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# 2018 Legislative Summary

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# 2018 Legislative Summary



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*Chair*

**Tom Lackey**  
*Vice Chair*

*Members*  
**Wendy Carrillo**  
**Sydney Kamlager-Dove**  
**Kevin Kiley**  
**Bill Quirk**  
**Miguel Santiago**



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# BACKGROUND CHECKS

## Peace Officer Misconduct: Employment

Existing law requires law enforcement agencies to establish a procedure for investigating complaints against a peace officer. However, those investigations do not always make it into the officer's personnel or conduct file. In some cases, even if an investigation does make it in, the employing agency may not appropriately review the file to ensure the officer is still qualified. This is because statute is silent on what the process is for reviewing the personnel records of current peace officers.

A *Los Angeles Times* article highlighted cases where the Los Angeles Sheriff's Department hired dozens of officers even though their personnel records revealed wrongdoing, incompetence or poor performance. According to the article, several individuals involved in the hiring did not review personnel records.

**AB 2327 (Quirk), Chapter 966**, requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file. Specifically, this new law:

- Requires peace officers seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file.
- Requires each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency.

## Subsequent Arrest Notification: Employment, Licenses, and Certifications

California's Department of Social Services (CDSS) is in charge of some 70,000 community care facilities in the state. These facilities are responsible for taking care of vulnerable populations, including minor children and the elderly. It is therefore necessary to vet the backgrounds of individuals who have access to the community care facilities, such as volunteers and employees. In order to do so, CDSS has established the Caregiver Background Check Bureau (CBCB) which reviews whether a potential employee or volunteer is fit to work within its care facilities. One important role of the CBCB is to review of the summary criminal history information of applicants who are seeking access to a community care facility.

When a person applies to be a volunteer or an employee at a community care facility, existing law requires the Department of Justice (DOJ) to provide information regarding every conviction, every arrest for which the individual is awaiting trial, sex offender registration status, and every arrest for crimes specified in the Health and Safety Code Section 1522(a)(1), which includes murder, elder abuse, and assault. If DOJ does not have records of a disposition for the arrest, it must make a genuine effort to determine the disposition. (*Id.*)

After a volunteer or employee has cleared this initial check, the DOJ can, but is not required to pass along subsequent arrest and conviction information. Therefore, a person who was initially granted access to a community care facility because they had no troubling convictions or arrests, may subsequently be arrested and continue working at the facility without the facility's knowledge. A recent State audit found that at least two employees or volunteers continued working in community care facilities after they had been arrested and convicted for serious crimes that should have disqualified them from employment.

**AB 2461 (Flora), Chapter 300**, requires the Department of Justice (DOJ) to continually update authorized entities with information about new arrests and convictions for people who have their fingerprints on file with the DOJ or the Federal Bureau of Investigation (FBI) as a result of applying for a job, license, or certification. Specifically, this new law:

- Requires DOJ to provide subsequent state or federal arrest or disposition notification to the California Department of Social Services (CDSS), the Medical Board of California, and the Osteopathic Medical Board of California to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the FBI as the result of an application for licensing, employment, certification, or approval.
- Specifies that an entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the DOJ for the purpose of establishing a record of the applicant to receive subsequent state or federal arrests or dispositions shall immediately notify the DOJ when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated.

# BAIL

## Pretrial Release or Detention: Pretrial Services

There are a number of challenges presented by the money bail system. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. Persons who have money have the ability to confront their criminal charges while free from confinement in county jail. And those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody.

Another function of the bail system is supposed to be protection of the community. Under the current system, prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether he or she will return to court. Arguably, the current bail system does not actually address community safety concerns because there is no assessment of risk, at least when bail is posted before the arrestee appears before the court.

**SB 10 (Hertzberg), Chapter 244**, repeals the current commercial bail system and enacts a risk-based preventative detention system. Specifically, this new law:

- States legislative intent to permit preventative detention of pretrial defendants only in a manner that is consistent with the United States (U.S.) Constitution as interpreted by the U.S. Supreme Court, and only to the extent permitted by the California Constitution as interpreted by the state Courts of Appeal and Supreme Court.
- Repeals existing Penal Code provisions regarding bail as of October 1, 2019.
- Requires courts to establish pretrial assessment services which are to be provided either by the courts or by public agencies, such as county probation departments, under contracts with the courts.
- Requires persons arrested or detained for most misdemeanors to be booked and released without being taken into custody, or if taken into custody, released within 12 hours of booking.
- Requires a pretrial assessment services investigation of all eligible persons detained for a crime, other than those booked and released for a misdemeanor, and preparation of a report containing information from the investigation and any recommendations for conditions of the person's release.
- Requires pre-arraignment, own-recognizance release of a person having been assessed as low risk to both public safety and failure to appear in court. Release shall be with the least restrictive non-monetary conditions needed to assure public safety and return to court.

- Requires pretrial assessment services to release or detain a person assessed as medium risk based on standards as determined by locally adopted court policies. For those persons released, release shall be with the least restrictive non-monetary conditions needed to assure public safety and return to court.
- Prohibits pretrial assessment services from releasing any of the following persons:
  - A person who has been assessed in the current case as high risk;
  - A person arrested for specified offenses requiring sex offender registration;
  - A person arrested for specified misdemeanor violations;
  - A person arrested for a felony involving physical violence or likelihood of great bodily injury as an element of the crime, or a felony in which the person is alleged to have personally inflicted great bodily injury or have been armed with, or used a deadly weapon or firearm;
  - A person arrested for driving under the influence under specified circumstances;
  - A person arrested for violation of a restraining order within five years;
  - A person who has three or more failures to appear in court within the prior 12 months;
  - A person who, at the time of arrest, was pending trial or sentencing in another felony or misdemeanor matter;
  - A person who has intimidated, threatened, or dissuaded a victim or witness;
  - A person who has violated a condition of pretrial release in the past five years;
  - A person who has been convicted of a serious or violent felony, as specified, in the past five years; and,
  - A person who has been arrested for a serious or violent felony, as specified.
- Provides that review of a person's custody status and release must occur without unnecessary delay and no later than 24 hours from booking, unless there is good cause to extend this time for an additional 12 hours.
- States that a released person shall not be required to pay for the costs of any non-monetary conditions of release.
- Requires a person to be released on his or her own recognizance to sign a release agreement which includes specified minimum conditions.

- Provides that persons not granted pre-arraignment release shall be detained unless the court provides pre-arraignment review.
- Allows courts to conduct pre-arraignment reviews and make release decisions, as specified, except that this authority does not apply to persons assessed as high risk, those charged with a serious or violent felony, or persons who at the time of arrest were pending trial or sentencing in another felony matter. The court may on its own motion modify the conditions of release for good cause.
- Requires pretrial assessment services to submit the following information to the court at or before the defendant's arraignment for its consideration:
  - The results of a risk assessment;
  - The person's criminal history information and current criminal charges;
  - Any supplemental information reasonably available affecting the person's risk to public safety or risk of failure to appear in court; and,
  - Recommendations to the court for conditions of release.
- Requires the prosecution to notify the victim of the arraignment and any other hearing regarding the defendant's custody status, if requested.
- Allows the prosecution or the defendant to request review and modification of the defendant's release conditions at arraignment.
- Allows the prosecutor to file a motion for preventative detention at arraignment or at any other time during the criminal proceedings based on any of the following circumstances:
  - The alleged crime was committed with violence, threat thereof, or likelihood of serious bodily injury, or was one which involved use of a deadly weapon, or the infliction of great bodily injury;
  - At the time of arrest, the defendant was on post-conviction supervision, as specified, or was pending trial or sentencing in another felony matter;
  - The defendant intimidated a witness or victim; or,
  - There is substantial reason to believe that pretrial-supervision conditions will not reasonably assure the defendant's appearance in court or public safety.
- Establishes procedures for release or detention determinations by the court at arraignments and sets forth the rights of the parties, including:



- The defendant has the right to counsel, the right to be heard, and the right to a continuous hearing at one session;
- The victim has a right to notice of the proceeding and the right to be heard;
- A rebuttable presumption that the person should not be released if either:
  - The alleged offense is a violent felony, as specified, or committed with violence, likelihood of serious bodily injury, or involved a deadly weapon; or
  - The defendant is assessed as high risk and either has a prior conviction for a serious or violent felony within the past five years; was pending sentencing for a violent felony or one involving violence or use of a deadly weapon; has intimidated or dissuaded a victim or witness of the current crime; or, at the time of arrest was on any form of post-conviction supervision other than informal probation;
- Standard of proof of clear and convincing evidence; and,
- The right to appellate writ review of the decision.
- Allows either the prosecution or the defense to file a motion to reopen a preventative detention hearing, or for a new hearing at any time before trial upon a showing of newly discovered evidence, facts, or material change in circumstances, as specified.
- Requires Judicial Council to adopt rules of court to prescribe the proper use of risk assessment information; the standards for review, release, and detention by pretrial assessment services and the courts; the parameters of local court rules, and the imposition of pretrial release conditions, including the designation of risk levels or categories.
- Requires superior courts to adopt a local court rule, consistent with the Rules of Court adopted by the Judicial Council, which sets forth review and release standards for persons assessed as medium risk, as specified. The local rule may further expand the list of offenses and factors for which pre-arraignment release of persons assessed as medium risk is not permitted, but cannot provide for the exclusion of release of all medium risk defendants.
- Places limitations on the agencies which can contract with the courts to perform pretrial risk assessment services, but exempts the Superior Court of Santa Clara County from these limitations.
- Requires data collection by the courts to be reported to the Judicial Council which will in turn submit annual reports, beginning January 1, 2021, to the Governor and the Legislature.

- Requires the Department of Finance in consultation with the Judicial Council and the Chief Probation Officers of California to annually estimate the level of funding and resources needed for pretrial assessment services so that funding needs are submitted to the Legislature along with the Governor's annual budget. Upon appropriation by the Legislature, the Judicial Council and Department of Finance shall allocate funds to local courts and probation departments for pretrial assessment services, as specified.
- Delays implementation of these provisions until October 1, 2019.
- States legislative intent that, to the extent practicable, priority for available jail capacity shall be for the post-conviction population.
- Defines various terms for purposes of these provisions.

### **Pretrial Release and Detention: Pretrial Services**

After the statute repealing commercial bail was enacted this legislative session, some necessary technical changes became apparent.

**SB 1054 (Hertzberg), Chapter 980**, makes technical changes to SB 10 (Hertzberg), Chapter, Statutes of 2018, which repealed the current commercial bail system and enacted a risk-based preventative detention system. Specifically, this new law:

- Exempts, until January 1, 2023, the San Francisco Pretrial Diversion Project from the requirement that pretrial assessment services be performed by public employees.
- Fixes an incorrect cross reference which references the version of the sex offender registration statute not yet in effect.



# CONTROLLED SUBSTANCES

## **CURES Database: Interstate Sharing of Information**

Currently, the Controlled Substance Utilization Review and Evaluation System (CURES) prescription drug monitoring program database contains information related to Schedule II-IV prescriptions dispensed only within California. This means that when a health practitioner consults a patient's prescription history prior to writing a new prescription, information relating to prescriptions written in other states are not reflected in the activity report.

Forty-nine states including California and the District of Columbia currently have a prescription drug monitoring program. Many of these states already participate in one of several interstate data share hubs that allow for the exchange of prescription information.

The CURES statutes do not currently include interstate hub sharing among the expressly authorized uses of data within CURES. There is also no framework provided requiring the California Department of Justice (DOJ) to insist on certain privacy and security minimums as part of any agreement it chooses to enter into.

**AB 1751 (Low), Chapter 478**, authorizes the DOJ to share prescription records between the state's prescription drug monitoring program, CURES, and other databases across state lines, with a requirement that other states meet California's patient privacy and data security standards. Specifically, this new law:

- Requires DOJ, no later than July 1, 2020, to adopt regulations regarding the access and use of the information within CURES;
- Requires the regulations to address:
  - The process for approving, denying, and disapproving individuals or entities seeking access to information in CURES;
  - The purposes for which a health care practitioner may access information in CURES;
  - The conditions under which a warrant, subpoena, or court order is required for a law enforcement agency to obtain information from CURES as part of a criminal investigation; and,
  - The process by which information in CURES may be provided for educational, peer review, statistical, or research purposes.
- Authorizes DOJ to enter into an agreement with an entity operating an interstate data share hub for purposes of participating in interjurisdictional information sharing between prescription drug monitoring programs across state lines.

- Requires any agreement entered into by DOJ for purposes of interstate data sharing to ensure that all access to data within CURES, and handling of CURES data, complies with California law and meets the same patient privacy and data security standards employed and required for direct access of CURES.

### **Prescription Drugs: Security Printers for Prescription Pads**

Under the Department of Justice's (DOJ) Security Prescription Printers Program, all paper prescriptions of any Schedule II through V controlled substance must use special tamper-resistant forms obtained from manufacturers approved by the DOJ. Vendors wishing to operate as approved security printers submit an application to the DOJ and are initially required to provide an applicant's name, address, and telephone number along with a description of the applicant's intended policies and procedures for ensuring that prescription pads are delivered only to valid prescribers.

Approximately 43 security printers are currently approved by the DOJ and operating throughout the state. The DOJ has stated that it believes this to be too many printers to substantially standardize the production of forms in a way that would allow for unique identifiers to be consistently applied in a way that can be tracked through the Controlled Substances Utilization Review and Evaluation System (CURES) or any other system.

**AB 1753 (Low), Chapter 479**, allows the DOJ to cap the number of security printers approved to manufacture regulated prescription pads and reduce the current number by regulation to no fewer than three. Specifically, this new law:

- Authorizes DOJ, in order to facilitate the standardization of all prescription forms and the serialization of prescription forms with unique identifiers, to cease issuing new approvals of security printers to the extent necessary to achieve these purposes.
- Authorizes DOJ, pursuant to regulation, to reduce the number of currently approved security printers to no fewer than three vendors.
- Requires DOJ to ensure that any reduction or limitation of approved security printers does not impact the ability of vendors to meet demand for prescription forms.
- Requires that all prescriptions be uniquely serialized.
- Requires that the DOJ link prescription pad serial numbers to corresponding records in the Controlled Substances Utilization Review and Evaluation System (CURES) prescription drug monitoring database when available.

## **Cannabis Convictions: Resentencing**

Proposition 64, the *Adult Use of Marijuana Act*, was a 2016 statewide ballot initiative that, among other regulations, legalized the possession, use, and cultivation of marijuana for people over age 21. Proposition 64 also reduced the penalties for possession, cultivation, possession with the intent to sell, and transportation for sale of cannabis. Proposition 64 also included provisions allowing anyone convicted of a specified cannabis offense, prior to its passage, to petition the court to resentence and/or dismiss the offense, or apply for redesignation of the offense.

It is estimated that between 1915 and 2016, California law enforcement made 2,756,778 cannabis arrests. According to a report by the Drug Policy Alliance, there were approximately 500,000 people arrested for cannabis felonies and misdemeanors between 2006-2015.

Proposition 64 offers millions of individuals the opportunity to clear their records of convictions for conduct that California no longer considers criminal. However, many individuals are unaware of this newly created opportunity, or lack the resources and ability to navigate the record change process on their own. As of September 2017, only 4,885 people have petitioned to the courts to have their cannabis convictions modified.

A criminal conviction – particularly a felony conviction – can prevent an individual from obtaining employment, getting housing, obtaining a professional license, and more. This is particularly true of cannabis-related crimes, which statistics show have been prosecuted with most vigor against people of color and the poor, whose communities have suffered for years from disproportionate arrest rates that take a toll on their families, community relations, and personal lives.

**AB 1793 (Bonta), Chapter 993**, expedites the identification, review, and notification of individuals who may be eligible for recall or dismissal, dismissal and sealing, or redesignation of specified cannabis-related convictions. Specifically, this new law:

- Requires the Department of Justice (DOJ) to review the records in the state summary criminal history information database and identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation and to notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.
- Requires the prosecution to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation.
- Allows the prosecution to challenge the resentencing of a person if the person does not meet specified criteria or presents an unreasonable risk to public safety.
- Allows the prosecution to challenge the dismissal and sealing or redesignation of a person who has completed his or her sentence for a conviction when the person does not meet specified criteria.

- Requires the public defender’s office, upon receiving notice from the prosecution, to make a reasonable effort to notify the person whose resentencing or dismissal is being challenged.
- Requires the court to reduce or dismiss the conviction if the prosecution does not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation by July 1, 2020.
- Requires the DOJ to modify the state summary criminal history information database accordingly.
- States the intent of the Legislature to prioritize persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation.

### **Law Enforcement Agencies: Opioid Antagonists**

In October of 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastating communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28% increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

Existing law authorizes a pharmacy to furnish naloxone hydrochloride or other opioid antagonists to a school district, county office of education, or charter school if specified criteria are met.

**AB 2256 (Santiago), Chapter 259**, allows a pharmacy or wholesaler to furnish naloxone hydrochloride or another opioid antagonist to a law enforcement agency, as specified. Specifically, this new law:

- Provides that, notwithstanding any other law, a pharmacy or wholesaler to furnish naloxone hydrochloride or another opioid antagonists to a law enforcement agency if both the following conditions are met:
  - The naloxone hydrochloride or another opioid antagonist is furnished exclusively for use by employees of the law enforcement agency who have completed training, provided by the law enforcement agency, in administering naloxone or another opioid antagonist; and

- Records regarding the acquisition and disposition of naloxone hydrochloride or another opioid antagonist furnished pursuant to this section shall be maintained by the law enforcement agency for a period of three years from the date the records were created. The law enforcement agency shall be responsible for monitoring the supply of naloxone hydrochloride or another opioid antagonist and ensuring the destruction of expired naloxone hydrochloride or another opioid antagonist.

### **Controlled Substances: Human Chorionic Gonadotropin**

Human chorionic gonadotropin (HCG) is a Schedule III controlled substance that is widely used by veterinarians to treat cows in the dairy industry. Schedule III controlled substances are highly regulated and require a prescription in order to be dispensed.

**AB 2589 (Bigelow), Chapter 81**, exempts HCG from the regulations associated with Schedule III controlled substances when purchased by, transferred to, or administered by a licensed veterinarian, or licensed veterinarian's agent, exclusively for veterinary use.

### **Hydrocodone Combination Products: Drug Schedules**

California classifies controlled substances in five schedules according to their danger and potential for abuse. The California and Federal schedules mirror each other closely. Although the federal and state controlled substance schedules are generally consistent, there are discrepancies. Hydrocodone combination products (HCPs), which are drugs that combine hydrocodone with non-narcotic ingredients including acetaminophen or ibuprofen, were previously Schedule III in both the federal and California schedules. Effective October 6, 2014, HCPs were rescheduled at the federal level from Schedule III to Schedule II in recognition of the drug's abuse potential. Vicodin and Norco two commonly used HCPs. Prior to this bill, California had not made any change regarding HCPs and they remain on Schedule III at the state level.

**AB 2783 (O'Donnell), Chapter 589**, reschedules HCPs from a Schedule III drug to a Schedule II drug.

### **Controlled Substances: Prohibition on Sale of Non-Oderized Butane**

Butane honey oil (BHO) is a waxy concentrated cannabis extract made by pushing liquid butane (which liquefies easily) through a tube packed with marijuana. Butane is a chemical solvent made from petroleum and natural gas. Liquid butane quickly dissolves the cannabinoids in marijuana. A solution of cannabinoids, waxes, and oil dissolved in butane comes out the other end.

BHO production can result in explosions and fires because of the volatile nature of butane. Large quantities of butane, ranging from a few dozen to over a thousand pressurized 400-mL canisters have been found inside of BHO labs.



**AB 3112 (Grayson), Chapter 595**, makes it unlawful for a manufacturer, wholesaler, reseller, or retailer, to sell non-odorized butane to a customer, but would exempt from the prohibition certain consumer items such as lighters and small containers of non-odorized butane used to refill these items. Specifically, this new law:

- Provides that it is unlawful for a manufacturer, wholesaler, reseller, retailer, or other person or entity to sell to any customer any quantity of nonodorized butane, except as otherwise provided.
- Provides that the prohibition on the sale of butane does not apply to any of the following transactions:
  - Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;
  - Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed as specified, or a medical cannabis collective or cooperative, operating in compliance with all applicable state licensing requirements and local regulations governing that type of business;
  - The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges, or other products that contain or use nonodorized butane and contain less than 150 milliliters of butane; or,
  - The sale of any product in which butane is used as an aerosol propellant.
- Provides that any person or business that violates the prohibition on the sale of butane is subject to a civil penalty of \$2,500.
- Provides that the Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this bill.
- Provides that the provisions of this bill will become operative on July 1, 2019.

# CORRECTIONS

## **Sex Offender Registration: Corrections and Custodial Facilities**

Under existing law, local law enforcement agencies and the Department of Justice (DOJ) are provided information about a registrant's address upon release from custody from California Department of Corrections and Rehabilitation (CDCR), state mental facilities, and local and county jails. Upon release from incarceration, local custody officials, courts, and probation officers are required to update local law enforcement and the DOJ with information about the registrants address. Additionally, a person who is required to register must re-register within five working days whenever they change residences—even if temporary, and must re-register annually within five working days of their birthday.

Currently, all state prisons, local correctional facilities, and state hospitals are required to notify the DOJ whenever the facility releases, discharges, or paroles a person required to register as a sex offender. CDCR and state mental facilities must notify the DOJ and local law enforcement within 90 days of receipt of a registrant. In felony sex offense cases, existing law also requires that the institution notify the DOJ, the local law enforcement agency where the registrant is planning to reside, and the prosecuting attorney's office of the release of the registrant 45 days prior to his or her scheduled release. Existing law does not mandate a timeline for notifying the DOJ of release for registrants convicted of misdemeanor sex offenses.

As custodian of the state's Sex Offender Registry, the DOJ is required to ensure that sex offender records are complete, accurate and up-to-date. Under current statutory reporting requirements, some registrants are incorrectly shown as "in-violation" for failing to register when they are actually in custody.

**AB 1994 (Cervantes), Chapter 811**, shortens the amount of time a CDCR facility or state hospital has to notify the DOJ of a registrant's receipt and release from the 90 days to 15 days, and extends this requirement to include county and local custodial facilities in the mandate to notify the DOJ upon the receipt of a sex offender registrant.

## **Criminal Offender Record Information: Reporting**

Generally, detention facilities have both admissions and release data readily available. California Department of Corrections and Rehabilitation keeps a wide variety of inmate admission and release information including, among other things; a report of the percentage of felons released to parole who are returned to prison, a report of the average daily prison population, and a report of the average time served by felons. Local detention facilities also maintain admissions and release data. The Board of State and Community Corrections requires all local detention facilities to maintain an inmate demographics accounting system designed to reflect the average daily population of all inmates, including juveniles; this information is required to be submitted as prescribed by the Jail Profile Survey form.

The requirement for detention facilities to report admissions or releases to the Department of Justice (DOJ) was first enacted in 1973 and was subsequently amended to its current form in 1978. Due to the absence of information regarding the legislation, it is difficult to determine whether the legislature had intended to create an option for detention facilities to choose to submit only admissions information or release information to the DOJ. Thus, under current law, state prisons and local county jails could provide the DOJ with information regarding either the admission or release of criminal offenders, which would result in incomplete data regarding admission and release of criminal offenders.

**AB 2080 (Cervantes), Chapter 814**, specifies that detention facilities are required to report both inmate admissions and releases to the DOJ within 30 days of such an action.

### **Custodial Officers: Madera County**

Under existing law a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, Santa Clara County, Napa County, or a county having a population of 425,000 or less who has the authority and responsibility of maintaining custody of prisoners and performs tasks related to the operation of a local detention facility. A custodial officer of a county shall be an employee of, and under the authority of, the sheriff, except in counties where the sheriff is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it.

Also, existing law authorizes a custodial officer employed by the Napa County Department of Corrections and the Santa Clara County Department of Corrections to perform arrests, conduct searches, and segregate and classify prisoners upon resolution by the Napa County and Santa Clara Board of Supervisors.

**AB 2197 (Bigelow), Chapter 19**, permits custodial officers employed by the Madera County Department of Corrections (DOC) to perform additional duties. Specifically, this new law:

- Authorizes, upon a resolution by the Madera County Board of Supervisors, custodial officers employed by the Madera County DOC to perform additional duties in any detention facility located in that county.
- Provides that custodial officers employed by Madera County DOC are authorized to perform the following additional duties in the facility:
  - Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;
  - Search property, cells, prisoners, or visitors;
  - Conduct strip or body cavity searches of prisoners as specified;

- Conduct searches and seizures pursuant to a duly issued warrant;
  - Segregate prisoners; and,
  - Classify prisoners for the purpose of housing or participation in supervised activities.
- States that Madera County custodial officers are not authorized to perform any law enforcement activities involving any person other than an inmate or his or her visitors in a Madera County detention facility.
  - Provides that it is the intent of the Legislature to enumerate the specific duties of Madera County correctional officers, and to clarify the relationship between correctional officers and deputy sheriffs in Madera County.

### **County Jails: Inmate Breast Milk Feeding Policy**

Considering the proven health and social benefits of breastfeeding to both the mother and her child, an imprisoned mother's actions should not condemn her children to lose their rights to the benefits of breastmilk. When a child cannot access the immunity-building and nutritional benefits of breastmilk (as well as the bonding that breastfeeding promotes) because his/her mother is in a correctional facility, that child too, is sentenced to the ramifications of the imprisonment.

Allowing incarcerated mothers the opportunity to provide their child with breastmilk not only promotes the well-being of both the inmate and the child, but preserves the mother to child bond. When an incarcerated mother remains connected to her child she is less likely to experience postpartum depression, postpartum anxiety disorder, or post-traumatic stress syndrome, and in turn is less likely to return to prison.

Children born to incarcerated mothers are already at a disadvantage from birth and will face many challenges. It is important that we promote a family bond so that when the mother is released she has a higher chance of leading a productive and crime-free life.

**AB 2507 (Jones-Sawyer), Chapter 944**, requires each county sheriff to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in county jails. Specifically, **this new law**:

- Requires that, on or before January 1, 2020, a county sheriff or the administrator of a county jail to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in or sentenced to a county jail that is based on currently accepted best practices.
- Requires that the breastfeeding policy be based on currently accepted best practices.
- Requires the breastfeeding policy include all of the following provisions:

- Procedures for providing medically appropriate support and care related to the cessation of lactation or weaning;
- Procedures providing for human milk expression, disposal, and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator; and,
- Procedures for conditioning an inmate's participation in the program upon the inmate undergoing drug screening.
- Requires that the breastfeeding policy be posted in all locations in the jail where medical care is provided and requires that the provisions of the policy be communicated to all staff persons who interact with or oversee pregnant or lactating inmates.
- Provides that the above provisions on the breastfeeding policy for county jail inmates applies without regard to whether the jail is operated pursuant to a contract with a private contractor and without regard to whether the inmate has been charged with or convicted of a crime.

## **Inmates: Indigence**

Inmates may hold funds in their trust accounts for health, legal, and mail needs and for discretionary spending, including health care appliances, legal materials, religious items, entertainment appliances, books and periodicals, handicraft materials, and canteen purchases. Canteens are ‘stores’ at a prison, where an inmate can order goods such as toothbrushes, toothpaste, soap, shampoo, food and beverages.

Indigent inmates do not have adequate funds in their trust account to purchase supplies or buy items from the canteen. Indigent inmates have a Constitutional right to personal hygiene supplies such as toothbrushes and soap and must be provided these resources.

There is no statute in California that defines indigent inmate. The California Code of Regulations states that an indigent inmate is “an inmate who is wholly without funds [in their trust account] at the time they were eligible for withdrawal of funds for canteen purchases.”

**AB 2533 (Stone), Chapter 764**, provides that an inmate in a state prison who has maintained an inmate trust account with \$25 or less for 30 consecutive days be deemed indigent and receive basic supplies necessary for maintaining personal hygiene.

## **Female Inmates: Pat Down Searches**

Incarcerated women often have high rates of past sexual violence, partner violence, and traumatic experiences. Allowing male guards to observe women who are incarcerated at all times, taking showers, dressing, going to the bathroom and being strip searched fails to acknowledge the ongoing suffered growing trauma that can occur through these interactions.

The Federal Prison Rape Elimination Act (PREA) provides that prisons and jails shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.

