months and pay a fine of at least three hundred seventy-five dollars ($375) but not more than five hundred dollars ($500).

(b) Pay a fine of at least three hundred seventy-five dollars ($375) but not more than five hundred dollars ($500) and have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

23165. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000).

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206, the court shall impose as conditions of probation that the person be subject to all of the provisions of either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year and pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(b) All of the following:

(1) Be confined in the county jail for at least two days but not more than one year.

(2) Pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted for one year to necessary travel to and from that person's place of employment and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

23167. Notwithstanding the provisions of Section 23207, if any person has been granted probation under the conditions of subdivision (b) of Section 23166 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation and shall proceed under either of the following provisions:

(a) Revoke suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the order revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 30 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the new grant of probation.

23168. Any person who has been granted probation under the conditions of subdivision (b) of Section 23166, may, after six months have elapsed since the commencement of participation in the treatment program, petition the court to have the restriction on that person's privilege to operate a motor vehicle removed, and the court may, for good cause shown, remove the restrictions upon a showing that the person has successfully participated in the treatment program and complied with the terms and conditions of probation.

23170. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153 or both, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked pursuant to paragraph (5) of subdivision (a) of Section 13352.

23171. (a) If the court grants probation to any person punished under Section 23170, in addition to the provisions of Section 23206, a condition of probation shall require the person to be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(b) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23170 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of

Section 23166 or paragraph (4) of subdivision (b) of Section 23186, it shall be a condition of probation that the person participate, for a least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. Under no circumstances shall the additional condition of probation required pursuant to this subdivision be construed as a basis for reducing any other probation requirement in the section or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

23180. If any person is convicted of a first violation of Section 23153, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000).

23181. If the court grants probation to any person punished under Section 23180, in addition to the provisions of Section 23206, a condition of probation shall require the person to be confined in the county jail for at least five days but not more than one year and pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

23185. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of a prior offense which resulted in a conviction of a violation of Section 23152 or 23153, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred seventy-five dollars ($375) nor more than five thousand dollars ($5,000).

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206, the court shall impose as conditions of probation that the person be subject to all of the provisions of either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred seventy-five dollars ($375) but not more than five thousand dollars ($5,000).

(b) All of the following:

(1) Be confined in the county jail for at least 30 days but not more than one year.

(2) Pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted for three years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(4) Participate, for at least one year and in a manner satisfactory

to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

23187. Notwithstanding the provisions of Section 23207, if any person has been granted probation under the conditions of subdivision (b) of Section 23186 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation and shall proceed under either of the following provisions:

(a) Revoke suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the Department of Motor Vehicles to revoke the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the order revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 90 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the new grant of probation.

23190. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153 or both, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked pursuant to paragraph (6) of subdivision (a) of Section 13352.

23191. (a) If the court grants probation to any person punished under Section 23190, in addition to the provisions of Section 23206, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred seventy-five dollars ($375) but not more than five thousand dollars ($5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code.

(b) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23170 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, it shall be a condition of probation that the person participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. Under no circumstances shall the additional condition of probation required pursuant to this subdivision be construed as a

basis for reducing any other probation requirement in this section or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

23200. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred within five years of one or more prior offenses which resulted in convictions of violations of Section 23152 or 23153 or both, the court shall not strike any prior conviction of those offenses for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter.

(b) In any case charging a violation of Section 23152 or 23153, the court shall obtain a copy of the driving record of the person charged from the Department of Motor Vehicles and may obtain any records from the Department of Justice or any other source to determine if one or more prior convictions of the person of offenses which resulted in convictions of Section 23152 or 23153 or both have occurred within five years of the charged offense.

(c) If any prior convictions of violations of Section 23152 or 23153 are reported to have occurred within five years of the charged offense, the court shall notify each court where any of the prior convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23207.

23202. (a) In any case in which a person is charged with a violation of Section 23152 or 23153, prior to acquittal or conviction, the court shall not suspend or stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any driver improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, or a treatment program for persons who are habitual users of drugs or other drug-related program.

(b) This section shall not apply to any attendance or participation in any driver improvement or treatment programs after conviction and sentencing, including attendance or participation in any of those programs as a condition of probation granted after conviction when permitted pursuant to this article.

23203. (a) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this article, the court shall clearly mark the restriction and the dates of the restriction on each of that person's operator's licenses and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The department shall place that restriction on the person's records in the department and enter the restriction on any license subsequently issued by the department to that person during the period of the restriction.

(b) If the court removes a restriction before the end of the previously specified term pursuant to Section 23168, the court shall

so mark the person's operator's license in a manner prescribed by the department and promptly notify the department of the removal of the restriction.

23204. If a person's privilege to operate a motor vehicle is suspended or revoked by the Department of Motor Vehicles pursuant to other provisions of this code, that person shall be present in court and each and every operator's license of that person shall be surrendered to the court. The court shall transmit the license or licenses to the Department of Motor Vehicles pursuant to Section 13550, and the court shall notify the department.

23206. (a) If any person is convicted of a violation of Section 23152 or 23153, the court shall not stay or suspend pronouncement of sentencing and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any presentence investigation report ordered pursuant to Section 23205.

(b) If any person is convicted of a violation of Section 23152 or 23153 and is granted probation, the terms and conditions of probation shall include, but not be limited to, a time of probation which shall be three years.

(c) The court shall not absolve a person who is convicted of a violation of Section 23152 or 23153 from the obligation of spending the minimum time in confinement, if any, or of paying the minimum fine provided in this article.

23207. Except as otherwise expressly provided in this article, if a person has been convicted of a violation of Section 23152 or 23153 and the court has suspended execution of the sentence for that conviction and has granted probation, and during the time of that probation, the person is found by the court to have violated a term or condition of that probation required by any provision of this article, the court shall revoke the suspension of sentence, revoke or terminate probation, and shall proceed in the manner provided in subdivision (c) of Section 1203.2 of the Penal Code.

23210. A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152 or 23153, is a conviction of Section 23152 or 23153 for the purposes of this code.

23211. A court shall not order or refer any person to any program, including a driver improvement program or a treatment program for persons who are habitual users of alcohol or drugs or a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, or a provider of such a program in which any employee of the court has a direct or indirect interest, as described in Section 3625 of the Government Code.

23215. The department may, but shall not be required to, provide patrol or enforce the provisions of Section 23152 for offenses which

occur other than upon a highway.

SEC. 33. Section 23152 of the Vehicle Code, as amended and renumbered by Section 12 of this act, is further amended to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle upon a highway or upon other than a highway in areas which are open to the general public.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

SEC. 34. Section 23153 of the Vehicle Code, as amended and renumbered by Section 10 of this act, is further amended to read:

23153. It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes death or bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, proximately cause death or bodily injury to any person other than the driver.

(c) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

SEC. 35. Section 23155 of the Vehicle Code, as amended and renumbered by Section 31 of this act, is further amended to read:

23155. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10

percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but such fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

Operative section

SEC. 36. Section 23165 of the Vehicle Code, as added by Section 32 of this act, is amended to read:

23165. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, or a prior offense which occurred on or after January 1, 1982, which resulted in a conviction of a violation of Section 23103 as specified in Section 23103.5 or of Section 23104 as specified in Section 24104.5, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000).

Operative Section

SEC. 37. Section 23170 of the Vehicle Code, as added by Section 32 of this act, is amended to read:

23170. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of two or more prior offenses which occurred on or after January 1, 1982, which resulted in convictions of violations of Section 23103 as specified in Section 23103.5 or Section 23104 as specified in Section 23104.5 or prior offenses which resulted in convictions of violations of Section 23152 or 23153, or any combination, or all, of those four provisions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred seventy-five dollars ($375) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked pursuant to paragraph (5) of subdivision (a) of Section 13352.

Operative Section

SEC. 38. Section 23185 of the Vehicle Code, as added by Section 32 of this act, is amended to read:

23185. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of a prior offense which resulted in a conviction of a violation of Section 23152 or 23153, or a prior offense which occurred on or after January 1, 1982, which resulted in a conviction of a violation of Section 23103 as specified in Section 23103.5 or of Section 23104 as specified in Section 23104.5, that person shall be punished by imprisonment in the state prison, or in

the county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred seventy-five dollars ($375) nor more than five thousand dollars ($5,000).

operative section

SEC. 39. Section 23190 of the Vehicle Code, as added by Section 32 of this act, is amended to read:

23190. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of two or more prior offenses which occurred on or after January 1, 1982, which resulted in convictions of violations of Section 23103 as specified in Section 23103.5 or Section 23104 as specified in Section 23104.5 or prior offenses which resulted in convictions of violations of Section 23152 or 23153, or any combination, or all, of those four provisions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked pursuant to paragraph (6) of subdivision (a) of Section 13352.

operative section

SEC. 40. Section 23200 of the Vehicle Code, as added by Section 32 of this act, is amended to read:

23200. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred within five years of one or more prior offenses which occurred on or after January 1, 1982, which resulted in convictions of violations of Section 23103 as specified in Section 23103.5 or Section 23104 as specified in Section 23104.5 or one or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, or any combination, or all, of those four provisions, the court shall not strike any prior conviction of those offenses for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter.

(b) In any case charging a violation of Section 23152 or 23153, the court shall obtain a copy of the driving record of the person charged from the Department of Motor Vehicles and may obtain any records from the Department of Justice or any other source to determine if one or more prior convictions of the person of offenses which resulted in convictions of Section 23152 or 23153 or both, or prior convictions which occurred on or after January 1, 1982, of Section 23103 as specified in Section 23103.5 or Section 23104 as specified in Section 23104.5 or both, have occurred within five years of the charged offense.

(c) If any prior convictions of violations of Section 23152 or 23153 are reported to have occurred within five years of the charged offense, the court shall notify each court where any of the prior convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23207.

not operative section

SEC. 41. Section 23208 is added to the Vehicle Code, to read:

23208. If any person is convicted of a violation of Section 23152 or

23153 and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

SEC. 42. Article 3 (commencing with Section 23231) is added to Chapter 12 of Division 11 of the Vehicle Code, to read:

Article 3. Driving Under the Influence Offender Programs

23231. A First Offender Program Task Force is hereby created which shall consist of 10 members appointed by the Governor, as follows:

(a) Three persons representing county alcohol programs.

(b) Two persons representing providers of alcohol treatment programs for drinking driver offenders.

(c) One person representing the judiciary.

(d) One person representing the State Advisory Board on Alcohol-Related Problems.

(e) One person representing the State Department of Alcohol and Drug Programs.

(f) One person representing prosecuting attorneys.

(g) One person representing the Department of Motor Vehicles.

23232. On or before April 30, 1982, the First Offender Program Task Force shall determine and report to the Legislature the statewide advisory guidelines for first offender programs. For the purposes of this article, "first offender" means a person convicted of an offense punished under Section 23160 or 23180.

23233. The members of the First Offender Program Task Force shall serve without compensation and shall not receive reimbursement for travel or other expenses for services rendered.

23234. The State Department of Alcohol and Drug Programs shall provide necessary staff services to the First Offender Program Task Force.

23235. Notwithstanding the provisions of Sections 23165, 23166, 23167, and 23168, or any other provision of law, the program conducted under the provisions of Chapter 1377 of the Statutes of 1980 shall not be superseded, terminated, or otherwise affected by the amendment, repeal, or reenactment of provisions relating to driving under the influence of alcohol by the enactment of the act which adds this article, chaptered during the 1981–82 Regular Session of the Legislature.

23236. This article shall remain in effect only until January 1, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends that date.

SEC. 43. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

Section 12500, subdivision (a), relating to unlicensed drivers.
Section 12951, subdivision (b), relating to refusal to display license.
Section 13004, relating to unlawful use of identification card.
Section 14601, relating to driving when suspended.
Section 14601.1, relating to driving when suspended.
Section 14601.2, relating to driving when suspended.
Section 14610, relating to unlawful use of driver's license.
Section 15501, relating to use of false or fraudulent license by minor.

SEC. 44. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:
Sections 23103 and 23104, relating to reckless driving.
Section 23109, relating to speed contests or exhibitions.
Section 23110, subdivision (a), relating to throwing at vehicles.
Section 23152, relating to driving under the influence.
Section 23253, relating to officers on vehicular crossings.
Section 23332, relating to trespassing.
Section 27150.1, relating to sale of exhaust systems.
Section 28050, relating to true mileage driven.
Section 28050.5, relating to nonfunctional odometers.
Section 28051, relating to resetting odometer.
Section 28051.5, relating to device to reset odometer.

SEC. 45. (a) The provisions of Sections 2, 6, 7, and 10 of the Vehicle Code expressly apply to the provisions of this act, and, further, for any recidivist or enhancement purposes, reference to an offense by section number is a reference to the provisions contained in that section, insofar as they are renumbered without substantive change, and those provisions shall be construed as restatements and continuations thereof and not as new enactments.

(b) Any reference in the provisions of the Vehicle Code to a prior offense of Section 23152 shall include a prior offense under Section 23102 or 23105, as those sections read prior to January 1, 1982.

(c) Any reference in the provisions of the Vehicle Code to a prior offense of Section 23153 shall include a prior offense under Section 23101 or 23106 as those sections read prior to January 1, 1982.

(d) The provisions of this section are declaratory of existing law.

SEC. 46. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 47. Sections 33, 34, and 35 of this act shall become operative only if AB 7 is chaptered and takes effect on January 1, 1982, whether this bill is chaptered before or after AB 7.

SEC. 48. Sections 36, 37, 38, 39, and 40 of this act shall become operative only if AB 348 is chaptered and takes effect on January 1, 1982, whether this bill is chaptered before or after AB 348.

SEC. 49. Section 41 of this act shall become operative only if AB 571 is chaptered and takes effect on January 1, 1982, whether this bill is chaptered before or after AB 571.

SEC. 50. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 551

CHAPTER 572

An act to add Section 1170.7 to the Penal Code, relating to robbery.

[Approved by Governor September 18, 1981. Filed with Secretary of State September 19, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 551, Katz. Robbery: controlled substances.

Existing law provides, with specified exceptions, that robbery is punishable by imprisonment in the state prison for 2, 3, or 5 years and attempted robbery is punishable by 16 months or 2 or 3 years' imprisonment in the state prison.

Existing law requires the court in imposing felony sentences generally to impose the middle term unless there are circumstances in mitigation or aggravation to permit the imposition of the lower or upper term.

This bill would provide that robbery or attempted robbery committed against a pharmacist, pharmacy employee, or other person lawfully possessing controlled substances for the purpose of obtaining any controlled substance shall be considered a circumstance in aggravation of the crime in imposing sentence.

The people of the State of California do enact as follows:

SECTION 1. Section 1170.7 is added to the Penal Code, to read:

1170.7. Robbery or attempted robbery for the purpose of obtaining any controlled substance, as defined in Section 11007 of the Health and Safety Code, when committed against a pharmacist, pharmacy employee, or other person lawfully possessing controlled substances, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

O

Assembly Bill No. 582

CHAPTER 155

An act to amend and repeal Sections 23103 and 23104 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 10, 1981. Filed with Secretary of State July 10, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 582, Ryan. Motor vehicles: reckless driving: fines.

Under existing law, it is unlawful to drive recklessly, and until July 1, 1982, the minimum fine is $130 for reckless driving and $205 for reckless driving causing bodily injury, and the maximum fine is $500 for reckless driving. After that date, the fines will revert to $95, $170 and $250, respectively.

This bill would delete the July 1, 1982, termination date for the higher fines so that the higher fines will remain in effect on and after that date.

The people of the State of California do enact as follows:

SECTION 1. Section 23103 of the Vehicle Code, as amended by Section 9 of Chapter 661 of the Statutes of 1980, is amended to read:

23103. Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than five days nor more than 90 days or by a fine of not less than one hundred thirty dollars ($130) nor more than five hundred dollars ($500), or by both fine and imprisonment, except as provided in Section 23104.

SEC. 2. Section 23103 of the Vehicle Code, as amended by Section 10 of Chapter 661 of the Statutes of 1980, is repealed.

SEC. 3. Section 23104 of the Vehicle Code, as amended by Section 12 of Chapter 661 of the Statutes of 1980, is amended to read:

23104. Whenever reckless driving of a vehicle proximately causes bodily injury to any person, the person driving the vehicle shall, upon conviction thereof, be punished by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two hundred five dollars ($205) nor more than five hundred dollars ($500), or by both fine and imprisonment.

SEC. 4. Section 23104 of the Vehicle Code, as amended by Section 13 of Chapter 661 of the Statutes of 1980, is repealed.

O

Assembly Bill No. 632

CHAPTER 759

An act to add Section 1192.6 to the Penal Code, relating to dismissal of charges.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 632, Papan. Dismissal of charges.

Existing law does not require the prosecutor to state the reasons for seeking the dismissal of charges or recommending the punishment the court should impose, nor is the record in the case required to contain a statement of the reason for a dismissal of a charge or an amendment of an accusatory pleading.

This bill would require the prosecuting attorney to state the reasons in open court in each felony case in which a dismissal is sought, or upon a specified plea when the punishment is recommended. This bill would also require that the record in each felony case in which the original charges in the accusatory pleading are amended or dismissed contain a statement of the reasons for the amendment or dismissal.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the bill would remain in effect unless and until they are amended or repealed by a later enacted act.

The people of the State of California do enact as follows:

SECTION 1. Section 1192.6 is added to the Penal Code, to read:

1192.6. (a) In each felony case in which the charges contained in the original accusatory pleading are amended or dismissed, the record shall contain a statement explaining the reason for the

amendment or dismissal.

(b) In each felony case in which the prosecuting attorney seeks a dismissal of a charge in the complaint, indictment, or information, he or she shall state the specific reasons for the dismissal in open court, on the record.

(c) When, upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, whether or not that plea is entered pursuant to Section 1192.5, the prosecuting attorney recommends what punishment the court should impose or how it should exercise any of the powers legally available to it, the prosecuting attorney shall state the specific reasons for the recommendation in open court, on the record. The reasons for the recommendation shall be transcribed and made part of the court file.

SEC. 2. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

o

Assembly Bill No. 633

CHAPTER 918

An act to amend Section 1332 of the Penal Code, relating to witnesses.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 633, Papan. Witnesses.