**AB 2550 (Weber), Chapter 174**, prohibits male correctional officers from conducting a pat down search of a female inmate and entering an area of the institution where female inmates may be in a state of undress. Specifically, this new law:

- Prohibits a male correctional officer from conducting a pat down search of a female inmate unless the prisoner presents a risk of immediate harm to herself or others or risk of escape and there is not a female correctional officer available to conduct the search.
- Prohibits a male correctional officer from entering into an area of the institution where female inmates may be in a state of undress, or be in an area where they can view female inmates in a state of undress, unless an inmate in the area presents a risk of immediate harm to herself or others or if there is a medical emergency in the area.

- Requires staff of the opposite sex shall announce their presence when entering a housing unit.
- States that if a male correctional officer conducts a pat down search of a female inmate or enters a prohibited area, the circumstances for and details of the exception shall be documented within three days of the incident.

### **County Jails: Veterans**

California law allows specified veterans to participate in pretrial diversion programs. The California Department of Veterans Affairs reports that these veteran treatment courts have resulted in reducing recidivism and lowering crime, with 70 percent of defendants finishing the programs and 75 percent not rearrested for at least two years after.

Requiring law enforcement to inquire about veteran status could ensure that veterans are connected to Veteran Treatment Courts earlier in the criminal justice process

**AB 2568 (Reyes), Chapter 281**, requires county jails, upon detention of a person, to ask if the person has served in the U.S. military, document the person's response, and make this information available to the individual, their counsel, and the district attorney.

### **Criminal Records: Arrest Record Sealing**

In 2017, the Legislature passed SB 393 (Lara), which created a process for persons who were arrested but never found guilty of a crime to petition the court to have their arrest record sealed. Now, under existing law, a person may petition the court if the prosecutor has not filed charges based on the arrest, no conviction has occurred, the charges have been dismissed, or if the arrestee is acquitted of the charges. If the court grants relief, the arrest is sealed and deemed not to have occurred and the person is released from penalties and disabilities resulting from the arrest.

The benefits of record sealing are numerous. For example, a sealed record may not be used in any way that could result in denial of any employment, benefit, or license. If a member of the public or a consumer agency requests information from the courts or law enforcement about an arrest, they will only be informed that the record has been sealed and will not be supplied any other information about the arrest. Private background check companies must destroy records of an arrest once they learn that the record is sealed, and are prohibited from disclosing a sealed arrest in their background reports.

Recent reforms have created the opportunity for more people to receive a clean slate and have equal access to job and housing opportunities. However, many people with criminal records do not pursue these remedies due to a lack of awareness about and/or resources for pursuing the process.

**AB 2599 (Holden), Chapter 653**, requires detention facilities to provide information to arrestees and about their right to petition for arrest record sealing. Specifically, this new law:

- Requires detention facilities to, at the request of an arrestee upon release, give the arrestee judicial council forms necessary to apply for arrest record sealing.
- Requires detention facilities to post a sign containing the following information: “A person who has been arrested but not convicted may petition the court to have his or her arrest and related record sealed. The petition form is available on the Internet or upon request in this facility.”

### **Inmates: Suicide Prevention**

In 1995, a Federal District Court ruled that California Department of Corrections and Rehabilitation was not providing adequate mental health care in violation of inmates’ Eighth and Fourteenth Amendment rights. The district court identified six areas where CDCR needed to make improvements, including suicide prevention. In 2011, the United States Supreme Court cited California’s inmate suicide rate and the percentage of those suicides that involved some measure of inadequate assessment, treatment, intervention, and were therefore most probably foreseeable or preventable as evidence that prisoners in California with serious mental illness do not receive adequate care. The Court found that California’s 2006 inmate suicide rate was nearly 80% higher than the national average for prison populations; 72.1% of the inmate suicides in 2006 involved some measure of inadequate assessment, treatment, or intervention, and were therefore most probably foreseeable and/or preventable; that percentage rose to 82% in 2007; that those numbers clearly indicate no improvement in this area during the past several years, and possibly signal a trend of ongoing deterioration; and that the data for 2010 was not showing improvement in suicide prevention.

Today, inmate suicide remains a pervasive problem at CDCR. In 2016, the Joint Legislative Audit Committee requested the California State Auditor to audit CDCR’s policies, procedures and practices for suicide prevention and reduction, with a particular emphasis on the recently elevated suicide rate at the California Institution for Women. The audit revealed that the average suicide rate in CDCR’s prisons was substantially higher than the average of U.S. state prisons; the rates of female inmates who committed suicide while in CDCR’s prisons have soared in recent years; there are significant weaknesses in compliance with suicide prevention and response policies; prisons failed to complete or completed inadequate risk evaluations for many of those inmates who required them; prisons did not complete or created inadequate treatment plans for some inmates—plans did not always specify medication dosage and frequency, treatment methods, provider information, or follow-up upon discharge; prisons did not properly monitor inmates who were at risk of committing suicide; although CDCR has known about many of the issues related to suicide prevention and response policies and practices that we found for a number of years, it has not fully implemented processes to address the issues that have been raised; and that CDCR could take a more proactive leadership role in identifying programs or best practices and reviewing a prison’s practices following an inmate’s suicide attempt.



**SB 960 (Leyva), Chapter 782**, requires CDCR to report annually on its efforts to respond to and prevent inmate suicides and attempted suicides. Specifically, this new law:

- Requires, on or before October 1 of each year, CDCR submit a report to the Legislature on its efforts to respond to and prevent inmate suicides and attempted suicides.
- Requires the report to include a description of CDCR's progress toward meeting its goals related to the completion of suicide risks evaluations in a sufficient manner; CDCR's progress toward meeting its goals related to the completion of 72 hour treatment plans in a sufficient manner; a description of CDCR's efforts to ensure that all required staff receive training related to suicide prevention and response; CDCR's progress in implementing the recommendations made by the special master regarding inmate suicides and attempts, including the results of any audits the department conducts; CDCR's progress in identifying and implementing initiatives that are designed to reduce risk factors associated with suicides; CDCR's efforts and progress to expand upon its process of notifying a designated person in the event of a prisoner's death, serious illness, or serious injury, including expansion of those notifications in cases of suicide attempts when deemed appropriate by the department, and when inmates have consented to allow release of that information.
- Provides that the report shall be submitted to the Legislature and posted on CDCR's Website in an easily accessible format.

### **Exonerated Inmates: Transitional Services**

Wrongfully convicted exonerees face many challenging obstacles when entering back into society, including psychological, physical, and financial difficulties. Existing law requires California Department of Corrections and Rehabilitation to provide specified transitional services to an exonerated person. An exonerated person can also petition the court to seal the case and arrest records. Though a step in the right direction, the existing services do not properly or wholly compensate an individual who was wrongfully deprived of their liberty.

Additionally, current law does not specify whether a person wrongfully convicted of an offense that requires them to register as a sex offender is relieved of the requirement to register once they are exonerated for the offense.

**SB 1050 (Lara), Chapter 979**, expands transitional services for exonerated persons and clarifies that an exonerated person is no longer required to register as a sex offender. Specifically, this new law:

- Specifies that the CDCR shall provide transitional services to exonerated persons including housing assistance, job training, and mental health services, as applicable.

- Requires CDCR to assist an exonerated person with enrollment in Medi-Cal and CalFresh and referral to the Employment Development Department and applicable regional planning units for workforce services.
- Requires, in addition to any other payment authorized by law, each person who is exonerated be paid \$1000 upon his or her release.
- Requires CDCR to notify the Department of Justice (DOJ) that a person meets the definition of “exonerated” no later than the date that CDCR releases the person from custody. States that upon receiving such notice, DOJ shall immediately update the person’s state summary criminal history information with a notation that the person meets the definition of “exonerated.”

### **Deferred Entry of Judgment: Young Adults**

In 2016, the Legislature enacted SB 1004 which created the “Transitional Age Youth” pilot project that provided a deferred entry of judgment program for young adults. The intention was to help improve the outcomes of young adults who come into contact with the justice system by placing them in a juvenile facility rather than an adult jail or prison and extending to them the services offered by the juvenile facility. The SB 1004 pilot program is currently in effect. However, the existing sunset date is January 1, 2020. When SB 1004 was enacted there were processes completed by the Board of State and Community Corrections to certify the programs compliance with State and Federal requirements which resulted in substantial delay in the program’s start date. Therefore, there will be relatively little data about the efficacy of the pilot program by January 1, 2020.

**SB 1106 (Hill), Chapter 1007**, extends the operative date of the existing Transitional Age Youth pilot program to January 1, 2022, expands the pilot program to the county of Ventura, and establishes a December 31, 2020, deadline by which a report on the program must be delivered to the Senate and Assembly Public Safety Committees.

## **Prison Food Options: Plant-Based Meals**

California Department of Corrections and Rehabilitation is the largest state food purchaser and food service provider, and serves around 130 million meals each year at 35 state prisons. Under current law, CDCR is required to provide inmates with sufficient plain and wholesome food of such variety as may be most conducive to good health. Generally, inmates are provided three meals during each 24-hour period, and a minimum of two of those meals are hot meals. All of CDCR's facilities serve the same standardized menu and all inmates are served the same menu.

As an alternative to the standardized menu, inmates at CDCR have three religious diet options: vegetarian, kosher, and religious meat alternate. According to data from 2016, approximately 9,600 inmates currently receive religious meal designation and approximately 4,500 receive vegetarian meals. Inmates approved for participation in the program are provided with an approved vegetarian protein alternative. Vegetarian meals are lacto-ovo vegetarian, meaning they may include dairy products, eggs, and fish. Halal meals consist of two vegetarian meals for breakfast and lunch and dinner with halal meat from an animal that was cared for and slaughtered according to Islamic dietary laws. Kosher meals consist of prepackaged frozen meals using kosher-certified food.

In addition to the three meals per day served by CDCR, inmates can use money in their inmate trust accounts to purchase food items from prison canteens. These items are not subject to any nutritional guidelines. Items for sale frequently include candy, ice cream, cookies and pastries, and instant food like Ramen and Spam.

A plant-based diet may improve inmate health. In general, inmates have a wide variety of risk factors that have been associated with poor physical health. Additionally, the increasing rate of incarceration of females and older individuals further taxes the medical resources of jails and prisons, as both populations have a higher likelihood of physical health concerns relative to young male inmates. The state bears the cost of poor inmate health—California spends hundreds of millions of dollars directly on food and spends more each year on health care costs of diet-related diseases through employee medical benefits, direct medical services to those housed in state facilities, and through state supported Medi-Cal and Medicaide. As the care for the physical health of offenders is becoming increasingly expensive, interventions that can improve inmates' physical health are desirable.

**SB 1138 (Skinner), Chapter 512**, requires CDCR to make plant-based meals available to the inmates under its jurisdiction, and requires specified licensed health care facilities to make plant-based meals available to their patients, as specified.

## Industrial Hemp Regulations

Current law strictly regulates the cultivation and production of industrial hemp, probably because of the fact that it comes from the same plant as marijuana. Nonetheless, industrial hemp has no psychoactive qualities because it contains a miniscule amount of delta-9-tetrahydrocannabinol (THC), which is the active ingredient in marijuana. Over 30 other nations and 19 states in the U.S. grow industrial hemp and California represents the largest consumer and industrial market for hemp raw materials and products in the U.S. With the passage of proposition 64, California legalized the recreational use, production, and cultivation of marijuana, but it has yet to update its regulations regarding the production and use of industrial hemp.

**SB 1409 (Wilk), Chapter 986**, updates existing California law pertaining to the production and cultivation of industrial hemp. Specifically, this new law:

- Amends the definition of industrial hemp so that it is no longer defined as a fiber and oilseed crop.
- Allows the production of industrial hemp by clonal propagation of cultivars that are on the list of approved seed cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.
- Deletes the requirement that industrial hemp be grown as a "densely planted" crop.
- Deletes the requirement that industrial hemp be grown only for fiber or oilseed.
- Deletes the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013 in order to be on the approved list of cultivars.
- Deletes the requirement that an application for registration to grow industrial hemp include information about whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop.
- Deletes prohibitions on ornamental cultivations of industrial hemp plants, pruning and tending of individual hemp plants, and culling of industrial hemp.
- Adds the requirement that an application for registration to grow industrial hemp include the state or county of origin of the seed cultivar to be grown.
- Reduces the length of time for which registration to produce industrial hemp is valid from two years to one, at which time the registrant must apply for renewal.
- Allows a commissioner or the counties, as appropriate, to retain the amount of a registration fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.

- Authorizes the board of supervisors of a county to establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing specified provisions of law pertaining to cultivation of industrial hemp; the fee is to be charged and collected by the commissioner upon registrations or renewals required to produce industrial hemp.
- Requires a registered producer of industrial hemp, other than an established agricultural research institution, to obtain a laboratory test report indicating the Tetrahydrocannabinol (THC) levels of a random sampling of the industrial hemp grown no more than 30 days before harvest.
- Requires that the sampling be conducted with the grower present.
- Requires the Department of Food and Agriculture (CDFA) to establish sampling procedures by regulation that include the number of plants to be sampled per field, the portions of plants to be sampled, and the parts of the plants to be included in the sample.
- Requires that the laboratory providing the test report be approved by the CDFA, rather than registered with the federal Drug Enforcement Agency.
- Specifies that the destruction of industrial hemp which exceeds permitted THC levels must begin within 48 hours and be completed within seven days.
- Authorizes the CDFA, as part of the industrial hemp registration program, to establish and carry out an agricultural pilot program pursuant to the Federal Agricultural Act of 2014.
- Requires an established agricultural research institution, before cultivating industrial hemp, to notify the commissioner of the county in which the institution intends to engage in cultivation and include the Global Positioning System coordinates of the proposed cultivation site.

# COURT HEARINGS

## Veterans: Resentencing Based on Mitigating Circumstances

Existing law provides if the court concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her military service, the court shall consider the circumstance as a factor in mitigation when imposing a criminal sentence. However, this provision does not apply to veterans convicted prior to January 1, 2015.

**AB 865 (Levine), Chapter 523**, authorizes the court, under specified conditions, to resentence any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service. Specifically, this new law:

- States that a person who is currently serving a sentence for a felony conviction, whether by trial or plea, who is, or was, a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service may petition for a recall of sentence, before the trial court that entered the judgment of conviction in his or her case, to request resentencing if the following condition are met:
  - The circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered as a factor in mitigation at the time of sentencing; and
  - The person was sentenced prior to January 1, 2015. This subdivision shall apply retroactively, whether or not the case was final as of January 1, 2015.
- Provides that if the court that originally sentenced the person is not available, the presiding judge shall designate another judge to rule on the petition.
- Requires, upon receiving a petition under these provisions of, the court to determine, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, whether the person satisfies the criteria required by this bill.
- Provides that at the hearing, the prosecution shall have an opportunity to be heard on the petitioner's eligibility and suitability for resentencing.

## **Juvenile Proceedings: Competency**

Adult mental incompetency is currently defined as lacking sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding or lacking a rational as well as factual understanding of the nature of the charges or proceedings. While those same factors would be considered in evaluating the competency of a minor, the court would also consider the minors developmental maturity. Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone.

The current statute governing juvenile competency was put in place in 2010. (AB 2212 (Fuentes), Chapter 671, Statutes of 2010.) That law sets forth guidelines for juvenile competency proceedings. However, there are some operational ambiguities among practitioners relative to the types of remediation services to be delivered, who is the appropriate entity to deliver them, and where a youth will receive those services and for how long.

**AB 1214 (Stone), Chapter 991**, revises the procedure to determine the mental competence of a juvenile charged with a crime. Specifically, this new law:

- States that if the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and make a determination of competence.
- States that a minor is incompetent if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her.
- States that incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.
- Allows the court to receive information from any source regarding the minor's ability to understand the proceedings.
- Provides that if the court finds substantial evidence that raises a doubt as to the minor's competency, the proceedings shall be suspended.
- States that unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor to determine if the minor is competent.
- Specifies that if the expert concludes that the minor lacks competency, the expert shall give his or her opinion on whether the minor is likely to attain competency in the foreseeable future, and if so, make recommendations regarding the type of services that would be effective in assisting the minor in attaining competency.

- Specifies that statements made to the appointed expert during the minor's competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of those statements shall not be used in any other hearing against the minor in either juvenile or adult court.
- Allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing.
- States that the question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert.
- Specifies that it shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent.
- Provides that if the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed.
- States that if the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.
- Provides that if the court finds the minor to be competent, the court shall reinstate proceedings.
- Requires the court upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency, unless the court finds that competency cannot be achieved within the foreseeable future.
- Requires the minor to be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody prior to the expiration of the total allowable remediation period.
- Requires the court to consider appropriate alternatives to juvenile hall confinement.
- States that within six months of the initial receipt of a recommendation by the designated person or entity, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program.
- Specifies that if the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent.



- Specifies that if the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable.
- Specifies that the court finds that the minor has been remediated, the court shall reinstate the proceedings.
- States that if the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed specified limits.
- States that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition.
- Provides that secure confinement shall not extend beyond six months from the finding of incompetence, unless otherwise excepted by the provisions of this bill.
- States that only in cases where the minor has been charged with specified serious or violent charges may the court consider whether it is necessary and in the best interests of the minor and the public's safety to order secure confinement of a minor for up to an additional year, not to exceed 18 months from the finding of incompetence.

### **Sentencing: Reduction of a Felony to a Misdemeanor**

When a judge grants probation he or she must specify whether the imposition of the sentence is suspended or whether the sentence is imposed, but execution of that sentence is suspended. Under existing law, when a defendant is granted probation a court can only exercise its discretion to reduce a felony to a misdemeanor if a sentence was not imposed at the time of granting felony probation. In this respect, similarly-situated defendants do not have the same benefits upon successfully completing probation. Reduction of a felony to a misdemeanor enables a defendant to avoid many, but not all, of the consequences of conviction. This creates an inequity in the law.

**AB 1941 (Jones-Sawyer), Chapter 18**, authorizes the court to reduce an offense punishable as either a felony or a misdemeanor to a misdemeanor upon successful completion of probation, regardless of whether the court had previously imposed a felony sentence. Specifically, this new law gives the court discretion to reduce a wobbler to a misdemeanor in situations where probation was granted and a sentence was imposed, but its execution had been suspended.

## **Discovery: Claims of Innocence**

“Postconviction discovery” is generally understood in the legal community as the provision of materials and documents to defendants after they have been convicted at the trial level and exhausted their appeals. Current law limits motions for postconviction discovery to only those cases in which a person is sentenced to death or life without parole. However there are many cases where a person may have received a lower sentence and nonetheless there are sound reasons to question the veracity of the verdict.

Currently, cases that are worthy of postconviction review, but where the defendant received a sentence of less than life in prison, often take 3 – 4 years to review and investigate before the parties are in a position to potentially litigate. The largest contributor to that immense amount of time is the limitation of postconviction discovery to cases where the defendant received a death sentence or life without the possibility of parole. This limitation results in the defendant’s inability to obtain evidence that may prove his or her innocence.

**AB 1987 (Lackey), Chapter 482**, expands the circumstances in which a defendant can bring a postconviction motion for discovery materials. Specifically, this new law:

- Expands the availability of a post-conviction motion for discovery materials to include cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more.
- Requires a defendant bringing a motion for post-conviction discovery to state whether he or she has previously been granted discovery.
- Gives the court discretion to grant (or deny) a subsequent motion for discovery if the defendant has previously been granted discovery.
- Requires a criminal defense attorney to retain his or her client’s file throughout the duration of that client’s prison sentence if the client was convicted of a serious or violent felony and sentenced to 15 years or more. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

## **Vacating Convictions**

California Penal Code Section 1473.7 permits individuals who are no longer in criminal custody to file a motion to vacate a conviction or sentence based on either one of two claims: (1) a prejudicial error damaging the defendant’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence.

Prior to the creation of Penal Code Section 1473.7, individuals who discovered evidence of actual innocence, or proof of a defect in the underlying criminal proceeding, had no legal vehicle to present this evidence after their criminal custody had expired. This lack had a particularly devastating impact on California’s immigrant communities.

Many immigrants suffered convictions without having any idea that their criminal record will, at some point in the future, result in mandatory immigration imprisonment and deportation, which can permanently separate families.

Courts throughout California have been reviewing and hearing California Penal Code §1473.7 motions since the section became operative on January 1, 2017. As these motions have been adjudicated, courts have reached differing interpretations of the proper timing and grounds for the motions, and what notice must be provided to the petitioning individual's prior defense counsel.

**AB 2867 (Gonzalez Fletcher), Chapter 825**, clarifies the timing and procedural requirements of motions for post-conviction relief that are based on a legal error regarding a defendant's comprehension of immigration consequences stemming from his or her conviction. Specifically, this new law:

- Provides that a motion to vacate the conviction based on legal error is deemed timely filed at any time in which the individual filing the motion is no longer in criminal custody and that a motion to vacate the conviction based on legal error may be deemed untimely filed if it was not filed with reasonable diligence after the later of the following:
  - The moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization; or
  - Notice that a final removal order has been issued against the moving party, based on the existence of the conviction or sentence that the moving party seeks to vacate.
- Removes the requirement that the moving party must be present for the court to hold a hearing on the motion.
- Provides that if the prosecution has no objection to the motion, the court may grant the motion to vacate the conviction or sentence without a hearing.
- Requires the following when the court is ruling on the motion to vacate the conviction due to legal error:
  - The moving party to establish that the conviction or sentence being challenged is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization;

- There is a presumption of legal invalidity if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences; and,
  - The only finding that the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.
- Deletes the requirement that in granting or denying a motion to vacate the conviction based on legal error, the court shall specify the basis for its conclusion but retains that requirement for a motion to vacate the conviction based on newly discovered evidence that actual innocence exists.
  - States that a finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.
  - Provides that a court may only issue a specific finding of ineffective assistance of counsel as a result of a motion to vacate the conviction based on legal error if the attorney found to be ineffective was given timely advance notice of the motion hearing by the moving party or the prosecutor, as specified.
  - States that it is intent of the Legislature to provide clarification to the courts regarding Section 1473.7 of the Penal Code to ensure uniformity throughout the state and efficiency in the statute's implementation.

### **Recalling a Sentence**

As a general matter, a court typically loses jurisdiction over a criminal sentence when the sentence begins. However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. In addition, the Director of the Corrections Department, and the Board of Parole Hearings or the county correctional administrator, can make a recommendation for resentencing at any time. The court also has authority to recall the sentence of terminally ill defendants. Finally, a defendant who was sentenced to a term of life without the possibility of parole prior to the age of eighteen may petition the court to recall his or her sentence in order to impose a new one.

California houses the largest prison population of inmates serving long-term sentences in the country. In some instances, district attorneys have found that certain prison sentences, upon further review, are no longer in the interest of justice and warrant a lesser, legal sentence.

However, unlike the administrators listed above, prosecutors do not have any discretion to ask a Court for resentencing.

**AB 2942 (Ting), Chapter 1001**, allows the court to recall and resentence an inmate upon the recommendation of the district attorney of the county in which a defendant was sentenced and to create a procedure for inmates sentenced to lengthy terms to submit a request to the district attorney for a recommendation for recall and resentencing. Specifically, this new law:

- Allows the district attorney of the county in which the defendant was sentenced to make a recommendation to the court to recall the sentence and commitment previously ordered and resentence the defendant.
- Allows a defendant who was sentenced for a term of 15 years or more, a term of life, or life without the possibility of parole, and who has been incarcerated for no less than the lesser of 15 years or 50 percent of the term, may submit to the district attorney of the county in which the defendant was sentenced a request for a recommendation to the sentencing court for recall and resentencing.
- Provides that the request shall be in writing and shall set forth the reasons why a recommendation is warranted.
- Exempts a defendant serving a sentence for murder in the first degree or any offense that requires sex offender registration.
- Clarifies that the provisions of this bill grants a district attorney the discretion to consider a request for a recommendation to promote the general welfare; it does not impose upon a district attorney any obligation to consider or grant a request, nor does it create a right to appeal the denial of a request.

### **Pretrial Release or Detention: Pretrial Services**

There are a number of challenges presented by the money bail system. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. Persons who have money have the ability to confront their criminal charges while free from confinement in county jail. And those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody.

Another function of the bail system is supposed to be protection of the community. Under the current system, prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether he or she will return to court. Arguably, the current bail system does not actually address community safety concerns because there is no assessment of risk, at least when bail is posted before the arrestee appears before the court.

**SB 10 (Hertzberg), Chapter 244**, repeals the current commercial bail system and enacts a risk-based preventative detention system. Specifically, this new law:

- States legislative intent to permit preventative detention of pretrial defendants only in a manner that is consistent with the United States (U.S.) Constitution as interpreted by the U.S. Supreme Court, and only to the extent permitted by the California Constitution as interpreted by the state Courts of Appeal and Supreme Court.
- Repeals existing Penal Code provisions regarding bail as of October 1, 2019.
- Requires courts to establish pretrial assessment services which are to be provided either by the courts or by public agencies, such as county probation departments, under contracts with the courts.
- Requires persons arrested or detained for most misdemeanors to be booked and released without being taken into custody, or if taken into custody, released within 12 hours of booking.
- Requires a pretrial assessment services investigation of all eligible persons detained for a crime, other than those booked and released for a misdemeanor, and preparation of a report containing information from the investigation and any recommendations for conditions of the person's release.
- Requires pre-arraignment, own-recognition release of a person having been assessed as low risk to both public safety and failure to appear in court. Release shall be with the least restrictive non-monetary conditions needed to assure public safety and return to court.
- Requires pretrial assessment services to release or detain a person assessed as medium risk based on standards as determined by locally adopted court policies. For those persons released, release shall be with the least restrictive non-monetary conditions needed to assure public safety and return to court.
- Prohibits pretrial assessment services from releasing any of the following persons:
  - A person who has been assessed in the current case as high risk;
  - A person arrested for specified offenses requiring sex offender registration;
  - A person arrested for specified misdemeanor violations;
  - A person arrested for a felony involving physical violence or likelihood of great bodily injury as an element of the crime, or a felony in which the person is alleged to have personally inflicted great bodily injury or have been armed with, or used a deadly weapon or firearm;

- A person arrested for driving under the influence under specified circumstances;
  - A person arrested for violation of a restraining order within five years;
  - A person who has three or more failures to appear in court within the prior 12 months;
  - A person who, at the time of arrest, was pending trial or sentencing in another felony or misdemeanor matter;
  - A person who has intimidated, threatened, or dissuaded a victim or witness;
  - A person who has violated a condition of pretrial release in the past five years;
  - A person who has been convicted of a serious or violent felony, as specified, in the past five years; and,
  - A person who has been arrested for a serious or violent felony, as specified.
- Provides that review of a person's custody status and release must occur without unnecessary delay and no later than 24 hours from booking, unless there is good cause to extend this time for an additional 12 hours.
  - States that a released person shall not be required to pay for the costs of any non-monetary conditions of release.
  - Requires a person to be released on his or her own recognizance to sign a release agreement which includes specified minimum conditions.
  - Provides that persons not granted pre-arraignment release shall be detained unless the court provides pre-arraignment review.
  - Allows courts to conduct pre-arraignment reviews and make release decisions, as specified, except that this authority does not apply to persons assessed as high risk, those charged with a serious or violent felony, or persons who at the time of arrest were pending trial or sentencing in another felony matter. The court may on its own motion modify the conditions of release for good cause.
  - Requires pretrial assessment services to submit the following information to the court at or before the defendant's arraignment for its consideration:
    - The results of a risk assessment;
    - The person's criminal history information and current criminal charges;
    - Any supplemental information reasonably available affecting the person's risk to public safety or risk of failure to appear in court; and,

- Recommendations to the court for conditions of release.
- Requires the prosecution to notify the victim of the arraignment and any other hearing regarding the defendant's custody status, if requested.
- Allows the prosecution or the defendant to request review and modification of the defendant's release conditions at arraignment.
- Allows the prosecutor to file a motion for preventative detention at arraignment or at any other time during the criminal proceedings based on any of the following circumstances:
  - The alleged crime was committed with violence, threat thereof, or likelihood of serious bodily injury, or was one which involved use of a deadly weapon, or the infliction of great bodily injury;
  - At the time of arrest, the defendant was on post-conviction supervision, as specified, or was pending trial or sentencing in another felony matter;
  - The defendant intimidated a witness or victim; or,
  - There is substantial reason to believe that pretrial-supervision conditions will not reasonably assure the defendant's appearance in court or public safety.
- Establishes procedures for release or detention determinations by the court at arraignments and sets forth the rights of the parties, including:
  - The defendant has the right to counsel, the right to be heard, and the right to a continuous hearing at one session;
  - The victim has a right to notice of the proceeding and the right to be heard;
  - A rebuttable presumption that the person should not be released if either:
    - The alleged offense is a violent felony, as specified, or committed with violence, likelihood of serious bodily injury, or involved a deadly weapon; or
    - The defendant is assessed as high risk and either has a prior conviction for a serious or violent felony within the past five years; was pending sentencing for a violent felony or one involving violence or use of a deadly weapon; has intimidated or dissuaded a victim or witness of the current crime; or, at the time of arrest was on any form of post-conviction supervision other than informal probation;
  - Standard of proof of clear and convincing evidence; and,
  - The right to appellate writ review of the decision.



- Allows either the prosecution or the defense to file a motion to reopen a preventative detention hearing, or for a new hearing at any time before trial upon a showing of newly discovered evidence, facts, or material change in circumstances, as specified.
- Requires Judicial Council to adopt rules of court to prescribe the proper use of risk assessment information; the standards for review, release, and detention by pretrial assessment services and the courts; the parameters of local court rules, and the imposition of pretrial release conditions, including the designation of risk levels or categories.
- Requires superior courts to adopt a local court rule, consistent with the Rules of Court adopted by the Judicial Council, which sets forth review and release standards for persons assessed as medium risk, as specified. The local rule may further expand the list of offenses and factors for which pre-arraignment release of persons assessed as medium risk is not permitted, but cannot provide for the exclusion of release of all medium risk defendants.
- Places limitations on the agencies which can contract with the courts to perform pretrial risk assessment services, but exempts the Superior Court of Santa Clara County from these limitations.
- Requires data collection by the courts to be reported to the Judicial Council which will in turn submit annual reports, beginning January 1, 2021, to the Governor and the Legislature.
- Requires the Department of Finance in consultation with the Judicial Council and the Chief Probation Officers of California to annually estimate the level of funding and resources needed for pretrial assessment services so that funding needs are submitted to the Legislature along with the Governor's annual budget. Upon appropriation by the Legislature, the Judicial Council and Department of Finance shall allocate funds to local courts and probation departments for pretrial assessment services, as specified.
- Delays implementation of these provisions until October 1, 2019.
- States legislative intent that, to the extent practicable, priority for available jail capacity shall be for the post-conviction population.
- Defines various terms for purposes of these provisions.

### **Diversion: Mental Disorders**

AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met. After the enactment of AB 1810, some commenters articulated a concern that a court could theoretically divert a mentally ill defendant charged with rape and murder under AB 1810.

Others have asked for clarification on whether victim restitution should be part of any grant of diversion under this section. This bill seeks to address those concerns.

**SB 215 (Beall), Chapter 1005**, amends AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, which authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met. Specifically, this new law:

- Requires the court, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion.
- Specifies that a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- Excludes defendants charged with specified serious and violent offenses from the diversion program.
- Authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

### **Competence to Stand Trial: Maximum Period of Confinement**

California's competency commitment scheme has existed since 1872. In 1974, pertinent statutes were amended to limit the maximum permissible time period for a competency commitment to 3 years, then-believed to be the constitutionally allowable maximum 'reasonable period of time,' either for restoring a person to competency, or for determining that he or she is not restorable. Over the past half-century, medication treatment of severely mentally ill individuals has advanced, competency restoration treatment programs have been shown to have consistently high success rates, and we have learned that committed persons attain competency in time periods far shorter than what was considered 'reasonable' in 1974. Studies show that the vast majority (80-90%) becomes trial-competent within six months of starting treatment, and nearly all who attain competency do so within a year.

**SB 1187 (Beall), Chapter 1008**, reduces the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years. Specifically, this new law:

- Reduces the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years.

- Specifies that when a defendant has been found IST and is held in a county jail treatment center while undergoing treatment for restoration to competency, that person is entitled to custody credits in the same manner as any other inmate confined to a county jail.
- Requires the court, if the defendant is suspected of having a developmental disability, to appoint the director of the applicable regional center or the director's designee to examine the person to determine whether he or she has a developmental disability and is therefore eligible for regional center services and supports.
- Specifies that the regional center director will provide periodic reports to the committing court for IST defendants with developmental disabilities who are placed on outpatient status.
- Deletes the requirement that the defendant be returned to court for a hearing, as specified, if a defendant is still incompetent after 18 months.

### **Sentencing: Striking 5 year Prison Priors for Serious Offenses**

Penal Code section 1385 specifies that a judge may, in furtherance of justice, order an action to be dismissed. That provision has been interpreted to allow courts broad discretion to strike prior convictions and enhancements in order to provide individualized sentencing to a defendant. One of the purposes of Section 1385 is to ensure that sentences are proportional to a defendant's conduct.

Current law provides that when a defendant is sentenced on an offense which qualifies as a serious felony and the defendant has a prior conviction for a serious felony, the defendant must receive an additional five year prison term for each prior conviction for a serious felony. Current law specifically prohibits a judge from using his or her authority under Section 1385 to strike a serious prior conviction and the additional five year prison term.

**SB 1393 (Mitchell), Chapter 1013**, allows a judge discretion to strike a prior serious felony conviction, in furtherance of justice, to avoid the imposition of the five year prison enhancement when the defendant has been convicted of a serious felony and is charged with a new offense that is a serious felony.

# CRIME PREVENTION

## **Mandated Reporters: Emergency Medical Technicians**

Emergency medical technicians (EMT's) frequently respond to 911 calls involving domestic violence. In Alameda County, the District Attorney's office has implemented a program to help victims of domestic violence escape environments where escalating violence is eminent. However, in extending training to EMT's, Alameda County Counsel deemed that EMTs are not mandated reporters for any incidents involving domestic violence. This is counter to the understanding Alameda EMT's have about the critical role they play in helping victims of domestic violence, as well as counter to the interpretation the Alameda District Attorney office has of current law. Clarification is needed.

**AB 1973 (Quirk), Chapter 164**, clarifies that health practitioners employed by or under contract with local government agencies, including emergency medical technicians and paramedics, are mandated reporters.

## **Automated Firearms System: Reporting**

Existing law requires police and sheriffs' departments to submit the description of firearms which has been reported stolen, lost, found, recovered, or under observation, directly into the California Department of Justice's (DOJ) Automated Firearms System (AFS). Existing law also requires police and sheriffs' departments to report to DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. But other law enforcement agencies are not subject to the same requirements.

Tracing lost or stolen weapons is a valuable tool for law enforcement to identify illegal firearm sales and firearm smuggling, as well as identify guns that have been used in crimes.

**AB 2222 (Quirk), Chapter 864**, requires all law enforcement agencies to report to the Department of Justice (DOJ) information about each firearm reported lost, stolen, or recovered. Specifically, this new law:

- Requires all law enforcement agencies in the state to input information regarding each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, into the DOJ's Automated Firearms System within three days after being notified.
- Defines a "law enforcement agency" as "a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer as defined."

- Requires firearm information entered into the Automated Firearms System to remain in the system until the reported firearm is found, recovered, no longer under observation, or determined to have been entered erroneously.
- States that any costs incurred by the DOJ in the implementation of the Automated Firearms System must be reimbursed by funds other than the fund resulting from fees relating to the sale, lease, or transfer of firearms.

### **Temporary Emergency Gun Violence Restraining Orders**

Temporary emergency Gun Violence Restraining Orders (GVROs) provide law enforcement a tool for removing a firearm from the possession a person who presents an immediate and present danger to him or herself or others. Under current law, the default procedure to obtain a temporary emergency GVRO is via written petition, unless time and circumstances do not permit writing and filing the petition. Where oral issuance is permitted, the statute directs law enforcement to follow the procedures used for obtaining an oral search warrant.

In practice, officers in the in the field who are dealing with an immediate and present danger generally obtain the GVRO orally because time and circumstances rarely allow the officer to present a written petition to a judicial officer at the courthouse. However, because the default procedure under existing law provides that officers must obtain such orders via written petition, there has been confusion about whether and how a written petition be presented in order to obtain the GVRO. This could result in unnecessary delays during an emergency situation.

**AB 2526 (Rubio), Chapter 873**, makes oral requests for a temporary emergency gun violence restraining order the statutory default and authorizes written requests if time and circumstances permit. Specifically, this new law:

- Allows a judicial officer to issue a temporary emergency GVRO orally based on the statements of the law enforcement officer and allows a temporary GVRO to be obtained in writing and based on a declaration signed under penalty of perjury if time and circumstances permit.
- Requires the officer to sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer.

### **Fraud: Financial Privacy**

When enacting the California Right to Financial Privacy Act, the Legislature limited the Attorney General and peace officers ability access to an individual's financial account information from financial institutions. In contrast, the Legislature authorized financial institutions to divulge more private details about their customers to police, sheriffs, and district attorneys investigating fraud, without a warrant, subpoena, summons, or the customer's consent. As a result the California Department of Corrections and Rehabilitation cannot access an individual's financial information without a search warrant when it is investigating fraud.

According to the DOJ, there have been many instances in which counterfeit checks were passed to a victim, and in order to determine who the legitimate account holder is, the DOJ had to write search warrants for bank records as opposed to being able to obtain the records directly from the financial institution.

**AB 3229 (Burke), Chapter 288**, adds the DOJ to the list of law enforcement agencies that may receive financial records from a financial institution, if a crime report involving fraud has been filed.

### **Investigations: Elderly and Dependent Adults**

Existing law states that any person who willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. Additionally, any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years. Despite the existence of these laws, it appears that they are currently being under used and unevenly applied.

In 2014-2015, a Grand Jury in Santa Clara received a complaint regarding law enforcement's failure to investigate false imprisonment and forced isolation of elderly residents in San Jose. Based on that complaint, the Grand Jury reviewed law enforcement manuals, training materials, and the county's Elder Abuse Protocol. Out of twelve law enforcement agencies that the Grand Jury reviewed, only one policy and sheriff's department manual specifically referenced by California Penal Code 368 which refers to elder abuse. The study showed that, across 12 counties, officer training manuals were inconsistent in their references to California Penal Code sections that protect elderly and dependent adults.

The San Jose Police Department (SJPD) was one of the departments who did not include Penal Code Section 368 in their training. Following the review by the Grand Jury, SJPD introduced references to Penal Code Section 368 in its training materials and policy manual. Since then, the number of elder abuse incidents documented by the police has risen each year. The increase in reports of elder abuse incidents correlates with the increased attention to training on elder abuse.

**SB 1191 (Hueso), Chapter 513**, requires local law enforcement and long-term care ombudsman programs to revise their policy manuals to include references to existing elder and dependent adult abuse laws. Specifically, this new law:

- Requires every local law enforcement agency and long-term care ombudsman program, when they next revise their policy manuals, to include in the portion relating to elder and dependent adult abuse, the following information:
  - That any person who knows that a person is an elder or dependent adult and who willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed \$2,000 or imprisonment in a county jail not to exceed one year, or by both fine and imprisonment;

- That any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years;
- That adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request, however, law enforcement agencies retain exclusive responsibility for criminal investigations, notwithstanding any law to the contrary; and,
- To include, as a guideline to investigators, the Department of Justice's definition of elder and dependent adult abuse which is: "Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."

### **Gun Violence Restraining Orders**

In 2014, AB 1014 (Skinner) established gun violence restraining orders (GVROs) as a tool family members could use to disarm loved ones who were threatening violence or self-harm. Since the law went into effect in January 2015, California has issued approximately 200 GVRO's. During this initial phase, a number of issues have come to light that if addressed would greatly improve the effectiveness of this tool.

**SB 1200 (Skinner), Chapter 898**, makes various changes to existing laws related to gun violence restraining orders (GVROs). Specifically, this new law:

- States that for purposes of the GVRO law, "ammunition" includes a "magazine," as defined in existing law.
- Makes conforming changes to the notice required to be given to the subject of a GVRO.
- Requires the court, within one day of receiving the receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency, or sold, or transferred to a licensed firearms dealer, to transmit a copy of the receipt to Department of Justice (DOJ) in a manner and pursuant to a process prescribed by DOJ.
- Requires an officer serving a GVRO to verbally ask the restrained person if he or she has any firearm, firearm part or component, ammunition, or magazine in his or her possession or under his or her custody or control.

- Requires the court to hold a hearing within 21 days after the date of the issuance of a temporary GVRO to determine if a one-year GVRO should be issued.
- Exempts any orders or injunctions related to GVROs from the requirement for prepayment of a fee deposit generally authorized in connection with service of process of notices for certain types of cases.
- Provides that there is no filing fee for an application, a responsive pleading, or an order to show cause which seeks to obtain, modify, or enforce a GVRO or other order authorized by the GVRO law if the request for the other order is necessary to obtain or give effect to a GRVO. There is also no fee for a subpoena filed in connection with such application, responsive pleading, or order to show cause.





# CRIMINAL JUSTICE PROGRAMS

## Batterer's Program: Pilot Project

Domestic violence is a pervasive problem and offenders generally have a high rate of recidivism. Studies using direct victim interviews over a period of time estimate repeat violence in the range of 40 to 80 percent of cases. Domestic violence is a complicated community problem and we have yet to figure out what works for effectively intervening with batterers to reduce these high rates of recidivism.

In the early 1990's California led the nation when it established a mandatory 52 week batterer intervention program (BIP) for people placed on probation for domestic violence battery. Most of these programs have not been updated since 1994 and they are also not necessarily based on evidence that they are effective. In fact, recent research has indicated that the most common court-mandated batterer intervention programs do not reduce recidivism or alter batterers' attitudes about violence.

**AB 372 (Stone), Chapter 290**, allows six counties, beginning in July 2019 and ending in July 2022, to offer alternative domestic violence treatment programs for individuals convicted of domestic violence. Specifically, this new law:

- Authorizes the counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer a program for individuals convicted of domestic violence that does not comply with the requirements of the batterer's program listed above if the following are true:
  - The county develops the program in consultation with the domestic violence service providers and other relevant community partners;
  - The county performs a risk and needs assessment utilizing an assessment demonstrated to be appropriate for domestic violence offenders for each offender entering the program;
  - The offender's treatment within the program is based on the findings of the risk and needs assessment;
  - The program includes components which are evidence-based or promising practices;
  - The program has a comprehensive written curriculum that informs the operations of the program and outlines the treatment and intervention modalities; and,
  - The offender's treatment within the program is for not less than one year in length, unless an alternative length is established by a validated risk and needs assessment completed by the probation department or an organization approved by the probation department.

- The county collects all of the following data for participants in the program:
  - The offender’s demographic information, including age, gender, race, ethnicity, marital status, familial status, and employment status;
  - The offender’s criminal history;
  - The offender’s risk level as determined by the risk and needs assessment;
  - The treatment provided to the offender during the program and if the offender completed that treatment; and,
  - The offender’s outcome at the time of program completion, and six months after completion, including subsequent restraining order violations, arrests and convictions, and feedback provided by the victim if the victim desires to participate.
- Requires that the county provide a report to the Legislature annually regarding the content and effectiveness of the program.
- Defines “evidence-based program or practice” to mean a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and evaluations that incorporate strong comparison group designs, or a single large multisite randomized study, and, typically, has specified procedures that allow for successful replication.
- Defines “promising program or practice” to mean a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation.
- Provides that this program is operative on July 1, 2019, and remains in effect only until July 1, 2022, and as of that date is repealed.

### **Commercially Sexually Exploited Children**

The commercial sexual exploitation of children (CSEC) is defined as the sexual exploitation of children entirely, or at least primarily, for financial or other economic reasons, and may be characterized by economic exchanges that are either monetary or non-monetary – e.g., for food, shelter, or drugs. Sex trafficking of minors is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” where the person is a United States citizen or a lawful permanent resident under the age of 18 years.

Nearly 98% of CSEC victims in the U.S. are female, and between 50 and 80% of child victims of commercial sexual exploitation have been involved with the child welfare system, according to the Alameda County Human Exploitation and Trafficking (H.E.A.T.) Watch Unit.

It is also estimated that, in 2014, one in six endangered runaways were likely sex trafficking victims, according to the National Center for Missing and Exploited Children. Due to challenges associated with identifying victims, collecting and cross-referencing data, and deciding on common definitions in order to collect accurate statistics, many experts believe that these numbers underestimate the magnitude of the problem. Many youth also do not self-identify as victims, or may be reluctant to admit to victimization due to fears of retaliation from traffickers, deportation, or incarceration.

**AB 2207 (Eggman), Chapter 757**, makes Legislative findings and declarations related to the CSEC in California, the intersection between CSEC and the child welfare system, and the provision of services to these youth by the state, and places a deadline of January 1, 2020, on the requirement in current law that the Department of Social Services, in consultation with stakeholders, must develop model policies, procedures, and protocols to assist counties in achieving certain goals related to the commercial sexual exploitation of youth receiving child welfare services, as specified.

### **Deferred Entry of Judgment: Young Adults**

In 2016, the Legislature enacted SB 1004 which created the “Transitional Age Youth” pilot project that provided a deferred entry of judgment program for young adults. The intention was to help improve the outcomes of young adults who come into contact with the justice system by placing them in a juvenile facility rather than an adult jail or prison and extending to them the services offered by the juvenile facility. The SB 1004 pilot program is currently in effect. However, the existing sunset date is January 1, 2020. When SB 1004 was enacted there were processes completed by the Board of State and Community Corrections to certify the programs compliance with State and Federal requirements which resulted in substantial delay in the program’s start date. Therefore, there will be relatively little data about the efficacy of the pilot program by January 1, 2020.

**SB 1106 (Hill), Chapter 1007**, extends the operative date of the existing Transitional Age Youth pilot program to January 1, 2022, expands the pilot program to the county of Ventura, and establishes a December 31, 2020, deadline by which a report on the program must be delivered to the Senate and Assembly Public Safety Committees.



## CRIMINAL OFFENSES

### **Aiding, Advising or Encouraging Suicide: Prosecution**

In 2015, the Legislature passed the End of Life Option Act which allows a terminally ill adult with the capacity to make medical decisions to request a prescription for an aid in dying drug if certain conditions are met, including that the patient is able to self-administer the drug. The End of Life Option Act insulates a prescribing physician and a person who is present to assist the qualified patient in preparing the drug from criminal liability for actions which are authorized under the Act. However, when the End of Life Option Act was enacted, the Penal Code provision which makes it a crime to aid a suicide was not updated to reflect that change.

**AB 282 (Jones-Sawyer), Chapter 245**, clarifies that a person whose actions are authorized under the provisions of the End of Life Option Act cannot be prosecuted for the crime of assisted suicide.

### **Invasion of Privacy: Identity of Victim**

Under current law, an individual can only be charged with disorderly conduct for recording a person in a state of partial or full undress for sexual gratification if the person being recorded is “identifiable.” The term identifiable is not defined in this section, and thus has been narrowly interpreted by the courts to require the identification of the specific victim by a third party. Because these images and videos are frequently of women from the up-skirt angle, the victim is most often not identifiable from this narrow definition. This stringent definition has led to the lack of ability for these crimes to be prosecuted, and thus women are not getting the justice they deserve.

**AB 324 (Kiley), Chapter 246**, defines the term “identifiable” for purposes of the crimes of secretly recording or photographing under or through the clothing worn by another identifiable person, or while the other person is in a state of full or partial undress, for the purpose of sexual gratification, as specified

## **Theft: Organized Retail Theft**

In 2017, the National Retail Federation (NRF) conducted the Organized Retail Crime Survey and found that organized retail theft continues to be pervasive within the industry. The survey stated that 95% of merchants reported having been a victim of coordinated theft, resulting in revenue losses estimated at \$30 billion per year. NRF defines organized retail crime as theft/fraudulent activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain, often through subsequent online or offline sales. Organized retail crime typically involves a criminal enterprise that organizes multiple theft rings at a number of retail stores and employs a fencing operation to sell the illegally-obtained goods for financial gain. Organized retail crime can also simply involve the recruitment of others to steal on another's behalf. Despite this growing trend in various forms of "Organized Retail Crime," California has never adopted a Penal Code section making it a crime.

**AB 1065 (Jones-Sawyer), Chapter 803**, creates the crime of organized retail theft. Establishes a sunset date of January 1, 2021, for the provisions of this bill. Specifically, this new law:

- Makes it a felony or misdemeanor to commit "organized retail theft."
- Defines "organized retail theft" as any of the following conduct:
  - Acts in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell or return the merchandise for value;
  - Acts in concert with two or more persons to receive, purchase, or possess merchandise from a merchant's premises or online marketplace, knowing or believing it to have been stolen;
  - Acts as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplace as part of an organized plan to commit theft; or,
  - Recruits, coordinates, organizes, supervises, directs, manages, or finances another to act in concert to steal or receive merchandise from a merchant's premises or online marketplace, or other specified theft crimes.
- Punishes a violation of "organized retail theft" as follows:
  - If violations of acting in concert, or as an agent, to steal or receive merchandise are committed on three or more separate occasions within a 1 year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that one year period exceeds nine hundred fifty dollars (\$950), the offense is punishable as a realigned felony with a maximum of three years in the county jail, or as a misdemeanor with a maximum of one year in the county jail;

- Any other violation for the conduct described above that does not meet the dollar and separate occasion threshold are punishable as a misdemeanor with a maximum of one year in the county jail.
- A violation of recruiting, coordinating, directing, or financing acts of organized retail theft is punishable as a realigned felony with a maximum of three years in the county jail, or as a misdemeanor with a maximum of one year in the county jail.
- Expands the jurisdiction for charging theft and receiving stolen property to include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating or aiding in the commission of those offenses.
- Specifies that if multiple offenses of theft or receiving stolen property, either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses.
- Requires the CHP to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the CHP as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary.
- Allows the prosecuting attorney's office or county probation department to create a diversion or deferred entry of judgment program for persons who commit repeat theft offenses.
- States that upon appropriation by the Legislature, the Board of State and Community Corrections (BSCC) shall award funding for a grant program to four or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.
- Establish a sunset date of January 1, 2021.



## Price Gouging: State of Emergency

On October of 2017, massive wildfires burned homes in counties across California. On October 9, Governor Brown declared a state of emergency for Napa, Sonoma, Butte, Lake, Mendocino, Nevada, and Yuba Counties. On October 10, Governor Brown declared a state of emergency in Solano County. On October 18, 2017, Governor Brown issued an Executive Order that extended the prohibition on price gouging in times of emergency will remained in effect until April 18, 2018 to protect the disaster survivors in the affected counties.

Current law prevents landlords from raising rent by more than 10% within 30 days of a declared disaster, however this law does not apply to new home rental units, and the victims of the North Bay fires were subjected to a skyrocketing rental market. According to a study by the online housing marketplace Zillow, in the seven days that followed the fires, the median rent in the county jumped over 35% and local newspapers reported anecdotal stories of homes coming onto the rental market at nearly double the price of other similar rentals in the same neighborhood.

**AB 1919 (Wood), Chapter 631**, expands the scope of the crime price gouging by including rental housing that was not on the market at the time of the proclamation or declaration of emergency. Defines the "rental price" of housing for purposes of price gouging. Specifically, this new law:

- Adds the following definition for “rental price” for housing for purposes of price gouging:
  - For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent rental price offered before the proclamation or declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the actual rental price paid by the previous tenant or an amount that equals 160 percent of the fair market rent, whichever is greater; and
  - For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development;

- Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price applicable to housing rented within one year prior to the proclamation or declaration of emergency, if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price specified for housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.
- Provides that it shall not be defense to prosecution that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as specified with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant.
- States that it is unlawful under the section that prohibits price gouging for a person, business, or other entity to evict any residential tenant of residential housing and rent or offer to rent to another person at a rental price higher than the evicted tenant could be charged under that section.
- Provides that it is not unlawful for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.
- States that the section that prohibits price gouging does not prohibit an owner from evicting a tenant for any lawful reason.
- Requires the Office of Emergency Services, upon the proclamation of a state of emergency declared by the Governor, to include on an appropriate Internet website information about applicable laws on price gouging including information for property owners about the effect of the proclamation on rental price, as defined.

### **Impersonation: Search and Rescue Personnel**

Current law makes it a crime to impersonate a police officer, firefighter, veteran, or public utility employee, yet there are currently no provisions in existing statute penalizing individuals or organizations that fraudulently present themselves as search and rescue entities. In many instances, these entities and individuals are not accredited nor are they affiliated with any charities or law enforcement group. Yet, they solicit funds through phone and direct mail, giving the public the impression that they are operating lawfully and in accord with local and state law enforcement. Often, citizens do not know that these groups are not vetted, trained, certified, or insured, and are misled into donating money to what they believe is a good cause.

**AB 1920 (Grayson), Chapter 252**, makes it a misdemeanor to intentionally and fraudulently impersonate a member of a search and rescue team. Specifically, this new law:

- Provides that any person, other than an officer or a member of a government-agency managed or affiliated search and rescue team, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card or writing of a person on such a team is guilty of a misdemeanor when done in any of the following situations:
  - With the intent of fraudulently impersonating a member of the search and rescue team;
  - With the intent of fraudulently inducing the belief that he or she is a member of the search and rescue team; or
  - Using the same to obtain aid, money, or assistance within the state.
- Provides that any person, other than one who is a lawful officer or member of a government-agency-managed or affiliated search and rescue team, who willfully wears, exhibits, or uses the badge of such a team is guilty of a misdemeanor when done in any of the following situations:
  - With the intent of fraudulently impersonating an officer or member of the search and rescue team; or,
  - With the intent of fraudulently inducing the belief that he or she is a member of the search and rescue team.
- Provides that any person who willfully wears or uses a fake badge purporting to be the badge of a government-agency-managed or affiliated search and rescue team, or one that resembles such a badge as would deceive an ordinary reasonable person, is guilty of a misdemeanor when done for the purpose of:
  - Fraudulently impersonating an officer or member of the search and rescue team; or
  - Fraudulently inducing the belief that he or she is a member of the search and rescue team.
- Defines "search and rescue unit or team" as "an entity engaged in the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person that becomes lost, injured, or is killed while outdoors or as a result of a natural or manmade disaster, including instances involving searches for downed or missing aircraft."

- Defines "member" as "any natural person who is registered with an accredited disaster council for the purpose of engaging in disaster service without pay or other consideration. Food and lodging provided, or expenses reimbursed for these items, during a member's activation does not constitute other consideration."

### **Vandalism: Veterans Memorials**

Penal Code section 621, which criminalizes the malicious vandalism of memorials for firefighters and police officers, was enacted in 1992 by AB 1818 (Conroy). That bill also enacted Military and Veterans Code section 1318 which criminalizes the malicious vandalism of veterans' memorials. The language found in Penal Code section 621 is nearly identical to the language in Military and Veterans Code section 1318. Both sections make it a crime to maliciously destroy, cut, break, mutilate, efface, or otherwise injure, tear down, or remove the specified memorials. Both sections punish the offenses either as a misdemeanor with imprisonment in the county jail for less than one year, or as a felony with imprisonment in the county jail pursuant to realignment. However, because prosecutors may not be as familiar with the Military and Veterans Code, vandalism of veterans' memorials may not be prosecuted to the same extent.

**AB 2801 (Salas), Chapter 549**, provides a cross-reference to the Military and Veterans Code provision related to vandalism of veterans' memorials in the Penal Code provision related to vandalism of law enforcement and firefighter memorials.

### **Theft: Looting During Natural or Man-Made Disasters**

During the February 2017 Oroville Dam situation and the 2017 fire season, many residents were ordered to leave their homes under a mandatory evacuation of the area. During this time, the affected neighborhoods saw an increase in property crime, specifically burglaries of evacuated houses and stores. Existing law makes a person who has committed second degree burglary or grand theft during a state of emergency or local emergency guilty of looting. However, there are circumstances in which an evacuation order has been issued before a state of emergency has been declared. Personal property should be protected to the same extent in these instances as well.

**AB 3078 (Gallagher), Chapter 132**, expands the crime of looting to include theft that occurs while an area is under an evacuation order. Specifically, this new law:

- Expands the crime of looting to encompass when the theft occurs during an evacuation order.
- Defines "evacuation order" as "an order from the Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the order are required to relocate outside of the geographic area covered by the order due to an imminent danger resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster."

## **Aggravated Arson**

Existing law requires that the threshold amount of property damage or loss required under California's aggravated arson statute be reviewed every five years in order to consider the effects of inflation on the dollar amount of damage required. This provision was due to expire on January 1, 2019.

The aggravated arson statute provides law enforcement and prosecutors with a tool when dealing with the most dangerous arsonists in California. Aggravated arsons are those intended to cause great bodily injury to persons, cause damage to multiple structures, cause more than \$7.0 million in damage, or were committed by a recidivist arsonist.

**SB 896 (McGuire), Chapter 619**, extends the sunset date until January 1, 2024 on the state's aggravated arson statute, and increases the threshold amount of property damage required from \$7 million to \$8.3 million.