Existing law permits a judge or magistrate in a preliminary examination, upon proof on oath when there is reason to believe a witness will not appear and testify unless security is required, to order the witness to enter into a written undertaking with sureties for his or her appearance.

This bill would permit a court to require a material witness, whether an adult or minor, when there is good cause to believe that the witness will not appear and testify unless security is required, to enter into a written undertaking in connection with his or her appearance in any criminal prosecution proceeding or in any wardship petition proceeding. The court would be required to commit a witness refusing to enter into the undertaking as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1332 of the Penal Code is amended to read:

1332. (a) Notwithstanding the provisions of Sections 878 to 883, inclusive, of the Penal Code, when the court is satisfied, by proof on oath, that there is good cause to believe that any material witness for the prosecution or defense, whether the witness is an adult or a minor, will not appear and testify unless security is required, at any proceeding in connection with any criminal prosecution or in connection with a wardship petition pursuant to Section 602 of the Welfare and Institutions Code, the court may order the witness to enter into a written undertaking to the effect that he or she will appear and testify at the time and place ordered by the court or that he or she will forfeit an amount the court deems proper. Section 1269d is applicable to undertakings entered into pursuant to this section.

(b) If the witness required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the court may commit the witness, if an adult, to the custody of the sheriff, and if a minor, to the custody of the probation officer or other appropriate agency, until the witness complies or is legally discharged.

(c) When a person is committed pursuant to this section, he or she

is entitled to an automatic review of the order requiring a written undertaking and the order committing the person, by a judge or magistrate having jurisdiction over the offense other than the one who issued the order. This review shall be held not later than two days from the time of the original order of commitment.

(d) If it is determined that the witness must remain in custody, the witness is entitled to a review of that order after 10 days.

(e) When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail or pursuant to the provisions of Section 1269d.

O

Assembly Bill No. 658

CHAPTER 339

An act to amend Sections 1237 and 1466 of the Penal Code, relating to appeals.

[Approved by Governor September 8, 1981. Filed with Secretary of State September 9, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 658, Martinez. Criminal appeals.

Under existing law, an appeal may be taken by a defendant from a final judgment. Existing law provides that in superior courts the commitment of a defendant for narcotics addiction shall be deemed a final judgment 90 days after commitment, and that in municipal and justice courts, a conviction of a defendant committed for narcotics addiction shall be deemed a final judgment 90 days after commitment.

This bill would instead provide that, in superior courts, the commitment of a defendant for narcotics addiction shall be deemed a final judgment and, in municipal courts, the conviction of a defendant committed for narcotics addiction shall be deemed a final judgment.

The people of the State of California do enact as follows:

SECTION 1. Section 1237 of the Penal Code is amended to read:

1237. An appeal may be taken by the defendant:

1. From a final judgment of conviction except as provided in Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a defendant for narcotics addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment the court may review any order denying a motion for a new trial.

2. From any order made after judgment, affecting the substantial rights of the party.

SEC. 2. Section 1466 of the Penal Code is amended to read:

1466. An appeal may be taken from a judgment or order of an inferior court, in a criminal case, to the superior court of the county in which such inferior court is located, in the following cases.

1. By the people:

(a) From an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy;

(b) From a judgment for the defendant upon the sustaining of a

demurrer;

(c) From an order granting a new trial;

(d) From an order arresting judgment;

(e) From any order made after judgment affecting the substantial rights of the people.

2. By the defendant:

(a) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for narcotics addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(b) From any order made after judgment affecting his substantial rights.

O

Assembly Bill No. 659

CHAPTER 110

An act to amend Sections 193 and 264 of the Penal Code, relating to crimes.

[Approved by Governor June 29, 1981. Filed with Secretary of State June 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 659, Cramer. Crimes: punishment.

Existing law provides for a jury to recommend whether the punishment of a person convicted of vehicular manslaughter or unlawful sexual intercourse shall be a state prison or county jail term.

This bill would delete the provisions for these recommendations.

The people of the State of California do enact as follows:

SECTION 1. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for two, four, or six years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) A violation of subsection 3 of Section 192 of this code is punishable as follows: In the case of a violation of subdivision (a) of said subsection 3 the punishment shall be either by imprisonment in the county jail for not more than one year or in the state prison; in the case of a violation of subdivision (b) of said subsection 3, the punishment shall be by imprisonment in the county jail for not more than one year.

SEC. 2. Section 264 of the Penal Code is amended to read:

264. Rape, as defined in Section 261, is punishable by imprisonment in the state prison for three, six, or eight years. Rape, as defined in Section 262, is punishable either by imprisonment in the county jail for not more than one year or in the state prison for three, six, or eight years. Unlawful sexual intercourse, as defined in Section 261.5, is punishable either by imprisonment in the county jail for not more than one year or in the state prison.

O

Assembly Bill No. 667

CHAPTER 209

An act to add Section 2541.1 to the Penal Code, relating to correctional facilities personnel.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 667, Wright. Gifts: prisoners.

Existing law prohibits officers or employees of the State Department of Corrections, or contractors or employees of contractors, from making any gift for or presenting any gift to, or receiving a gift from, any prisoner, or having any barter or dealings with a prisoner. A violation of such prohibition by officers or employees of the Department of Corrections would result in termination of employment.

This bill would extend the prohibition to include officers and employees of police departments, members and employees of sheriff's departments, employees of jails or other local governmental custodial correctional facilities, as specified, and would impose the same penalty for a violation of the prohibition.

The people of the State of California do enact as follows:

SECTION 1. Section 2541.1 is added to the Penal Code, to read:

2541.1. (a) No police officer, member of a sheriff's department, employee of a police department or sheriff's department, or employee of a city or county jail, or other city or county custodial correctional facility, shall, without permission of the police department or sheriff's department, make any gift or present to a prisoner or arrestee, or receive any gift or present from a prisoner or arrestee, or have any barter or dealings with a prisoner or arrestee.

(b) No officer, member, or employee of a police or sheriff's department shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by anyone for or on behalf of a county or city jail, or other county or city custodial correctional facility.

(c) For any violation of this section the officer, member, or employee shall be subject to the penalties set forth in Section 2540.

O

Assembly Bill No. 673

CHAPTER 318

An act to amend Section 786 of the Penal Code, relating to criminal prosecution.

[Approved by Governor September 2, 1981. Filed with Secretary of State September 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 673, La Follette. Criminal prosecution.

Existing law provides that when property taken in one jurisdictional territory by burglary, robbery, theft, or embezzlement has been brought into another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory.

This bill would similarly provide that when property is received in one jurisdictional territory with knowledge that it has been stolen or embezzled and such property was stolen or embezzled in another jurisdictional territory, the offense may be prosecuted in either jurisdictional territory.

The people of the State of California do enact as follows:

SECTION 1. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and such property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory.

O

Assembly Bill No. 698

CHAPTER 166

An act to repeal Sections 12018 and 12019 of the Fish and Game Code, to amend and repeal Section 13967 of the Government Code, to amend Section 1464 of, to repeal Section 13521 of, and to add Section 13835.9 to, the Penal Code, to repeal Sections 42050, 42051, 42052, and 42053 of the Vehicle Code, to amend and repeal Section 258 of the Welfare and Institutions Code, to repeal Section 3 of Chapter 713 of the Statutes of 1979, and to repeal Section 13 of Chapter 530 of the Statutes of 1980, relating to crimes, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 12, 1981. Filed with Secretary of State July 12, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 698, Thurman. Crimes.

(1) Under existing law, victim and witness assistance centers are funded by the state and local governments as specified. On and after January 1, 1983, funding for the continuation of any such center is at the election of the local government served thereby, and state responsibility therefor ceases.

This bill would require a specified report to the Legislature by January 1, 1985, concerning the effectiveness of the centers.

(2) Under existing law, provisions for increases in assessments on fines and forfeitures which are equally divided to assist local victim and witness programs and to indemnify victims of violent crimes when appropriated by the Legislature, and provisions relative to the collection of such increased assessments, terminate January 1, 1982.

This bill would continue such provisions indefinitely, would eliminate the requirement that these funds be divided equally, and would provide for appropriation by the Legislature of an unspecified portion of these funds for the training of sexual assault investigators and prosecutors and assistance to local rape victim counseling centers.

(3) Under existing law, provisions whereby penalty assessments are deposited in the Assessment Fund and transferred as specified would be repealed after a specified date and replaced by other provisions relative to penalty assessments.

This bill would continue the provisions relative to the Assessment Fund indefinitely and increase the assessment and provide for its distribution as specified.

(4) The bill would appropriate $2,700,000 in augmentation of Item 472, Budget Act of 1980, for payment of claims under the Victims of Violent Crimes Program, as a loan, to be repaid, without interest,

during the 1981–82 fiscal year from revenues deposited in the Indemnity Fund.

(5) The bill would take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12018 of the Fish and Game Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 2. Section 12019 of the Fish and Game Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 3. Section 13967 of the Government Code, as amended by Section 3 of Chapter 530 of the Statutes of 1980, is amended to read:

13967. (a) Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, of at least ten dollars ($10), but not to exceed ten thousand dollars ($10,000).

(b) The fine imposed pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article and to provide assistance to established local comprehensive programs for victims and witnesses, including but not limited to, pilot local assistance centers for victims and witnesses established pursuant to the provisions of Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4 of the Penal Code, and to provide funding for the programs provided pursuant to Article 3 (commencing with Section 13836) of Chapter 4 of Title 6 of Part 4 of the Penal Code and Article 4 (commencing with Section 13837) of Chapter 4 of Title 6 of Part 4 of the Penal Code.

(c) It is the intent of the Legislature that funds appropriated pursuant to this section for local assistance centers for victims and witnesses shall be in addition to any funds appropriated as provided in Section 13835.8 of the Penal Code.

(d) Funds appropriated pursuant to this section shall be made available through the Office of Criminal Justice Planning to those public or private nonprofit programs for the assistance of victims and witnesses which:

(1) Provide comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type or types of crimes.

(2) Are recognized by the county board of supervisors as the major provider of comprehensive services to such victims and witnesses.

(3) Are selected by the county board of supervisors as the eligible program to receive such funds.

(4) Assist victims of violent crimes in the preparation and presentation of their claims to the State Board of Control for indemnification pursuant to this article.

(5) Cooperate with the State Board of Control in obtaining and verifying data required by this article.

SEC. 4. Section 13967 of the Government Code, as amended by Section 3.1 of Chapter 530 of the Statutes of 1980, is repealed.

SEC. 5. Section 13967 of the Government Code, as added by Section 3.5 of Chapter 530 of the Statutes of 1980, is repealed.

SEC. 6. Section 1464 of the Penal Code, as amended by Section 1 of Chapter 1047 of the Statutes of 1980, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposit of bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and

Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 27.50 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 37.36 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall remain in effect only until January 1, 1982, and as of that date is repealed.

SEC. 7. Section 1464 of the Penal Code, as amended by Section 2 of Chapter 1047 of the Statutes of 1980, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this

section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall remain in effect only until July 1, 1982, and as of that date is repealed.

SEC. 8. Section 1464 of the Penal Code, as added by Section 3 of Chapter 1047 of the Statutes of 1980, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or

registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on July 1, 1982.

SEC. 9. Section 13521 of the Penal Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 10. Section 13835.9 is added to the Penal Code, to read:

13835.9. By January 1, 1985, the Office of Criminal Justice Planning shall prepare and submit to the Legislature a report summarizing the effectiveness of victim and witness assistance centers established pursuant to this article. That report shall include, but not be limited to, the effectiveness in achieving the design functions enumerated in Section 13835.4 and the provision of services enumerated in Section 13835.6.

The Office of Criminal Justice Planning is specifically authorized and encouraged to seek the assistance of an organization or organizations which may be able to utilize funding sources other than the state to prepare this report for the Office of Criminal Justice Planning.

SEC. 11. Section 42050 of the Vehicle Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 12. Section 42051 of the Vehicle Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 13. Section 42052 of the Vehicle Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 14. Section 42053 of the Vehicle Code, as added by Chapter 530 of the Statutes of 1980, is repealed.

SEC. 15. Section 258 of the Welfare and Institutions Code as amended by Section 12 of Chapter 530 of the Statutes of 1980 is amended to read:

258. (a) Upon a hearing conducted in accordance with Section 257, upon an admission by the minor of the commission of a traffic violation charged, or upon a finding that the minor did in fact commit such traffic violation, the judge, referee, or traffic hearing officer may do any of the following:

(1) Reprimand the minor and take no further action;

(2) Direct the probation officer to file a petition as provided for in Article 8 (commencing with Section 325); or

(3) Make any or all of the following orders:

(i) That the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

(ii) That the minor attend traffic school over a period not to exceed 60 days.

(iii) That the minor pay to the general fund of the county a sum, not to exceed fifty dollars ($50), and to the Assessment Fund an assessment in the amount provided in Section 1464 of the Penal

Code. Any judge, referee, or traffic hearing officer may waive an assessment if the amount the minor is ordered to pay to the general fund of the county is less than ten dollars ($10).

(iv) That the probation officer undertake a program of supervision of the minor for a period not to exceed six months.

(v) That the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code.

(vi) That the minor work in a city park or recreational facility or county or regional park for not to exceed 25 hours over a period not to exceed 30 days, during times other than his hours of school attendance or employment. When the order to work is made by a referee or a traffic hearing officer, it shall be approved by a judge of the juvenile court.

(b) The judge, referee, or traffic hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

SEC. 16. Section 258 of the Welfare and Institutions Code, as added by Section 12.5 of Chapter 530 of the Statutes of 1980, is repealed.

SEC. 17. Section 3 of Chapter 713 of the Statutes of 1979 is repealed.

SEC. 18. Section 13 of Chapter 530 of the Statutes of 1980 is repealed.

SEC. 19. The sum of two million seven hundred thousand dollars ($2,700,000) is hereby appropriated from the General Fund in augmentation of Item 472, Budget Act of 1980, for the payment of claims under the Victims of Violent Crimes Program, as a loan, which shall be repaid, without interest, during the 1981–82 fiscal year from the first two million seven hundred thousand dollars ($2,700,000) in revenues that are deposited in the Indemnity Fund during the 1981–82 fiscal year.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act will affect the Budget Act of 1980, funding provisions relative to the 1981–82 fiscal year, and certain activities of the Office of Criminal Justice Planning. In order that it may achieve its intended results, it is necessary that this act take effect immediately.

O

Assembly Bill No. 754

CHAPTER 854

An act to amend Sections 859b, 861, 871.5, and 1387 of, and to add Section 859c to, the Penal Code, relating to dismissal of criminal actions.

[Approved by Governor September 26, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 754, Cramer. Dismissal of criminal actions.

Existing law requires, when a defendant who has not pleaded guilty is in custody at the time of arraignment or plea, that the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of arraignment or plea. This requirement is subject to 2 exceptions: personal waiver by the defendant of his right to preliminary examination within 10 court days or establishment of good cause for a continuance beyond 10 court days by the prosecution. However, if the preliminary examination is set or continued beyond 10 court days the defendant shall be released on his own recognizance unless charged with a capital offense which would be nonbailable.

This bill would make the requirement of dismissal of the complaint if the preliminary hearing is set or continued beyond 10 days, applicable to any defendant who has not pleaded guilty and who is in custody and would provide further exceptions to the release of the defendant on his own recognizance when the preliminary examination is set or continued beyond 10 court days.

Existing law requires a preliminary examination of a criminal defendant to be completed at one session unless good cause is shown for a postponement. Upon such postponement the defendant, unless charged with a nonbailable capital offense, is released upon his own recognizance.

This bill would provide for the release of the defendant on his own recognizance upon postponement on the same basis as release is permitted when the preliminary examination is continued or set beyond 10 court days.

Existing law permits the prosecution to seek reinstatement of a dismissed complaint on the ground of erroneous dismissal as a matter of law.

This bill would make minor changes in the procedure to seek reinstatement of the complaint.

Existing law provides that a second order terminating an action pursuant to specified provisions of law is a bar to any other prosecution for a felony or a misdemeanor charged with a felony unless subsequent to the dismissal a judge or magistrate finds that

substantial new evidence has been discovered by the prosecution which would not have been known previously by the exercise of due diligence.

This bill would provide that previous dismissals for specified reasons are not a bar to prosecution of the offense.

The people of the State of California do enact as follows:

SECTION 1. Section 859b of the Penal Code is amended to read:

859b. At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court day period.

If the preliminary examination is set or continued beyond the 10-court day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

(3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant.

(4) The illness of counsel.

(5) The unexpected engagement of counsel in a jury trial.

(6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment or plea, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

SEC. 1.5. Section 859c is added to the Penal Code, to read:

859c. Notwithstanding the provisions of Section 859b, the magistrate may deny release on the person's own recognizance if the reason the continuance is requested is not the fault of the prosecution and the offense charged is one of the violent felonies in subdivision (c) of Section 667.5.

SEC. 2. Section 861 of the Penal Code is amended to read:

861. The preliminary examination shall be completed at one session or the complaint shall be dismissed, unless the magistrate, for good cause shown by affidavit, postpones it. The postponement shall not be for more than 10 court days, unless either of the following occur:

(a) The defendant personally waives his or her right to a continuous preliminary examination.

(b) The prosecution establishes good cause for a postponement beyond the 10-court day period. If the magistrate postpones the preliminary examination beyond the 10-court day period, the defendant shall be released pursuant to subdivision (b) of Section 859b.

The preliminary examination shall not be postponed beyond 60 days from the date the motion to postpone the examination is granted, unless by consent or on motion of the defendant.

Nothing in this section shall preclude the magistrate from interrupting the preliminary examination to conduct brief court matters so long as a substantial majority of the court's time is devoted to the preliminary examination.

SEC. 3. Section 871.5 of the Penal Code is amended to read:

871.5. When an action, or a portion thereof, is dismissed by a magistrate pursuant to Section 859b, 861, 871 or 1385, the prosecutor may make a motion in the superior court within 10 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate. Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof.

Within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney may file a written request for a transcript of the proceedings with the clerk of the magistrate.

The reporter shall immediately transcribe his or her shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with the provisions of Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immmediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon his or her demand without cost.

When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings within 10 days after the superior court has entered an order directing the reinstatement of the complaint, or a portion thereof, or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. Such review may only be sought in the event the defendant is held to answer pursuant to Section 871.

Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

SEC. 4. Section 1387 of the Penal Code is amended to read:

1387. An order terminating an action pursuant to this chapter, or Section 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony or it is a misdemeanor charged together with a felony and the action has been previously terminated pursuant to this chapter, or Section 859b, 861, 871, or 995, or if it is a misdemeanor not charged together with a felony, except in those felony cases, or those cases where a misdemeanor is charged with a felony, where subsequent to the dismissal of the felony or misdemeanor the judge or magistrate finds that substantial new evidence has been discovered by the prosecution which would not have been known through the exercise of due diligence at or prior to the time of termination of the action.

However, if the previous termination was pursuant to Section 859b, 861, 871, or 995, the subsequent order terminating an action is not a bar to prosecution if either:

(a) Good cause is shown why the preliminary examination was not held within 60 days from the date of arraignment or plea.

(b) The motion pursuant to Section 995 was granted because of (1) present insanity of the defendant or (2) a lack of counsel after the defendant elected to represent himself rather than being represented by appointed counsel.

SEC. 5. Section 859c as added to the Penal Code by Section 1.5 of this act shall become operative only if Senate Constitutional Amendment No. 10 of the 1981–82 Regular Session of the Legislature is adopted by the people.

O

Assembly Bill No. 779

CHAPTER 1111

An act to amend Sections 1170, 1203.01, 3000, and 3041.5 of, and to add Section 3058.5 to, the Penal Code, and to add Section 1180 to the Welfare and Institutions Code, relating to parole.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 779, Greene. Parole.

Existing law requires the Board of Prison Terms within 1 year of the commencement of imprisonment to recommend by motion that the sentencing court recall the sentence of the defendant and resentence him or her if the board determines on review that the sentence is disparate under specified rules and compared to sentences received by persons convicted of similar crimes.

This bill would require the board to notify specified persons of a determination that the sentence is disparate, and authorize the sentencing court to resentence the defendant within 120 days of receipt of the information.

Under existing law, after judgment has been pronounced the clerk of the court is required to send to the prison or institution where the convicted person is delivered, copies of the statements filed by the judge, district attorney, the defendant's attorney and the investigating law enforcement agency, and a copy of the transcript of the proceedings.

This bill would require the clerk to also send the charging documents and the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty.

Existing law provides that parole of an inmate imprisoned under a life sentence shall not exceed 5 years and that any other inmate's parole shall not exceed 3 years. Except for persons who have escaped from prison, any person sentenced under the determinate sentencing law may not be retained under parole supervision more than 4 years and a person initially sentenced under the indeterminate sentencing law may not be retained under parole supervision more than 7 years.

This bill would additionally provide that parole for a person convicted of first or second degree murder may not exceed 5 years. The bill would instead provide that, except for escapees, parole supervision of a prisoner subject to 3 years on parole may not exceed 4 years and for a prisoner subject to 5 years on parole, parole supervision may not exceed 7 years.

Existing law provides that if the Board of Prison Terms refuses to set a parole date for a prisoner the board shall hear the case annually

thereafter.

This bill would provide that the board shall hear each case annually thereafter except the board may schedule the next hearing no later than 3 years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

Under existing law, the Board of Prison Terms grants parole of any prisoner subject to conditions it may deem proper. The Youthful Offender Parole Board may grant parole to a person committed to a school under the control of the Department of the Youth Authority under such conditions as the board deems best.

This bill would require the Department of Corrections and the Department of the Youth Authority to make available within 10 days upon request to the chief of police or sheriff of a city or county information concerning persons then on parole who are or may be residing in the city or county.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

The people of the State of California do enact as follows:

SECTION 1. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of 16 months, two or three years; two, three, or four

years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless such convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he had committed his crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, any such sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment either party may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.5, 12022.6, or 12022.7. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the

defendant that as part of the sentence after expiration of the term he may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) (1) Within one year after the commencement of the term of imprisonment, the Board of Prison Terms shall review the sentence to determine whether the sentence is disparate in comparison with the sentences imposed in similar cases. If the Board of Prison Terms determines that the sentence is disparate, the board shall notify the judge, the district attorney, the defense attorney, the defendant, and the Judicial Council. The notification shall include a statement of the reasons for finding the sentence disparate.

Within 120 days of receipt of this information, the sentencing court shall schedule a hearing and may recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant had not been sentenced previously, provided the new sentence is no greater than the initial sentence. In resentencing under this subdivision the court shall apply the sentencing rules of the Judicial Council and shall consider the information provided by the Board of Prison Terms.

(2) The review under this section shall concern the decision to deny probation and the sentencing decisions enumerated in paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 1170.3 and apply the sentencing rules of the Judicial Council and the information regarding the sentences in this state of other persons convicted of similar crimes so as to eliminate disparity of sentences and to promote uniformity of sentencing.

(g) Prior to sentencing pursuant to this chapter, the court may request information from the Board of Prison Terms concerning the sentences in this state of other persons convicted of similar crimes under similar circumstances.

SEC. 2. Section 1203.01 of the Penal Code is amended to read:

1203.01. Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed

with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with such reports as the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause such statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he was convicted. Forthwith after the filing of such statements and reports, the clerk of the court shall mail a copy thereof, certified by such clerk, with postage thereon prepaid, addressed to the Department of Corrections at the prison or other institution to which the person convicted is delivered. Within 30 days after judgment has been pronounced, the clerk shall mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage thereon prepaid, addressed to the attorney for the defendant, if any, and to the defendant in care of the Department of Corrections, and a copy of any statement submitted by the attorney for the defendant, with postage thereon prepaid, shall be mailed to the district attorney.

SEC. 3. Section 3000 of the Penal Code is amended to read:

3000. The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section. Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter:

(a) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170, or at the expiration of such term as reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the board for good cause waives parole and discharges the inmate from custody of the department.

(b) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for first or second degree murder or any offense for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the

board for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(c) The board shall consider the request of any inmate regarding the length of his parole and the conditions thereof.

(d) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward such period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his initial parole.

(e) It is not the intent of this section to diminish resources presently allocated to the Department of Corrections for parole functions.

(f) The Department of Corrections shall meet with each inmate at least 30 days prior to his good time release date, unless such release date is within 30 days of July 1, 1977, and shall provide, under guidelines specified by the Board of Prison Terms, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the Board of Prison Terms.

SEC. 4. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing or rescinding of parole dates:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact

that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner will have rights set forth in paragraphs (3) and (5) of subdivision (a) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an opportunity for review of such action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for such action and shall, within six months, set the prisoner's parole release date in accord with the provisions of Section 3041 and this section.

SEC. 5. Section 3058.5 is added to the Penal Code, to read:

3058.5. The Department of Corrections shall provide, within 10 days, upon request to the chief of police of a city or the sheriff of a county information available to the department, including photographs, concerning persons then on parole who are or may be residing or temporarily domiciled in that city or county.

SEC. 6. Section 1180 is added to the Welfare and Institutions Code, to read:

1180. The Department of the Youth Authority shall provide, within 10 days, upon request to the chief of police of a city or the sheriff of a county information available to the department, including photographs, concerning persons then on parole who are or may be residing or temporarily domiciled in that city or county.

SEC. 7. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

O

Assembly Bill No. 788

CHAPTER 1030

An act to add Chapter 3.5 (commencing with Section 13826) to Title 6 of Part 4 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 788, Martinez. Crimes.

(1) Existing law provides for an Office of Criminal Justice Planning to develop a statewide plan for the improvement of criminal justice activity, to define, develop, and correlate programs and projects, and for various related purposes.

This bill would establish the Gang Violence Suppression Program within the Office of Criminal Justice Planning to provide for financial and technical assistance for district attorneys' offices, as specified.

(2) The bill would become operative only if federal funds are made available.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.5 (commencing with Section 13826) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 3.5. GANG VIOLENCE SUPPRESSION

13826. The Legislature hereby finds and declares that violent activity by gangs is a serious and growing problem in the State of California. In enacting this chapter, the Legislature intends to support increased efforts by district attorneys' offices to prosecute the perpetrators of gang violence through organizational and operational techniques that have been proven effective in selected counties in this and other states.

13826.1. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for district attorneys' offices, designated the Gang Violence Suppression Program. All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to counties in which gang violence suppression units are established in substantial compliance with the policies and criteria

set forth in this chapter.

(c) The allocation and award of funds shall be made on the application of the district attorney of the county and with the approval of the board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Gang Violence Suppression Program, be made available to support the prosecution of gang-related criminal cases.

(d) On or before April 1, 1982, the executive director shall prepare and issue written program and administrative guidelines and procedures for the Gang Violence Suppression Program, consistent with this chapter. In addition to all other formal requirements that may apply to the enactment of the guidelines and procedures, a complete and final draft of the guidelines and procedures shall be submitted on or before March 1, 1982, to the chairpersons of the Criminal Justice Committee of the Assembly and the Judiciary Committee of the Senate of the California Legislature.

(e) Annually, commencing November 1, 1983, the executive director shall prepare a report to the Legislature describing in detail the operation of the statewide program and the results obtained by gang violence prosecutor units of district attorneys' offices receiving funds under this chapter and under comparable federally financed awards.

(f) Criteria for selection of district attorneys to receive gang violence suppression funding shall be developed in consultation with the Gang Violence Suppression Advisory Committee whose members shall be appointed by the Executive Director of the Office of Criminal Justice Planning.

(g) The Gang Violence Suppression Advisory Committee shall be composed of five district attorneys; three attorneys primarily engaged in the practice of juvenile criminal defense; three law enforcement officials with expertise in gang-related investigations; one member from the California Youth Authority Gang Task Force nominated by the Director of the California Youth Authority; one member of the Department of Corrections Law Enforcement Liaison Unit nominated by the Director of the Department of Corrections; and one member from the Department of Justice nominated by the Attorney General.

13826.2. Gang violence prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon cases identified under criteria set forth in Section 13826.3. Enhanced prosecution efforts shall include, but not be limited to:

(a) "Vertical" prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance in a gang-related case will perform all subsequent court appearances on that particular case through its conclusion, including the sentencing phase.

(b) Assignment of highly qualified investigators and prosecutors

to gang-related cases.

(c) Significant reduction of caseloads for investigators and prosecutors assigned to gang-related cases.

(d) Measures taken in coordination with law enforcement agencies to protect cooperating witnesses from intimidation or retribution at the hands of gang members or associates.

13826.3. (a) An individual shall be subject to gang violence prosecution efforts who is under arrest for the commission or the attempted commission of any gang-related violent crime where the individual is (1) a known member of a gang, and (2) has exhibited a prior criminal background.

(b) For purposes of this chapter, gang-related means that the suspect or victim of the crime is a known member of a gang.

(c) For purposes of this chapter, gang violence prosecution includes both criminal prosecutions and proceedings in Juvenile Court in which a petition is filed pursuant to Section 602 of the Welfare and Institutions Code.

13826.4. The Office of Criminal Justice Planning and the California Council on Criminal Justice are encouraged to utilize any federal funds that may become available for purposes of this act. This act becomes operative only if federal funds are made available for its implementation.

O

Assembly Bill No. 825

CHAPTER 208

An act to amend Section 72706.1 of the Government Code, relating to court commissioners.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 825, Wright. Court commissioners: duties.

Existing law specifies that a municipal court commissioner in Los Angeles County may conduct arraignment proceedings if so directed by the sole or presiding judge.

This bill would specify that such duties would include the issuance and signing of bench warrants.

The people of the State of California do enact as follows:

SECTION 1. Section 72706.1 of the Government Code is amended to read:

72706.1. A commissioner of the municipal court may conduct arraignment proceedings in the court if directed to perform such duties by the presiding or sole judge of the court, including the issuance and signing of bench warrants.

O

Assembly Bill No. 1016

CHAPTER 1026

An act to amend Section 872 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1016, McCarthy. Preliminary examinations.

A defendant in a criminal case is required to be given an examination preliminary to a trial. If there is sufficient cause, based upon evidence adduced at the examination, to induce a strong suspicion in the mind of a man of ordinary caution or prudence that a crime has been committed and that the defendant is the guilty person, the defendant will be held to answer the criminal complaint.

This bill would expressly authorize a finding of sufficient cause to be based upon hearsay evidence, and would permit the prosecuting attorney to file with the court a statement made under penalty of perjury of the testimony of a witness which the prosecution wishes to be introduced at the examination in lieu of the testimony of the witness. The bill would permit the defendant to call any witness for examination. The bill would have no application where the witness is a victim of a crime against his or her person or where the testimony of the witness includes eyewitness identification of a defendant or the prosecuting attorney has not filed with the court and furnished to the defendant a copy of the statement 10 or more days prior to the date set for the preliminary hearing.

The people of the State of California do enact as follows:

SECTION 1. Section 872 of the Penal Code is amended to read:

872. (a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the complaint an order, signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A.B. guilty thereof, I order that he be held to answer to the same."

(b) The finding of sufficient cause may be based in whole or in part upon hearsay evidence in the form of written statements of witnesses in lieu of testimony. At the time the defendant appears before the magistrate for arraignment, the prosecuting attorney may file with the court, and furnish a copy to the defendant, a statement

made under penalty of perjury of the testimony of any witness which the prosecution wishes to introduce into evidence at the examination in lieu of the testimony of the witness. The statement shall be considered as evidence in the examination. This subdivision shall not apply if the witness is a victim of a crime against his or her person, or the testimony of the witness includes eyewitness identification of a defendant, or the prosecuting attorney has not filed with the court and furnished a copy to the defendant the statement of the testimony of the witness at the time of the arraignment or at least 10 court days prior to the date set for the preliminary hearing. For the purposes of this section an "eyewitness" is any person who sees the perpetrator during the commission of the crime charged, whether or not he or she can identify the perpetrator.

(c) Nothing in this section shall limit the right of the defendant to call any witness for examination at the preliminary hearing. If the witness called by the defendant is one whose statement of testimony was offered by the prosecuting attorney as provided in subdivision (b), the defendant shall have the right to cross-examine the witness as to all matters asserted in the statement. If the defendant makes reasonable efforts to secure the attendance of the witness but is unsuccessful in securing his or her attendance, the court shall grant a short continuance at the request of the defendant and shall require the prosecuting attorney to present the witness for cross-examination. If the prosecuting attorney fails to present the witness for cross-examination, the statement of the testimony of the witness shall not be considered as evidence in the examination.

o

Assembly Bill No. 1025

CHAPTER 483

An act to amend Section 3042 of the Penal Code, relating to parole hearings.

[Approved by Governor September 15, 1981. Filed with Secretary of State September 16, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1025, Thurman. Notice of parole hearings.

Existing law requires the Board of Prison Terms to send to specified persons written notice of a hearing to consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence.

This bill would provide that where the prisoner who is the subject of a parole suitability hearing was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder is also to receive written notice of the parole hearing from the Board of Prison Terms.

This bill would incorporate additional changes in Section 3042 of the Penal Code proposed by SB 39, to become operative if SB 39 and this bill are both chaptered and become effective on or before January 1, 1982, and this bill is chaptered after SB 39.

The people of the State of California do enact as follows:

Operative Section

SECTION 1. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state

findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

Not operative section

SEC. 2. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder. In the case of a prisoner sentenced to a life sentence for first degree murder, the board shall also send written notice to the next of kin of the person murdered where a request for such notice has been filed with the Board of Prison Terms by the next of kin. The burden shall be on the requesting party to keep the board apprised of the party's current mailing address.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

SEC. 3. It is the intent of the Legislature, if this bill and Senate Bill 39 are both chaptered and become effective January 1, 1982, both bills amend Section 3042 of the Penal Code, and this bill is chaptered after Senate Bill 39, that the amendments to Section 3042 proposed by both bills be given effect and incorporated in Section 3042 in the

form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Senate Bill 39 are both chaptered and become effective January 1, 1982, both amend Section 3042, and this bill is chaptered after Senate Bill 39, in which case Section 1 of this act shall not become operative.

O

Assembly Bill No. 1027

CHAPTER 1084

An act to amend, repeal, and add Sections 13961.1 and 13965 of the Government Code, and to repeal Section 6 of Chapter 1370 of the Statutes of 1980, relating to victims of crimes.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, Levine. Victims of crimes.

Existing law establishes an emergency award procedure for victims of crime who incur loss of income or support and includes on the application for this type of assistance, a listing of creditors by name, address, and amount of debt, of whom an applicant wishes the Board of Control to request forebearance of collections. Existing law also provides that the emergency award procedure shall be repealed as of December 31, 1981, unless a later enacted statute extends that date.

This bill would repeal the listing of creditors provision until January 1, 1985, and would repeal the termination date for the emergency award procedure.

Existing law authorizes specified increases in the amounts of assistance to victims, depending upon the availability of federal funds.

This bill would make technical changes in this provision of law until January 1, 1985.

The people of the State of California do enact as follows:

SECTION 1. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim of a crime of violence if, as a result of the crime, the victim incurs loss of his or her income or support.

(b) Emergency award application forms shall be provided by the State Board of Control upon request of the applicant. The board shall make available such application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim. Disbursements of emergency awards funds shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant

emergency awards.

(d) If the applicant does not complete the application for a grant or, if, upon final disposition of the victim's claim under this article, it is found that the victim is not eligible for assistance from the board, the victim shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon final disposition of the victim's application, the board grants assistance to the claimant, the amount of the emergency award shall be deducted from the final award of compensation granted to the victim; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's application for assistance, before any appellate action is instituted.

(e) The amount of the emergency award shall be dependent upon the immediate needs of the victim, as evidenced by the victim's loss of income or support and losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed one thousand dollars ($1,000).

(f) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of such agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) A statement that in the event the victim is denied assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(7) The applicant's signature and a statement that the victim was a resident of the state on the date of the crime and that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(8) The board shall report to the Legislature in 1984 on the advances which became uncollectable in 1982 and 1983.

This section shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

SEC. 2. Section 13961.1 is added to the Government Code, to read:

13961.1. (a) An emergency award shall be available for a victim

of a crime of violence if, as a result of the crime, the victim incurs loss of his or her income or support.

(b) Emergency award application forms shall be provided by the State Board of Control upon request of the applicant. The board shall make available such application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim. Disbursements of emergency awards funds shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant emergency awards.