## **Unmanned Aircraft Systems: Correctional Facilities**

Unmanned Aircraft Systems (UAS), commonly known as drones, have progressively become smaller and easier to operate. As they proliferate in the consumer market, virtually anyone could use a UAS to drop contraband into a prison or county jail. Additionally, they can be used to gather sensitive information from prisons and jails which can be used for a variety of dangerous exploits, including inmate escapes and riots. While smuggling contraband into prison or jail through any method is illegal, no statute currently bars drones from flying near correctional facilities.

**SB 1355 (Hill), Chapter 333**, makes a person who knowingly and intentionally operates an unmanned aircraft system on or above the grounds of a state prison or jail, guilty of an infraction punishable by a fine of \$500.

## **Murder: Accomplice Liability**

The felony murder rule is a legal doctrine that excludes considerations of context and intention in a murder-crime: when someone is killed during the commission of a felony, regardless of how or by whom they are killed, the person engaged in the felony is charged with murder. The United States is the only country in the world to use the felony murder rule. Hawaii and Kentucky have banned the felony murder rule by statute and in Michigan through the Supreme Court. In Michigan, the Supreme Court noted when it abolished the felony murder rule: “Whatever reasons can be gleaned from the dubious origin of the felony-murder rule to explain its existence, those reasons no longer exist today. Indeed, most states, including our own, have recognized the harshness and inequity of the rule as is evidenced by the numerous restrictions placed on it. The felony-murder doctrine is unnecessary and in many cases, unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based.”

**SB 1437 (Skinner), Chapter 1015**, limits liability for individuals based on a theory of 1<sup>st</sup> or 2<sup>nd</sup> degree felony murder. Specifically, this new law:

- Specifies that in order to be convicted of murder, a participant in a crime must have the mental state described as malice, unless certain criteria are met.
- States that malice shall not be imputed to a person based solely on his or her participation in a crime.
- States that a participant in certain specified felonies is liable for first degree murder only if one of the following is proven:
  - The person was the actual killer;
  - The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree; and,
  - The person was a major participant in the underlying felony and acted with reckless indifference to human life, as specified.
- Allows a defendant to be convicted of first degree murder if the victim is a peace officer who was killed in the course of duty, where the defendant was a participant in certain specified felonies and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of duty, regardless of the defendant's state of mind.
- Allows a person convicted of felony murder or murder under a natural and probable consequences theory to file a petition with the court to have that the murder conviction vacated and be resentenced on any remaining counts when specified conditions apply.
- Requires the petition to be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, and on the attorney who represented the petitioner in the trial court.
- Requires the court to review the petition and determine if the petitioner has made a sufficient showing that the petitioner potentially qualifies for resentencing.
- States that the prosecutor shall file and serve a response within 60 days of the service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor's response is served.
- Specifies that if the petitioner has made the required showing that the petitioner potentially qualifies for resentencing, the judge will issue an order to show good cause.

- States that with 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder conviction and resentence the petitioner on any remaining counts.
- States that at the hearing the burden of proof shall be on the prosecution to prove beyond a reasonable doubt that the petitioner is ineligible for resentencing.
- Provides that if the prosecutor fails to meet their burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resented on the remaining charges.
- States that if the petitioner is entitled to relief pursuant to the provisions of this bill, and the offense underlying the felony murder conviction was not charged, the conviction shall be redesignated as the underlying offense for resentencing.
- Allows the prosecutor and the petitioner to rely on the record of conviction or offer new or additional evidence as proof.

# CRIMINAL PROCEDURE

## **Jurisdiction: Sex Offenses**

The general rule of territorial jurisdiction requires a criminal case to be tried in a court located in the county where the offense was committed. This rule preserves the right of the accused to be tried by a jury of his or her peers, and allows trial to be held in a county that has a relationship to the crimes committed.

However, if a defendant commits multiple offenses in different counties, existing law permits certain specified offenses to be consolidated and tried together in a single trial. In effect, these laws authorize a court to extend its jurisdiction over a criminal offense that was not committed within its county. Laws permitting consolidation require a specified nexus between the commission of the out-of-county offense and the place designated for trial.

One such exception to the general rule of territorial jurisdiction permits consolidation of child abandonment and neglect, domestic violence, and stalking offenses. Trial may be held in any county where at least one of these offenses occurred, provided that the defendant and the victim are the same for all offenses.

Consolidation could reduce costs and time associated with conducting trials in multiple jurisdictions, expedite criminal prosecutions, and prevent victims from testifying at multiple trials. However, sexual battery and unlawful intercourse offenses are not permitted to be consolidated in a single trial if either is committed in different counties.

**AB 1746 (Cervantes), Chapter 962**, adds sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial. Specifically, this new law:

- Allows cases involving two or more sexual battery, unlawful sexual intercourse, abandonment and neglect, domestic violence, and stalking offenses that occurred in multiple counties to be consolidated and tried together.
- Authorizes a trial in any county where at least one of these offenses occurred, if the defendant and the victim are the same for all of the offenses.

## **Discovery: State Summary Criminal History Records**

California's summary criminal history database is organized and operated by the Department of Justice (DOJ). This database lists the arrests and convictions of all individuals. Penal Code Section 11105 gives nearly two dozen categories of persons access to the database for a variety of purposes. Criminal defense attorneys are included in the list of people that have access, however, as currently drafted, these attorneys are allowed access only if there is another law in addition to Penal Code Section 11105 that specifically grants them access. This limitation does not apply to any other entity on the list.



**AB 2133 (Weber), Chapter 965**, clarifies in what situations a criminal defense attorney may be provided with information from the Department of Justice's (DOJ) summary criminal history database and eliminates the requirement that a criminal defense attorney have some separate legal authorization to access that information. Specifically, this new law:

- Clarifies that criminal defense attorneys representing defendants or juvenile delinquents on appeal and in postconviction proceedings are representing persons in a criminal case for purposes of obtaining information from the DOJ summary criminal history database.
- Eliminates the requirement that criminal defense attorneys have separate statutory or judicial authorization in order to receive information from the DOJ summary criminal history database.

### **Mandated Reporters: Statute of Limitations**

As a general rule, in California, the statute of limitations for misdemeanor offenses is one year after the commission of the offense. Under current law, the failure of a mandated reporter to report an incident is misdemeanor offense by up to six months confinement in a county jail or by a fine of \$1000 or both imprisonment and a fine. Thus, the prosecution must be commenced within one year from the date the failure to report occurred.

In some cases, a mandated reporter who failed to report an abuse may no longer be prosecuted for the failing to report if the one year statute of limitations has ended before the abuse is discovered.

**AB 2302 (Baker), Chapter 943**, extends the statute of limitations in cases involving the failure to report an incident known or reasonably suspected by a mandated reporter to be sexual assault to five years, commencing on the date the offense occurred.

### **Search and Arrest Warrants: Application by Email or Fax**

With the increasing use of technologies such as email and the ability to electronically transmit data, courts are increasingly relying on such mediums to manage their documents. The Legislature has passed a number of bills to provide the courts more latitude to handle applications for arrest and search warrants by electronic means.

Current law allows applications for search and arrest warrants to be made by an officer in person, or made by an officer remotely by means of, telephone and fax, telephone and electronic mail, or telephone and computer server. Existing law requires a telephone conversation between the officer and the judge when the officer is making an application for a warrant by fax or email even though an officer is required to submit an application setting forth the facts supporting the warrant.

The telephonic conversations between officers and judges for arrest and search warrants can be considerable, especially for courts that experience a greater volume of applications.

**AB 2710 (Oberholte), Chapter 176**, eliminates the requirement that a judge take the oath over the telephone when an officer makes an application for a search warrant or arrest warrant by fax, email, or computer server. Requires an officer to sign a declaration in support of search or arrest warrant under penalty of perjury. Specifically, this new law:

- Eliminates the requirement that a judge take the oath over the telephone when an officer makes an application for an arrest warrant or a search warrant by fax, email, or computer server.
- States that the warrant, signed by the magistrate and received by the declarant, shall be deemed the original warrant.
- Requires if the declarant transmits the proposed arrest warrant or search warrant and all affidavits and supporting documents to the magistrate using fax, email, or computer server:
  - The declarant to sign under penalty of perjury his or her declaration in support of the warrant of probable cause for arrest or issuance of a search warrant; and,
  - The magistrate to verify that all of the pages sent have been received, that all the pages are legible, and that the declarant's signature, digital signature, or electronic signature is genuine.

### **Jurisdiction: Minors Under the Age of Twelve**

California has no law specifying a minimum age for juvenile justice jurisdiction, meaning that young children of any age can be processed in the juvenile justice system provided that they meet the standards of capacity and competency under state law. A child under the age of 14 is not capable of committing a crime in the absence of clear proof that at the time of committing the alleged act, the child knew of its wrongfulness. In the criminal context, competency is the ability to understand the charges and the proceedings, to consult meaningfully with counsel, and to assist in one's own defense. A child is incompetent to stand trial in juvenile court if, "[S]he/he lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her."

Numerous studies have demonstrated that juveniles lack the neurodevelopmental framework to be fully competent and capable to stand trial. Further, the treatment of juveniles as equally culpable as adults clashes with emerging empirical evidence on the immaturity of adolescents with respect to both their ability to make informed and nuanced judgments about their behavior, as well as their moral development. Researchers in the science of human development generally agree that from a developmental standpoint an adolescent is not an adult.

If it is recognized that the brain and moral development of adolescents is not as formed as that of an adult, then it stands to reason that the brain and moral development of pre-adolescents is even less so. Based on this rationale, and on the recognition that involvement in the juvenile justice system can cause more harm than benefit to the minor, juvenile justice reform advocates argue there should be a minimum age for

**SB 439 (Mitchell), Chapter 1006**, prohibits the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or specified sex offenses. Specifically, this new law:

- Establishes 12 years of age as the minimum age for which the juvenile court has jurisdiction to adjudicate a minor as a ward of the court for either a crime or a status offense, except as specified.
- Allows a child under the age of 12 to be brought under the jurisdiction of the juvenile court when it is alleged that the child has committed one of the following offenses:
  - Murder;
  - Rape by force, violence, menace, duress, or fear of immediate bodily injury;
  - Sodomy by force, violence, menace, duress, or fear of immediate bodily injury;
  - Oral copulation by force, violence, menace, duress, or fear of immediate bodily injury; or,
  - Sexual penetration by force, violence, menace, duress, or fear of immediate bodily injury.
- States legislative intent that counties use the least restrictive means of intervention, and avoid intervention whenever possible, when a child under the age of 12 engages in conduct that would otherwise bring him or her under the jurisdiction of the juvenile court.
- States legislative intent that counties use existing funding for behavioral or mental health, or other existing funding sources to provide the alternative services required.
- Provides that, on and after January 1, 2020, when a minor under the age of 12 comes to the attention of law enforcement because his or her conduct constitutes a crime or a status offense, the minor must be released to his or her parent, guardian, or caregiver.
- Requires counties to develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

## **Prosecution of Minors: Fitness for Juvenile Court**

Historically, California has handled offences committed by youth under age 16 in the juvenile system. However, in 1995, California significantly shifted its policies to allow youth age 14 and 15 to be tried in adult criminal courts. The departure from traditionally handling young teenagers' cases in juvenile court was fueled by media's portrayal of youth as "super-predators," consistent with the era's tough on crime attitude. In 2000, Proposition 21 again dramatically shifted California's criminal justice policies. Proposition 21 required adult trial for juveniles 14 or older charged with murder or violent sex offenses.

Since 2000, science and the law have evolved to recognize the impact of brain development and trauma has on youth and adolescent behavior. In 2016, Proposition 57 changed the requirement that juveniles 14 or older charged with certain serious offences are to be tried in adult court. Current law requires the district attorney to make a motion to transfer youth age 14 or 15 to adult court, and the youth is entitled to have a hearing in juvenile court before they can be tried in adult court. However, the current case-by-case approach requires the state to make assumptions about a 14 or 15 year old's potential to change based on its opinion of the youth's cognitive abilities and opportunities for rehabilitation based on the circumstances at the time of the crime.

**SB 1391 (Lara), Chapter 1012**, repeals the authority of a district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a specified serious offense when he or she was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.



# DNA

## DNA Collection: Minors

Current law under Proposition 69 from 2004 limits the collection of buccal swab samples from minors only when they have been convicted of certain specified crimes, such as a sex offense or felony, and then requires those samples to be forwarded to the Department of Justice for identification of deoxyribonucleic acid (DNA). However, the proposition also allowed for the maintenance of local databases, which has created a legal loophole wherein samples collected by local law enforcement which are only submitted to the local database, but not to the Department of Justice, are not subject to the same standards.

In practice, this has allowed law enforcement to broaden their scope of those eligible for collection of buccal swab samples. For instance, in San Diego, the department currently collects samples for “investigative purposes” simply based on a signed consent form, which is used for both minors and adults, and does not require any parental notification or consent when collecting a sample from a minor.

**AB 1584 (Gonzalez Fletcher), Chapter 745**, states that law enforcement shall not request a DNA sample be collected directly from a minor, without first obtaining written consent from the minor and the minor's parent or legal guardian, or attorney representing the minor. Specifically, this new law:

- Provides that a law enforcement officer, employee of law enforcement agency, or any agent thereof, shall not collect any biological sample from a minor for the purposes of obtaining the DNA of that minor, as part of an investigation of a crime in which the minor is alleged to be a suspect or participant.
- Specifies that the probation stated above does not apply when the following conditions are met:
  - The sample is collected pursuant to a valid search warrant or court order;
  - The sample collection is expressly required pursuant to this chapter; and,
  - Both of the following are met:
    - The minor consents in writing, after being orally advised of the purpose and manner of the collection, the right to refuse to consent, and the right to consult with an attorney, parent, or legal guardian prior to providing consent.
    - A parent or legal guardian of the minor, or an attorney representing the minor, is contacted, is provided the admonition is allowed to privately consult with the minor and after that consultations, concurs with the minor’s decision to consent.

- States that except as otherwise required, a DNA sample collected from a minor shall not be added to any DNA and forensic identification database or data bank, including but not limited to any local forensic DNA and forensic identification database or databank, the state DNA and forensic identification database and databank, or any national or international DNA database and data bank.
- Provides that this section does not apply to a suspected offender's DNA that is collected as evidence from a person or a victim under the age of 18 years.

### **Sexual Assault Investigations: Rape Kits**

When tested, DNA evidence can be an incredibly powerful tool to solve and prevent crime. It can identify an unknown assailant and confirm the presence of a known suspect. It can affirm the survivor's account of the attack and discredit the suspect. It can connect the suspect to other crime scenes. It can also exonerate innocent suspects.

However there have been instances of mismanagement of DNA evidence in sexual assault cases in many jurisdictions. Right now, some kits are analyzed but many are not. Currently, there is no comprehensive data on the number of rape kits that have been collected and the reasons why kits were not tested.

**AB 3118 (Chiu), Chapter 950**, requires each law enforcement agency, crime lab, medical facility, or any other facility that possesses sexual assault evidence kits to conduct an audit of all kits in their possession and report the findings to the Department of Justice (DOJ), as specified. Specifically, this new law:

- Provides that each law enforcement agency, crime lab, medical facility, or other facility that receives or stores sexual assault kit evidence must conduct an audit of all untested kits in their possession and, by July 1, 2019, report to the DOJ all of the following:
  - The total number of untested kits in their possession.
  - For each kit reported, the following information, as applicable:
    - Whether or not the assault had been reported to a law enforcement agency.
    - The date the kit was collected.
    - The date a law enforcement agency had picked the kit up, for each agency which has taken custody of the kit.
    - The date the kit was delivered to a crime lab.
    - The reason a kit has not been tested, if applicable.

- Requires the DOJ to submit a report to the Legislature summarizing the above information by July 1, 2020.





# DOMESTIC VIOLENCE

## Batterer's Program: Pilot Project

Domestic violence is a pervasive problem and offenders generally have a high rate of recidivism. Studies using direct victim interviews over a period of time estimate repeat violence in the range of 40 to 80 percent of cases. Domestic violence is a complicated community problem and we have yet to figure out what works for effectively intervening with batterers to reduce these high rates of recidivism.

In the early 1990's California led the nation when it established a mandatory 52 week batterer intervention program (BIP) for people placed on probation for domestic violence battery. Most of these programs have not been updated since 1994 and they are also not necessarily based on evidence that they are effective. In fact, recent research has indicated that the most common court-mandated batterer intervention programs do not reduce recidivism or alter batterers' attitudes about violence.

**AB 372 (Stone), Chapter 290**, allows six counties, beginning in July 2019 and ending in July 2022, to offer alternative domestic violence treatment programs for individuals convicted of domestic violence. Specifically, this new law:

- Authorizes the counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer a program for individuals convicted of domestic violence that does not comply with the requirements of the batterer's program listed above if the following are true:
  - The county develops the program in consultation with the domestic violence service providers and other relevant community partners;
  - The county performs a risk and needs assessment utilizing an assessment demonstrated to be appropriate for domestic violence offenders for each offender entering the program;
  - The offender's treatment within the program is based on the findings of the risk and needs assessment;
  - The program includes components which are evidence-based or promising practices;
  - The program has a comprehensive written curriculum that informs the operations of the program and outlines the treatment and intervention modalities; and,
  - The offender's treatment within the program is for not less than one year in length, unless an alternative length is established by a validated risk and needs assessment completed by the probation department or an organization approved by the probation department.

- The county collects all of the following data for participants in the program:
  - The offender’s demographic information, including age, gender, race, ethnicity, marital status, familial status, and employment status;
  - The offender’s criminal history;
  - The offender’s risk level as determined by the risk and needs assessment;
  - The treatment provided to the offender during the program and if the offender completed that treatment; and,
  - The offender’s outcome at the time of program completion, and six months after completion, including subsequent restraining order violations, arrests and convictions, and feedback provided by the victim if the victim desires to participate.
- Requires that the county provide a report to the Legislature annually regarding the content and effectiveness of the program.
- Defines “evidence-based program or practice” to mean a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and evaluations that incorporate strong comparison group designs, or a single large multisite randomized study, and, typically, has specified procedures that allow for successful replication.
- Defines “promising program or practice” to mean a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation.
- Provides that this program is operative on July 1, 2019, and remains in effect only until July 1, 2022, and as of that date is repealed.

### **Multidisciplinary Personnel Teams: Domestic Violence and Human Trafficking**

Under current law, collaboration through a multidisciplinary team model is permitted in the areas of elder abuse and child abuse. The theories behind these models are to allow multiple service providers and government agencies to act in a collaborative fashion to help meet the needs of the community as well as parties involved. The model has been used for cases of child abuse and elder abuse because the parties involved have had to interact with multiple agencies and interests, and the victims are often viewed as coming from a vulnerable community.

As in the case of child abuse and elder abuse, the parties involved in domestic abuse and human trafficking are similarly situated. There is a natural intersection between the need for social services and the criminal justice system in these situations.

Without a multidisciplinary personnel team there is no ability for advocates to share information about human trafficking victims or domestic violence victims.

**AB 998 (Grayson), Chapter 802**, authorizes a city, county, city and county, or a nonprofit organization to establish domestic violence and human trafficking multidisciplinary personnel teams trained in the prevention, identification, management, or treatment of those cases. Specifically, this new law:

- Provides that a city, county, city and county, or community-based nonprofit organization may establish a domestic violence multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of domestic violence cases and who are qualified to provide a broad range of services related to domestic violence.
- States that a domestic violence multidisciplinary team may include, but not be limited to, any of the following: law enforcement and medical personnel; psychiatrists, psychologists, therapists, or other trained counseling personnel; district and city attorneys; victim-witness program personnel; social service agency staff members; county health department staff; and other specified persons.
- Authorizes team members to disclose and exchange information and records to and with one another relating to incidents of domestic violence that may be confidential if the member of the team having that information or records reasonably believes it is generally relevant to the prevention, identification, management, or treatment of domestic violence or the provision of domestic violence services and support.
- Provides that all discussions relating to the disclosure or exchange of information or records during team meetings is confidential unless disclosure is required by law.
- States that, notwithstanding any other law, testimony concerning those discussions is not admissible in any criminal, civil, or juvenile court proceeding.
- Provides that disclosure and exchange of information may occur telephonically or electronically if there is adequate verification.
- Prohibits disclosure and exchange of information with anyone other than members of the team.
- Allows the team to designate qualified persons to be a member of the team for a particular case. A person designated as a team member may receive and disclose relevant information and records, subject to specified confidentiality provisions.
- States that the sharing of information shall be governed by protocols developed in each county describing how and what information may be shared by the multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies who participate in the teams.

- Prohibits team members who have obtained confidential information from an individual from disclosing that information with one another unless the individual has consented to the disclosure, as specified. Before consent is obtained, the individual must be notified that the information may be shared with law enforcement professionals or other entities without his or her consent if required by law.
- Provides that a disclosure of information consented to by an individual is not deemed a waiver of any privilege or confidentiality provision, including those in specified sections of the Business and Professions and Evidence Codes.
- States that every member of the multidisciplinary team who receives information or records regarding children or families in his or her capacity as a team member is under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records.
- Requires that information or records obtained be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.
- Provides that these provisions shall not be construed to restrict guarantees of confidentiality provided under state or federal law.
- States that information and records communicated or provided to the team members by providers and agencies, as well as information and records created in the course of a domestic violence investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by applicable statutory and common law protections, except where disclosure is required by law. Existing civil and criminal penalties apply to the inappropriate disclosure of information held by the team members.
- Allows for identical multidisciplinary teams for human trafficking.

### **Firearm Prohibition for Criminal Conviction: Lifetime Prohibition for Misdemeanor Domestic Violence**

Current law prohibits a person from possessing firearms for a period of 10 years after a conviction specified misdemeanors. Current law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of domestic violence and battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship.

Existing law also prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail.

**AB 3129 (Rubio), Chapter 883**, imposes a lifetime ban on the ownership, purchase, receipt, or possession of firearms on individuals who have been convicted of misdemeanor domestic violence. Specifically, this new law:

- Specifies that is unlawful for a person to ever own or possess a firearm, if that person is convicted on or after January 1, 2019, of a misdemeanor violation of domestic violence.
- Punishes such an offense as a felony with a maximum sentence of three years in state prison or as a misdemeanor with a maximum sentence of one year in the county jail.

### **Officer Training: Domestic Violence**

Many abusive situations turn deadly when a victim attempts to leave a relationship. Seventy-two percent of all murder-suicides involve an intimate partner, with 94 percent of the victims of these murder-suicides female, and more than half of all female homicide victims were killed in connection with intimate partner violence. The World Health Organization says that worldwide, a partner or spouse is the killer in 38 percent of women’s homicides.

Lethality assessments are protocols designed for law enforcement first responders. Excessive jealousy, having threatened suicide or homicide in the past, heavy drug or alcohol use, or previous cases of choking a victim are tied to increased risk of lethality. Victims are asked a series of questions based on research on factors linked to lethality; certain victims’ responses trigger the ‘protocol referral,’ which is an immediate connection with a local advocacy program.

**SB 1331 (Jackson), Chapter 137**, requires the Commission on Peace Officer Standards and Training (POST) to include procedures and techniques for assessing signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers in the handling of domestic violence complaints.



# DRIVING UNDER THE INFLUENCE

## Blood Tests: Consequences for Refusal to Provide Blood Sample

Current law provides for criminal sanctions for failure to comply with a lawful request to provide a biological sample (breath or blood) when there is probable cause to believe that the person is driving under the influence. However, these laws are not in compliance with the due process requirements set forth by the Supreme Court of the United States in *Birchfield v. North Dakota* (2016) 136 S.Ct. 2160 [195 L.Ed.2d 560].

In *Birchfield*, and the two companion cases, the U.S. Supreme Court ruled that breath testing was not a violation of the Fourth Amendment as it was incident to an arrest, but obtaining a blood sample would require a warrant. This means that “implied consent” does not exist in the case of the blood testing. Furthermore, according to one of the holdings in *Birchfield, supra.*, a state cannot burden the invocation of the Fourth Amendment protection by a lawfully arrested driver by imposing criminal sanctions on said driver.

**AB 2717 (Lackey), Chapter 177**, modifies California law as it relates to refusal to submit to a chemical test due to suspicion of driving under the influence (DUI) to comply with the Supreme Court's ruling in *Birchfield v. North Dakota* (2016) 136 S. Ct. 2160. Specifically, this new law:

- States that if a person is arrested for DUI and willfully refused a police officer's request to submit to, or willfully failed to complete, the breath or urine tests, the person is subject to specified criminal penalties if the person is subsequently convicted of DUI.
- States that if a person refuses to take, or fails to complete, a blood test, the enhanced criminal penalties described in this bill do not apply.
- Specifies that if a person refuses to take, or fails to complete, a blood test, that the provisions of this bill do not prohibit the imposition of administrative actions (such as suspension) involving driving privileges.
- Modifies the admonition a police officer gives an individual arrested for DUI to require that the officer state that an individual's failure submit to, or the failure to complete, the required breath or urine testing will result in a fine and mandatory imprisonment if the person is convicted of a violation of DUI.
- Modifies the admonition a police officer gives an individual arrested for DUI to require that the officer state that an individual's failure to submit to, or the failure to complete, the required breath, blood, or urine tests will result in the administrative suspension by the department of the person's privilege to operate a motor vehicle for specified periods of time.





## ELDER ABUSE

### Dependent Person: Definition

The US Census Bureau, in its *American Community Survey*, classifies an adult as “independent living disabled” if, because of a physical, mental, or emotional condition, they have difficulty doing errands—such as shopping or visiting the doctor’s office—alone. As seen above, the federal definition for a disabled person clearly applies to persons who live alone; whereas, in many instances, California’s definition for “dependent” persons or adults is not so apparent.

Under California law, various statutes using the terms “dependent adult” and “dependent person” give different definitions. In many cases, statutes define the terms by cross-referencing to the sections which would be amended by this bill. Of these, only a few expressly specify that the definition applies regardless of whether the person lives independently.

**AB 1934 (Jones-Sawyer), Chapter 70**, clarifies that “dependent person” and “dependent adult” includes a person who lives independently. Specifically, this new law:

- Amends the definition of “dependent person” and “dependent adult” in various sections of the Codes to include a person living on his or her own.
- Amends a legislative declaration to instead state: “The Legislature finds and declares that elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.”

### Subsequent Arrest Notification: Employment, Licenses, and Certifications

California’s Department of Social Services (CDSS) is in charge of some 70,000 community care facilities in the state. These facilities are responsible for taking care of vulnerable populations, including minor children and the elderly. It is therefore necessary to vet the backgrounds of individuals who have access to the community care facilities, such as volunteers and employees. In order to do so, CDSS has established the Caregiver Background Check Bureau (CBCB) which reviews whether a potential employee or volunteer is fit to work within its care facilities. One important role of the CBCB is to review of the summary criminal history information of applicants who are seeking access to a community care facility.

When a person applies to be a volunteer or an employee at a community care facility, existing law requires the Department of Justice (DOJ) to provide information regarding every conviction, every arrest for which the individual is awaiting trial, sex offender registration status, and every arrest for crimes specified in the Health and Safety Code Section 1522(a)(1), which includes murder, elder abuse, and assault. If DOJ does not have records of a disposition for the arrest, it must make a genuine effort to determine the disposition. (*Id.*)

After a volunteer or employee has cleared this initial check, the DOJ can, but is not required to pass along subsequent arrest and conviction information. Therefore, a person who was initially granted access to a community care facility because they had no troubling convictions or arrests, may subsequently be arrested and continue working at the facility without the facility's knowledge. A recent State audit found that at least two employees or volunteers continued working in community care facilities after they had been arrested and convicted for serious crimes that should have disqualified them from employment.

**AB 2461 (Flora), Chapter 300**, requires the Department of Justice (DOJ) to continually update authorized entities with information about new arrests and convictions for people who have their fingerprints on file with the DOJ or the Federal Bureau of Investigation (FBI) as a result of applying for a job, license, or certification. Specifically, this new law:

- Requires DOJ to provide subsequent state or federal arrest or disposition notification to the California Department of Social Services (CDSS), the Medical Board of California, and the Osteopathic Medical Board of California to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the FBI as the result of an application for licensing, employment, certification, or approval.
- Specifies that an entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the DOJ for the purpose of establishing a record of the applicant to receive subsequent state or federal arrests or dispositions shall immediately notify the DOJ when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated.