(d) If the applicant does not complete the application for a grant or, if, upon final disposition of the victim's claim under this article, it is found that the victim is not eligible for assistance from the board, the victim shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon final disposition of the victim's application, the board grants assistance to the claimant, the amount of the emergency award shall be deducted from the final award of compensation granted to the victim; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's application for assistance, before any appellate action is instituted.

(e) The amount of the emergency award shall be dependent upon the immediate needs of the victim, as evidenced by the victim's loss of income or support and losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed one thousand dollars ($1,000).

(f) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of such agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) A listing of creditors by name, address, and amount of debts, of whom applicant wishes the board to request forbearance of

collections.

(7) A statement that in the event the victim is denied assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(8) The applicant's signature and a statement that the victim was a resident of the state on the date of the crime and that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

SEC. 3. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical-related expenses directly resulting from the injury but not to exceed ten thousand dollars ($10,000);

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury, but not to exceed ten thousand dollars ($10,000);

(3) Authorize cash payments not to exceed three thousand dollars ($3,000) to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in paragraphs (1), (2), and (3) of subdivision (a).

(c) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(d) The maximum cash payments authorized in paragraphs (1) and (2) of subdivision (a) shall be increased to twenty thousand dollars ($20,000) and the attorney's fees authorized in subdivision (c) of this section shall be increased to one thousand dollars ($1,000), if federal funds for such increases are available.

This section shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

SEC. 4. Section 13965 is added to the Government Code, to read:

13965. (a) If the application for assistance is approved, the board

shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical-related expenses directly resulting from the injury but not to exceed ten thousand dollars ($10,000);

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury, but not to exceed ten thousand dollars ($10,000);

(3) Authorize cash payments not to exceed three thousand dollars ($3,000) to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in paragraphs (1), (2), and (3) of subdivision (a).

(c) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(d) The maximum cash payments authorized in paragraphs (1) and (2) of subdivision (a) shall be increased to twenty thousand dollars ($20,000) and the attorney's fees authorized in subdivision (c) of this section shall be increased to five thousand dollars ($5,000) and one thousand dollars ($1,000), respectively, if federal funds for such increases are available.

SEC. 5. Section 2 and 4 of this act shall become operative on January 1, 1985.

SEC. 6. Section 6 of Chapter 1370 of the Statutes of 1980 is repealed.

o

Assembly Bill No. 1091

CHAPTER 1009

An act to add Section 647d to the Penal Code, relating to disorderly conduct.

[Became law without Governor's signature. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1091, Costa. Disorderly conduct.

Under existing law a person found in any public place under the influence of intoxicating liquor, any drug, or a designated substance, or a combination thereof, as specified, or who because of being under the influence of any such liquor, drug, or substance interferes with or obstructs or prevents the free use of a public way, is guilty of disorderly conduct.

This bill would provide that if such a person has been previously convicted of such conduct he or she shall be imprisoned in the county jail for not less than 90 days, but would authorize probation or suspension of the sentence upon the condition that he or she spend 60 days in an alcohol recovery program, as specified. The provisions of the bill would be operative in a county only if the board of supervisors adopts an ordinance to that effect.

The people of the State of California do enact as follows:

SECTION 1. Section 647d is added to the Penal Code, to read:

647d. (a) Notwithstanding any other provision of law, subdivision (b) shall become operative in a county only if the board of supervisors adopts the provisions of subdivision (b) by ordinance after a finding that sufficient alcohol treatment and recovery facilities exist or will exist to accommodate the persons described in that subdivision.

(b) In any accusatory pleading charging a violation of subdivision (f) of Section 647, if the defendant has been previously convicted two or more times of a violation of subdivision (f) of Section 647 within the previous 12 months, each such previous conviction shall be charged in the accusatory pleading. If two or more of the previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in the county jail for a period of not less than 90 days. The trial court may grant probation or suspend the execution of sentence imposed upon the defendant if the court, as a condition of the probation or suspension, orders the defendant to spend 60 days in an alcohol treatment and recovery program in a facility which, as a minimum, meets the standards described in the

guidelines for alcoholic recovery home programs issued by the Division of Alcohol Programs of the Department of Alcohol and Drug Abuse.

(c) The provisions of Section 4019 shall apply to the conditional attendance of an alcohol treatment and recovery program described in subdivision (b).

O

Assembly Bill No. 1131

CHAPTER 351

An act to add and repeal Chapter 6.5 (commencing with Section 1112) of Part 3 of Division 2 of the Labor Code, relating to peace officers' employment.

[Approved by Governor September 8, 1981. Filed with Secretary of State September 9, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, Bates. Peace officers' employment.

Existing law does not prohibit public entities from permitting their peace officers to be employed by private employers as security guards during, and at the site of, a strike, lockout, picketing, or other physical demonstration of a labor dispute which occurs in the jurisdiction in which the peace officer is regularly employed.

This bill would so prohibit, would specify that the prohibition also applies when a peace officer is on loan from one jurisdiction to another with regard to both jurisdictions, and would declare the intent of the Legislature in this regard.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1988, the provisions contained in the bill for which state reimbursement is required.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.5 (commencing with Section 1112) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 6.5. PEACE OFFICERS

1112. No public entity shall permit any of its peace officers, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to be employed by any private employer

as a security guard during a strike, lockout, picketing, or other physical demonstration of a labor dispute at the site of the strike, lockout, picketing, or other physical demonstration of a labor dispute which occurs in the jurisdiction in which the peace officer is regularly employed. When a peace officer is on loan from one jurisdiction to another, the prohibition of this section applies to any strike, lockout, picketing, or other physical demonstration of a labor dispute which occurs in the jurisdiction in which the peace officer is regularly employed and the jurisdiction to which the peace officer is loaned.

1113. This chapter shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 2. It is the intent of the Legislature in enacting this bill to ensure the neutrality of peace officers during labor disputes. Since on duty peace officers may be reluctant, or be accused of being reluctant, to intervene in any situation where a fellow peace officer is employed while off duty as a security guard for one party to a labor dispute, the Legislature finds that it is a matter of statewide concern that peace officers be prohibited from employment as security guards during labor disputes.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

O

Assembly Bill No. 1151

CHAPTER 849

An act to amend Section 261 of the Penal Code, relating to crimes.

[Approved by Governor September 26, 1981. Filed with Secretary of State September 26, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1151, Levine. Rape.

Existing statutory law does not define rape as an act of sexual intercourse accomplished with a person not the spouse of the perpetrator where the perpetrator causes submission of the victim by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat.

This bill would so provide.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 261 of the Penal Code is amended to read:

261. Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.

(2) Where it is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating, narcotic, or anaesthetic substance, administered by or with the privity of the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused.

(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused,

with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1148

CHAPTER 447

An act to amend Section 742 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 11, 1981. Filed with Secretary of State September 12, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1148, McAlister. Juvenile court law.

An existing provision of the juvenile court law requires the probation officer to inform the victim of a crime of the final disposition of the case, upon request, as defined.

This bill would make a clarifying change in the definition of the term "final disposition" and would specify that details of an order for restitution, as specified, shall be included in the information so provided.

The people of the State of California do enact as follows:

SECTION 1. Section 742 of the Welfare and Institutions Code is amended to read:

742. Upon the request of an alleged victim of a crime, the probation officer shall, within 60 days of the final disposition of a case within which a petition has been filed pursuant to Section 602, inform that person by letter of the final disposition of the case. "Final disposition" means dismissal, acquittal, or findings made pursuant to this article. If the court orders that restitution shall be made to the victim of a crime, the amount, terms, and conditions thereof shall be included in the information provided pursuant to this section.

O

Assembly Bill No. 1161

CHAPTER 1142

An act to amend Section 131.7 of the Code of Civil Procedure, to amend Sections 1029, 20021.8, and 31469.4 of the Government Code, to amend Sections 830.5 and 1203b of, and to add Sections 1202.7 and 1202.8 to, the Penal Code, and to amend Section 777 of the Welfare and Institutions Code, relating to probation.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, Moore. Probation.

Under existing law, the county probation officer has discretionary authority whether to notify the presiding judge of the superior court when the available staff and financial resources are insufficient to meet his or her statutory or court-ordered responsibilities.

This bill would require the county probation officer to notify the presiding judge and also the board of supervisors.

Existing law does not authorize a person who has been convicted of a felony, or an offense in another state which would have been a felony in this state, to be a probation officer in a county probation department.

This bill would do so, if the person has been granted a full and unconditional pardon as to the felony or the other offense.

Existing law provides that, among other persons, any superintendent, supervisor, or employee having custody of wards in an institution operated by a probation department is a peace officer whose authority extends to any place in the state.

This bill would extend peace officer status to any persons having custodial responsibilities of adults in institutions operated by a probation department. It also would specify that specified persons employed as peace officers are included within the term "county peace officer" for the purposes of the Public Employees' Retirement System.

This bill would specify a legislative finding and declaration that the safety of the public, the nature of the offense, the interests of justice, the loss to the victim, and the needs of the defendant are primary considerations in the grant of probation.

Existing law provides that persons placed on probation shall be under the supervision of the probation officer, except that in misdemeanor and infraction cases persons granted probation summarily are required to report only to the court and the probation officer is not responsible for supervision in those cases.

This bill would delete the reference to summary probation in misdemeanor and infraction cases and, instead, would authorize a

court, in those cases, to grant conditional and revocable release in the community without supervision of the probation officer.

Existing law does not authorize a supplemental petition, for purposes of removing a minor from the physical custody of a parent, guardian, relative, or friend, to be filed on behalf of a minor on probation who is not also a ward of the court.

This bill would do so.

It also would make further changes in Section 777 of the Welfare and Institutions Code contingent upon the enactment and prior chaptering of SB 262.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 131.7 of the Code of Civil Procedure is amended to read:

131.7. Upon a determination that, in his or her opinion, staff and financial resources available to him or her are insufficient to meet his or her statutory or court-ordered responsibilities, the probation officer shall immediately notify the presiding judge of the superior court and the board of supervisors of the county, or city and county, in writing. The notification shall explain which responsibilities cannot be met and what resources are necessary in order that statutory or court-ordered responsibilities can be properly discharged.

SEC. 2. Section 1029 of the Government Code is amended to read:

1029. (a) Except as provided in subdivision (b), any person who has been convicted of a felony in this state or any other state, or who has been convicted of any offense in any other state which would have been a felony if committed in this state, is disqualified from holding office or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer.

(b) Any person who has been convicted of a felony, other than a felony punishable by death, in this state or any other state, or who

has been convicted of any offense in any other state which would have been a felony, other than a felony punishable by death, if committed in this state, and who demonstrates the ability to assist persons in programs of rehabilitation may hold office and be employed as a parole officer of the Department of Corrections or the Department of the Youth Authority, or as a probation officer in a county probation department, if he or she has been granted a full and unconditional pardon for the felony or offense of which he or she was convicted. Notwithstanding any other provision of law, the Department of Corrections or the Department of the Youth Authority, or a county probation department, may refuse to employ any such person regardless of his or her qualifications.

(c) Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense.

SEC. 3. Section 20021.8 of the Government Code is amended to read:

20021.8. "County peace officer" shall also include probation officers, deputy and assistant probation officers, and persons employed in a juvenile hall or home and having as their primary duty and responsibility the counseling, supervision and custody of a group of youths assigned or committed to the hall or home. It shall also include persons employed as peace officers pursuant to Section 830.5 of the Penal Code, regardless of the administrative title of the position. It shall not include persons employed as teachers, instructors, psychologists, or to provide food, maintenance, health or other supporting services even though responsibility for custody and control of youths may be incident to or imposed in connection with such service.

The provisions of this section shall not apply to the employees of any contracting agency nor to any such agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20461.5 or by express provision in its contract with the board.

SEC. 4. Section 31469.4 of the Government Code is amended to read:

31469.4. "Safety member" means persons employed as probation officers, juvenile hall or juvenile home group counselors, and group supervisors who are primarily engaged in the control and custody of delinquent youths who must be detained under physical security in order not to be harmful to themselves or others.

The provisions of this section shall not be applicable in any county until the board of supervisors by resolution make the provisions

applicable.

SEC. 5. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Such peace officer may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency:

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, or deputy probation officer. Except as otherwise provided in this subdivision, the authority of such parole or probation officer shall extend only (1) to conditions of parole or of probation by any person in this state on parole or probation; (2) to the escape of any inmate or ward from a state or local institution; (3) to the transportation of such persons; and (4) to violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Department of the Youth Authority or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

SEC. 6. Section 1202.7 is added to the Penal Code, to read:

1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, the nature of the offense, the interests of justice, the loss to the victim, and the needs of the defendant shall be primary considerations in the granting of probation.

SEC. 6.5. Section 1202.8 is added to the Penal Code, to read:

1202.8. Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine the level of supervision.

SEC. 7. Section 1203b of the Penal Code is amended to read:

1203b. All courts shall have power to suspend sentence and grant conditional and revocable release in the community in misdemeanor and infraction cases without referring such cases to the probation officer; provided, however, that unless otherwise ordered by the court, persons granted conditional and revocable release in the

community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons.

SEC. 8. Section 777 of the Welfare and Institutions Code is amended to read:

777. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer, where a minor has been declared a ward of the court or a probationer under Section 601, and by the prosecuting attorney, at the request of the probation officer, where a minor has been declared a ward or probationer under Section 602, in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(b) Notwithstanding the provisions of subdivision (a), if the petition alleges a violation of a condition of probation and is for the commitment of a minor to a county juvenile institution for a period of 15 days or less, it is not necessary to allege and prove that the previous disposition has not been effective in the rehabilitation or protection of the minor. In order to make such a commitment the court must, however, find that such commitment is in the best interest of the minor. The provisions of this subdivision may not be utilized more than twice during the time the minor is a ward of the court.

(c) Upon the filing of such supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 658 and 660.

(d) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of this chapter.

SEC. 9. Section 777 of the Welfare and Institutions Code is amended to read:

777. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer, where a minor has been declared a ward of the court or a probationer under Section 601, and by the prosecuting attorney at the request of the probation officer where a minor has been declared a ward or probationer under Section 602, in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(b) Notwithstanding the provisions of subdivision (a), if the petition alleges a violation of a condition of probation and is for the commitment of a minor to a county juvenile institution for a period of 15 days or less, it is not necessary to allege and prove that the previous disposition has not been effective in the rehabilitation or protection of the minor. In order to make such a commitment the court must, however, find that the commitment is in the best interest of the minor. The provisions of this subdivision may not be utilized more than twice during the time the minor is a ward of the court.

(c) Upon the filing of a supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice of it to be served upon the persons and in the manner prescribed by Sections 658 and 660.

(d) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of this chapter.

(e) The filing of a supplemental petition and the hearing thereon shall not be required for the commitment of a minor to a county institution for a period of 30 days or less pursuant to an original or a previous order imposing a specified time in custody and staying the enforcement of the order subject to subsequent violation of a condition or conditions of probation, provided that in order to make the commitment, the court finds at a hearing that the minor has violated a condition of probation.

SEC. 10. It is the intent of the Legislature, if this bill and Senate Bill 262 are both chaptered and become effective January 1, 1982, both bills amend Section 777 of the Welfare and Institutions Code, and this bill is chaptered after Senate Bill 262, that the amendments to Section 777 proposed by both bills be given effect and incorporated in Section 777 in the form set forth in Section 9 of this act. Therefore, Section 9 of this act shall become operative only if this bill and Senate Bill 262 are both chaptered and become effective January 1, 1982, both amend Section 777, and this bill is chaptered after Senate Bill 262, in which case Section 8 of this act shall not become operative.

SEC. 11. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and

Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

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Assembly Bill No. 1190

CHAPTER 332

An act to add and repeal Section 656.2 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 6, 1981. Filed with Secretary of State September 8, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1190, Katz. Juvenile court law.

Under existing law, a proceeding in the juvenile court to declare a minor a ward of the court on the basis of criminal conduct is commenced by the filing of a petition by the prosecuting attorney. If a minor is found to be a person who comes within the jurisdiction of the court on the basis of criminal conduct the court is required to hear evidence on the proper disposition to be made of the minor, including receiving in evidence the social study of the minor made by the probation officer.

This bill would require the probation officer to obtain a statement from the victim concerning the offense which would be required to be included in the social study, in cases where a minor is alleged to have committed an act which would have been a felony if committed by an adult.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

In compliance with Section 2231.5 of the Revenue and Taxation Code, this bill would also repeal, 6 years after their effective date, the provisions contained in the bill for which state reimbursement is required.

The people of the State of California do enact as follows:

SECTION 1. Section 656.2 is added to the Welfare and Institutions Code, to read:

656.2. In any case in which a minor is alleged to have committed an act which would have been a felony if committed by an adult, the

probation officer shall obtain a statement from the victim concerning the offense which shall be included in the social study made by the probation officer and submitted to the court pursuant to Section 706.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. This act shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

O

Assembly Bill No. 1207

CHAPTER 349

An act to amend Section 602 of the Penal Code, relating to trespass.

[Approved by Governor September 8, 1981. Filed with Secretary of State September 9, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1207, Kelley. Trespass.

Existing law provides that any person who willfully commits a trespass by any of specified acts is guilty of a misdemeanor.

This bill would add to those acts refusing or failing to leave a hotel or motel, where the person has obtained accommodations, and has refused to pay for the accommodations upon request of the proprietor or manager.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on such lands.

(c) Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an

automobile association, which sign, signboard or notice is intended to indicate or designate a road or roads, or a highway or highways, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering such lands, without first having obtained written permission from the owner of such lands or his agent, or the person in lawful possession thereof.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering such lands without the written permission of the owner of such land, his agent or of the person in lawful possession, and

(1) Refusing or failing to leave such lands immediately upon being requested by the owner of such land, his agent or by the person in lawful possession to leave such lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on such lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into such lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, his agent, or the person in lawful possession thereof.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, his agent, or the person in lawful possession thereof.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer and the owner, his agent, or the person in lawful possession thereof, or (2) the owner, his agent, or the person in lawful possession thereof; provided, however, that clause (2) of this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code; provided, such closed areas shall have been posted with notices declaring such closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through such lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating such closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1246

CHAPTER 978

An act to add and repeal Section 40304.5 of the Vehicle Code, relating to traffic infraction warrants.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1246, M. Waters. Vehicles: parking and traffic infractions: procedure on arrest.

Under existing law, when a person is taken into custody for bail to be collected on an outstanding warrant for failure to appear on a citation for a parking offense or a traffic infraction, the person may be booked in jail, photographed, fingerprinted, and searched.

This bill would prohibit a person with 4 or fewer outstanding warrants taken into custody under those circumstances from being booked, photographed, or fingerprinted, or an arrest record from being made, when the amount of bail required to be paid on such warrant may be ascertained on the face of the warrant or a bail schedule, unless the person is first given the opportunity to post bail or to arrange to post bail, as specified.

The provisions would be repealed on January 1, 1984, unless a later enacted statute extends or deletes that date.

The people of the State of California do enact as follows:

SECTION 1. Section 40304.5 is added to the Vehicle Code, to read:

40304.5. Notwithstanding any other provision of law, whenever any person is taken into custody for bail to be collected on four or fewer outstanding warrants for failure to appear on a citation for a parking offense or a traffic infraction, he shall be provided the opportunity immediately to post bail, and he shall not be booked, photographed, or fingerprinted, nor shall an arrest record be made, when the amount of bail required to be paid on the warrant may be ascertained by reference to the face thereof or to a fixed schedule of bail, unless and until all of the following requirements have been exhausted:

(a) If the person has sufficient cash in his possession, he shall be given the opportunity immediately to post bail with the person in charge of the jail or his designee.

(b) If the person does not have sufficient cash in his possession, he shall be informed of his right and given the opportunity to all of the following:

(1) Make not less than three completed telephone calls to obtain

bail.

(2) Have not more than fifty cents ($0.50) of change advanced against bail, or have his own funds changed, in order to operate a pay telephone.

(3) Have not less than two hours in which to arrange for the deposit of bail.

This section shall remain in effect only until January 1, 1984, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends that date.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

O

Assembly Bill No. 1265

CHAPTER 1022

An act to amend Sections 32050 and 32051 of, to amend, repeal, and add Section 32052 to, and to add and repeal Section 32053 of, the Education Code, relating to schools.

[Approved by Governor September 30, 1981. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1265, Cramer. Schools: student hazing.

(1) Existing law prohibits any student, or any other person in attendance at any public, private, parochial, or military school, community college, college or other educational institution from conspiring to engage in, or from participating in the hazing of any student or other person, as defined. Existing law specifies that a violation of the hazing provisions of law shall constitute a misdemeanor and specifies the allowable fines and imprisonment, or both.

Existing law authorizes the governing board of any public school, public college, public university or other public educational institution or agency to adopt necessary rules and regulations to implement these provisions.

This bill would extend the definition of hazing to include any method of initiation or preinitiation which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm to any student or other person in attendance of specified educational institutions.

This bill would increase the maximum fine for a violation of these provisions to $5,000 and would increase the maximum imprisonment term to not more than 1 year in the county jail.

Existing law authorizes the governing board of any public school or any other public educational institution or agency to adopt implementing rules and regulations.

This bill would require the governing board of any public college or university on or after January 1, 1988, to adopt necessary rules and regulations, and would require that these rules and regulations be published in all campus general catalogs.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act

for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

(3) This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1994, the provisions contained in the bill for which state reimbursement is required.

The people of the State of California do enact as follows:

SECTION 1. Section 32050 of the Education Code is amended to read:

32050. As used in this article, "hazing" includes any method of initiation or preinitiation into a student organization or any pastime or amusement engaged in with respect to such an organization which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any student or other person attending any school, community college, college, university or other educational institution in this state; but the term "hazing" does not include customary athletic events or other similar contests or competitions.

SEC. 2. Section 32051 of the Education Code is amended to read:

32051. No student, or other person in attendance at any public, private, parochial, or military school, community college, college, or other educational institution, shall conspire to engage in hazing, participate in hazing, or commit any act that causes or is likely to cause bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm to any fellow student or person attending the institution.

The violation of this section is a misdemeanor, punishable by a fine of not less than fifty dollars ($50), nor more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than one year, or both.

SEC. 3. Section 32052 of the Education Code is amended to read:

32052. Any person who participates in the hazing of another, or any corporation or association which knowingly permits hazing to be conducted by its members or by others subject to its direction or control, shall forfeit any entitlement to public funds, scholarships or awards which are enjoyed by him, by her, or by it and shall be deprived of any sanction or approval granted by any public educational institution or agency.

If the Attorney General or the district attorney of any county or city and county has reason to believe that a forfeiture should be declared under this section, he or she may institute a special proceeding in the superior court to establish such forfeiture. Any funds so forfeited shall be deposited in the State Treasury and credited to the State School Fund.

This section shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 4. Section 32052 is added to the Education Code, to read:

32052. Any person who participates in the hazing of another, or any corporation or association which knowingly permits hazing to be conducted by its members or by others subject to its direction or control, shall forfeit any entitlement to state funds, scholarships or awards which are enjoyed by him, by her, or by it and shall be deprived of any sanction or approval granted by any public educational institution or agency.

The governing board of any public school, public college, public university or other public educational institution or agency shall adopt rules and regulations to implement this section.

If the Attorney General or the district attorney of any county or city and county has reason to believe that a forfeiture should be declared under this section, he or she may institute a special proceeding in the superior court to establish such forfeiture. Any funds so forfeited shall be deposited in the State Treasury and credited to the State School Fund.

Notice of the existence of these provisions of law and implementing institutional regulations prohibiting hazing, together with the campus location where verbatim copies can be obtained, shall be published in all campus general catalogs.

This section shall become operative January 1, 1988, and shall remain in effect only until January 1, 1994, and as of that date is repealed unless a later enacted statute, which is chaptered on or before January 1, 1994, extends or deletes that date.

SEC. 5. Section 32053 is added to the Education Code, to read:

32053. The governing board of any public school or any other public educational institution or agency may adopt rules and regulations to implement this article.

This section shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 6. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

O

Assembly Bill No. 1284

CHAPTER 328

An act to add Section 466.8 to the Penal Code, relating to the making of keys for residences.

[Approved by Governor September 3, 1981. Filed with Secretary of State September 3, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1284, Rogers. Making of keys for residences.

Under existing law, any person who makes a key capable of operating the ignition of a motor vehicle for another by any method other than by the duplication of any existing key is required to obtain and set forth on a work order, a copy of which must be retained for inspection by peace officers, specified information regarding the person requesting or purchasing the key. Failure to do so is a misdemeanor.

This bill would similarly require any person who knowingly and willfully makes a key capable of opening any door or other means of entrance to any residence for another by any method involving an onsite inspection of such door or entrance to obtain on a work order form, a copy of which must be retained for inspection by peace officers, specified information, including information regarding the person requesting or purchasing the key. Failure to do so would be a misdemeanor.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 466.8 is added to the Penal Code, to read:

466.8. (a) Any person who knowingly and willfully makes a key capable of opening any door or other means of entrance to any residence for another by any method involving an onsite inspection of such door or entrance, whether or not for compensation, shall obtain, together with the date the key was made, the street address of the residence, and the signature of the person for whom the key was made, on a work order form, the following information regarding the person requesting or purchasing the key:

(1) Name.
(2) Address.
(3) Telephone number, if any.
(4) Date of birth.
(5) Driver's license number or identification number, if any.

A copy of each such work order shall be retained for one year and shall be open to inspection by any peace officer during business hours.

Any person who violates any provision of this subdivision is guilty of a misdemeanor.

(b) Nothing contained in this section shall be construed to prohibit the duplication of any key for a residence from another such key.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1297

CHAPTER 1153

An act to amend Section 6036 of, and to amend and repeal Section 1464 of, the Penal Code, relating to local officers, and making an appropriation therefor.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, Levine. Corrections and probation officers: training.

(1) Existing law authorizes the Board of Corrections, among other things, to develop and operate a professional certificate program for local corrections and probation officers.

This bill would authorize the board to develop and present training courses for those officers.

(2) Under existing law, certain penalty assessments are imposed on fines, penalties, and bail forfeitures for certain traffic offenses. On July 1, 1982, the percentage allocation to the Driver Training Penalty Assessment Fund will be increased and the percentage allocation to the Corrections Training Fund will be deleted. Moneys in these funds are continuously appropriated.

This bill would extend the date of that change to January 1, 1983.

The bill would require an amount equivalent to the funds deposited to the Corrections Training Fund during the period July 1, 1980, to December 31, 1980, to be transferred from that fund to the Assessment Fund, except as specified.

This bill would incorporate changes to Section 1464 of the Penal Code proposed by AB 189 and SB 210 contingent upon their respective enactment.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall

remain in effect only until January 1, 1983, and as of that date is repealed.

SEC. 2. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the

provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1983.

Not operative Section

SEC. 3. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment

levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

Not operative section

SEC. 4. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this

section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1983, and shall remain in effect only until January 1, 1986, and as of that date is repealed.

Not operative section

SEC. 4.5. Section 1464 is added to the Penal Code, to read:

1464. There shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.

Where multiple offenses are involved, the assessment shall be

based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1986.

Not operative section

SEC. 5. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for

every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the

Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

Not operative section

SEC. 6. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which

would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1983.

Not operative section

SEC. 7. Section 1464 of the Penal Code, as amended by Section 7 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section

1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver

Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1982, shall remain in effect only until January 1, 1983, and as of that date is repealed.

NOT operative Section

SEC. 8. Section 1464 of the Penal Code, as amended by Section 8 of Chapter 166 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines

collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1983, and shall remain in effect only until January 1, 1986, and as of that date is repealed.

Not operative section

SEC. 9. Section 1464 of the Penal Code, as added by Section 3 of Senate Bill 210, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in

proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on January 1, 1986.

SEC. 10. An amount equivalent to the funds deposited to the Corrections Training Fund during the period July 1, 1980, to December 31, 1980, shall be herewith transferred from the Corrections Training Fund to the Assessment Fund. In the event that

Assembly Bill 985 is chaptered, the sum of four hundred ninety-five thousand dollars ($495,000) appropriated by that bill shall be subtracted from the funds herewith transferred from the Corrections Training Fund to the Assessment Fund.

SEC. 11. Section 6036 of the Penal Code is amended to read:

6036. For purposes of implementing this article, the board shall have the following powers:

(a) Approve or certify, or both, training and education courses at institutions approved by the board.

(b) Make such inquiries as may be necessary to determine whether every city, county, and city and county receiving state aid pursuant to this chapter is adhering to the standards for selection and training established pursuant to this chapter.

(c) Develop and operate a professional certificate program which provides recognition of achievement for local corrections and probation officers whose agencies participate in the program.

(d) Adopt such regulations as are necessary to carry out the purposes of this chapter.

(e) Develop and present training courses for local corrections and probation officers.

(f) Perform such other activities and studies as would carry out the intent of this article.

SEC. 12. It is the intent of the Legislature, if this bill and Senate Bill 210 are both chaptered and become effective on or before January 1, 1982, both bills amend Section 1464 of the Penal Code, and this bill is chaptered after Senate Bill 210, but Assembly Bill 189 is not chaptered, that the amendments to Section 1464 proposed by both bills be given effect and incorporated in Section 1464 in the form set forth in Sections 3, 4, and 4.5 of this act. Therefore, Sections 3, 4, and 4.5 of this act shall become operative only if, this bill and Senate Bill 210 are both chaptered and become effective on or before January 1, 1982, both amend Section 1464, and this bill is chaptered after Senate Bill 210, but Assembly Bill 189 is not chaptered, in which case Sections 1, 2, 5, 6, 7, 8, and 9 of this act shall not become operative.

SEC. 13. It is the intent of the Legislature, if this bill and Assembly Bill 189 are both chaptered and become effective on or before January 1, 1982, both bills amend Section 1464 of the Penal Code, and this bill is chaptered after Assembly Bill 189, but Senate Bill 210 is not chaptered, that the amendments to Section 1464 proposed by both bills be given effect and incorporated in Section 1464 in the form set forth in Sections 5 and 6 of this act. Therefore, Sections 5 and 6 of this act shall become operative only if this bill and Assembly Bill 189 are both chaptered and become effective on or before January 1, 1982, both amend Section 1464, and this bill is chaptered after Assembly Bill 189, but Senate Bill 210 is not chaptered, in which case Sections 1, 2, 3, 4, 4.5, 7, 8, and 9 of this act shall not become operative.

SEC. 14. It is the intent of the Legislature, if this bill, Assembly

Bill 189, and Senate Bill 210 are all chaptered and become effective on or before January 1, 1982, all bills amend Section 1464 of the Penal Code, and this bill is chaptered after Assembly Bill 189 and Senate Bill 210, that the amendments to Section 1464 proposed by all bills be given effect and incorporated in Section 1464 in the form set forth in Sections 7, 8, and 9 of this act. Therefore, Sections 7, 8, and 9 of this act shall become operative only if, this bill, Assembly Bill 189, and Senate Bill 210 are all chaptered and become effective on or before January 1, 1982, all amend Section 1464, and this bill is chaptered after Assembly Bill 189 and Senate Bill 210, in which case Sections 1, 2, 3, 4, 4.5, 5, and 6 of this act shall not become operative.

o

Assembly Bill No. 1303

CHAPTER 205

An act to add Section 824 to the Penal Code, relating to juvenile court law.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1303, Moore. Juvenile court law.

Existing law provides that when a minor willfully misrepresents himself or herself to be 18 years or older when taken into custody by a peace officer or probation officer, and the misrepresentation causes delay in the filing of a detention petition or criminal complaint against the minor within 48 hours, the petition or criminal complaint shall be filed within 48 hours from the time the true age is determined or the minor shall be released from custody.

Existing law provides for release of a minor from custody unless a complaint or petition is filed within 48 hours.

Existing law requires bringing an adult defendant before a magistrate within 2 days, except as specified, and makes various provisions relative to the making of complaints in proceedings before a magistrate.

This bill would provide for the filing of a complaint within 48 hours of the time the true age is determined in the case of an adult who willfully misrepresents himself or herself to be a minor under 18 years of age when taken into custody.

The people of the State of California do enact as follows:

SECTION 1. Section 824 is added to the Penal Code, to read:

824. When an adult willfully misrepresents himself or herself to be a minor under 18 years of age when taken into custody and this misrepresentation effects a material delay in investigation which prevents the filing of a criminal complaint against him or her in a court of competent jurisdiction within 48 hours, the complaint shall be filed within 48 hours from the time the true age is determined, excluding nonjudicial days.

O

Assembly Bill No. 1401

CHAPTER 645

An act to add Section 1767.1 to the Welfare and Institutions Code, relating to crime and punishment.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1401, Baker. Crime and punishment.

Under existing law, the Youthful Offender Parole Board may grant parole to a person committed to the Department of the Youth Authority under specified conditions.

This bill would require the board to notify interested persons, as specified, of any meeting to review or consider the parole of any person under the age of 18 if the person was committed to the Department of the Youth Authority on the basis of his or her commission of any of certain designated offenses. It also would authorize such interested persons to submit a written statement to the board.

The people of the State of California do enact as follows:

SECTION 1. Section 1767.1 is added to the Welfare and Institutions Code, to read:

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person under 18 years of age who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, the board shall send written notice of hearing to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, the law enforcement agency that investigated the case, and, where he or she has filed a request for such notice with the board, the victim or next of kin of the victim of the offense for which the person was committed to the authority. The notice to the victim or next of kin of the victim shall be sent to the last mailing address on file with the board.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing.

O

Assembly Bill No. 1405

CHAPTER 945

An act to amend Section 12051 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1405, Baker. Firearms.

Under existing law, filing an application for a license to carry a concealed firearm, knowing that it contains false statements, is a misdemeanor.

This bill would, with respect to an application for a license to carry a concealed weapon, make it a felony to make a false statement regarding specified matters.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12051 of the Penal Code is amended to read:

12051. (a) Applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number and the caliber.

Applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. Such forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor. Any person knowingly making a false statement on the application regarding the denial or revocation of a concealed

weapons license, a criminal conviction, a finding of not guilty by reason of insanity, the use of a controlled substance, a dishonorable discharge from military service, a commitment to a mental institution, or a renunciation of United States citizenship is guilty of a felony.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1409

CHAPTER 644

An act to amend Section 2800 of the Vehicle Code, relating to peace officers.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1409, Baker. Peace officers.

(1) Under existing law, it is a misdemeanor to willfully fail to refuse to comply with a lawful order, signal, or direction of any traffic officer, defined to be a member of the California Highway Patrol or any peace officer who is on duty for the exclusive or main purpose of enforcing Divisions 10 and 11 of the Vehicle Code, which relate to accidents and accident reporting and rules of the road.

This bill would make it a misdemeanor to willfully fail or refuse to comply with a lawful order, signal, or direction of any peace officer who is in uniform and is performing duties under any provision of the Vehicle Code.

(2) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2800 of the Vehicle Code is amended to read:

2800. It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, when that peace officer is in uniform and is performing duties under any of the provisions of this code, or to refuse to submit to any lawful inspection under this code.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime

or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1422

CHAPTER 896

An act to amend Sections 286, 288a, and 289 of the Penal Code, relating to sexual assault.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, Bergeson. Sexual assault.

Existing law provides that unlawful sodomy and unlawful oral copulation occur, among other ways, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or when the act is accomplished voluntarily in concert against the victim's will be means of force or fear of immediate and unlawful bodily injury on the victim or another person.

Existing law punishes by imprisonment in the state prison every person who causes the penetration of the genital or anal openings by any foreign object against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

This bill would provide that any person who commits an act of sodomy, oral copulation, or penetration of the genitals by a foreign object when the victim is at the time incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than 1 year.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for five, seven or nine years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(g) Any person who commits an act of sodomy, and the victim is at the time incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

SEC. 2. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of oral copulation with

another person who is under 14 years of age and more than 10 years younger than he, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting such other person, commits an act of oral copulation when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for five, seven, or nine years.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(g) Any person who commits an act of oral copulation, and the victim is at the time incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

SEC. 3. Section 289 of the Penal Code is amended to read:

289. (a) Every person who causes the penetration, however slight, of the genital or anal openings of another person, by any foreign object, substance, instrument, or device when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Every person who causes the penetration, however slight, of the genital or anal openings of another person by any foreign object, substance, instrument, or device when the victim is at the time incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent, and this is known or reasonably should be known to the person committing the act, for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonmnet in the state prison, or in a county jail for a period of not more than one year.