### **Investigations: Elderly and Dependent Adults**

Existing law states that any person who willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. Additionally, any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years. Despite the existence of these laws, it appears that they are currently being under used and unevenly applied.

In 2014-2015, a Grand Jury in Santa Clara received a complaint regarding law enforcement's failure to investigate false imprisonment and forced isolation of elderly residents in San Jose. Based on that complaint, the Grand Jury reviewed law enforcement manuals, training materials, and the county's Elder Abuse Protocol. Out of twelve law enforcement agencies that the Grand Jury reviewed, only one policy and sheriff's department manual specifically referenced by California Penal Code 368 which refers to elder abuse.

The study showed that, across 12 counties, officer training manuals were inconsistent in their references to California Penal Code sections that protect elderly and dependent adults.

The San Jose Police Department (SJPD) was one of the departments who did not include Penal Code Section 368 in their training. Following the review by the Grand Jury, SJPD introduced references to Penal Code Section 368 in its training materials and policy manual. Since then, the number of elder abuse incidents documented by the police has risen each year. The increase in reports of elder abuse incidents correlates with the increased attention to training on elder abuse.

**SB 1191 (Hueso), Chapter 513**, requires local law enforcement and long-term care ombudsman programs to revise their policy manuals to include references to existing elder and dependent adult abuse laws. Specifically, this new law:

- Requires every local law enforcement agency and long-term care ombudsman program, when they next revise their policy manuals, to include in the portion relating to elder and dependent adult abuse, the following information:
  - That any person who knows that a person is an elder or dependent adult and who willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed \$2,000 or imprisonment in a county jail not to exceed one year, or by both fine and imprisonment;
  - That any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years;
  - That adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request, however, law enforcement agencies retain exclusive responsibility for criminal investigations, notwithstanding any law to the contrary; and,
  - To include, as a guideline to investigators, the Department of Justice's definition of elder and dependent adult abuse which is: "Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."



# EVIDENCE

## **Admissibility of Evidence: Acts of Prostitution**

Sex workers often feel unsafe reporting violence to police officers, or coming forward as a witness to a violent crime because they fear they will be prosecuted for engaging in prostitution. A recent study found that over 60% of sex workers face some form of assault while engaged in sex work – 32% reported a physical assault, while 29% reported a sexual assault. Currently, many prosecutors provide immunity to sex workers who act as cooperating witnesses and do not prosecute for these witnesses for acts of prostitution that they may have been engaged in at the time of being a witness or victim to a crime. However, current law does not require such immunity to be granted in exchange for any such testimony.

**AB 2243 (Friedman), Chapter 27**, prohibits the use of evidence that victims of, or witnesses to a violent felony, extortion, or stalking, were engaged in an act of prostitution at or around the time they were the witness or victim to such a crime.

## **Disposition of Evidence After Trial**

A defendant is entitled to an appeal from a judgment of conviction suffered in the trial court. The California Rules of Court specify the items that must be included in the record on appeal. These items include exhibits admitted in evidence, refused or lodged in the trial court. These exhibits sometimes contain biological material. Besides direct appeal, defendants may have a number of other postconviction remedies available to them such as a state or federal habeas petition. Current law generally requires biological exhibits to be preserved for as long as the defendant is in prison for the relevant offense. However, the biological evidence may be destroyed prior to the expiration of the prison term if proper notice is given to the relevant parties and no declaration of innocence has been filed by the defendant within one year of the judgment of conviction.

**AB 2988 (Weber), Chapter 972**, eliminates the requirement that a declaration of innocence be filed within one year of the date of conviction in order to continue the preservation of biological material during the term of imprisonment.

## **Immigration Status: Admissibility**

In 2017, several media outlets reported that Immigrations and Customs Enforcement (ICE) officers were making arrests of California residents in California courthouses. In response, California Supreme Court Justice Tani Cantil-Sakauye sent a letter to U.S. Attorney General Jeff Sessions and Homeland Security Secretary John Kelly expressing concern over reports of immigration agents seeking out undocumented immigrants in California courthouses. Chief Justice Cantil-Sakauye stated, “Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws.”

On January 10, 2018, ICE published a directive regarding arrests in state courthouses. According to the directive, “courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.” The presence of ICE agents seeking to make arrests in California courthouses means that undocumented immigrants may be unwilling to come forward and testify before the court. That could result in vital testimony not being revealed to a jury simply because the witness happened to be an undocumented immigrant and is scared of being exposed if he or she chooses to testify.

**SB 785 (Weiner), Chapter 12**, prohibits the disclosure of a person’s immigration status in open court unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing. Specifically, this new law:

- Provides that in a criminal case, evidence of a person’s immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking the disclosure.
- Provides that in criminal matters, the provisions of this bill do not do any of the following:
  - Apply to cases in which a person’s immigration status is necessary to prove an element of a claim or an affirmative defense;
  - Limit discovery in a criminal action; or,
  - Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.
- States that in a civil case, except for in cases of personal injury or wrongful death, evidence of a person’s immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure.
- States that the provisions of this bill related to civil actions do not do any of the following:
  - Apply to cases in which a person’s immigration status is necessary to prove an element of an offense or an affirmative defense;
  - Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action; or,
  - Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.

- Provides that the provisions of this bill do not alter a prosecutor’s existing obligation to disclose exculpatory evidence.
- Sunsets its provisions on January 1, 2022.

### **Eyewitness Identification: Procedures**

Compliance with best practices improves the reliability of valid eyewitness identification. Eyewitness misidentification is the leading contributor to wrongful convictions proven with DNA evidence nationally. In California eyewitness misidentification contributed to 66 wrongful convictions, including 12 out of the 13 DNA-based exonerations. Wrongful convictions involving eyewitness misidentification threatens public safety because when an innocent person is convicted the real perpetrator remains undetected and could harm others. There is currently no statewide standard requiring law enforcement to use best practices. Although law enforcement agencies in San Francisco, Alameda, Contra Costa, and Santa Clara Counties are amongst some of the California jurisdictions that follow some of the recommended procedures. Nationally, 19 states have adopted state requirements for eyewitness identification procedures including Georgia, Nebraska, North Carolina, Ohio, Texas, and West Virginia. These evidence-based procedures have been endorsed by the California Commission on the Fair Administration of Justice, the National Academy of the Sciences, the U.S. Department of Justice, the American Bar Association, and the International Association of Chiefs of Police.

**SB 923 (Wiener), Chapter 977**, requires law enforcement agencies and prosecutors to adopt regulations for conducting photo and live lineups with eye witnesses. Specifically, this new law:

- Provides that all law enforcement agencies and prosecutorial entities shall adopt regulations for conducting photo lineups and live lineups with eyewitnesses.
- Requires that the regulations be developed to ensure reliability and accurate suspect identifications, and comply with the following minimum requirements:
  - The eyewitness must complete a standardized form describing the perpetrator of the offense before conducting the identification procedure, and as close in time to the incident as possible;
  - The person conducting the identification procedure must use blind administration or blinded administration during the identification procedure;
  - If blind administration is not used, the investigator shall state in writing the reason that the presentation of the lineup was not so conducted;
  - Before an identification procedure, an eyewitness must be told that the perpetrator may or may not be among the persons in the lineup, that the eyewitness should not feel compelled to make an identification, and, that neither an identification nor the failure to make one will not end the investigation;



- The identification procedure must be composed so that all fillers generally fit the eyewitness' description of the suspect, and, in the case of a photo lineup, the photograph of the suspect should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out;
- When conducting a photo lineup, writings or information about any previous arrest of the suspect cannot be visible to the eyewitness;
- Only one suspect shall be included in any identification procedure;
- All eyewitnesses must be separated when viewing a line up;
- Nothing shall be said to the eyewitness that might influence his or her selection of the person suspected as the perpetrator;
- An electronic recording shall be made that includes both audio and visual representations of the identification, when feasible, otherwise, an audio recording shall be used; and,
- If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:
  - The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing what he or she says;
  - Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness's statement of confidence level and documenting the exact words of the eyewitness; and,
  - The officer shall not validate or invalidate the eyewitness' identification.
- Provides that this bill does not affect policies for in field show up procedures.
- Contains legislative findings and declarations about the importance of valid eyewitness identification.
- States that nothing in these provisions is intended to preclude the admissibility of any relevant evidence or to affect the standards governing the admissibility of evidence under the United States Constitution.
- Delays implementation until January 1, 2020.

## FINES AND FEES

### Prosecution Costs: Nuisances and Local Ordinances

A “public nuisance” is a legal term used to describe anything that makes everyday life for members of the community unsafe or inconvenient. A public nuisance could be almost anything that is dangerous, offensive, or obstructive. Some common examples of a nuisance include loud fireworks, strong odors such as those produced by raw sewage, or some kind of physical obstruction that interferes with the public right of way, such as decorations or large bushes that block the view of oncoming traffic.

Current law gives broad authority to local government to not only declare what constitutes a “public nuisance,” but also how to approach code enforcement to abate such a nuisance. Local government can pursue public nuisance actions administratively, civilly, or criminally. A local entity may also pursue cost recovery options as long as they have previously adopted a local ordinance specifically allowing for it.

This framework has been used in some cases to charge exorbitant prosecution fees to citizens who caused minor nuisances in their community. In one such example, a 79 year-old landlord was billed thousands of dollars in prosecution costs as a result of the fact that one of her tenants had a few chickens on her property. In a second example, a man was criminally charged in Coachella after making a minor expansion to his home without a permit. As a result of the criminal charge, the man pled guilty, brought his house up to code, and paid a \$900 fine. More than a year later, he was sent a bill for \$26,000.

**AB 2495 (Mayes), Chapter 264**, makes it unlawful for a local city or county government to charge a person for the costs of investigation, prosecution, or appeal that that city or county sustains in a criminal case, with certain exceptions. Specifically, this new law:

- Provides that a city, county or city and county, including an attorney acting on behalf of a city, county or city and county, shall not charge a defendant for the cost of investigation, prosecution, or appeal in a criminal case, including, but not limited to, a criminal violation of a local ordinance.
- States that it shall not apply in any civil action or civil proceeding.
- States that it shall not apply to specified provisions that specifically allow for recovery of the costs of prosecution.
- Provides that nothing in this section shall be interpreted to affect the authority of a probation department to assess and collect fees or other charges authorized by statute.
- Provides that for purposes of this section the term “costs” means the salary, fees, and hourly rate paid to attorneys, law enforcement, and inspectors for hours spent either investigating or enforcing the charged crime.

- Provides that costs shall not include the cost, including oversight, to remediate, abate, restore, or otherwise clean-up harms caused by criminal conduct.

### **Community Service in Lieu of Fine: Payment Rate**

Low-income individuals of African American, Latin, Asian, and Native American descent are disproportionately represented in our criminal justice system, and they are also disproportionately burdened by high levels of court ordered debt related to traffic infractions. Paying the court ordered debt is a financial burden, the court does provide people an opportunity to perform community service but the current conversion rate for community service is inequitable.

Existing law provides that a court may sentence a defendant to perform community service if payment of the total fine would pose a hardship on the defendant or his or her family. Currently, each court determines its own hourly rate for defendants who perform community service, resulting in different rates throughout the state.

**AB 2532 (Jones-Sawyer), Chapter 280**, requires a court to permit a person convicted of an infraction to perform community service in lieu of paying a fine upon demonstrated financial hardship, and sets an hourly rate for community service. Specifically, this new law:

- Requires the court to permit a person convicted of an infraction to perform community service in lieu of paying a fine upon the defendant demonstrating financial hardship.
- Clarifies the definition of “total fine.”
- Sets the hourly applicable rate for community service at double the minimum wage set for the applicable calendar year, as specified.
- Allows courts to adopt a local rule increasing the hourly rate.

## **FIREARMS**

### **Large Capacity Magazines: Reserve Peace Officers**

The Safety for All Act of 2016 makes it a crime for a person, commencing July 1, 2017, to possess a large capacity magazine. The Act exempts from the ban the possession of large capacity magazine honorably retired sworn peace officers.

**AB 1192 (Lackey), Chapter 63**, exempts retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high-capacity magazines.

### **Unsafe Handguns: Port District Police**

Existing law prohibits the manufacture, importation, sale, or transfer of an unsafe handgun. Existing law exempts from this prohibition sales to specified law enforcement agencies or other specified government agencies employees and sales to specified peace officer.

**AB 1872 (Voepel), Chapter 56**, exempts sworn peace officers of a harbor or port district including the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles who have satisfactorily completed the Commission on Peace Officer Standards and Training firearms training course from the state prohibition relating to the sale or purchase of an unsafe handgun.

### **Mental Health Commitments: Prohibition on Firearms**

Research shows that suicide with a firearm is the most common and by far the most lethal suicide method. Just having a firearm in the home is a strong predictor for gun suicide.

Current law states that a person who has been taken into custody on a 72-hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. Current law provides that a person subject to a 72-hour hold may make a single request for a hearing regarding their right to possess a firearm at any time during the five-year period.

**AB 1968 (Low), Chapter 861**, requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings. Specifically, this new law:

- Specifies that a person who has been taken into custody, assessed, and admitted because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.
- Allows a person admitted more than once within a one-year period because they were a danger to themselves or others, to request a court hearing on whether they would be likely to use firearms in a safe and lawful manner.
- Requires the District Attorney to bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner, if a hearing has been requested.
- Specifies that if court finds that the people have met their burden to show by a preponderance of the evidence that a person is subject to a lifetime firearm prohibition because that person had been admitted to mental health facility, as specified, more than once within the previous one year period, the court shall inform the person of their right to file a subsequent petition no sooner than five years from the date of the hearing.
- States that a person subject to a lifetime ban is entitled to bring subsequent petitions under this section. A person cannot file a subsequent petition, and is not entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition.
- Requires that the form to request a hearing on the right to possess firearms include an authorization for the release of the person's medical and mental health records, upon request, to the appropriate court, solely for use in the hearing.
- Prohibits the mental health facility from submitting the hearing petition form on behalf of the individual.
- Extends the time for the court to set the hearing on restoration of right to possess firearms from within 30 days, to within 60 days of the filing of a petition.
- Authorizes a continuance of the hearing for 30 days on the restoration of right to possess firearms, upon a showing of good cause by the district attorney, an extension from the current continuance of 14 days.
- Makes the provisions of this bill operative on January 1, 2020.

## **Firearms: Carried Concealed Weapons Permits**

Under existing law, a person who has never even fired a gun or received proper training on how to safely handle one can receive a concealed carry permit from a local jurisdiction and then legally carry a loaded firearm in public. Additionally, existing law sets a maximum time training standard of 16 hours, but does not require a minimum number of hours of training, nor does it require that an applicant demonstrate proficiency with a firearm.

**AB 2103 (Gloria), Chapter 752**, requires that the training for applicants for a license to carry a concealed firearm (CCW) shall be no less than 8 hours in length, and specifies safe handling and shooting proficiency requirements. Specifically, this new law:

- Provides that the course of training for applicants for a CCW license may be any course acceptable to the licensing authority that meets the following criteria:
  - The course shall be no less than eight hours, but shall not exceed 16 hours in length;
  - The course shall include instruction on firearm safety, firearm handling, shooting technique, and laws regarding the permissible use of a firearm; and,
  - The course shall include live-fire shooting exercises on a firing range and shall include a demonstration by the applicant of safe handling of, and shooting proficiency with each firearm the applicant is applying for a license to carry.
- Requires the licensing authority to establish, and make available to the public, standards for live-fire shooting exercises that include, without limitation, a minimum number of rounds to be fired and minimum passing scores at specified firing distances.
- Requires that an applicant for a renewal of a CCW to satisfy safe handling and shooting proficiency requirements.

## **Automated Firearms System: Reporting**

Existing law requires police and sheriffs' departments to submit the description of firearms which has been reported stolen, lost, found, recovered, or under observation, directly into the California Department of Justice's (DOJ) Automated Firearms System (AFS). Existing law also requires police and sheriffs' departments to report to DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. But other law enforcement agencies are not subject to the same requirements.

Tracing lost or stolen weapons is a valuable tool for law enforcement to identify illegal firearm sales and firearm smuggling, as well as identify guns that have been used in crimes.

**AB 2222 (Quirk), Chapter 864**, requires all law enforcement agencies to report to the Department of Justice (DOJ) information about each firearm reported lost, stolen, or recovered. Specifically, this new law:

- Requires all law enforcement agencies in the state to input information regarding each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, into the DOJ's Automated Firearms System within three days after being notified.
- Defines a "law enforcement agency" as "a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer as defined."
- Requires firearm information entered into the Automated Firearms System to remain in the system until the reported firearm is found, recovered, no longer under observation, or determined to have been entered erroneously.
- States that any costs incurred by the DOJ in the implementation of the Automated Firearms System must be reimbursed by funds other than the fund resulting from fees relating to the sale, lease, or transfer of firearms.

### **Temporary Emergency Gun Violence Restraining Orders**

Temporary emergency Gun Violence Restraining Orders (GVROs) provide law enforcement a tool for removing a firearm from the possession a person who presents an immediate and present danger to him or herself or others. Under current law, the default procedure to obtain a temporary emergency GVRO is via written petition, unless time and circumstances do not permit writing and filing the petition. Where oral issuance is permitted, the statute directs law enforcement to follow the procedures used for obtaining an oral search warrant.

In practice, officers in the in the field who are dealing with an immediate and present danger generally obtain the GVRO orally because time and circumstances rarely allow the officer to present a written petition to a judicial officer at the courthouse. However, because the default procedure under existing law provides that officers must obtain such orders via written petition, there has been confusion about whether and how a written petition be presented in order to obtain the GVRO. This could result in unnecessary delays during an emergency situation.

**AB 2526 (Rubio), Chapter 873**, makes oral requests for a temporary emergency gun violence restraining order the statutory default and authorizes written requests if time and circumstances permit. Specifically, this new law:

- Allows a judicial officer to issue a temporary emergency GVRO orally based on the statements of the law enforcement officer and allows a temporary GVRO to be obtained in writing and based on a declaration signed under penalty of perjury if time and circumstances permit.

- Requires the officer to sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer.

### **Firearm Prohibition for Criminal Conviction: Lifetime Prohibition for Misdemeanor Domestic Violence**

Current law prohibits a person from possessing firearms for a period of 10 years after a conviction specified misdemeanors. Current law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of domestic violence and battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship.

Existing law also prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail.

**AB 3129 (Rubio), Chapter 883**, imposes a lifetime ban on the ownership, purchase, receipt, or possession of firearms on individuals who have been convicted of misdemeanor domestic violence. Specifically, this new law:

- Specifies that is unlawful for a person to ever own or possess a firearm, if that person is convicted on or after January 1, 2019, of a misdemeanor violation of domestic violence.
- Punishes such an offense as a felony with a maximum sentence of three years in state prison or as a misdemeanor with a maximum sentence of one year in the county jail.

### **Firearms and Ammunition: Transfer to a Licensed Dealer when Possession Prohibited**

Under existing law, a person who has an outstanding warrant for a felony or certain misdemeanors is prohibited from purchasing, owning, or possessing a firearm. The person must relinquish his or her firearms by either surrendering them to local law enforcement or selling them to a licensed firearm dealer. SB 746 would add the option of transferring firearms and ammunition to a licensed firearm dealer for storage during the duration of the prohibition.

In recent years, legislation has been enacted to allow dealer storage as a relinquishment option for temporary firearm prohibitions, including those due to protective orders, domestic violence restraining orders and gun violence restraining orders. Existing law does not have corresponding provisions when a person is prohibited from possessing a firearm because of an outstanding warrant.



**SB 746 (Portantino), Chapter 780**, establishes procedures for the return of ammunition that has been seized by law enforcement or has been transferred to a licensed firearms dealer because of a temporary prohibition on ammunition possession. Specifically, this new law:

- Makes the procedure for a court or law enforcement agency to return a seized firearm applicable to ammunition.
- Makes the procedure for a licensed firearm dealer to return a firearm that has been transferred to them because the person is temporarily prohibited from possessing a firearm applicable to ammunition.
- Allows a person that owns ammunition or ammunition feeding device that is in the custody of a court or law enforcement agency to sell those items to a licensed firearm dealer, ammunition vendor, or third party that is not prohibited from possessing such items.
- Allows a person temporarily prohibited from possessing ammunition to transfer ammunition to an ammunition vendor, in addition to a licensed firearms dealer.
- Specifies that any ammunition in the possession of a firearms dealer or ammunition vendor because of a temporary prohibition of ammunition possession, not be returned to the owner after the prohibition has expired, unless the owner meets the eligibility requirements necessary to purchase ammunition.
- Clarifies that a person who has an outstanding warrant for a felony or misdemeanor can transfer his or her firearms to a licensed firearms dealer, for the duration of the prohibition, as specified.
- Requires that any firearm that is confiscated by law enforcement which does not possess an engraved serial number or other identification mark, as specified, be destroyed.
- Requires a new resident to California to apply with DOJ for a serial number for any firearm that the resident owns that does not have a serial number.
- Makes July 1, 2020, the operative date for the provisions of this bill regarding ammunition feeding devices and ammunition, as specified.

### **Firearms: Sale or Transfer**

Existing law prohibits the sale or transfer of a handgun, excepts as exempted, to any person under 21 years of age. Existing law also prohibits the sale or transfer of a firearm other than a handgun, except as exempted, to any person under 18 years of age. A violation of this provision by a firearms dealer is a crime.

Existing law requires a person who wishes to manufacture or assemble a firearm to first apply to the Department of Justice ( DOJ) for a unique serial number or other identifying mark. Existing law requires an applicant to be at least 18 years of age for a firearm that is not a handgun, and at least 21 years of age for a firearm that is not a handgun. A violation of this application requirement is a felony.

**SB 1100 (Portantino), Chapter 894**, increases the age for which a person can purchase a long-gun from a licensed dealer from 18 to 21 years of age, except as specified.

Specifically, this new law:

- Exempts the sale of a firearm, that is not a handgun, to the following persons that are 18 years of age or older:
- A person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife;
- An active peace officer, who is authorized to carry a firearm in the course and scope of his or her employment;
- An active federal officer, or law enforcement agent, who is authorized to carry a firearm in the course and scope of his or her employment;
- A reserve peace officer, who is authorized to carry a firearm in the course and scope of his or her employment; and,
- An active member of the United States Armed Forces, the National Guard, the Air national Guard, or the active reserve components of the United States, where the individuals in these organizations are properly identified. Proper identification includes the Armed Forces Identification Card or other written documentation certifying that the individual is an active or honorably retired member.
- Makes conforming changes to the age requirements for an application for the granting of serial number by DOJ to persons wishing to manufacture or assemble a firearm.

## **Gun Violence Restraining Orders**

In 2014, AB 1014 (Skinner) established gun violence restraining orders (GVROs) as a tool family members could use to disarm loved ones who were threatening violence or self-harm. Since the law went into effect in January 2015, California has issued approximately 200 GVRO's. During this initial phase, a number of issues have come to light that if addressed would greatly improve the effectiveness of this tool.

**SB 1200 (Skinner), Chapter 898**, makes various changes to existing laws related to gun violence restraining orders (GVROs). Specifically, this new law:

- States that for purposes of the GVRO law, "ammunition" includes a "magazine," as defined in existing law.
- Makes conforming changes to the notice required to be given to the subject of a GVRO.
- Requires the court, within one day of receiving the receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency, or sold, or transferred to a licensed firearms dealer, to transmit a copy of the receipt to Department of Justice (DOJ) in a manner and pursuant to a process prescribed by DOJ.
- Requires an officer serving a GVRO to verbally ask the restrained person if he or she has any firearm, firearm part or component, ammunition, or magazine in his or her possession or under his or her custody or control.
- Requires the court to hold a hearing within 21 days after the date of the issuance of a temporary GVRO to determine if a one-year GVRO should be issued.
- Exempts any orders or injunctions related to GVROs from the requirement for prepayment of a fee deposit generally authorized in connection with service of process of notices for certain types of cases.
- Provides that there is no filing fee for an application, a responsive pleading, or an order to show cause which seeks to obtain, modify, or enforce a GVRO or other order authorized by the GVRO law if the request for the other order is necessary to obtain or give effect to a GRVO. There is also no fee for a subpoena filed in connection with such application, responsive pleading, or order to show cause.

### **Firearms: Multiburst Trigger Activators**

Bump stocks, also known as multiburst trigger activators, are a type of firearm modification. A bump stock is an accessory that modifies a semiautomatic rifle so that it can fire shots continuously as long as the shooter keeps the rifle against his or her shoulder. The bump stock takes the place of the gun's standard stock (the piece of the rifle that rests against the shooter's shoulder). By holding down the trigger and simultaneously placing pressure on the barrel of the gun, a shooter using a bump stock can shoot almost as quickly as an automatic firearm.

Bump stocks were reportedly used in the Las Vegas massacre, the deadliest mass shooting in modern American history. Between 10:05 and 10:15 p.m. on October 1, 2017, 64-year-old Stephen Paddock of Mesquite, Nevada, fired more than 1,100 rounds from his suite on the 32nd floor of the Mandalay Bay Hotel. By the end of Paddock's shooting spree, 58 people were dead and another 851 injured. In the wake of this horrific event, and in light of porous borders between states, it should be unmistakably clear in California that possession, sale, transfer, and import of these devices is a crime punishable by up to three years in jail.

In October after the Las Vegas shooting, the Attorney General felt it necessary to issue an advisory to gun retailers, reminding them that bump stocks are illegal under California law.

**SB 1346 (Jackson), Chapter 795**, clarifies that the definition of a multiburst trigger includes a bump stock, bump fire stock, or other similar devices that are attached to, built into, or used in combination with a semiautomatic firearm to increase the rate of fire of that firearm. Specifically, this new law:

- Defines a multiburst trigger activator to include, but is not limited to any of the following devices:
  - A device that uses a spring, piston, or similar mechanism to push back against the recoil of a firearm, there by moving the firearm in a back-and-forth motion and facilitating the rapid reset and activation of the trigger by a stationary figure . These devices are known as bump stocks, bump fire stocks, or bump fire stock attachments;
  - A device placed within the trigger guard of a firearm that uses a spring to push back against the recoil of the firearm causing the finger in the trigger guard to move back and forth and rapidly activate the trigger. These devices are commonly known as burst triggers.
  - A mechanism that activates the trigger of the firearm in rapid succession by turning a crank. These devices are commonly known as trigger cranks, gat cranks, gat triggers, or trigger activators; and,
  - Any aftermarket trigger, or trigger system that, if installed, allows that allows more than one round to be fired with a single depression of the trigger.

### **Firearms: Vehicle Storage**

SB 869 (Hill), Chapter 651, Statutes of 2016, required every person when leaving a handgun in an unattended vehicle, to secure the handgun in either the trunk of the vehicle or in a locked container out of plain view. However, for many who drive either a pickup truck or vehicle that does not have a trunk, the options under current law to legally and safely store a firearm are quite limited.

**SB 1382 (Vidak), Chapter 94**, permits the leaving of a handgun in an unattended vehicle if the handgun is locked in a tool box or utility box, and defines a locked tool box or utility box as a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not have a trunk, and is locked by a padlock, key lock, combination lock, or other similar locking device.



# HATE CRIMES

## Hate Crime Investigations: Law Enforcement Policy

According to the DOJ's 2016 report, Hate Crimes in California, the total number of hate crime events (an occurrence when a hate crime is involved) decreased 34.7 percent from 2007 to 2016. Filed hate crime complaints decreased 30.5 percent from 2006 to 2015. However, hate crime events in California have been on the rise; there was a 10.4 percent rise from 2014 to 2015, and then another 11.2 percent rise from 2015 to 2016. The total number of hate crime events, offenses, victims, and suspects had all increased in 2016.

According to its 2015 report, "The DOJ requested that each law enforcement agency establish procedures incorporating a two-tier review (decision-making) process. The first level is done by the initial officer who responds to the suspected hate crime incident. At the second level, each report is reviewed by at least one other officer to confirm that the event was, in fact, a hate crime." Even with the two-tiered system in place, the DOJ still lists the policies of law enforcement agencies as one of four factors possibly influencing the volume of hate crimes reported.

**AB 1985 (Ting), Chapter 26**, provides that local law enforcement agencies must include certain requirements and definitions into a hate crimes policy manual if they decide to adopt or update a hate crimes policy manual. Specifically, this new law:

- Requires a local law enforcement agency, if it adopts or updates a hate crime policy, to include, but not be limited to, all of the following:
  - Specified definitions related to hate crimes;
  - The content of the model policy framework as developed by the Commission on Peace Officer Standards and Training (POST), and any future revisions or additions the made by the commission, as specified;
  - Information about bias motivation;
  - A definition of bias motivation and examples of what it may look like, as specified;
  - A list of indicators officers should consider when gathering information in a suspected disability-bias hate crime, as specified;
  - A requirement, for officers faced with a suspected disability-bias hate crime, to determine if the perpetrator perceived the victim to be vulnerable, to then consider whether the perpetrator targeted the victim with a perceived disability while not targeting other vulnerable-appearing persons such as inebriated persons, and if such circumstances were found, to mark it as a suspected hate crime;

- Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes along with a plan to remedy the underreporting;
  - A protocol for reporting suspected hate crimes to the Department of Justice;
  - A checklist of first responder responsibilities, as specified;
  - A specific procedure for transmitting and updating the policy, including a simple and immediate way for officers to access the policy in the field when needed;
  - The title of any officers responsible for assuring the department has a hate crime brochure; and,
  - A requirement that all officers be familiar with and carry out the policy at all times unless otherwise directed.
- Provides that a local law enforcement agency may include any provisions of a model hate crimes policy developed by the International Association of Chiefs of Police so long as it is consistent with the above requirements.

# HUMAN TRAFFICKING

## **Multidisciplinary Personnel Teams: Domestic Violence and Human Trafficking**

Under current law, collaboration through a multidisciplinary team model is permitted in the areas of elder abuse and child abuse. The theories behind these models are to allow multiple service providers and government agencies to act in a collaborative fashion to help meet the needs of the community as well as parties involved. The model has been used for cases of child abuse and elder abuse because the parties involved have had to interact with multiple agencies and interests, and the victims are often viewed as coming from a vulnerable community.

As in the case of child abuse and elder abuse, the parties involved in domestic abuse and human trafficking are similarly situated. There is a natural intersection between the need for social services and the criminal justice system in these situations. Without a multidisciplinary personnel team there is no ability for advocates to share information about human trafficking victims or domestic violence victims.

**AB 998 (Grayson), Chapter 802**, authorizes a city, county, city and county, or a nonprofit organization to establish domestic violence and human trafficking multidisciplinary personnel teams trained in the prevention, identification, management, or treatment of those cases. Specifically, this new law:

- Provides that a city, county, city and county, or community-based nonprofit organization may establish a domestic violence multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of domestic violence cases and who are qualified to provide a broad range of services related to domestic violence.
- States that a domestic violence multidisciplinary team may include, but not be limited to, any of the following: law enforcement and medical personnel; psychiatrists, psychologists, therapists, or other trained counseling personnel; district and city attorneys; victim-witness program personnel; social service agency staff members; county health department staff; and other specified persons.
- Authorizes team members to disclose and exchange information and records to and with one another relating to incidents of domestic violence that may be confidential if the member of the team having that information or records reasonably believes it is generally relevant to the prevention, identification, management, or treatment of domestic violence or the provision of domestic violence services and support.
- Provides that all discussions relating to the disclosure or exchange of information or records during team meetings is confidential unless disclosure is required by law.
- States that, notwithstanding any other law, testimony concerning those discussions is not admissible in any criminal, civil, or juvenile court proceeding.



- Provides that disclosure and exchange of information may occur telephonically or electronically if there is adequate verification.
- Prohibits disclosure and exchange of information with anyone other than members of the team.
- Allows the team to designate qualified persons to be a member of the team for a particular case. A person designated as a team member may receive and disclose relevant information and records, subject to specified confidentiality provisions.
- States that the sharing of information shall be governed by protocols developed in each county describing how and what information may be shared by the multidisciplinary team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law. A copy of the protocols shall be distributed to each participating agency and to persons in those agencies who participate in the teams.
- Prohibits team members who have obtained confidential information from an individual from disclosing that information with one another unless the individual has consented to the disclosure, as specified. Before consent is obtained, the individual must be notified that the information may be shared with law enforcement professionals or other entities without his or her consent if required by law.
- Provides that a disclosure of information consented to by an individual is not deemed a waiver of any privilege or confidentiality provision, including those in specified sections of the Business and Professions and Evidence Codes.
- States that every member of the multidisciplinary team who receives information or records regarding children or families in his or her capacity as a team member is under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records.
- Requires that information or records obtained be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.
- Provides that these provisions shall not be construed to restrict guarantees of confidentiality provided under state or federal law.
- States that information and records communicated or provided to the team members by providers and agencies, as well as information and records created in the course of a domestic violence investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by applicable statutory and common law protections, except where disclosure is required by law. Existing civil and criminal penalties apply to the inappropriate disclosure of information held by the team members.

- Allows for identical multidisciplinary teams for human trafficking.

### **Protective Orders: Human Trafficking, Pimping and Pandering**

Currently, California law only affords the protection of a post-conviction 10-year criminal protective order for minor victims of pimping and pandering. But adult victims may be in need of the protection as well.

Similarly under existing law, human trafficking victims that are not trafficked for sexual purposes, but rather are trafficked for forced labor or services are not able seek a post-conviction restraining order. Arguably these human trafficking victims are also vulnerable to the abuse and coercion of their traffickers, and should be able to obtain such an order.

**AB 1735 (Cunningham), Chapter 805**, requires the court to consider issuing a protective order in all cases in which a defendant has been convicted of human trafficking, pimping or pandering. Specifically, this new law extends the court's authority to issue post-conviction protective orders lasting up to 10 years in human trafficking, pimping, and pandering cases.

### **Commercially Sexually Exploited Children**

The commercial sexual exploitation of children (CSEC) is defined as the sexual exploitation of children entirely, or at least primarily, for financial or other economic reasons, and may be characterized by economic exchanges that are either monetary or non-monetary – e.g., for food, shelter, or drugs. Sex trafficking of minors is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” where the person is a United States citizen or a lawful permanent resident under the age of 18 years.

Nearly 98% of CSEC victims in the U.S. are female, and between 50 and 80% of child victims of commercial sexual exploitation have been involved with the child welfare system, according to the Alameda County Human Exploitation and Trafficking (H.E.A.T.) Watch Unit. It is also estimated that, in 2014, one in six endangered runaways were likely sex trafficking victims, according to the National Center for Missing and Exploited Children. Due to challenges associated with identifying victims, collecting and cross-referencing data, and deciding on common definitions in order to collect accurate statistics, many experts believe that these numbers underestimate the magnitude of the problem. Many youth also do not self-identify as victims, or may be reluctant to admit to victimization due to fears of retaliation from traffickers, deportation, or incarceration.

**AB 2207 (Eggman), Chapter 757**, makes Legislative findings and declarations related to the CSEC in California, the intersection between CSEC and the child welfare system, and the provision of services to these youth by the state, and places a deadline of January 1, 2020, on the requirement in current law that the Department of Social Services, in consultation with stakeholders, must develop model policies, procedures, and protocols to assist counties in achieving certain goals related to the commercial sexual exploitation of youth receiving child welfare services, as specified.

### **Peace Officer Training: Commercial Sexual Exploitation of Children (CSEC)**

Commission on Peace Officer Standards and Training (POST) currently provides training and materials on Human Trafficking and has a statutory mandate regarding such training. The POST Guidelines on Law Enforcement Response to Human Trafficking is presented in a format that allows the reader to follow a systematic process for conducting a human trafficking investigation. The materials stress that the nature of human trafficking makes it critical for law enforcement to understand the dynamics, indicators, and manifestations of its occurrence.

California has recognized the harmful effects of arresting exploited children for their perpetrators' crimes and has helped counties develop victim-centered responses. Existing training materials for peace officers could be supplemented with materials on the dynamics and trauma of exploitation, how to identify commercially sexually exploited children and keep them safe, requirements to report the abuse to child protection, and their role in collaborating to ensure they access the services they need to escape exploitation.

**AB 2992 (Daly), Chapter 973**, requires POST to develop and implement a course on victims of human trafficking. Specifically, this new law:

- Requires POST to develop a course on CSEC and victims of human trafficking. The course shall include, but not be limited to, the following topics:
  - The dynamics of commercial sexual exploitation of children;
  - The impact of trauma on child development and manifestations of trauma in victims of commercial sexual exploitation;
  - Strategies to identify potential victims of commercial sexual exploitation, including indicators that youth is being exploited;
  - Mandatory reporting requirements related to commercial sexual exploitation;
  - Appropriate interviewing, engagement, and intervention techniques that avoid retraumatizing the victim and promote collaboration with victim-serving agencies; and,
  - Introduction to the purpose, scope, and use of specialized victim interview resources.

- Requires the course to be equitable to a course included as part of continuing professional training for peace officers and include facilitated discussions and learning activities, including scenario training exercises.
- Requires POST to develop the course in consultation with the appropriate community, local, and state organizations and with agencies that have expertise in CSEC and human trafficking and to include meaningful input from human trafficking survivors.



# JUVENILES

## Juvenile Proceedings: Competency

Adult mental incompetency is currently defined as lacking sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding or lacking a rational as well as factual understanding of the nature of the charges or proceedings. While those same factors would be considered in evaluating the competency of a minor, the court would also consider the minors developmental maturity. Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone.

The current statute governing juvenile competency was put in place in 2010. (AB 2212 (Fuentes), Chapter 671, Statutes of 2010.) That law sets forth guidelines for juvenile competency proceedings. However, there are some operational ambiguities among practitioners relative to the types of remediation services to be delivered, who is the appropriate entity to deliver them, and where a youth will receive those services and for how long.

**AB 1214 (Stone), Chapter 991**, revises the procedure to determine the mental competence of a juvenile charged with a crime. Specifically, this new law:

- States that if the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and make a determination of competence.
- States that a minor is incompetent if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her.
- States that incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.
- Allows the court to receive information from any source regarding the minor's ability to understand the proceedings.
- Provides that if the court finds substantial evidence that raises a doubt as to the minor's competency, the proceedings shall be suspended.
- States that unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor to determine if the minor is competent.

- Specifies that if the expert concludes that the minor lacks competency, the expert shall give his or her opinion on whether the minor is likely to attain competency in the foreseeable future, and if so, make recommendations regarding the type of services that would be effective in assisting the minor in attaining competency.
- Specifies that statements made to the appointed expert during the minor's competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of those statements shall not be used in any other hearing against the minor in either juvenile or adult court.
- Allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing.
- States that the question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert.
- Specifies that it shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent.
- Provides that if the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed.
- States that if the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.
- Provides that if the court finds the minor to be competent, the court shall reinstate proceedings.
- Requires the court upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency, unless the court finds that competency cannot be achieved within the foreseeable future.
- Requires the minor to be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody prior to the expiration of the total allowable remediation period.
- Requires the court to consider appropriate alternatives to juvenile hall confinement.

- States that within six months of the initial receipt of a recommendation by the designated person or entity, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program.
- Specifies that if the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent.
- Specifies that if the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable.
- Specifies that the court finds that the minor has been remediated, the court shall reinstate the proceedings.
- States that if the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed specified limits.
- States that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition.
- Provides that secure confinement shall not extend beyond six months from the finding of incompetence, unless otherwise excepted by the provisions of this bill.
- States that only in cases where the minor has been charged with specified serious or violent charges may the court consider whether it is necessary and in the best interests of the minor and the public's safety to order secure confinement of a minor for up to an additional year, not to exceed 18 months from the finding of incompetence.

### **DNA Collection: Minors**

Current law under Proposition 69 from 2004 limits the collection of buccal swab samples from minors only when they have been convicted of certain specified crimes, such as a sex offense or felony, and then requires those samples to be forwarded to the Department of Justice for identification of deoxyribonucleic acid (DNA). However, the proposition also allowed for the maintenance of local databases, which has created a legal loophole wherein samples collected by local law enforcement which are only submitted to the local database, but not to the Department of Justice, are not subject to the same standards.



In practice, this has allowed law enforcement to broaden their scope of those eligible for collection of buccal swab samples. For instance, in San Diego, the department currently collects samples for “investigative purposes” simply based on a signed consent form, which is used for both minors and adults, and does not require any parental notification or consent when collecting a sample from a minor.

**AB 1584 (Gonzalez Fletcher), Chapter 745**, states that law enforcement shall not request a DNA sample be collected directly from a minor, without first obtaining written consent from the minor and the minor's parent or legal guardian, or attorney representing the minor. Specifically, this new law:

- Provides that a law enforcement officer, employee of law enforcement agency, or any agent thereof, shall not collect any biological sample from a minor for the purposes of obtaining the DNA of that minor, as part of an investigation of a crime in which the minor is alleged to be a suspect or participant.
- Specifies that the probation stated above does not apply when the following conditions are met:
  - The sample is collected pursuant to a valid search warrant or court order;
  - The sample collection is expressly required pursuant to this chapter; and,
  - Both of the following are met:
    - The minor consents in writing, after being orally advised of the purpose and manner of the collection, the right to refuse to consent, and the right to consult with an attorney, parent, or legal guardian prior to providing consent.
    - A parent or legal guardian of the minor, or an attorney representing the minor, is contacted, is provided the admonition is allowed to privately consult with the minor and after that consultations, concurs with the minor’s decision to consent.
- States that except as otherwise required, a DNA sample collected from a minor shall not be added to any DNA and forensic identification database or data bank, including but not limited to any local forensic DNA and forensic identification database or databank, the state DNA and forensic identification database and databank, or any national or international DNA database and data bank.
- Provides that this section does not apply to a suspected offender's DNA that is collected as evidence from a person or a victim under the age of 18 years.

## **Juvenile Case Files: Inspection**

Existing law recognizes the importance of maintaining the confidentiality of juvenile case files in order to protect the privacy rights of the child. Under current law, the juvenile court has exclusive authority to determine whether and to what extent to grant access to confidential juvenile records to unauthorized persons.

Consequently, as a general matter, a person who wishes to inspect a juvenile case file, who is not otherwise authorized, must petition the juvenile court for authorization by showing good cause for the release of the information. This statutory scheme reflects the strong public policy of confidentiality of juvenile records and the legislative determination that the juvenile court has both the sensitivity and expertise to make decisions about access to juvenile records.

The Legislature has authorized certain broad categories of persons to inspect juvenile case files without a court order, including judges and court personnel; law enforcement officers; investigators; agencies that provide services to the child, the child and the child's parents; and certain individuals designated by the court. An authorized person may not disclose information from the juvenile file to an unauthorized person without a court order.

Currently, individuals who have filed a notice of appeal or petition challenging a juvenile court order, or are respondents in such an appellate proceeding are not entitled to access the juvenile case without first seeking a court order, even if they were previously given access to the records by the juvenile court. Requiring this narrow subset of individuals to first seek a judicial order to review the juvenile case file delays the resolution of the appeal of juvenile court decisions, and increases the juvenile court's workload.

**AB 1617 (Bloom), Chapter 992**, authorizes specified individuals to inspect and copy records in a juvenile case file in order to respond to an appeal or writ proceeding. Specifically, this new law:

- Authorizes individuals who file a notice of appeal or petition for writ challenging a juvenile court order or who are respondents in that appeal or real parties in interest in that writ proceeding, for purposes of that appeal or writ proceeding, to inspect and copy any records in a juvenile case file to which they were previously granted access by the juvenile court.
- Requires that existing limitations on release and dissemination of records apply to records received.
- Requires Judicial Council to adopt rules to implement all of the above provisions.

## **Juveniles: Computing Technology**

Technology is an essential component of modern communications and a lack of digital literacy can derail a youth's life for years to come. The United Nations has gone as far as to declare access to the Internet is a human right, noting that technology must be recognized as part of our freedom of expression. Youth in out-of-home placement already face academic challenges and social isolation that result in poor outcomes when the youth reenter their communities.

Access to technology and the Internet is vital to ensure that these vulnerable youth continue to make academic progress and maintain important connections with family and friends. Education and supportive connections are crucial for these youth to succeed.

**AB 2448 (Gipson), Chapter 997**, grants youth confined in or committed to certain juvenile facilities, as well as individuals in foster care, the right to reasonable access to computer technology and the Internet. Specifically, this new law:

- Requires that a minor being detained or committed to a juvenile hall, ranch, camp, or forestry camp be provided with access to computer technology and the Internet for the purpose of education.
- Provides a minor being detained or committed to a juvenile hall, ranch, camp, or forestry camp may be provided with access to computer technology and the Internet for the purpose maintaining relationships with family.
- States that the chief probation or his or her designee shall not be limited in their authority to deny access to computer technology or the Internet for safety and security or staffing reasons.
- Provides that every child adjudged to be a dependent child of the juvenile court or resides in foster care shall be provided access to computer technology or the Internet.

### **Wards: Confinement**

In the mid-2000s, California began to shift responsibility for juvenile offenders to the counties. In 2007, SB 81, permitted counties to commit only the most serious juvenile offenders to state facilities. In 2010, AB 1628, realigned supervision of juveniles released from the Division of Juvenile Justice (DJJ) by the Board of Parole Hearings to county probation offices. Throughout the years, juvenile realignment bills have amended various sections of the Welfare and Institution, Penal, and Government Codes. However, many sections of the codes are outdated, and need to be updated to reflect current law. One such section is Welfare and Institutions Code Section 731 subdivision (c).

Section 731 subdivision (c) limits the amount of time a juvenile may be held in physical custody at DJJ. Under this subdivision, the committing court may only commit a juvenile for a time period based on the facts and circumstances that brought the juvenile under the jurisdiction of the court. Additionally, a juvenile may only be confined in DJJ for a period not exceeding the maximum time that an adult convicted of the same offense could receive. Section 731 subdivision (c) reflects an outdated version of this law as it existed prior to juvenile realignment. Specifically, subdivision (c) as it currently exists provides that the limitations on the amount of time a juvenile can be confined in DJJ do not limit the power of the Board of Parole Hearings discharge a youth on parole. This language reflects the wrong agency; the Board of Parole Hearings no longer paroles youth confined in DJJ.

**AB 2595 (Oberholte), Chapter 766**, clarifies that the limitations on the length of the physical confinement of a ward committed to DJJ, do not limit the powers of the Board of Juvenile Hearings and the committing juvenile court to, set a maximum base term, retain jurisdiction of the ward, discharge a ward, and establish conditions of supervision.

### **Driving Restrictions: Minors**

Under current law a juvenile court may suspend or delay the driver's license of a habitual truant for up to one year. This code section was last amended in 1994 by the enactment of SB 1728. SB 1728 was introduced to "deter habitual truancy." Since the enactment of SB 1728, studies have linked truancy to lower-income families. This has created concern that the suspension and delay of minors' driver's licenses has a disproportionate impact on lower income families who rely on their young family members' ability to get themselves to and from work in order to supplement the family income. This punishment also hinders educational advancements for youth who do not have access to reliable public transportation or school bus options. Suspending or delaying the driving privilege of a minor who comes from a low-income family may therefore exacerbate the issues faced by California's lower-income families.

**AB 2685 (Lackey), Chapter 717**, repeals the provision of law allowing a juvenile court to suspend or delay the driver's license of a habitual truant for up to one year.

### **Sealed Juvenile Records: Access**

In the last few years California created a system in which juvenile courts can auto-seal-records upon satisfactory completion of diversion or probation in certain circumstances. By allowing the automatic sealing of records California can remove barriers to success for these young people. This process helps young people have increased access to jobs, housing, and licensure agencies. However, the Welfare and Institutions Code does not allow prosecutors to access sealed juvenile records for a Brady Disclosure. A Brady disclosure is a constitutionally required disclosure of information or evidence that is material to the guilt, innocence, or punishment of a defendant in a criminal case. Under current law, if a prosecuting attorney needs access to a sealed file in order to comply with this disclosure obligation, he or she would be unable to do so.

**AB 2952 (Stone), Chapter 1002**, authorizes a prosecuting attorney to access, inspect, or utilize a juvenile record that has been sealed under the automatic sealing process in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. Specifically, this new law:

- Provides that a record that has been sealed pursuant to the Welfare and Institutions Code Section 786 process may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

- Requires the prosecutor to submit to the juvenile court his or her rationale for believing that access to the information in the record is necessary to meet the disclosure obligation.
- Requires the juvenile court to notify the person having the sealed record, including the person's attorney of record, that the court is considering the prosecutor's request to access the record, and the court must provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination.
- Requires the juvenile court to review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record.
- Requires the court to approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation.
- Requires the court to state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed, if the juvenile court approves the prosecuting attorney's request.

### **Jurisdiction: Minors Under the Age of Twelve**

California has no law specifying a minimum age for juvenile justice jurisdiction, meaning that young children of any age can be processed in the juvenile justice system provided that they meet the standards of capacity and competency under state law. A child under the age of 14 is not capable of committing a crime in the absence of clear proof that at the time of committing the alleged act, the child knew of its wrongfulness. In the criminal context, competency is the ability to understand the charges and the proceedings, to consult meaningfully with counsel, and to assist in one's own defense. A child is incompetent to stand trial in juvenile court if, "[S]he/he lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her."

Numerous studies have demonstrated that juveniles lack the neurodevelopmental framework to be fully competent and capable to stand trial. Further, the treatment of juveniles as equally culpable as adults clashes with emerging empirical evidence on the immaturity of adolescents with respect to both their ability to make informed and nuanced judgments about their behavior, as well as their moral development. Researchers in the science of human development generally agree that from a developmental standpoint an adolescent is not an adult. If it is recognized that the brain and moral development of adolescents is not as formed as that of an adult, then it stands to reason that the brain and moral development of pre-adolescents is even less so.

Based on this rationale, and on the recognition that involvement the juvenile justice system can cause more harm than benefit to the minor, juvenile justice reform advocates argue there should be a minimum age for

**SB 439 (Mitchell), Chapter 1006**, prohibits the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or specified sex offenses. Specifically, this new law:

- Establishes 12 years of age as the minimum age for which the juvenile court has jurisdiction to adjudicate a minor as a ward of the court for either a crime or a status offense, except as specified.
- Allows a child under the age of 12 to be brought under the jurisdiction of the juvenile court when it is alleged that the child has committed one of the following offenses:
  - Murder;
  - Rape by force, violence, menace, duress, or fear of immediate bodily injury;
  - Sodomy by force, violence, menace, duress, or fear of immediate bodily injury;
  - Oral copulation by force, violence, menace, duress, or fear of immediate bodily injury; or,
  - Sexual penetration by force, violence, menace, duress, or fear of immediate bodily injury.
- States legislative intent that counties use the least restrictive means of intervention, and avoid intervention whenever possible, when a child under the age of 12 engages in conduct that would otherwise bring him or her under the jurisdiction of the juvenile court.
- States legislative intent that counties use existing funding for behavioral or mental health, or other existing funding sources to provide the alternative services required.
- Provides that, on and after January 1, 2020, when a minor under the age of 12 comes to the attention of law enforcement because his or her conduct constitutes a crime or a status offense, the minor must be released to his or her parent, guardian, or caregiver.
- Requires counties to develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

## **Juvenile Records: Inspection**

Currently, it is illegal for someone who committed certain offenses, including serious or violent felonies, as a juvenile to own or possess a firearm until age 30. However, because juvenile records are sealed and destroyed at the conclusion of the case, it is impossible to enforce this prohibition.

In light of the 3-year statute of limitations for violations of existing law that mandates that juveniles who violate these provisions not be allowed to own or possess a firearm until age 30, the unintended incompatibility between the sealing/destruction requirements, and the juvenile firearms prohibition would best be solved by setting the age of destruction of eligible juvenile records at age 33.

**SB 1281 (Stern), Chapter 793**, prohibits the destruction of a sealed juvenile record if an offense in that record has made the person subject to a firearms restriction until he or she turns 33 years of age, and authorizes a prosecuting attorney or the Department of Justice (DOJ) to inspect, to utilize those records for purposes related to the enforcement of that restriction, as specified. Specifically, this new law:

- Provides that if a sealed juvenile record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age, as specified, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age.
- Adds the following to the list of circumstances under which a person's sealed record may be inspected, or utilized:
  - By a prosecuting attorney for the evaluation of charges and the prosecution of offenses related to the restriction that a person not own or possess a firearm until they turn 30 years of age; and
  - By the DOJ for the purpose of determining if an individual is eligible to purchase, own, or possess a firearm consistent with the restriction that a person not own or possess a firearm until they turn 30 years of age.

## **Prosecution of Minors: Fitness for Juvenile Court**

Historically, California has handled offences committed by youth under age 16 in the juvenile system. However, in 1995, California significantly shifted its policies to allow youth age 14 and 15 to be tried in adult criminal courts. The departure from traditionally handling young teenagers' cases in juvenile court was fueled by media's portrayal of youth as "super-predators," consistent with the era's tough on crime attitude. In 2000, Proposition 21 again dramatically shifted California's criminal justice policies. Proposition 21 required adult trial for juveniles 14 or older charged with murder or violent sex offenses.

Since 2000, science and the law have evolved to recognize the impact of brain development and trauma has on youth and adolescent behavior. In 2016, Proposition 57 changed the requirement that juveniles 14 or older charged with certain serious offences are to be tried in adult court. Current law requires the district attorney to make a motion to transfer youth age 14 or 15 to adult court, and the youth is entitled to have a hearing in juvenile court before they can be tried in adult court. However, the current case-by-case approach requires the state to make assumptions about a 14 or 15 year old's potential to change based on its opinion of the youth's cognitive abilities and opportunities for rehabilitation based on the circumstances at the time of the crime.

**SB 1391 (Lara), Chapter 1012**, repeals the authority of a district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a specified serious offense when he or she was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.





# MENTAL HEALTH

## Mental Health Commitments: Prohibition on Firearms

Research shows that suicide with a firearm is the most common and by far the most lethal suicide method. Just having a firearm in the home is a strong predictor for gun suicide.

Current law states that a person who has been taken into custody on a 72-hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. Current law provides that a person subject to a 72-hour hold may make a single request for a hearing regarding their right to possess a firearm at any time during the five-year period.

**AB 1968 (Low), Chapter 861**, requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings. Specifically, this new law:

- Specifies that a person who has been taken into custody, assessed, and admitted because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.
- Allows a person admitted more than once within a one-year period because they were a danger to themselves or others, to request a court hearing on whether they would be likely to use firearms in a safe and lawful manner.
- Requires the District Attorney to bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner, if a hearing has been requested.
- Specifies that if court finds that the people have met their burden to show by a preponderance of the evidence that a person is subject to a lifetime firearm prohibition because that person had been admitted to mental health facility, as specified, more than once within the previous one year period, the court shall inform the person of their right to file a subsequent petition no sooner than five years from the date of the hearing.
- States that a person subject to a lifetime ban is entitled to bring subsequent petitions under this section. A person cannot file a subsequent petition, and is not entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition.

- Requires that the form to request a hearing on the right to possess firearms include an authorization for the release of the person's medical and mental health records, upon request, to the appropriate court, solely for use in the hearing.
- Prohibits the mental health facility from submitting the hearing petition form on behalf of the individual.
- Extends the time for the court to set the hearing on restoration of right to possess firearms from within 30 days, to within 60 days of the filing of a petition.
- Authorizes a continuance of the hearing for 30 days on the restoration of right to possess firearms, upon a showing of good cause by the district attorney, an extension from the current continuance of 14 days.
- Makes the provisions of this bill operative on January 1, 2020.

### **Diversion: Mental Disorders**

AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met. After the enactment of AB 1810, some commenters articulated a concern that a court could theoretically divert a mentally ill defendant charged with rape and murder under AB 1810. Others have asked for clarification on whether victim restitution should be part of any grant of diversion under this section. This bill seeks to address those concerns.

**SB 215 (Beall), Chapter 1005**, amends AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, which authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met. Specifically, this new law:

- Requires the court, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion.
- Specifies that a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- Excludes defendants charged with specified serious and violent offenses from the diversion program.
- Authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

## **Competence to Stand Trial: Maximum Period of Confinement**

California's competency commitment scheme has existed since 1872. In 1974, pertinent statutes were amended to limit the maximum permissible time period for a competency commitment to 3 years, then-believed to be the constitutionally allowable maximum 'reasonable period of time,' either for restoring a person to competency, or for determining that he or she is not restorable. Over the past half-century, medication treatment of severely mentally ill individuals has advanced, competency restoration treatment programs have been shown to have consistently high success rates, and we have learned that committed persons attain competency in time periods far shorter than what was considered 'reasonable' in 1974. Studies show that the vast majority (80-90%) becomes trial-competent within six months of starting treatment, and nearly all who attain competency do so within a year.