(c) As used in this section, "foreign object, substance, instrument,

or device" shall not include any part of the body.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1463

CHAPTER 897

An act to amend Sections 651, 655, and 668 of the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 27, 1981. Filed with Secretary of State September 28, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1463, Hart. Vessels: operation: violations.

(1) Under existing law, any person who uses any boat or vessel or manipulates any water skis, aquaplane, or similar device while under the influence of intoxicating liquor or under the influence of any narcotic or restricted dangerous drug as defined in specified provisions of the Health and Safety Code is guilty of a misdemeanor.

This bill would prohibit any person from operating any boat or vessel or manipulating any such device while so under the influence, and while so operating, do any act forbidden by law, or neglect any duty imposed by law, which act or neglect proximately causes death or serious bodily injury to any person other than himself. The bill would prescribe the punishment for any such violation, and would prescribe minimum jail terms and fines for subsequent violations within 5 years of specified prior convictions where the person is granted probation. The bill would specify the circumstances and conditions under which the court may strike a prior conviction for purposes of sentencing in order to avoid those minimum punishments.

The bill would also make violation of specified provisions requiring the stoppage of vessels upon order of peace officers or harbor policemen a misdemeanor, subject to prescribed punishment.

(2) Under existing law, "operator" is defined to mean the person on board who is in control or in charge of a vessel while it is in use.

This bill would redefine "operator" to mean the person on board steering the vessel while underway.

(3) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

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SECTION 1. Section 651 of the Harbors and Navigation Code is amended to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Department" means the Department of Boating and Waterways.

(b) "Director" means the Director of Boating and Waterways.

(c) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

(d) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(f) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not such person lends, rents, or pledges such vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(g) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(h) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(i) "Waters of this state" means any waters within the territorial limits of this state.

(j) "Person" means an individual, partnership, firm, corporation, association or other entity, but does not include the United States, the state or a municipality or subdivision thereof.

(k) "Operator" means the person on board who is steering the vessel while underway.

(*l*) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(m) "Use" means operate, navigate, or employ.

(n) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(o) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(p) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(q) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(r) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(s) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain,

or muscles of a person as to impair to an appreciable degree his ability to operate a vessel in the manner that an ordinarily prudent man, in full possession of his faculties, using reasonable care, would operate a similar vessel under like conditions.

SEC. 2. Section 655 of the Harbors and Navigation Code is amended to read:

655. (a) No person shall use any boat or vessel or manipulate any water skis, aquaplane, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. The department shall adopt regulations for the use of boats or vessels, water skis, aquaplanes, or similar devices in a manner which will minimize the danger to life, limb, or property consistent with reasonable use of the equipment for the purpose for which it was designed.

(b) No person shall operate any boat or vessel or manipulate any water skis, aquaplane, or similar device while under the influence of intoxicating liquor, any drug, or the combined influence of intoxicating liquor and any drug.

(c) No person shall operate any boat or vessel or manipulate any water skis, aquaplane, or similar device while under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug, and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the boat, vessel, water skis, aquaplane, or similar device, which act or neglect proximately causes death or serious bodily injury to any person other than himself.

SEC. 3. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates any provisions of Section 652, 654, 654.05, 654.06, 655.2, 655.3, 659, or 663.6, or any regulations adopted by the department pursuant thereto, is guilty of a misdemeanor and shall be subject to a fine of not to exceed fifty dollars ($50) or imprisonment in the county jail for not to exceed five days, or both, for each violation.

(b) Any person who violates any provisions of subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be subject to a fine of not to exceed one hundred dollars ($100) for each violation.

(c) Any person who violates any provision of Section 652.5, subdivision (a) or (b) of Section 655, Section 656, or subdivision (d) or (e) of Section 658, or any special rules and regulations adopted by the department pursuant to the provisions of subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be subject to a fine of not to exceed five hundred dollars ($500) or imprisonment in the county jail for not to exceed six months, or both, for each violation.

(d) Any person who violates subdivision (c) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days nor more than one year, and by a fine of not

less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000).

(e) If any person is convicted of an offense under subdivision (c) of Section 655 within five years of a prior conviction of a violation of subdivision (b) of Section 655 and is granted probation, it shall be a condition of probation that the person be confined in county jail for not less than five days nor more than one year, and pay a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000). If any person is convicted of an offense under subdivision (c) of Section 655 within five years of a prior conviction of a violation of subdivision (c) of Section 655 and is granted probation, it shall be a condition of probation that the person be confined in county jail for not less than 90 days nor more than one year, and pay a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000).

(f) In no event shall the court have the power to absolve a person who is convicted of an offense under subdivision (c) of Section 655 within five years of a prior conviction of a violation of that section from the obligation of spending the minimum time in confinement as provided in this section, and of paying a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (g).

(g) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under subdivision (b) or (c) of Section 655 for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation the minimum time in confinement and the minimum fine, as provided in this section. When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking such a prior conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1493

CHAPTER 775

An act to amend Sections 5602, 21113, 21461, 40510, 40521, 41103, and 41103.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1493, Wray. Vehicles: offenses.

(1) Existing law provides that an owner who has made a bona fide sale or transfer of a vehicle, delivered it to the purchaser, and complied with stated provisions, is not thereafter subject to civil liability for operation of the vehicle.

This bill would also provide that such person is not criminally liable for operation of the vehicle.

(2) Existing law prohibits the driving, stopping, or parking of any vehicle or animal on specified types of publicly owned or maintained property, except as may be permitted, conditioned, and regulated by the governing board or officer having jurisdiction over the property.

This bill would make these provisions applicable to any property under the control of a harbor district.

(3) Under existing law, it is an infraction for the driver of a vehicle to fail to obey a sign or signal erected or maintained to carry out the provisions of the Vehicle Code or a local traffic ordinance or resolution. Existing law also makes it an infraction to violate various stopping, standing, or parking statutes or ordinances.

This bill would except the stopping, standing, and parking violations from the prohibition against failing to obey the signs and signals.

(4) Existing law authorizes the deposit of bail by a person who promised to appear, and permits that deposit by personal check, before specified dates.

This bill would also authorize deposit of bail before the time to appear contained in a notice of a parking violation and permit that bail to be deposited by personal check.

(5) Existing law provides for a notice of violation for parking offenses to be issued to owners of unattended vehicles, and prescribes the procedure for giving that notice to the person charged before a warrant for arrest may be issued.

This bill would add a procedure to require dismissal if a mailed notice is returned and the person charged has sold or transferred the vehicle. It would also provide that, upon return of the notice to the court with any indication that the notice was not delivered to the person charged, the court shall inquire of the department, before issuing a warrant of arrest for a resident of this state, whether or not

the person has sold or transferred the vehicle. For parking violations, the bill would require a copy of a certificate of adjudication of the matter to be provided the person charged or that person's representative in addition to filing the certificate with the Department of Motor Vehicles.

(6) The bill would also make other technical and conforming changes.

(7) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 5602 of the Vehicle Code is amended to read:

5602. An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession thereof to a purchaser shall not by reason of any of the provisions of this code be deemed the owner of the vehicle so as to be subject to civil liability or criminal liability for the operation of the vehicle thereafter by another when the owner in addition to the foregoing has fulfilled either of the following requirements:

(a) When he has made proper endorsement and delivery of the certificate of ownership and delivered the certificate of registration as provided in this code.

(b) When he has delivered to the department or has placed in the United States mail, addressed to the department, either the notice as provided in Section 5900 or Section 5901 or appropriate documents for registration of the vehicle pursuant to the sale or transfer.

SECTION 1.5. Section 21113 of the Vehicle Code is amended to read:

21113. (a) No person shall drive any vehicle or animal, nor shall any person stop, park, or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities, or the grounds of any public school, state university, state college, unit of the state park system, county park, municipal airport, rapid transit district, or any property under the direct control of the legislative body of a municipality, or any state, county, or hospital district institution or building, or any educational institution exempted in whole or in part from taxation, or any harbor district formed pursuant to Part 3 (commencing with Section 6000) of Division 8 of the Harbors and Navigation Code, except with the

permission of, and upon and subject to such conditions and regulations as may be imposed by, the legislative body of the municipality, or the governing board or officer of the public school, state university, state college, county park, municipal airport, rapid transit district, or state, county, or hospital district institution or building, or educational institution, or harbor district, or the Director of Parks and Recreation regarding units of the state park system.

(b) Every governing board, legislative body, or officer shall erect or place appropriate signs giving notice of any special conditions or regulations that are imposed under this section and every board, legislative body, or officer shall also prepare and keep available at the principal administrative office of the board, legislative body, or officer, for examination by all interested persons, a written statement of all such special conditions and regulations adopted under this section.

(c) When any governing board, legislative body, or officer permits public traffic upon the driveways, paths, parking facilities, or grounds under their control then, except for those conditions imposed or regulations enacted by the governing board, legislative body, or officer applicable to the traffic, all the provisions of this code relating to traffic upon the highways shall be applicable to the traffic upon the driveways, paths, parking facilities, or grounds.

(d) With respect to the permitted use of vehicles or animals on property under the direct control of the legislative body of a municipality, no change in the use of vehicles or animals on such property, which had been permitted on January 1, 1976, shall be effective unless and until the legislative body, at a meeting open to the general public, determines that the use of vehicles or animals on such property should be prohibited or regulated.

SEC. 2. Section 21461 of the Vehicle Code is amended to read:

21461. (a) It shall be unlawful for any driver of a vehicle to fail to obey any sign or signal erected or maintained to indicate and carry out the provisions of this code or any local traffic ordinance or resolution adopted pursuant to a local traffic ordinance, or to fail to obey any device erected or maintained pursuant to Section 21352.

(b) The provisions of subdivision (a) shall not apply to acts constituting violations under Chapter 9 (commencing with Section 22500) of this division or to acts constituting violations of any local traffic ordinance adopted pursuant to Chapter 9 (commencing with Section 22500).

SEC. 3. Section 40510 of the Vehicle Code is amended to read:

40510. (a) Prior to the date upon which a defendant promised to appear, or prior to the time to appear contained on a notice of a parking violation, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has bee· filed, and prior to the scheduled court date, the defendant m· deposit bail with the magistrate or the person authorized to receiv a deposit of bail.

(b) For any offense which is not declared to be a felony, such deposit of bail may be by a personal check meeting the criteria established in accordance with subdivision (c).

(c) Each court, sheriff, or other agency which regularly accepts deposits of bail, shall adopt a written policy governing the acceptance of personal checks in payment of bail deposits. The policy shall permit clerks and other appropriate officers to accept personal checks under conditions which tend to assure the validity of the checks.

SEC. 4. Section 40521 of the Vehicle Code is amended to read:

40521. (a) Except when personal appearance is required by the bail schedule established under Section 1269b of the Penal Code, a person to whom a notice to appear has been issued under Section 40500, or a person to whom a notice of a parking violation has been issued under Section 41103, who intends to forfeit bail and to pay any penalty assessment may forward by United States mail the amount fixed as bail, together with the appropriate amount of any penalty assessment, to the person authorized to receive a deposit of bail. Such amounts may be paid in the form of a personal check which meets the criteria established pursuant to subdivision (c) of Section 40510, or a bank cashier's check or a money order. Bail and any penalty assessment shall be paid not later than the day of appearance set forth in the notice to appear or prior to the expiration of any lawful continuance of such date.

(b) Bail forwarded by mail shall be effective only when the funds are actually received.

(c) The provisions of Section 40512 are applicable to bail paid pursuant to this section. Upon the making of the order pursuant to Section 40512 that no further proceedings be had, the amount paid as bail shall be paid into the city or county treasury, as the case may be, and the penalty assessment shall be transmitted to the State Treasury in the manner provided in Section 42052.

SEC. 5. Section 41103 of the Vehicle Code is amended to read:

41103. The method of giving notice for the purposes of the provisions of Section 41102 is as follows:

(a) During the time of the violation a notice thereof shall be securely attached to the vehicle setting forth the violation, including reference to the section of this code or of the local ordinance or federal statute or regulation so violated, the approximate time thereof, and the location where the violation occurred and fixing a time and place for appearance by the registered owner or the lessee or renter in answer to the notice.

The notice shall be attached to such vehicle either on the steering post or front door handle thereof or in another conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the person's return thereto.

(b) Before any notice of noncompliance may be forwarded to the department under Section 41103.5 or any warrant for the arrest of a

resident of this state may be issued following the filing of a complaint charging such a violation, a notice of the parking violation shall be given to the person so charged. The notice shall contain the information required in subdivision (a) and shall also inform the registered owner or the lessee or renter that unless he appears in the court designated in the notice within 10 days after service of the notice and answers the charge, or completes and files an affidavit of nonownership, the renewal of the vehicle registration is contingent upon compliance with the notice of a parking violation and that, failing compliance, a warrant or citation to appear may be issued against him.

The notice shall contain or be accompanied by an affidavit of nonownership. In addition to any other required information, the notice shall also provide information as to what constitutes nonownership, information as to the effect of executing that affidavit, and instructions for mailing or returning the affidavit to the court. Upon receipt of evidence satisfactory to the court that the person charged with violating Section 41102 has made a bona fide sale or transfer of the vehicle and has delivered possession thereof to the purchaser prior to the date of the alleged violation, the court shall obtain verification from the department that the person charged has complied with the requirements of subdivision (a) or (b) of Section 5602, and, if the person has complied with subdivision (a) or (b) of Section 5602, the charges against the person under Section 41102 shall be dismissed. Upon return of the notice to the court with any indication that the notice has not been delivered to the person so charged, the court shall, before issuing any warrant of arrest for a resident of this state, inquire of the department as to whether or not the person charged has complied with the requirements of subdivision (a) or (b) of Section 5602, and, if the person has complied with subdivision (a) or (b) of Section 5602, the charges against the person under Section 41102 and the charges against the person under any regulation governing the standing or parking of a vehicle under this code, any federal statute or regulation, or any ordinance enacted by local authorities, shall be dismissed.

The notice shall be given, either by personal delivery thereof to the owner, lessee or renter, or by deposit in the United States mail of an envelope with postage prepaid, which envelope shall contain the notice and shall be addressed to the owner, lessee or renter at the address as shown by the records of the department or the leasing or renting agency. The giving of notice by personal delivery is complete upon delivery of a copy of the notice to that person. The giving of notice by mail is complete upon the expiration of 10 days after the deposit of the notice.

Proof of giving the notice may be made by the certificate of any traffic or police officer or affidavit of any person over 18 years of age naming the person to whom the notice was given and specifying the time, place and manner of the giving thereof.

(c) Before any warrant for the arrest of a nonresident of this state may be issued following the filing of a complaint charging such a violation, a notice of the parking violation shall be given to the person so charged. The notice shall contain the information required in subdivision (a) and shall also inform the registered owner or the lessee or renter that unless he appears in the court to be designated in such notice within 10 days after service of the notice and answers the charge, or completes and files an affidavit of nonownership, a warrant or citation to appear will be issued against him.

SEC. 6. Section 41103.5 of the Vehicle Code is amended to read:

41103.5. (a) Whenever any person has for a period of 15 or more days failed to answer the charge in the notice of a parking violation given, or file an affidavit of nonownership, pursuant to the provisions of subdivision (b) of Section 41103, the magistrate or clerk of the court or the officer of the issuing agency designated by the magistrate or clerk of the court shall give notice of such fact to the department if no warrant of arrest is outstanding in connection with the matter. The notice shall be given not more than 30 days after the failure to appear. Whenever thereafter the case, in which the notice of a parking violation was given pursuant to subdivision (b) of Section 41103, is adjudicated, the magistrate or clerk of the court hearing the case shall immediately sign a certificate to that effect, provide the person charged or that person's representative with a copy, and file a copy of the certificate with the department.

(b) Whenever a fine or forfeiture is received in connection with a matter for which a notice of noncompliance has been forwarded under this section, the clerk of the court, or judge if there is no clerk, shall determine the amount of the administrative service fee due as established by the department under Section 4763, and shall transmit that amount to the county treasury. The county treasurer shall, at least once each month, transmit the fees collected pursuant to this section to the State Treasury for deposit in the Motor Vehicle Account in the State Transportation Fund. The funds shall be transmitted in the same manner as fines collected for the state by the county. In any case involving federal jurisdictions, the fees shall be transmitted monthly to the Department of Motor Vehicles for deposit in the Motor Vehicle Account in the State Transportation Fund.

(c) The procedure for the collection of bail authorized by this section and the provisions of Sections 4760 to 4765, inclusive, shall apply to any registration or equipment infraction charged simultaneously with any parking violation in any notice of a parking violation issued to an unattended vehicle under subdivision (a) of Section 41103.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a

local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1583

CHAPTER 744

An act to amend Section 830.1 of the Penal Code, relating to peace officers.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1583, Kapiloff. Peace officers.

Under existing law specified sheriffs, marshals, constables, and district attorney investigators or inspectors, and policemen of a city or a district have specified general powers as peace officers, while certain harbor and port policemen and others have peace officer powers relating to their duties, as specified.

This bill would grant general peace officer powers to police officers of the San Diego Unified Port District Harbor Police.

The people of the State of California do enact as follows:

SECTION 1. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, any police officer of a city, any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid as such, of a judicial district, or any inspector or investigator regularly employed and paid as such in the office of a district attorney, is a peace officer. The authority of any such peace officer extends to any place in the state:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs him; or

(2) Where he has the prior consent of the chief of police, or person authorized by him to give such consent, if the place is within a city or of the sheriff, or person authorized by him to give such consent, if the place is within a county; or

(3) As to any public offense committed or which there is probable cause to believe has been committed in his presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and such investigators who are designated by the Attorney General are peace officers. The authority of any such peace officer

extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

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Assembly Bill No. 1587

CHAPTER 746

An act to amend Section 626.8 of the Penal Code, relating to school disruption.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1587, Imbrecht. School disruption.

Existing law makes it a misdemeanor for any person to remain upon or to reenter, within 72 hours of being asked to leave, school grounds or adjacent areas without lawful business if his presence or acts interfere with or disrupt the peaceful conduct of school activities.