**SB 1187 (Beall), Chapter 1008**, reduces the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years. Specifically, this new law:

- Reduces the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years.
- Specifies that when a defendant has been found IST and is held in a county jail treatment center while undergoing treatment for restoration to competency, that person is entitled to custody credits in the same manner as any other inmate confined to a county jail.
- Requires the court, if the defendant is suspected of having a developmental disability, to appoint the director of the applicable regional center or the director's designee to examine the person to determine whether he or she has a developmental disability and is therefore eligible for regional center services and supports.
- Specifies that the regional center director will provide periodic reports to the committing court for IST defendants with developmental disabilities who are placed on outpatient status.
- Deletes the requirement that the defendant be returned to court for a hearing, as specified, if a defendant is still incompetent after 18 months.



# PEACE OFFICERS

## Peace Officers: Body Cameras

Law enforcement agencies across California have elected to use body-worn cameras to record their daily interactions with the public. Since the rise to prominence of this practice, there have been various attempts at passing legislation to codify the process for accessing the footage recorded by the cameras. Presently, there is no uniform set of procedures that police departments must follow in deciding whether to release footage. However, recordings are often withheld from the public on the grounds that they are “investigative records” and therefore exempt from mandatory disclosure pursuant to the California Public Records Act

The CPRA requires disclosure of public records upon a reasonably focused and specific request, except with respect to public records exempt from disclosure by express provisions of law. When a record is not specifically exempt from disclosure, the CPRA provides a balancing test to be used when determining whether records should be released. If the public interest in nondisclosure clearly outweighs the public interest in disclosure, the records will not be released. (*American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 62.) Currently, law enforcement investigative records are exempt from mandated disclosure under the CPRA. This includes records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda.

**AB 748 (Ting), Chapter 960**, establishes a standard for the release of body-worn camera footage by balancing privacy interests with the public's interest in the footage. Specifically, this new law:

- Provides that, commencing July 1, 2019, an audio or video recording that relates to a critical incident, as defined, may only be withheld as follows:
  - During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure;
  - After 45 days from the date the agency knew or should have known about the incident, and up to one year from that date the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay the disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation.

If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved;

- If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered;
- If the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction and that person's interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted or un-redacted, shall be disclosed promptly, upon request, to any of the following:
  - To the subject of the recording or his or her authorized representative;
  - To the parent or legal guardian of the subject, if the subject is a minor; and,
  - To an heir, beneficiary, designated immediate family member, or authorized legal representative of the subject, if subject the is deceased.
- Provides that if disclosure, as specified, would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the video or audio recording. Thereafter, the recording may be held for 45 days, subject to extensions, as specified.
- States that an audio or video recording relates to a critical incident if it depicts any of the following incidents:
  - An incident involving the discharge of a firearm at a person by a peace officer or a custodial officer; and

- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.
- Provides that an agency may provide greater public access to audio or video recordings than the established minimum standards.
- States that the above standards do not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident, as specified.
- Provides that a peace officer does not include any peace officer employed by the California Department of Corrections and Rehabilitation.

### **Large Capacity Magazines: Reserve Peace Officers**

The Safety for All Act of 2016 makes it a crime for a person, commencing July 1, 2017, to possess a large capacity magazine. The Act exempts from the ban the possession of large capacity magazine honorably retired sworn peace officers.

**AB 1192 (Lackey), Chapter 63**, exempts retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high-capacity magazines.

### **Unsafe Handguns: Port District Police**

Existing law prohibits the manufacture, importation, sale, or transfer of an unsafe handgun. Existing law exempts from this prohibition sales to specified law enforcement agencies or other specified government agencies employees and sales to specified peace officer.

**AB 1872 (Voepel), Chapter 56**, exempts sworn peace officers of a harbor or port district including the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles who have satisfactorily completed the Commission on Peace Officer Standards and Training firearms training course from the state prohibition relating to the sale or purchase of an unsafe handgun.



## **Peace Officers: Basic Training Requirements**

Existing law provides that a person completing the basic peace officer training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of the powers of a peace officer, except for specified individuals

**AB 1888 (Salas), Chapter 17**, deletes the January 1, 2019 sunset date on provisions of law that allow a deputy sheriff assigned to custodial duties to be reassigned to the general enforcement of the criminal laws of the state within five years of completing the basic peace officer training course if the deputy sheriff has been continuously employed by the same department and has maintained perishable skills training required by the Commission on Peace officer Standards and Training.

## **Hate Crime Investigations: Law Enforcement Policy**

According to the DOJ's 2016 report, Hate Crimes in California, the total number of hate crime events (an occurrence when a hate crime is involved) decreased 34.7 percent from 2007 to 2016. Filed hate crime complaints decreased 30.5 percent from 2006 to 2015. However, hate crime events in California have been on the rise; there was a 10.4 percent rise from 2014 to 2015, and then another 11.2 percent rise from 2015 to 2016. The total number of hate crime events, offenses, victims, and suspects had all increased in 2016.

According to its 2015 report, "The DOJ requested that each law enforcement agency establish procedures incorporating a two-tier review (decision-making) process. The first level is done by the initial officer who responds to the suspected hate crime incident. At the second level, each report is reviewed by at least one other officer to confirm that the event was, in fact, a hate crime." Even with the two-tiered system in place, the DOJ still lists the policies of law enforcement agencies as one of four factors possibly influencing the volume of hate crimes reported.

**AB 1985 (Ting), Chapter 26**, provides that local law enforcement agencies must include certain requirements and definitions into a hate crimes policy manual if they decide to adopt or update a hate crimes policy manual. Specifically, this new law:

- Requires a local law enforcement agency, if it adopts or updates a hate crime policy, to include, but not be limited to, all of the following:
  - Specified definitions related to hate crimes;
  - The content of the model policy framework as developed by the Commission on Peace Officer Standards and Training (POST), and any future revisions or additions the made by the commission, as specified;
  - Information about bias motivation;

- A definition of bias motivation and examples of what it may look like, as specified;
  - A list of indicators officers should consider when gathering information in a suspected disability-bias hate crime, as specified;
  - A requirement, for officers faced with a suspected disability-bias hate crime, to determine if the perpetrator perceived the victim to be vulnerable, to then consider whether the perpetrator targeted the victim with a perceived disability while not targeting other vulnerable-appearing persons such as inebriated persons, and if such circumstances were found, to mark it as a suspected hate crime;
  - Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes along with a plan to remedy the underreporting;
  - A protocol for reporting suspected hate crimes to the Department of Justice;
  - A checklist of first responder responsibilities, as specified;
  - A specific procedure for transmitting and updating the policy, including a simple and immediate way for officers to access the policy in the field when needed;
  - The title of any officers responsible for assuring the department has a hate crime brochure; and,
  - A requirement that all officers be familiar with and carry out the policy at all times unless otherwise directed.
- Provides that a local law enforcement agency may include any provisions of a model hate crimes policy developed by the International Association of Chiefs of Police so long as it is consistent with the above requirements.

### **Law Enforcement Agencies: Opioid Antagonists**

In October of 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastating communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28% increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

Existing law authorizes a pharmacy to furnish naloxone hydrochloride or other opioid antagonists to a school district, county office of education, or charter school if specified criteria are met.

**AB 2256 (Santiago), Chapter 259**, allows a pharmacy or wholesaler to furnish naloxone hydrochloride or another opioid antagonist to a law enforcement agency, as specified. Specifically, this new law:

- Provides that, notwithstanding any other law, a pharmacy or wholesaler to furnish naloxone hydrochloride or another opioid antagonists to a law enforcement agency if both the following conditions are met:
  - The naloxone hydrochloride or another opioid antagonist is furnished exclusively for use by employees of the law enforcement agency who have completed training, provided by the law enforcement agency, in administering naloxone or another opioid antagonist; and
  - Records regarding the acquisition and disposition of naloxone hydrochloride or another opioid antagonist furnished pursuant to this section shall be maintained by the law enforcement agency for a period of three years from the date the records were created. The law enforcement agency shall be responsible for monitoring the supply of naloxone hydrochloride or another opioid antagonist and ensuring the destruction of expired naloxone hydrochloride or another opioid antagonist.

### **Peace Officer Misconduct: Employment**

Existing law requires law enforcement agencies to establish a procedure for investigating complaints against a peace officer. However, those investigations do not always make it into the officer's personnel or conduct file. In some cases, even if an investigation does make it in, the employing agency may not appropriately review the file to ensure the officer is still qualified. This is because statute is silent on what the process is for reviewing the personnel records of current peace officers.

A *Los Angeles Times* article highlighted cases where the Los Angeles Sheriff's Department hired dozens of officers even though their personnel records revealed wrongdoing, incompetence or poor performance. According to the article, several individuals involved in the hiring did not review personnel records.

**AB 2327 (Quirk), Chapter 966**, requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file. Specifically, this new law:

- Requires peace officers seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file.

- Requires each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency.

### **Peace Officer Training: Sexual Orientation and Gender Identity**

California holds an estimated 1.3 million lesbian, gay, bisexual, and transgender adults (Williams Institute. (2016). *The LGBT Divide in California: A Look at the Socioeconomic Well-being of LGBT People in California*). According to the DOJ's 2016 report, *Hate Crimes in California*, over the past ten years hate crimes events (an occurrence when a hate crime is involved) that were perpetrated due to a sexual orientation bias have been listed as the second most common type of crime reported. Sexual orientation bias hate crimes have increased annually from 2014-2016, and account for 22.2 percent of all hate crimes reported in California in 2016. However, these estimates are likely being underreported.

**AB 2504 (Low), Chapter 969**, requires the Commission on Peace Officer Standards and Training (POST) to develop and implement a training course regarding sexual orientation and gender identity minority groups. Specifically, this new law:

- Requires POST to develop and implement a training course regarding sexual orientation and gender variant groups in this state.
- Requires the basic training courses for officers and dispatchers to incorporate:
  - The terminology used to identify and describe sexual orientation and gender identity;
  - How to create an inclusive workplace within law enforcement for sexual orientation and gender variant groups;
  - Important moments in history related to sexual orientation and gender variant groups and law enforcement; and,
  - How law enforcement can respond effectively to domestic violence and hate crimes involving sexual orientation and gender variant groups.
- Authorizes law enforcement officers, administrators, executives, and dispatchers to participant in supplementary training that includes all of the topics describes in this section. The supplementary training shall fulfill POST requirements for continuing professional training and shall include facilitated discussions and learning activities, including scenario training exercises. Additional training courses to update this instruction shall be established as deemed necessary by POST.

## **Peace Officer Training: Commercial Sexual Exploitation of Children (CSEC)**

Commission on Peace Officer Standards and Training (POST) currently provides training and materials on Human Trafficking and has a statutory mandate regarding such training. The POST Guidelines on Law Enforcement Response to Human Trafficking is presented in a format that allows the reader to follow a systematic process for conducting a human trafficking investigation. The materials stress that the nature of human trafficking makes it critical for law enforcement to understand the dynamics, indicators, and manifestations of its occurrence.

California has recognized the harmful effects of arresting exploited children for their perpetrators' crimes and has helped counties develop victim-centered responses. Existing training materials for peace officers could be supplemented with materials on the dynamics and trauma of exploitation, how to identify commercially sexually exploited children and keep them safe, requirements to report the abuse to child protection, and their role in collaborating to ensure they access the services they need to escape exploitation.

**AB 2992 (Daly), Chapter 973**, requires POST to develop and implement a course on victims of human trafficking. Specifically, this new law:

- Requires POST to develop a course on CSEC and victims of human trafficking. The course shall include, but not be limited to, the following topics:
  - The dynamics of commercial sexual exploitation of children;
  - The impact of trauma on child development and manifestations of trauma in victims of commercial sexual exploitation;
  - Strategies to identify potential victims of commercial sexual exploitation, including indicators that youth is being exploited;
  - Mandatory reporting requirements related to commercial sexual exploitation;
  - Appropriate interviewing, engagement, and intervention techniques that avoid retraumatizing the victim and promote collaboration with victim-serving agencies; and,
  - Introduction to the purpose, scope, and use of specialized victim interview resources.
- Requires the course to be equitable to a course included as part of continuing professional training for peace officers and include facilitated discussions and learning activities, including scenario training exercises.
- Requires POST to develop the course in consultation with the appropriate community, local, and state organizations and with agencies that have expertise in CSEC and human trafficking and to include meaningful input from human trafficking survivors.

## **Law Enforcement Agencies: Public Records**

Although existing law provides that members of the public may use the California Public Records Act (“CPRA”) to request an opportunity to inspect police department training, policies and procedures, compliance with these requirements widely varies across the State. Community groups and individuals have voiced legitimate frustration that all of these public records are not all simply available online, as some jurisdictions have already done. Unless these state and local regulations are publicly available online, individual state and local law enforcement agencies must continue to expend significant staff resources and public funds to respond to requests for access to police regulations, which are already covered under CPRA.

**SB 978 (Bradford), Chapter 978**, requires, commencing January 1, 2020 the Commission on Peace Officer Standards and Training (POST) and each local law enforcement agency to conspicuously post on their Internet websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available if a request was made pursuant California Public Records Act (CPRA), and makes Legislative findings and declarations.

## **Officer Training: Domestic Violence**

Many abusive situations turn deadly when a victim attempts to leave a relationship. Seventy-two percent of all murder-suicides involve an intimate partner, with 94 percent of the victims of these murder-suicides female, and more than half of all female homicide victims were killed in connection with intimate partner violence. The World Health Organization says that worldwide, a partner or spouse is the killer in 38 percent of women’s homicides.

Lethality assessments are protocols designed for law enforcement first responders. Excessive jealousy, having threatened suicide or homicide in the past, heavy drug or alcohol use, or previous cases of choking a victim are tied to increased risk of lethality. Victims are asked a series of questions based on research on factors linked to lethality; certain victims’ responses trigger the ‘protocol referral,’ which is an immediate connection with a local advocacy program.

**SB 1331 (Jackson), Chapter 137**, requires the Commission on Peace Officer Standards and Training (POST) to include procedures and techniques for assessing signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers in the handling of domestic violence complaints.

## **Police Personnel Records: Disclosure**

Events such as the death of Stephon Clark in Sacramento and the beating of Rodney King in Los Angeles underscore the immense public concern related to police and community interactions. Courts have long recognized that activity of police officers is of the highest public concern, particularly when they use serious or deadly force. And yet, under current law, the public has little ability to access records related to police misconduct and use of force, depriving the press of the ability to fully investigate the activity of powerful public institutions.

Law enforcement officials wield immense power. For that reason, they should be subject to the same level of scrutiny as all other public employees, whose personnel records are disclosable in cases of heightened public concern.

**SB 1421 (Skinner), Chapter 988**, subjects specified personnel records of peace officers and correctional officers to disclosure under the California Public Records Act (PRA). Specifically, this new law:

- Provides that, notwithstanding any other law, the following peace-officer or custodial-officer personnel records are not confidential and shall be made available for public inspection pursuant to the PRA:
  - A record relating to the report, investigation, or findings of either of the following:
    - An incident involving an officer's discharge of a firearm at a person; or,
    - An incident in which an officer's use of force against a person resulted in death or great bodily injury.
  - Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, as defined; and,
  - Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.
- States that the records requiring release include:
  - All investigative reports;
  - Photographic, audio, and video evidence;
  - Transcripts or recordings of interviews;
  - Autopsy reports;
  - All materials compiled and presented to the district attorney or to any person or body charged with determining:
    - Whether to file criminal charges against an officer in connection with an incident;

- Whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action; or,
  - What discipline to impose or corrective action to take;
- Documents of findings and recommended findings; and,
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline, or other documentation reflecting implementation of corrective action.
- Prohibits the release of a record from a separate and prior investigation of a separate incident unless it is independently subject to disclosure.
- Provides that if an investigation or incident involves multiple officers, information requiring sustained findings for release must be found independently against each officer. However, factual information about an officer's actions during an incident, or an officer's statements about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release.
- Requires an agency to redact disclosed records for any of the following purposes:
  - To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers;
  - To preserve the anonymity of complainants and witnesses;
  - To protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by officers; and,
  - Where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.
- Allows redaction of records where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. This includes redaction of personal identifying information.
- Allows delayed disclosure for records relating to an investigation or court proceeding involving a use-of-force incident, as follows:
  - During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred, or until the prosecutor decides whether to file criminal charges, whichever occurs first.



After 60 days from the use-of-force incident, disclosure may still be delayed if it could reasonably be expected to interfere with the investigation. However, at 180 day intervals as necessary, the agency must justify the continued delayed disclosure, as specified. Information withheld must be disclosed no later than 18 months after the date of the incident if the investigation involves the officer who used force. If the information involves someone other than the officer, then disclosure must occur no later than 18 months after the incident, unless there are extraordinary circumstances warranting continued delay;

- If criminal charges are filed in relation to the use-of-force incident, the agency may delay disclosure until a verdict is reached at trial, or in the case involving an entry of plea, until the time to withdraw the plea; and,
  - During an administrative investigation into a use-of-force incident, the agency may delay disclosure until the agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force by a person authorized to initiate an investigation, or 30 days after the close of the criminal investigation related to the officer's use of force, whichever is later.
- Prohibits release of records if the complaint is frivolous, as specified, or is deemed to be unfounded.
  - Specifies that these provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.
  - Specifies that nothing in these provisions is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59.

## POST CONVICTION RELIEF

### Cannabis Convictions: Resentencing

Proposition 64, the *Adult Use of Marijuana Act*, was a 2016 statewide ballot initiative that, among other regulations, legalized the possession, use, and cultivation of marijuana for people over age 21. Proposition 64 also reduced the penalties for possession, cultivation, possession with the intent to sell, and transportation for sale of cannabis. Proposition 64 also included provisions allowing anyone convicted of a specified cannabis offense, prior to its passage, to petition the court to resentence and/or dismiss the offense, or apply for redesignation of the offense.

It is estimated that between 1915 and 2016, California law enforcement made 2,756,778 cannabis arrests. According to a report by the Drug Policy Alliance, there were approximately 500,000 people arrested for cannabis felonies and misdemeanors between 2006-2015.

Proposition 64 offers millions of individuals the opportunity to clear their records of convictions for conduct that California no longer considers criminal. However, many individuals are unaware of this newly created opportunity, or lack the resources and ability to navigate the record change process on their own. As of September 2017, only 4,885 people have petitioned to the courts to have their cannabis convictions modified.

A criminal conviction – particularly a felony conviction – can prevent an individual from obtaining employment, getting housing, obtaining a professional license, and more. This is particularly true of cannabis-related crimes, which statistics show have been prosecuted with most vigor against people of color and the poor, whose communities have suffered for years from disproportionate arrest rates that take a toll on their families, community relations, and personal lives.

**AB 1793 (Bonta), Chapter 993**, expedites the identification, review, and notification of individuals who may be eligible for recall or dismissal, dismissal and sealing, or redesignation of specified cannabis-related convictions. Specifically, this new law:

- Requires the Department of Justice (DOJ) to review the records in the state summary criminal history information database and identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation and to notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.
- Requires the prosecution to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation.
- Allows the prosecution to challenge the resentencing of a person if the person does not meet specified criteria or presents an unreasonable risk to public safety.

- Allows the prosecution to challenge the dismissal and sealing or redesignation of a person who has completed his or her sentence for a conviction when the person does not meet specified criteria.
- Requires the public defender’s office, upon receiving notice from the prosecution, to make a reasonable effort to notify the person whose resentencing or dismissal is being challenged.
- Requires the court to reduce or dismiss the conviction if the prosecution does not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation by July 1, 2020.
- Requires the DOJ to modify the state summary criminal history information database accordingly.
- States the intent of the Legislature to prioritize persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation.

### **Discovery: Claims of Innocence**

“Postconviction discovery” is generally understood in the legal community as the provision of materials and documents to defendants after they have been convicted at the trial level and exhausted their appeals. Current law limits motions for postconviction discovery to only those cases in which a person is sentenced to death or life without parole. However there are many cases where a person may have received a lower sentence and nonetheless there are sound reasons to question the veracity of the verdict.

Currently, cases that are worthy of postconviction review, but where the defendant received a sentence of less than life in prison, often take 3 – 4 years to review and investigate before the parties are in a position to potentially litigate. The largest contributor to that immense amount of time is the limitation of postconviction discovery to cases where the defendant received a death sentence or life without the possibility of parole. This limitation results in the defendant’s inability to obtain evidence that may prove his or her innocence.

**AB 1987 (Lackey), Chapter 482**, expands the circumstances in which a defendant can bring a postconviction motion for discovery materials. Specifically, this new law:

- Expands the availability of a post-conviction motion for discovery materials to include cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more.
- Requires a defendant bringing a motion for post-conviction discovery to state whether he or she has previously been granted discovery.
- Gives the court discretion to grant (or deny) a subsequent motion for discovery if the defendant has previously been granted discovery.

- Requires a criminal defense attorney to retain his or her client’s file throughout the duration of that client’s prison sentence if the client was convicted of a serious or violent felony and sentenced to 15 years or more. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

### **Criminal Records: Arrest Record Sealing**

In 2017, the Legislature passed SB 393 (Lara), which created a process for persons who were arrested but never found guilty of a crime to petition the court to have their arrest record sealed. Now, under existing law, a person may petition the court if the prosecutor has not filed charges based on the arrest, no conviction has occurred, the charges have been dismissed, or if the arrestee is acquitted of the charges. If the court grants relief, the arrest is sealed and deemed not to have occurred and the person is released from penalties and disabilities resulting from the arrest.

The benefits of record sealing are numerous. For example, a sealed record may not be used in any way that could result in denial of any employment, benefit, or license. If a member of the public or a consumer agency requests information from the courts or law enforcement about an arrest, they will only be informed that the record has been sealed and will not be supplied any other information about the arrest. Private background check companies must destroy records of an arrest once they learn that the record is sealed, and are prohibited from disclosing a sealed arrest in their background reports.

Recent reforms have created the opportunity for more people to receive a clean slate and have equal access to job and housing opportunities. However, many people with criminal records do not pursue these remedies due to a lack of awareness about and/or resources for pursuing the process.

**AB 2599 (Holden), Chapter 653**, requires detention facilities to provide information to arrestees and about their right to petition for arrest record sealing. Specifically, this new law:

- Requires detention facilities to, at the request of an arrestee upon release, give the arrestee judicial council forms necessary to apply for arrest record sealing.
- Requires detention facilities to post a sign containing the following information: “A person who has been arrested but not convicted may petition the court to have his or her arrest and related record sealed. The petition form is available on the Internet or upon request in this facility.”

### **Pardons and Commutations**

Individuals who have been convicted of a crime may apply for a gubernatorial pardon or commutation if they have demonstrated exemplary behavior. A pardon restores specified rights that people lose when convicted of a felony, such as the ability to obtain a professional license.

A pardon may also allow for immigrants to reopen their deportation cases so that an immigration judge can reevaluate their case in light of the pardon. Although those convicted of crimes may spend years rehabilitating themselves into productive and law-abiding residents, immigrants are faced with the risk of being sent back to countries where they have little or no ties despite their rehabilitative efforts. Due to the sharp increase in immigration enforcement arrests, one of the primary reasons people have been seeking pardons is to obtain potential relief from deportation. Pardons are one of the only available avenues of relief for immigrants facing deportation.

**AB 2845 (Bonta), Chapter 824**, makes changes to the existing process for applying for pardons and commutations, including requiring the Board of Parole Hearings (BPH) to consider expediting review of an application if the application indicates an urgent need for the pardon or commutation, and requiring the BPH to notify applicants after the receipt of an application and when it has issued a recommendation on the application. Specifically, this new law:

- Requires the Governor to make the application for pardon available for submission on the Governor's Office website and requires the Governor to promptly forward all applications for a direct pardon to BPH for investigation and recommendation to the Governor.
- Authorizes the BPH to investigate and report on all applications for reprieves, pardons, and commutations of sentence and to make recommendations to the Governor.
- Provides that the BPH may make recommendations to the Governor at any time regarding applications for pardon or commutation, and the Governor may request investigation into applicants at any time.
- Requires the BPH to consider expedited review of an application if a petitioner indicates in the application an urgent need for the pardon or commutation, including but not limited to, a pending deportation order or deportation proceeding.
- Requires the BPH to provide electronic or written notification to an applicant after the BPH receives the application, and when the BPH has issued a recommendation on the application. Provides that the BPH is not required to notify the applicant as to the reasons for its recommendation, which shall remain confidential.
- Allows the Governor to grant an application for a pardon without investigation and recommendation if the application is supported by a certificate of rehabilitation.
- Permits a person to file a petition for a certificate of rehabilitation in the county in which he or she was convicted of a felony, or had an accusatory pleading dismissed.

- Requires that a certificate of rehabilitation issued by a court be reviewed by the BPH within one year of receipt of the certificate subject to criteria established by the Governor. Requires the BPH to issue a recommendation on whether the Governor should pardon that individual. Requires any criteria established by the Governor to be made publicly available, but exempts the establishment of the criteria from the requirements of the administrative regulation and rulemaking process as provided in the Government Code.
- Makes it unlawful for any employer with five or more employees to consider, distribute, or disseminate information about a conviction for which a person has received a full pardon or been issued a certificate of rehabilitation.

### **Vacating Convictions**

California Penal Code Section 1473.7 permits individuals who are no longer in criminal custody to file a motion to vacate a conviction or sentence based on either one of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence.

Prior to the creation of Penal Code Section 1473.7, individuals who discovered evidence of actual innocence, or proof of a defect in the underlying criminal proceeding, had no legal vehicle to present this evidence after their criminal custody had expired. This lack had a particularly devastating impact on California's immigrant communities. Many immigrants suffered convictions without having any idea that their criminal record will, at some point in the future, result in mandatory immigration imprisonment and deportation, which can permanently separate families.

Courts throughout California have been reviewing and hearing California Penal Code §1473.7 motions since the section became operative on January 1, 2017. As these motions have been adjudicated, courts have reached differing interpretations of the proper timing and grounds for the motions, and what notice must be provided to the petitioning individual's prior defense counsel.

**AB 2867 (Gonzalez Fletcher), Chapter 825**, clarifies the timing and procedural requirements of motions for post-conviction relief that are based on a legal error regarding a defendant's comprehension of immigration consequences stemming from his or her conviction. Specifically, this new law:

- Provides that a motion to vacate the conviction based on legal error is deemed timely filed at any time in which the individual filing the motion is no longer in criminal custody and that a motion to vacate the conviction based on legal error may be deemed untimely filed if it was not filed with reasonable diligence after the later of the following:

- The moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization; or
- Notice that a final removal order has been issued against the moving party, based on the existence of the conviction or sentence that the moving party seeks to vacate.
- Removes the requirement that the moving party must be present for the court to hold a hearing on the motion.
- Provides that if the prosecution has no objection to the motion, the court may grant the motion to vacate the conviction or sentence without a hearing.
- Requires the following when the court is ruling on the motion to vacate the conviction due to legal error:
  - The moving party to establish that the conviction or sentence being challenged is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization;
  - There is a presumption of legal invalidity if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences; and,
  - The only finding that the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.
- Deletes the requirement that in granting or denying a motion to vacate the conviction based on legal error, the court shall specify the basis for its conclusion but retains that requirement for a motion to vacate the conviction based on newly discovered evidence that actual innocence exists.
- States that a finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.
- Provides that a court may only issue a specific finding of ineffective assistance of counsel as a result of a motion to vacate the conviction based on legal error if the attorney found to be ineffective was given timely advance notice of the motion hearing by the moving party or the prosecutor, as specified.

- States that it is intent of the Legislature to provide clarification to the courts regarding Section 1473.7 of the Penal Code to ensure uniformity throughout the state and efficiency in the statute's implementation.

## **Recalling a Sentence**

As a general matter, a court typically loses jurisdiction over a criminal sentence when the sentence begins. However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. In addition, the Director of the Corrections Department, and the Board of Parole Hearings or the county correctional administrator, can make a recommendation for resentencing at any time. The court also has authority to recall the sentence of terminally ill defendants. Finally, a defendant who was sentenced to a term of life without the possibility of parole prior to the age of eighteen may petition the court to recall his or her sentence in order to impose a new one.

California houses the largest prison population of inmates serving long-term sentences in the country. In some instances, district attorneys have found that certain prison sentences, upon further review, are no longer in the interest of justice and warrant a lesser, legal sentence. However, unlike the administrators listed above, prosecutors do not have any discretion to ask a Court for resentencing.