This bill would also make it a misdemeanor for any person to otherwise establish a continued pattern of unauthorized entry, as defined, after being asked to leave, beyond the 72-hour reentry period provided for under existing law.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 626.8 of the Penal Code is amended to read:

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of such school or disrupt the school or its pupils or school activities is guilty of a misdemeanor if he or she:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or California Highway Patrol Officer; or

(2) Reenters or comes upon such place within 72 hours of being asked to leave by a person specified in paragraph (1); or

(3) Has otherwise established a continued pattern of unauthorized entry.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine of not exceeding five hundred dollars ($500), by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and he shall not be released on probation, parole, or any other basis until he has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and he shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(c) As used in this section:

(1) "Lawful business" means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(2) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of such school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

O

Assembly Bill No. 1595

CHAPTER 984

An act to amend Sections 4460, 40652, 40675, 40676, 40690, 40691, 40701, 40714, 40715, 40718, and 40719 of, and to add Sections 40706 and 40715.5 to, the Vehicle Code, relating to traffic adjudication, and making an appropriation therefor.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1595, Moorhead. Administrative traffic adjudication.

(1) Existing law authorizes the Department of Motor Vehicles or the Department of the California Highway Patrol or specified police officers or deputy sheriffs to take possession of licenses when expired, revoked, suspended, or canceled.

This bill would also authorize the Traffic Adjudication Board to take possession of licenses in those circumstances.

(2) Under existing law, the term "traffic safety violation", for purposes of administrative adjudication of driving offenses, includes infractions of the Vehicle Code or local ordinances or resolutions adopted pursuant thereto.

This bill would redefine that term to also include any rule or regulation of a state agency adopted pursuant to the Vehicle Code.

(3) Except for a specified study group, existing law authorizes citation for infractions which are also traffic safety violations before a hearing officer of the board. Among other things, the schedule of monetary sanctions is required to be on the notice to appear or on a form accompanying the notice, and, when additional nonmonetary sanctions may be imposed, the notice or form accompanying the notice is required to state that a personal appearance will be required.

This bill would instead authorize the applicable monetary sanctions to be given to the cited person on a form sent by first-class mail and, when additional nonmonetary sanctions may be imposed, would require the notice to appear or the form sent by mail to state that a personal appearance will be required.

(4) Under existing law, a person who receives a notice to appear for a traffic safety violation is required to answer by mail postmarked within 14 days, or by personal appearance at a traffic adjudication office within 14 days, of the date of the alleged violation.

This bill would extend the time to respond to 21 days of the alleged violation.

(5) Under existing law and notwithstanding other provisions of law, including the laws relating to crimes committed by juveniles, any person under the age of 18 who has been issued a license or

permit to drive and is alleged to have committed a traffic safety violation is subject to administrative adjudication of that violation.

This bill would make any person under the age of 18 who is alleged to have committed a traffic safety violation subject to administrative adjudication of that violation.

(6) Under existing law, a person given a notice to appear for a traffic safety violation has various answering options, including a denial with a waiver of full hearing and denial requiring a full hearing. The notice to appear is required to specify the local traffic adjudication area processing center and a check or money order for the violation is required to be submitted for each answer.

This bill would authorize the board to prescribe terms and conditions for exercise of the answer option of denial with waiver of full hearing and would require any terms and conditions to be included in the annual report to the Legislature by the board. The bill would delete the requirement for the location of the center to be on the notice to appear, and, instead, require it on the answer form. The bill would limit the requirement for a check or money order to be submitted with the answer to those cases where it is specified on the answer form. The bill would also authorize the board to require a cited person to appear whenever the board determines it is in the interest of traffic safety to do so and to suspend or revoke the license of a person who fails to comply with the requirements of the notice to appear.

(7) Under existing law, the hearing officer or the board may suspend or revoke the driving privilege of a person who doesn't answer or comply with a notice to appear or an order of the board or hearing officer, which suspension is effective after 60 days from receipt of the notice of suspension sent by certified mail. At the termination of suspension or revocation, a fee of $6 is required to be paid to the board in addition to any other specified fees, and the fees are continuously appropriated to the board for its administrative costs.

This bill would make that suspension or revocation effective after 45 days from receipt of the notice of suspension sent by first-class mail, increase the termination of suspension or revocation fee to $20 and state the purposes of the fee is to reimburse board for its costs and to encourage compliance with board requirements. The bill would also authorize the board to notify the Department of Motor Vehicles when a cited person has failed to answer, appear, or comply with the notice to appear or any order of the board or hearing officer, in which case the department may refuse to refuse registration, renewal, or transfer of the vehicle registration of the cited vehicle until the cited person complies with the board's requirements.

(8) Existing law provides for a notice of violation to be issued when a specified peace officer has reasonable cause to believe a person involved in a traffic accident has violated a nonfelony violation of the Vehicle Code or local ordinances, which violation was

a factor in the occurrence of the traffic accident. The notice of violation is required to be delivered by the officer to the person named in the notice and, when filed in court, is a complaint to which the defendant may plead guilty or nolo contendere, or is the basis for a complaint and further proceedings. Existing law does not authorize administrative adjudication of such a notice by the board.

This bill would require, notwithstanding any other provisions of the Vehicle Code, the board to notify the department if the cited person who has had a copy delivered to him or her has failed to answer, appear, or otherwise comply with the notice of violation and the department would be required to refuse issuance or renewal of the cited person's driving privilege until the cited person has complied with the requirements of the board. Otherwise, when a person is delivered a notice of violation when so issued, the provisions relating to administrative traffic adjudication shall apply.

(9) Existing law also makes it an infraction for an owner or other person, employing or directing a driver of a vehicle to cause operation of the vehicle upon a highway contrary to law or to cause it to be operated when not registered or when it violates equipment, load, or air pollution requirements or when it violates regulations or city or county ordinances adopted pursuant to the code. Existing law authorizes an owner or lessee, prosecuted under those provisions to cause the court to join the driver as a codefendant. When a written notice to appear has been mailed to an owner or other person under these provisions and filed in court, it is a complaint to which the defendant may plead guilty or nolo contendere, or is the basis for a complaint for further proceedings. Existing law does not authorize administrative adjudication of such a notice by the board.

This bill would, when a notice to appear is issued and mailed to an owner or other person under those provisions, and notwithstanding any other provision of the Vehicle Code, provide that the provisions relating to administrative traffic adjudication shall apply.

(10) Existing law provides for an appeal of a decision of a hearing officer in administrative adjudication of traffic safety violations to the board. A fee of $10 is required to make an appeal, and a transcript of the hearing is available at cost to the appellant upon deposit of $20 toward those costs.

This bill would authorize the board to waive those fees for indigents and to prescribe the standards for determining indigency by rules and regulations of the board.

(11) Existing law does not provide for the precedent decisions of the board.

This bill would authorize the board, on appeals, to designate certain of its decisions as precedents and provide a procedure for that determination and revision of the precedent decisions on judicial review. The bill would require hearing officers to be controlled by the precedent decisions, and would permit any interested person or organization to bring an action for declaratory relief for judicial

review, as specified.

(12) Under existing law, orders issued on an appeal are required to be sent by certified mail.

This bill would require the orders to be sent by first-class mail.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4460 of the Vehicle Code is amended to read:

4460. The Department of Motor Vehicles, the Traffic Adjudication Board, and the Department of the California Highway Patrol or any regularly employed and salaried police officer or deputy sheriff may take possession of any certificate, card, permit, license, or license plate issued under this code upon expiration, revocation, cancellation, or suspension thereof or which is fictitious or which has been unlawfully or erroneously issued. Any license plate which is not attached to the vehicle for which issued, when and in the manner required under this code may be seized, and attachment to the proper vehicle may be made or required.

Any such document or license plate seized shall be delivered to the Department of Motor Vehicles.

SEC. 2. Section 40652 of the Vehicle Code is amended to read:

40652. For the purpose of this chapter, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(a) "Admission" means that the party charged with a traffic safety violation admits to having committed the traffic safety violation.

(b) "Admission with explanation" means that the party charged with a traffic safety violation admits to having committed the traffic safety violation, but demands an informal hearing in order to explain the surrounding circumstances so as to mitigate the sanctions that may be imposed pursuant to this chapter.

(c) "Board" means the Traffic Adjudication Board.

(d) "Denial" means that the person charged with a traffic safety violation denies all or part of the traffic safety violation alleged in the notice to appear and demands a full hearing.

(e) "Denial with waiver of full hearing" means that the person charged with a traffic safety violation denies all or part of the traffic safety violation alleged in the notice to appear and demands an informal hearing.

(f) "Full hearing" is a hearing at which the person charged with a traffic safety violation, the citing officer, and any witnesses are present.

(g) "Hearing officer" means a person authorized by the board to conduct hearings pursuant to this chapter.

(h) "Informal hearing" means that the person charged with a traffic safety violation waives the right to confront the citing officer

and any witnesses. The waiver shall include a stipulation by the person charged that the information appearing on the notice to appear, or on the complaint in the event of an arrest by a private person, may be received as evidence with the same effect as if the officer or such private person were present to testify.

(i) "Monetary sanction" is a sanction imposed for the purpose of modifying and improving driver behavior and traffic safety. "Monetary sanction" does not include moneys collected as a penalty assessment.

(j) "No contest" means the person charged with a traffic safety violation neither admits nor denies the traffic safety violation alleged in the notice to appear. For procedural purposes, a no contest answer shall have the same effect as an admission. The no contest answer may not be used as an admission in any subsequent civil action.

(k) "Penalty assessments" are moneys collected as provided in Section 42050.

(*l*) "Traffic adjudication office" is a location designated by the board for the conduct of administrative hearings pursuant to this chapter.

(m) "Traffic safety violation" includes any act or omission which constitutes an infraction, as specified in this code or under any local ordinance or resolution, or any rule or regulation of a state agency, adopted pursuant to this code. A finding that a traffic safety violation has occurred is an administrative violation and shall not be deemed an adjudication of a crime. Nothing in this chapter shall be construed to mean that an act which constitutes a traffic safety violation is not also a crime.

SEC. 3. Section 40675 of the Vehicle Code is amended to read:

40675. (a) Except as provided in Section 40752, whenever any person is arrested for any violation which is both an infraction and a traffic safety violation pursuant to this chapter, the citing officer shall issue a notice to appear before a hearing officer for the adjudication of the traffic safety violation if the violation was committed within a municipal court district. The notice to appear shall contain, when available, the name, address, and driver's license number of the person to whom the notice to appear is issued, the license number of any vehicle involved, and the name and address of the registered owner or lessee of the vehicle. The notice shall specify the traffic safety violation alleged to have been violated and the circumstances surrounding such violation. The notice may specify the time and place the cited person is required to appear before a hearing officer, if the person desires a full hearing. The consequences for failing to appear or answer, and the various answer options available, shall be set forth either on the notice or on a form accompanying the notice. The applicable monetary sanctions, and penalty assessments, may be set forth on a form sent to the cited person by first-class mail. The notice or the mailed form shall also state that, when additional nonmonetary sanctions may be imposed,

a personal appearance will be required. The notice or the form accompanying the notice shall also state that a person cited may request that the matter be adjudicated as an infraction by a court.

(b) Every notice to appear alleging a speeding violation that is a traffic safety violation shall specify the approximate speed at which the driver is alleged to have driven, the maximum or prima facie speed limit applicable to the highway at the time and place of the alleged violation, and any other speed limit alleged to have been exceeded that is applicable to the particular type of vehicle or combination of vehicles operated by the cited person.

(c) If the cited person refuses to sign the notice to appear before a hearing officer pursuant to this chapter, the citing officer shall proceed in the manner provided pursuant to Chapter 2 (commencing with Section 40300) relating to the arrest of a person for a traffic infraction.

SEC. 4. Section 40676 of the Vehicle Code is amended to read:

40676. The time for a hearing shall be at least 21 calendar days after the notice to appear is issued.

SEC. 5. Section 40690 of the Vehicle Code is amended to read:

40690. Notwithstanding any other provision of law, any person under the age of 18, alleged to have committed a traffic safety violation, shall be subject to adjudication pursuant to the provisions of this chapter and the rules and regulations of the board. The board may, by rule or regulation, request the person having custody or control of any person under 18 years of age to accompany such person. The board shall notify the person having custody or control of the cited minor of the nature of the offense and of the minor's right to request that the matter be adjudicated as an infraction by a court.

SEC. 6. Section 40691 of the Vehicle Code is amended to read:

40691. (a) Any person who receives a notice to appear for a traffic safety violation shall answer such notice by mail postmarked within 21 days of the date of the alleged violation or by personal appearance at a traffic adjudication office within 21 days of the date of the alleged violation, in the manner provided in this chapter.

(b) A person alleged to have committed a traffic safety violation shall have the following answer options:

(1) Admission.

(2) Admission with explanation.

(3) Denial.

(4) Denial with waiver of full hearing.

(5) No contest.

The terms and conditions under which a person may amend an answer shall be prescribed by rules and regulations of the board.

(c) Notwithstanding the provisions of subdivision (b), the board may prescribe terms and conditions under which the answer option of denial with waiver of full hearing may be exercised. The terms and conditions shall be prescribed by rules and regulations of the board. Any terms and conditions shall be reported to the Legislature as part

of the board's annual report.

(d) If the person admits to the traffic safety violation alleged in the notice to appear, the person shall complete an appropriate answer form, as prescribed by the board, and forward the form to the local traffic adjudication area processing center specified on the answer form. A check or money order in the amount of the monetary sanction and penalty assessment for the traffic safety violation alleged, if specified on the answer form, shall be submitted with each such answer. Such answer may not be accepted by mail if the admission will result in the assignment of a point or points pursuant to Section 12810, with the result that the person's driving record will show three or more points within a 12-month period, four or more points within a 24-month period, or five or more points within a 36-month period unless the board determines otherwise based on traffic safety implications or geographical considerations. In addition, the board may require a cited person to appear before a hearing officer to answer to a notice to appear when the board determines that to do so is in the interest of traffic safety.

(e) If the person denies part or all of the traffic safety violation alleged in the notice to appear, the person shall complete an appropriate answer form, as prescribed by the board, and forward the form to the local traffic adjudication area processing center specified on the answer form. A check or money order in the amount of the monetary sanction and penalty assessment for the traffic safety violation alleged may be submitted with such answer. Upon receipt, such answer shall be recorded. The board may change the date, time, and place of appearance in the interests of justice. The local traffic adjudication area processing center shall notify such person by mail of the new date, time, and place of such hearing.

(f) If the person desires to answer with either an admission with explanation or a denial with waiver of full hearing, such answer shall be made within 21 days. The informal hearing may be heard on the day of the answer.

(g) If the person desires to neither admit nor deny the traffic safety violation alleged in the notice to appear, the person shall complete an appropriate answer form, indicating no contest, as prescribed by the board, and forward such form to the local traffic adjudication area processing center specified on the answer form. A check or money order in the amount of the monetary sanction, and penalty assessments, for the traffic safety violation alleged if specified on the answer form, shall be submitted with such answer. This answer shall be treated the same as an admission and shall be recorded in the same manner in the person's driving record. Such answer may be accepted by mail but is subject to the exception set forth in subdivision (d). Such answer shall constitute a waiver of the right to a full hearing.

SEC. 7. Section 40701 of the Vehicle Code is amended to read:

40701. (a) In addition to any other authority vested in the board,

the board or hearing officer may suspend or revoke the driving privilege and order surrender of the driver's license of any person who fails to answer, appear, or otherwise comply with the requirements of the notice to appear or any order of the board or hearing officer. Such suspension or revocation shall continue until the person has complied with all of the orders of the board or hearing officer. A suspension for failure to comply with the requirements of the notice to appear shall not be effective any sooner than 45 days from the date of receipt, by first-class mail, of the notice of suspension. At the termination of the suspension or revocation, a fee to be established by the board, not to exceed twenty dollars ($20), shall be paid to the board in addition to any other fees required by this code, in order to reimburse the board's costs and to encourage timely compliance with board requirements, thereby contributing to the program's traffic safety objectives.

(b) When a citation has been issued pursuant to Section 40001, the board shall notify the department if the cited person has failed to answer, appear, or otherwise comply with the requirements of the notice to appear or any order of the board or hearing officer. The department may then refuse registration renewal of the cited vehicle until the cited person has complied with the board's requirements.

SEC. 8. Section 40706 is added to the Vehicle Code, to read:

40706. (a) Notwithstanding any other provisions of this code, when a notice of violation is issued pursuant to Section 40600 and delivered pursuant to Section 40602, the board shall notify the department if the cited person has failed to answer, appear, or otherwise comply with the requirements of the notice of violation. The department shall refuse issuance or renewal of the driving privilege unless the cited person has complied with the board's requirements. Otherwise, the provisions of this chapter shall apply to the notice of violation.

(b) Notwithstanding any other provisions of this code, when a notice to appear is issued pursuant to Section 40001, and the written notice to appear has been mailed to an owner of a vehicle or other person referred to in Section 40001, the provisions of this chapter shall apply to the notice to appear.

SEC. 9. Section 40714 of the Vehicle Code is amended to read:

40714. The fee for filing an appeal shall be ten dollars ($10) to reimburse the board's costs. The board may waive the filing fee for indigent appellants. The standards for determining indigency shall be prescribed by rules and regulations of the board.

SEC. 10. Section 40715 of the Vehicle Code is amended to read:

40715. (a) A written transcript of the record of any hearing may be obtained at cost by the appellant. A deposit fee of twenty dollars ($20) shall be paid before preparation of a written transcript will be initiated. Any additional costs incurred shall be collected from the appellant prior to delivery of such transcript and any excess amount

deposited shall be returned. These fees are to reimburse the board's costs.

(b) Notwithstanding subdivision (a) of this section, the board may waive all appropriate transcript fees for indigent appellants. The standards for determining indigency shall be prescribed by rules and regulations of the board.

SEC. 11. Section 40715.5 is added to the Vehicle Code, to read:

40715.5. (a) On appeals the board may designate certain of its appellate decisions as precedents. The board may, on its own motion, reconsider a previously issued decision solely to determine whether or not the decision shall be designated as a precedent decision. The designation of precedent decisions by the board shall be by a majority vote of its appointed members. The hearing officer shall be controlled by the precedent decisions, except as modified by judicial review.

(b) All decisions designated as precedent decisions shall be reduced to writing and published in a manner as to make them available for public use. The board may charge a reasonable price for copies of the precedent decisions, as the board may determine is necessary to defray the cost of their publication and distribution.

(c) Any interested person or organization may bring an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure to obtain judicial declaration as to the validity of any precedent decision of the board.

(d) If the final judgment of a court of competent jurisdiction reverses or declares invalid a precedent decision of the board issued under this section, the board shall promptly modify the precedent decision to conform in all respects to the judgment of the court. The modified precedent decision shall supersede the prior precedent decision for all purposes. The board shall promptly notify the hearing officers and all other subscribers to the precedent decisions of the modified precedent decision.

SEC. 12. Section 40718 of the Vehicle Code is amended to read:

40718. An order amending, modifying, or reversing the decision of the hearing officer shall be in writing and copies thereof shall be sent by first-class mail or delivered personally to the appellant. The board shall direct the department to take such further action as is required in the circumstances, and all fees and costs and any monetary sanction paid by the appellant shall be ordered to be returned when appropriate. The effective date of the order shall be as stated therein, but shall not be later than 15 days after the mailing of the order.

SEC. 13. Section 40719 of the Vehicle Code is amended to read:

40719. An order affirming the decision of the hearing officer shall be in writing and copies thereof shall be sent by first-class mail or delivered personally to the appellant. The effective date of the order shall be as stated therein, but shall not be later than 15 days after the mailing of the order, and no reconsideration or rehearing may be

permitted thereafter.

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Assembly Bill No. 1613

CHAPTER 795

An act to amend Section 11460 of the Penal Code, relating to paramilitary activities.

[Approved by Governor September 25, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1613, Berman. Paramilitary activities.

Existing law makes it a crime punishable by imprisonment in the county jail for not more than 1 year or a fine of not more than $1,000, or both for 2 or more persons to assemble as a paramilitary organization, as defined, for the purpose of practicing with weapons.

This bill would provide the same punishment for any person who teaches or demonstrates to any other person the use, application, or making of any firearms, explosive or destructive device, as defined, or technique capable of causing injury or death to persons knowing or having reason to know that such objects or techniques will be unlawfully employed for use in or in the futherance of a civil disorder, and for any person who assembles with other persons for the purpose of training or practicing with or being instructed in the use of any firearm, explosive, or destructive device, or technique causing injury or death to persons with the intent to cause or further a civil disorder.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11460 of the Penal Code is amended to read:

11460. (a) Any two or more persons who assemble as a paramilitary organization for the purpose of practicing with weapons shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both.

As used in this subdivision, "paramilitary organization" means an organization which is not an agency of the United States government or of the State of California, or which is not a private school meeting

the requirements set forth in Section 12154 of the Education Code, but which engages in instruction or training in guerilla warfare or sabotage, or which, as an organization, engages in rioting or the violent disruption of, or the violent interference with, school activities.

(b) (1) Any person who teaches or demonstrates to any other person the use, application, or making of any firearm, explosive, or destructive device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that such objects or techniques will be unlawfully employed for use in, or in the furtherance of a civil disorder, or any person who assembles with one or more other persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, explosive, or destructive device, or technique capable of causing injury or death to persons, with the intent to cause or further a civil disorder, shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both.

Nothing in this subdivision shall make unlawful any act of any peace officer or a member of the military forces of this state or of the United States, performed in the lawful course of his official duties.

(2) As used in this section:

(A) "Civil disorder" means any disturbance involving acts of violence which cause an immediate danger of or results in damage or injury to the property or person of any other individual.

(B) "Destructive device" has the same meaning as in Section 12301.

(C) "Explosive" has the same meaning as in Section 12000 of the Health and Safety Code.

(D) "Firearm" means any device designed to be used as a weapon, or which may readily be converted to a weapon, from which is expelled a projectile by the force of any explosion or other form of combustion, or the frame or receiver of any such weapon.

(E) "Peace officer" means any peace officer or other officer having the powers of arrest of a peace officer, specified in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Assembly Bill No. 1645

CHAPTER 204

An act to add Section 978.5 to the Penal Code, relating to bench warrants.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1645, Farr. Bench warrants.

Under existing law, various provisions provide for the instances when a bench warrant of arrest may be issued upon failure of a defendant to appear in court.

This bill, in addition, would specify in a single provision the instances when a bench warrant of arrest may be issued.

The people of the State of California do enact as follows:

SECTION 1. Section 978.5 is added to the Penal Code, to read:

978.5. (a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

O

Assembly Bill No. 1675

CHAPTER 1125

An act to add Section 594.1 to the Penal Code, relating to aerosol paint.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1675, Alatorre. Aerosol paint containers.

Under existing law, every person who maliciously defaces with paint or any other liquid any real or personal property not his own, is guilty of vandalism, punishable by a fine, imprisonment, or both.

This bill would require every retailer selling or offering for sale in this state aerosol containers of paint capable of defacing property to post in a conspicuous place a sign stating that any person who maliciously defaces real or personal property with paint is guilty of vandalism which is punishable by a fine, imprisonment, or both.

This bill would also provide that it is a misdemeanor for (1) any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint larger than 6 ounces (net weight of contents) capable of defacing property, without first obtaining bona fide evidence of majority and identity, as specified; (2) any person under the age of 18 years to purchase an aerosol container of paint capable of defacing property; (3) any person, unless authorized, as specified, to possess an aerosol container of paint larger than 6 ounces (net weight of contents) while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way; (4) any person under the age of 18 years to possess an aerosol container of paint larger than 6 ounces (net weight of contents) for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 594.1 is added to the Penal Code, to read:

594.1. (a) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint larger than six ounces (net weight of contents) that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

For purposes of this subdivision, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(b) It shall be unlawful for any person under the age of 18 years to purchase an aerosol container of paint larger than six ounces (net weight of contents) that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: "Any person who maliciously defaces real or personal property with paint is guilty of vandalism which is punishable by a fine, imprisonment, or both."

(d) It is unlawful for any person to carry on his or her person and in plain view to the public an aerosol container of paint larger than six ounces (net weight of contents) while in any posted public facility, park, playground, swimming pool, beach or recreational area, other than a highway, street, alley or way, unless he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision "posted" means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess a spray can of paint larger than six ounces in such public facility, park, playground, swimming pool, beach or recreational area without valid authorization.

(e) It is unlawful for any person under the age of 18 years to possess an aerosol container of paint larger than six ounces (net weight of contents) for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(f) Violation of any provision of this section is a misdemeanor.

SEC. 2. It is the intent of the Legislature in enacting this act to preempt all local government regulations relating to sales and possession of aerosol containers of paint larger than six ounces (net weight of contents).

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the

California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Assembly Bill No. 1678

CHAPTER 650

An act to amend Section 490.5 of the Penal Code, relating to theft.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1678, Young. Theft.

Existing law provides that a merchant, or a person employed by a library facility, may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant or library employee has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise, or books or library materials, respectively, from the premises. During the period of detention, any items which the merchant or library employee has reasonable cause to believe are unlawfully taken from the premises and which are in plain view may be examined for the purpose of ascertaining ownership. In any action for false arrest, false imprisonment, slander, or unlawful detention brought by any person detained by a merchant, or library employee, it is a defense to such action that the merchant, or library employee, detaining such person had probable cause to believe that the person had stolen or attempted to steal merchandise, or books or library materials, respectively, and that the merchant or library employee acted reasonably under all the circumstances. Petty theft of merchandise or a book by an unemancipated minor is imputed to the parent or legal guardian who is jointly and severally civilly liable with the minor for the retail value of the merchandise or book plus damages of not less than $50 nor more than $500.

The bill would provide, regarding examination of items during detention, that during the period of detention, a merchant, a person employed by a library facility, or an agent thereof, having probable cause to believe the person detained was attempting to unlawfully take or has taken any item from the premises, may request the person detained to voluntarily surrender the item, to provide adequate proof of true identity upon surrender or discovery of the item, and to conduct a specified search if the person detained refuses to surrender the item. The bill would also revise the provisions regarding defenses to an action for false arrest, false imprisonment, slander, or unlawful detention by providing that those defenses are applicable in any civil action brought by any person resulting from detention or arrest.

The people of the State of California do enact as follows:

SECTION 1. Section 490.5 of the Penal Code is amended to read:

490.5. (a) Upon a first conviction for petty theft involving merchandise taken from a merchant's premises or a book or other library materials taken from a library facility, a person shall be punished by a mandatory fine of not less than fifty dollars ($50) and not more than one thousand dollars ($1,000) for each such violation; and may also be punished by imprisonment in the county jail, not exceeding six months, or both such fine and imprisonment.

(b) When an unemancipated minor's willful conduct would constitute petty theft involving merchandise taken from a merchant's premises or a book or other library materials taken from a library facility, any merchant or library facility who has been injured by such conduct may bring a civil action against the parent or legal guardian having control and custody of the minor. For the purposes of such actions the misconduct of the unemancipated minor shall be imputed to the parent or legal guardian having control and custody of the minor. The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this subdivision shall be jointly and severally liable with the minor to a merchant for the retail value of his merchandise, if not recovered in merchantable condition or to a library facility for the fair market value of its book or other library materials, plus damages of not less than fifty dollars ($50) nor more than five hundred dollars ($500) plus costs. Recovery of such damages may be had in addition to, and is not limited by, any other provision of law which limits the liability of a parent or legal guardian for the tortious conduct of a minor. An action for recovery of damages, pursuant to this subdivision, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of such court, or in any other appropriate court; however, total damages, including the value of the merchandise or book or other library materials, shall not exceed five hundred dollars ($500) for each action brought under this section.

The provisions of this subdivision are in addition to other civil remedies and do not limit merchants or other persons to elect to pursue other civil remedies, except that the provisions of Section 1714.1 of the Civil Code shall not apply herein.

(c) In lieu of the fines prescribed by subdivision (a), any person may be required to perform public services designated by the court, provided that in no event shall any such person be required to perform less than the number of hours of such public service necessary to satisfy the fine assessed by the court as provided by subdivision (a) at the minimum wage prevailing in the state at the time of sentencing.

(d) All fines collected under this section shall be collected and distributed in accordance with Sections 1463 and 1463.1 of the Penal Code; provided, however, that a county may, by a majority vote of the members of its board of supervisors, allocate any amount up to, but not exceeding 50 percent of such fines to the county

superintendent of schools for allocation to local school districts. The fines allocated shall be administered by the county superintendent of schools to finance public school programs, which provide counseling or other educational services designed to discourage shoplifting, theft, and burglary. Subject to rules and regulations as may be adopted by the Superintendent of Public Instruction, each county superintendent of schools shall allocate such funds to school districts within the county which submit project applications designed to further the educational purposes of this section. The costs of administration of this section by each county superintendent of schools shall be paid from the funds allocated to the county superintendent of schools.

(e) (1) A merchant may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant's premises.

A person employed by a library facility may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the person employed by a library facility has probable cause to believe the person to be detained is attempting to unlawfully remove or has unlawfully removed books or library materials from the premises of the library facility.

(2) In making the detention a merchant or a person employed by a library facility may use a reasonable amount of nondeadly force necessary to protect himself or herself and to prevent escape of the person detained or the loss of property.

(3) During the period of detention any items which a merchant or any items which a person employed by a library facility has probable cause to believe are unlawfully taken from the premises of the merchant or library facility and which are in plain view may be examined by the merchant or person employed by a library facility for the purposes of ascertaining the ownership thereof.

(4) A merchant, a person employed by a library facility, or an agent thereof, having probable cause to believe the person detained was attempting to unlawfully take or has taken any item from the premises, may request the person detained to voluntarily surrender the item. Should the person detained refuse to surrender the item of which there is probable cause to believe has been unlawfully taken from the premises, or attempted to be unlawfully taken from the premises, a limited and reasonable search may be conducted by those authorized to make the detention in order to recover the item. Only packages, shopping bags, handbags or other property in the immediate possession of the person detained, but not including any clothing worn by the person, may be searched pursuant to this subdivision. Upon surrender or discovery of the item, the person detained may also be requested, but may not be required, to provide adequate proof of his or her true identity.

(5) A peace officer who accepts custody of a person arrested for an offense contained in this section may, subsequent to the arrest, search the person arrested and his or her immediate possessions for any item or items alleged to have been taken.

(6) In any civil action brought by any person resulting from a detention or arrest by a merchant, it shall be a defense to such action that the merchant detaining or arresting such person had probable cause to believe that the person had stolen or attempted to steal merchandise and that the merchant acted reasonably under all the circumstances.

In any civil action brought by any person resulting from a detention or arrest by a person employed by a library facility, it shall be a defense to such action that the person employed by a library facility detaining or arresting such person had probable cause to believe that the person had stolen or attempted to steal books or library materials and that the person employed by a library facility acted reasonably under all the circumstances.

(g) As used in this section:

(1) "Merchandise" means any personal property, capable of manual delivery, displayed, held or offered for retail sale by a merchant.

(2) "Merchant" means an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises used for the retail purchase or sale of any personal property capable of manual delivery.

(3) The terms "book or other library materials" include any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual material in any format, magnetic or other tape, electronic data-processing record, artifact, or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, on loan to, or otherwise in the custody of a library facility.

(4) The term "library facility" includes any public library; any library of an educational, historical or eleemosynary institution, organization or society; any museum; any repository of public records.

(h) Any library facility shall post at its entrance and exit a conspicuous sign to read as follows:

IN ORDER TO PREVENT THE THEFT OF BOOKS AND LIBRARY MATERIALS, STATE LAW AUTHORIZES THE DETENTION FOR A REASONABLE PERIOD OF ANY PERSON USING THESE FACILITIES SUSPECTED OF COMMITTING "LIBRARY THEFT" (PENAL CODE SECTION 490.5).

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Assembly Bill No. 1790

CHAPTER 226

An act to amend Section 1306 of the Penal Code, relating to bail bonds.

[Approved by Governor July 19, 1981. Filed with Secretary of State July 20, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1790, Moore. Penalty assessments.

Under existing law, certain penalty assessments are imposed on fines, penalties, and bail forfeitures for certain offenses.

This bill would specify that when any bail bond is forfeited and a judgment is entered against the bondsman, the judgment shall not exceed the amount of the bond with costs and no penalty assessment shall be levied upon or added to the judgment.

The people of the State of California do enact as follows:

SECTION 1. Section 1306 of the Penal Code is amended to read:

1306. When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, regardless of the amount of the bail, shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman has bound himself. In no event shall the judgment exceed the amount of the bond, with costs and notwithstanding any other provision of law, no penalty assessments shall be levied or added to the judgment.

If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.

A dismissal of the complaint, indictment or information after the default of the defendant shall not release or affect the obligation of the bail bond or undertaking.

Within five days after the summary judgment becomes final, the district attorney or civil legal adviser of the board of supervisors shall demand immediate payment of the judgment. If the judgment remains unpaid for a period of 20 days after demand has been made, he shall forthwith cause a writ of execution to issue and be levied upon the property of the judgment debtor, and shall take any other steps necessary to collect the judgment.

The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.

O

Assembly Bill No. 2009

CHAPTER 732

An act to amend Section 12021.5 of the Penal Code, relating to firearms and ammunition.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2009, Elder. Minors: firearms.

Existing law prohibits possession of a concealable firearm by a minor without parental or a guardian's consent.

This bill would also prohibit possession of live ammunition without such consent, except while going to or from a lawful shooting activity.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12021.5 of the Penal Code is amended to read:

12021.5. (a) A minor may not possess a concealable firearm unless he or she has the written permission of his or her parent or guardian to have such firearm or is accompanied by his or her parent or guardian while he or she has such firearm in his or her possession.

(b) A minor may not possess live ammunition unless he or she has the written permission of his or her parent or guardian or is accompanied by his or her parent or guardian, except while going to or from an organized lawful recreational or competitive shooting activity or a lawful hunting activity.

(c) Violation of this section is a misdemeanor.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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Assembly Bill No. 2109

CHAPTER 188

An act to amend Section 903.1 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2109, Harris. Juvenile court law.

Existing law does not specifically provide that the father, mother, spouse or other person liable for the support of a minor and the estate of any such person shall be liable for any cost to the county of legal services rendered directly to any such person in a dependency proceeding.

This bill would so provide.

The people of the State of California do enact as follows:

SECTION 1. Section 903.1 of the Welfare and Institutions Code is amended to read:

903.1. The father, mother, spouse, or other person liable for the support of a minor, the estate of such a person, and the estate of the minor, shall be liable for the cost to the county of legal services rendered to the minor by the public defender pursuant to an order of the juvenile court, or for the cost to the county for the legal services rendered to the minor by an attorney in private practice appointed pursuant to an order of the juvenile court. The father, mother, spouse, or other person liable for the support of a minor and the estate of any such person shall also be liable for any cost to the county of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by the public defender pursuant to an order of the juvenile court, or by an attorney in private practice appointed pursuant to order of the juvenile court. The liability of such persons (in this article called relatives) and estates shall be a joint and several liability.

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Assembly Bill No. 2173

CHAPTER 727

An act to amend Section 1203.1 of the Penal Code, and to amend Section 730.5 of the Welfare and Institutions Code, relating to probation.

[Approved by Governor September 24, 1981. Filed with Secretary of State September 25, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2173, Campbell. Probation.

Existing law permits a court in sentencing a convicted defendant to impose as a condition of probation that the defendant make restitution. The court may also, after determining the ability of the defendant to pay, require the defendant to pay all or a portion of the reasonable cost of probation.

This bill would permit the board of supervisors to collect fees, as specified, for the administrative costs of the collection of restitution payments.

Existing law permits a court adjudging a minor to be a ward of the court to levy a fine not to exceed $250 if it determines the minor has the financial ability to pay.

This bill would specify that such a fine is also subject to a penalty assessment as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.1 of the Penal Code is amended to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; may provide for reparation in proper cases; and may require bonds for the faithful observance and

performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and

counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 2. Section 730.5 of the Welfare and Institutions Code is amended to read:

730.5. When a minor is adjudged a ward of the court on the ground that he or she is a person described in Section 602, in addition to any of the orders authorized by Section 726, 727, 730, or 731, the court may levy a fine against the minor not to exceed two hundred fifty dollars ($250), if the court finds that the minor has the financial ability to pay the fine. Section 1464 of the Penal Code applies to fines levied pursuant to this section.

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