**AB 2942 (Ting), Chapter 1001**, allows the court to recall and resentence an inmate upon the recommendation of the district attorney of the county in which a defendant was sentenced and to create a procedure for inmates sentenced to lengthy terms to submit a request to the district attorney for a recommendation for recall and resentencing. Specifically, this new law:

- Allows the district attorney of the county in which the defendant was sentenced to make a recommendation to the court to recall the sentence and commitment previously ordered and resentence the defendant.
- Allows a defendant who was sentenced for a term of 15 years or more, a term of life, or life without the possibility of parole, and who has been incarcerated for no less than the lesser of 15 years or 50 percent of the term, may submit to the district attorney of the county in which the defendant was sentenced a request for a recommendation to the sentencing court for recall and resentencing.
- Provides that the request shall be in writing and shall set forth the reasons why a recommendation is warranted.
- Exempts a defendant serving a sentence for murder in the first degree or any offense that requires sex offender registration.



- Clarifies that the provisions of this bill grants a district attorney the discretion to consider a request for a recommendation to promote the general welfare; it does not impose upon a district attorney any obligation to consider or grant a request, nor does it create a right to appeal the denial of a request.

## SEARCH AND SEIZURE

### Interception of Electronic Communications: Fentanyl

According to the Drug Enforcement Administration's *2017 Illicit Drug Threat Assessment*, fentanyl is a contributing factor in opioid overdose epidemic. Traffickers in the United States usually mix fentanyl into heroin products and sometimes other illicit drugs, or press it into counterfeit prescription pills, often without users' awareness, which leads to overdose incidents. The Centers for Disease Control and Prevention describes the class of drugs known as 'fentanyls' as rapid-acting opioid/synthetic opiate drugs that alleviate pain without causing loss of consciousness. Exposure to fentanyl may be fatal and is estimated to be 80 times as potent as morphine and hundreds of times more potent than heroin.

Electronic intercepts are legally sanctioned surveillance of electronic and wire communications for law enforcement purposes. Individuals involved in criminal activity often use wire and electronic communications to plan crimes such as drug trafficking. The use of court-authorized electronic intercepts is an effective tool to help law enforcement identify and investigate drug traffickers and other offenses. However, current law does not include fentanyl in the list of controlled substances for which an electronic intercept may be authorized.

**AB 1948 (Jones-Sawyer), Chapter 294**, adds fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered. Specifically, this new law allows a presiding superior court judge, or judge designated by the presiding judge, upon application by an investigative or law enforcement officer, to issue an order authorizing interception of wire or electronic communications when there is probable cause to believe that a specified offense involving fentanyl is being, has been, or is about to be committed.

### Vessels: Impoundment

Under current law, a peace officer may impound a vehicle from public or private property when the officer has probable cause to believe that the vehicle was either used as the means of committing a crime, is evidence itself that a crime was committed, or contains evidence which cannot readily be removed and tends to show that a crime has been committed.

Existing law does not have similar provisions which extend to vessels used as the means of committing a crime, or which contain evidence that a crime was committed.

**AB 2175 (Aguiar-Curry), Chapter 341**, authorizes a peace officer or marine safety officer to remove a vessel from public property when the vessel has been used in a crime or provides evidence of a crime. Specifically, this new law:

- Allows a peace officer or marine safety officer to impound a vessel in either of the following circumstances:

- When the vessel is found on public property and the officer has probable cause to believe that it was used in the commission of a crime; or
- When the vessel is found on public property and the officer has probable cause to believe that the vessel itself provides evidence that a crime was committed, or it contains evidence of a possible crime and the evidence cannot be easily removed from it.
- States that a lien shall not attach to a vessel impounded under this bill unless it is determined that it was used in the commission of a crime with the express or implied consent of the owner.
- Allows the court to order a person convicted of a crime involving the use of the impounded vessel to pay for the costs of towing and storage, as well as any administrative charges related to the removal, impoundment, storage, or release of the vessel.
- States that "vessel" includes both the vessel and any trailer used by the operator to transport the vessel.

### **Embezzlement of Vehicles: Electronic Surveillance**

Existing law allows a rental car company to use surveillance technology when a rental vehicle has not been returned after one week. That provision allows a rental company to utilize this technology without any notification that the vehicle has been stolen or abandoned if one week had passed from the agreed-upon return date. Arguably, that timeline is far too long for the rental car companies because oftentimes if a renter is late with returning their vehicle it usually does not take a week to contact the rental car company to state that they need the vehicle longer than their contracted date. Rental car companies have reported that their vehicles have been found as far as Mexico after waiting the necessary one week period. Oftentimes these vehicles are stripped for parts or are used to commit other crimes.

**AB 2620 (Ting), Chapter 344**, allows electronic surveillance of rental cars that are not returned within 72 hours of the end of the rental term. Specifically, this new law:

- Provides that until January 1, 2024, if a rental vehicle has not been returned following 72 hours after the contracted return date, as specified, the rental company may activate electronic surveillance technology.
- Requires that a rental company provide, electronically and by telephone, notice of activation of the electronic surveillance technology 24 hours prior to activation, unless the renter has not provided a telephone number or the renter has not agreed to electronic communication, as specified.

- Requires rental companies that use surveillance technology pursuant to provisions above, to advise the renter orally and in the rental or lease agreement that electronic surveillance technology may be activated if the rental vehicle has not been returned within 72 hours after the contracted return date or extension of the return date, and would require that the renter acknowledge this advisement in the rental or lease agreement by initials.
- Exempts members of the rental company's membership program from the advisement requirement above, but would require that those advisements be provided upon enrolling in the rental company's membership program.
- Requires a rental company to send communications to a renter electronically if the renter agrees to that communication in the rental or lease agreement, and prohibit a rental company from denying a rental or lease agreement if the renter chooses not to receive communications electronically.

## **Eavesdropping**

Existing law authorizes the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General, or any district attorney, any officer of the California Highway Patrol, any chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting at the direction of one of those law enforcement officers acting in the scope of his or her authority, to overhear or record any communication they could lawfully hear prior to the enactment of unauthorized eavesdropping provisions.

The above provision does not include peace officers employed by the California Department of Corrections (CDCR) Office of Internal Affairs (OIA). Thus any communications gathered by the OIA must be done at the direction of the local district attorney.

**AB 2669 (Jones-Sawyer), Chapter 175** authorizes any peace officer of the OIA of CDCR acting in the scope of his or her authority, to overhear or record any communication they could lawfully hear prior to the enactment of unauthorized eavesdropping provisions.

## **Search and Arrest Warrants: Application by Email or Fax**

With the increasing use of technologies such as email and the ability to electronically transmit data, courts are increasing relying on such mediums to manage their documents. The Legislature has passed a number of bills to provide the courts more latitude to handle applications for arrest and search warrants by electronic means.

Current law allows applications for search and arrest warrants to be made by an officer in person, or made by an officer remotely by means of, telephone and fax, telephone and electronic mail, or telephone and computer server. Existing law requires a telephone conversation between the officer and the judge when the officer is making an application for a warrant by fax or email even though an officer is required to submit an application setting forth the facts supporting the warrant. The telephonic conversations between officers and judges for arrest and search warrants can be considerable, especially for courts that experience a greater volume of applications.

**AB 2710 (Oberholte), Chapter 176**, eliminates the requirement that a judge take the oath over the telephone when an officer makes an application for a search warrant or arrest warrant by fax, email, or computer server. Requires an officer to sign a declaration in support of search or arrest warrant under penalty of perjury. Specifically, this new law:

- Eliminates the requirement that a judge take the oath over the telephone when an officer makes an application for an arrest warrant or a search warrant by fax, email, or computer server.
- States that the warrant, signed by the magistrate and received by the declarant, shall be deemed the original warrant.
- Requires if the declarant transmits the proposed arrest warrant or search warrant and all affidavits and supporting documents to the magistrate using fax, email, or computer server:
  - The declarant to sign under penalty of perjury his or her declaration in support of the warrant of probable cause for arrest or issuance of a search warrant; and,
  - The magistrate to verify that all of the pages sent have been received, that all the pages are legible, and that the declarant's signature, digital signature, or electronic signature is genuine.

### **Impoundment of Vehicles: Charter Party Passenger Carriers**

The California Public Utilities Commission (CPUC) regulates different modes of passenger transportation for compensation including passenger stage corporations (PSC) and charter-party carriers (CPC). PSCs are services that provide transportation to the general public on an individual fare basis, such as scheduled bus operators and airport shuttles. CPCs are services that charter a vehicle, on a prearranged basis, for the exclusive use of an individual or group. Charges are based on the mileage or time of use, or a combination of both. Types of CPCs include limousines, tour buses, sightseeing services, and charter and party buses.

Current law authorizes the CPUC to seek the impoundment of carrier vehicles through the court. Impoundment of carrier vehicles can be pursued any time a carrier has engaged in, or is about to engage in, acts that violate the Public Utilities Act and any regulation issued pursuant to that act.

**SB 1474 (Hill), Chapter 797**, authorizes the California Public Utilities Commission (CPUC), as part of its enforcement of its regulation of passenger stage corporations (PSC) and charter-party carriers (CPC) to contract with the California Highway Patrol (CHP) or a sheriff to assist in the enforcement of an order for vehicle impound.



## SEX OFFENSES

### **Jurisdiction: Sex Offenses**

The general rule of territorial jurisdiction requires a criminal case to be tried in a court located in the county where the offense was committed. This rule preserves the right of the accused to be tried by a jury of his or her peers, and allows trial to be held in a county that has a relationship to the crimes committed.

However, if a defendant commits multiple offenses in different counties, existing law permits certain specified offenses to be consolidated and tried together in a single trial. In effect, these laws authorize a court to extend its jurisdiction over a criminal offense that was not committed within its county. Laws permitting consolidation require a specified nexus between the commission of the out-of-county offense and the place designated for trial.

One such exception to the general rule of territorial jurisdiction permits consolidation of child abandonment and neglect, domestic violence, and stalking offenses. Trial may be held in any county where at least one of these offenses occurred, provided that the defendant and the victim are the same for all offenses.

Consolidation could reduce costs and time associated with conducting trials in multiple jurisdictions, expedite criminal prosecutions, and prevent victims from testifying at multiple trials. However, sexual battery and unlawful intercourse offenses are not permitted to be consolidated in a single trial if either is committed in different counties.

**AB 1746 (Cervantes), Chapter 962**, adds sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial. Specifically, this new law:

- Allows cases involving two or more sexual battery, unlawful sexual intercourse, abandonment and neglect, domestic violence, and stalking offenses that occurred in multiple counties to be consolidated and tried together.
- Authorizes a trial in any county where at least one of these offenses occurred, if the defendant and the victim are the same for all of the offenses.

### **Sex Offenders: Release from Custody**

The California Sex Offender Management Board (CASOMB) is made up of members representing various law enforcement entities, judges, and mental health professionals. CASOMB's purpose is to address any issues, concerns, and problems related to the community management of the state's adult sex offenders, with a goal of safer communities and reduced victimization.



CASOMB has produced many publications regarding California's Sex Offender Registry. In 2017, it published an educational pamphlet which discussed some of the issues relating to the reintegration of sex offenders into society following their sentence. The pamphlet notes that sex offenders face a variety of challenges upon release, including the "inability to create prosocial peer networks, being ostracized, being the targets of threats and violence" and "difficulties finding jobs or housing."

**SB 1199 (Wilk), Chapter 226**, provides that an inmate being released from custody on parole or Post Release Community Supervision who was committed to prison for a sex offense for which registration is required, shall through all efforts reasonably possible be returned to the city that was the last legal residence of the inmate prior to incarceration, or a close geographic location in which he or she has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to his or her victim.

## SEXUALLY VIOLENT PREDATORS

### Sexually Violent Predators: Jurisdiction

Jurisdiction for commitment of a Sexually Violent Predator (SVP) should be the county most appropriately suited to handle such a petition. Coalinga State Hospital has recently had a rash of child pornography cases while patients were awaiting resolution of an SVP petition. If an SVP is convicted of a new offense while in state prison or a state hospital, the county of the most recent conviction will be the county in which the prison or a state hospital is located. In most cases, this will not be the county from which the SVP came, which is most familiar with the person's history and possesses the relevant records. Under existing law, Fresno County would be inundated with petitions for commitment as an SVP, rather than the counties from which the patients came.

**AB 2661 (Arambula), Chapter 821**, clarifies that a person's subsequent conviction for an offense that is not a sexually violent offense committed while in the custody of the California Department of Corrections and Rehabilitation (CDCR) or the Department of State Hospitals (DSH) while awaiting the resolution of a petition to have the person committed to the DSH as an SVP does not change the jurisdiction over the pending SVP petition, which is the county in which the person was convicted of the sexually violent offense that resulted in commitment to CDCR.



# VEHICLES

## Embezzlement of Vehicles: Electronic Surveillance

Existing law allows a rental car company to use surveillance technology when a rental vehicle has not been returned after one week. That provision allows a rental company to utilize this technology without any notification that the vehicle has been stolen or abandoned if one week had passed from the agreed-upon return date. Arguably, that timeline is far too long for the rental car companies because oftentimes if a renter is late with returning their vehicle it usually does not take a week to contact the rental car company to state that they need the vehicle longer than their contracted date. Rental car companies have reported that their vehicles have been found as far as Mexico after waiting the necessary one week period. Oftentimes these vehicles are stripped for parts or are used to commit other crimes.

**AB 2620 (Ting), Chapter 344**, allows electronic surveillance of rental cars that are not returned within 72 hours of the end of the rental term. Specifically, this new law:

- Provides that until January 1, 2024, if a rental vehicle has not been returned following 72 hours after the contracted return date, as specified, the rental company may activate electronic surveillance technology.
- Requires that a rental company provide, electronically and by telephone, notice of activation of the electronic surveillance technology 24 hours prior to activation, unless the renter has not provided a telephone number or the renter has not agreed to electronic communication, as specified.
- Requires rental companies that use surveillance technology pursuant to provisions above, to advise the renter orally and in the rental or lease agreement that electronic surveillance technology may be activated if the rental vehicle has not been returned within 72 hours after the contracted return date or extension of the return date, and would require that the renter acknowledge this advisement in the rental or lease agreement by initials.
- Exempts members of the rental company's membership program from the advisement requirement above, but would require that those advisements be provided upon enrolling in the rental company's membership program.
- Requires a rental company to send communications to a renter electronically if the renter agrees to that communication in the rental or lease agreement, and prohibit a rental company from denying a rental or lease agreement if the renter chooses not to receive communications electronically.

## **Driving Restrictions: Minors**

Under current law a juvenile court may suspend or delay the driver's license of a habitual truant for up to one year. This code section was last amended in 1994 by the enactment of SB 1728. SB 1728 was introduced to "deter habitual truancy." Since the enactment of SB 1728, studies have linked truancy to lower-income families. This has created concern that the suspension and delay of minors' driver's licenses has a disproportionate impact on lower income families who rely on their young family members' ability to get themselves to and from work in order to supplement the family income. This punishment also hinders educational advancements for youth who do not have access to reliable public transportation or school bus options. Suspending or delaying the driving privilege of a minor who comes from a low-income family may therefore exacerbate the issues faced by California's lower-income families.

**AB 2685 (Lackey), Chapter 717**, repeals the provision of law allowing a juvenile court to suspend or delay the driver's license of a habitual truant for up to one year.

## **Impoundment: Community Caretaking Doctrine**

Current law gives peace officers the authority to seize vehicles in accordance with the Fourth Amendment, requiring a search warrant in most cases. However, courts have also ruled that in a limited number of circumstances warrantless seizures may also be appropriate if peace officers lack probable cause, but have grounds to remove a vehicle from its location under the "community caretaking doctrine."

The community caretaking doctrine has been defined by courts through various rulings to mean that an impoundment may be proper...if the driver's violation...prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed location. This means that an impoundment may be deemed constitutional if a driver is unable to operate or move the vehicle.

This doctrine provides peace officers with discretion as they ensure public safety and the movement of traffic. However, this authority needs to be weighed against the rights of individuals. Although case law has made clear that protections exist for individuals, statutes are not explicit on this matter. This lack of clarity has resulted in vehicle seizures that are outside the scope of the community caretaking doctrine and in violation of 4th Amendment rights.

**AB 2876 (Jones-Sawyer), Chapter 592**, clarifies that the protections against removal and subsequent storage of a vehicle, as authorized by California statute, must be reasonable under the Fourth Amendment and the California Constitution. Specifically, this new law:

- States that it is unlawful for a peace officer or an unauthorized person to remove an unattended vehicle from a highway to a garage or to any other place, except as provided in this code.

- States that any removal of vehicle is a seizure under the Fourth Amendment of the U.S. Constitution and Article 1, Section 13 of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.
- States that those law enforcement and other agencies identified in this chapter as having the authority to remove vehicles shall also have the authority to provide hearings in compliance with provisions of vehicle disposition. During these hearings the storing agency shall have the burden of establishing the authority for, and the validity of, the removal.
- States that this section does not prevent a review or other action as may be permitted by the laws of this state by a court of competent jurisdiction.

### **Impoundment of Vehicles: Charter Party Passenger Carriers**

The California Public Utilities Commission (CPUC) regulates different modes of passenger transportation for compensation including passenger stage corporations (PSC) and charter-party carriers (CPC). PSCs are services that provide transportation to the general public on an individual fare basis, such as scheduled bus operators and airport shuttles. CPCs are services that charter a vehicle, on a prearranged basis, for the exclusive use of an individual or group. Charges are based on the mileage or time of use, or a combination of both. Types of CPCs include limousines, tour buses, sightseeing services, and charter and party buses.

Current law authorizes the CPUC to seek the impoundment of carrier vehicles through the court. Impoundment of carrier vehicles can be pursued any time a carrier has engaged in, or is about to engage in, acts that violate the Public Utilities Act and any regulation issued pursuant to that act.

**SB 1474 (Hill), Chapter 797**, authorizes the California Public Utilities Commission (CPUC), as part of its enforcement of its regulation of passenger stage corporations (PSC) and charter-party carriers (CPC) to contract with the California Highway Patrol (CHP) or a sheriff to assist in the enforcement of an order for vehicle impound.



# VETERANS

## Veterans: Resentencing Based on Mitigating Circumstances

Existing law provides if the court concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her military service, the court shall consider the circumstance as a factor in mitigation when imposing a criminal sentence. However, this provision does not apply to veterans convicted prior to January 1, 2015.

**AB 865 (Levine), Chapter 523**, authorizes the court, under specified conditions, to resentence any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service. Specifically, this new law:

- States that a person who is currently serving a sentence for a felony conviction, whether by trial or plea, who is, or was, a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service may petition for a recall of sentence, before the trial court that entered the judgment of conviction in his or her case, to request resentencing if the following condition are met:
  - The circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered as a factor in mitigation at the time of sentencing; and
  - The person was sentenced prior to January 1, 2015. This subdivision shall apply retroactively, whether or not the case was final as of January 1, 2015.
- Provides that if the court that originally sentenced the person is not available, the presiding judge shall designate another judge to rule on the petition.
- Requires, upon receiving a petition under these provisions of, the court to determine, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, whether the person satisfies the criteria required by this bill.
- Provides that at the hearing, the prosecution shall have an opportunity to be heard on the petitioner's eligibility and suitability for resentencing.



## **County Jails: Veterans**

California law allows specified veterans to participate in pretrial diversion programs. The California Department of Veterans Affairs reports that these veteran treatment courts have resulted in reducing recidivism and lowering crime, with 70 percent of defendants finishing the programs and 75 percent not rearrested for at least two years after.

Requiring law enforcement to inquire about veteran status could ensure that veterans are connected to Veteran Treatment Courts earlier in the criminal justice process

**AB 2568 (Reyes), Chapter 281**, requires county jails, upon detention of a person, to ask if the person has served in the U.S. military, document the person's response, and make this information available to the individual, their counsel, and the district attorney.

# VICTIMS

## California Victim Compensation Program: Accessibility

The California Victim Compensation Program (CalVCP) provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security.

Some victims' advocates allege some victims and/or their family members are excluded from receiving compensation and related services through CalVCP based upon their own, or their family's alleged gang membership, affiliation, or association, or their or their family's immigration status.

**AB 1639 (E. Garcia), Chapter 161**, requires the Victim Compensation Board to conduct outreach and training to local law enforcement agencies about their duties related to the CalVCP. Specifically, this new law:

- Requires the board to conduct outreach to local law enforcement agencies about their duties related to the CalVCP.
- States that every local law enforcement agency shall annually provide to the board the contact information for the designated Victims of Crime Liaison Officer.
- States that the board shall annually make available to the Victims of Crime Liaison Officer at every local law enforcement agency one hour of training on victim compensation in California and materials to educate the officers and staff in their law enforcement agencies and publicize CalVCP within their jurisdictions.
- Provides that the board's outreach and training shall affirm that neither access to information about victim compensation, nor an application for compensation, shall be denied on the basis of the victim's or victim's family member's membership in, affiliation with, or association with, a gang, or suspected membership in, association with, or affiliation with, a gang or on the basis of the victim's or victim's family member's immigration status.

## Victim Restitution: Residential Security

Existing law provides that a defendant may be liable for costs to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks. There is a split of authority as to whether the statute's language limits court authority to order restitution for residential security only in cases in which the defendant has been convicted of, or pleads guilty to, a violent felony, and the issue is currently pending before the California Supreme Court in *People v. Calavano* review granted Aug. 9, 2017 (S242474).

Although domestic violence is not listed as a violent crime, arguably in some instances, because of its nature, the victim may not feel safe at home.

**AB 2226 (Patterson), Chapter 142**, allows the court to order victim restitution to cover the costs of installing a residential security system in domestic violence cases. Specifically, this new law expands the court's authority to order victim restitution to cover the costs of installing a residential security system in domestic violence crimes, not just cases involving violent felonies.

### **California Victim Compensation Program: Application**

Under existing law, an application for compensation must be filed in a timely manner. The application must be filed three years from the date of the crime, three years after the victim attains 18 years of age, or three years from the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. In addition, applications for compensation based on certain sex crimes against minors may be filed any time prior to the victim's 28th birthday. The board may however, for good cause, grant an extension of the specified time periods under some circumstances.

Youth under the age of 18 and young adults between the ages of 18-24 are particularly vulnerable following victimization. They may need additional time to apply for victim's compensation.

**SB 1232 (Bradford), Chapter 983**, extends the time limit for a minor victim to file an application for compensation under the California Victim Compensation Program (CalVCP) to within three years after the victim turns 21 years of age. Specifically, this new law:

- Requires an application for compensation to be filed within three years after a minor victim attains 21, instead of 18, years of age.
- Provides that the CalVCP board may for good cause grant an extension of the filing period for an application for compensation if the victim or derivative victim incurs emotional harm as a result of the identification of the "East Area Rapist", as specified.
- Defines "emotional harm" for the purpose of an application for compensation to include harm while preparing to testify.

## MISCELLANEOUS

### Peace Officers: Body Cameras

Law enforcement agencies across California have elected to use body-worn cameras to record their daily interactions with the public. Since the rise to prominence of this practice, there have been various attempts at passing legislation to codify the process for accessing the footage recorded by the cameras. Presently, there is no uniform set of procedures that police departments must follow in deciding whether to release footage. However, recordings are often withheld from the public on the grounds that they are “investigative records” and therefore exempt from mandatory disclosure pursuant to the California Public Records Act

The CPRA requires disclosure of public records upon a reasonably focused and specific request, except with respect to public records exempt from disclosure by express provisions of law. When a record is not specifically exempt from disclosure, the CPRA provides a balancing test to be used when determining whether records should be released. If the public interest in nondisclosure clearly outweighs the public interest in disclosure, the records will not be released. (*American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 62.) Currently, law enforcement investigative records are exempt from mandated disclosure under the CPRA. This includes records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda.

**AB 748 (Ting), Chapter 960**, establishes a standard for the release of body-worn camera footage by balancing privacy interests with the public's interest in the footage. Specifically, this new law:

- Provides that, commencing July 1, 2019, an audio or video recording that relates to a critical incident, as defined, may only be withheld as follows:
  - During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure;

- After 45 days from the date the agency knew or should have known about the incident, and up to one year from that date the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay the disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved;
- If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered;
- If the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction and that person's interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted or un-redacted, shall be disclosed promptly, upon request, to any of the following:
  - To the subject of the recording or his or her authorized representative;
  - To the parent or legal guardian of the subject, if the subject is a minor; and,
  - To an heir, beneficiary, designated immediate family member, or authorized legal representative of the subject, if subject is deceased.
- Provides that if disclosure, as specified, would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the video or audio recording. Thereafter, the recording may be held for 45 days, subject to extensions, as specified.

- States that an audio or video recording relates to a critical incident if it depicts any of the following incidents:
  - An incident involving the discharge of a firearm at a person by a peace officer or a custodial officer; and
  - An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.
- Provides that an agency may provide greater public access to audio or video recordings than the established minimum standards.
- States that the above standards do not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident, as specified.
- Provides that a peace officer does not include any peace officer employed by the California Department of Corrections and Rehabilitation.

### **Cannabis Inspectors: Powers of Arrest and Warrants**

California is in the midst of a large transition as the state works to implement Proposition 64, the Adult Use Marijuana Act. Despite cannabis now being legal for adult-use, California's illicit black market continues to thrive. Under current law, the California Department of Food and Agriculture (CDFA) is in charge of regulating cultivation licenses. However, CDFA investigators do not have non-peace officer status. This means that if an investigator observes violations that merit probable cause for a search warrant, they would not be able to develop, apply for, and serve a search warrant, resulting in the halt of the Department's investigation.

**AB 873 (Lackey), Chapter 138**, specifies that persons employed by the CDFA and designated by the CDFA Secretary as an investigator whose primary duty is enforcement of commercial cannabis activity are not peace officers, but have the powers of arrest and the power to serve warrants if they meet specified training requirements.

## **Dependent Person: Definition**

The US Census Bureau, in its *American Community Survey*, classifies an adult as “independent living disabled” if, because of a physical, mental, or emotional condition, they have difficulty doing errands—such as shopping or visiting the doctor’s office—alone. As seen above, the federal definition for a disabled person clearly applies to persons who live alone; whereas, in many instances, California’s definition for “dependent” persons or adults is not so apparent.

Under California law, various statutes using the terms “dependent adult” and “dependent person” give different definitions. In many cases, statutes define the terms by cross-referencing to the sections which would be amended by this bill. Of these, only a few expressly specify that the definition applies regardless of whether the person lives independently.

**AB 1934 (Jones-Sawyer), Chapter 70**, clarifies that “dependent person” and “dependent adult” includes a person who lives independently. Specifically, this new law:

- Amends the definition of “dependent person” and “dependent adult” in various sections of the Codes to include a person living on his or her own.
- Amends a legislative declaration to instead state: “The Legislature finds and declares that elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.”

## **Mandated Reporters: Emergency Medical Technicians**

Emergency medical technicians (EMT's) frequently respond to 911 calls involving domestic violence. In Alameda County, the District Attorney’s office has implemented a program to help victims of domestic violence escape environments where escalating violence is eminent. However, in extending training to EMT's, Alameda County Counsel deemed that EMTs are not mandated reporters for any incidents involving domestic violence. This is counter to the understanding Alameda EMT's have about the critical role they play in helping victims of domestic violence, as well as counter to the interpretation the Alameda District Attorney office has of current law. Clarification is needed.

**AB 1973 (Quirk), Chapter 164**, clarifies that health practitioners employed by or under contract with local government agencies, including emergency medical technicians and paramedics, are mandated reporters.

## **Deadly Weapons Statutes: Recommendations of Law Revision Commission**

In 2006, the Legislature directed the Law Revision Commission to conduct a study and recommend non-substantive changes to the statutes relating to control of deadly weapons in order to simplify and provide better organization to this area of law. (ACR 73 (McCarthy), Chapter 128, Statutes of 2007.) The Commission was expressly directed not to make any change that would affect the existing scope of criminal liability.

In June 2009, the commission submitted its recommendations on non-substantive reorganization of deadly weapons statutes to the Legislature. In 2010, the recommendations were enacted.

However, during the course of the study, the commission found a number of minor issues that could not be addressed without potentially effecting a substantive change. Consistent with the commission's limited mandate, it did not address any of these minor issues in its deadly weapons recommendation. Instead, these minor issues were set aside for possible future work, and the commission requested authority to study these clean-up issues. The Legislature granted the commission that authority.

The Law Revision Commission now recommends minor clean-up amendments to address some of the issues identified. This recommendation also includes a few minor improvements that were not previously identified. (See *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm'n Reports 471 (2015).)

**AB 2176 (Jones-Sawyer), Chapter 185**, makes various changes to the deadly weapons statutes of the Penal Code based on recommendations of the California Law Revision Commission. Specifically, this new law:

- Imposes receipt requirements for deadly weapons taken by officers.
- Extends civil liability to a person who authorizes a minor's acquisition of tear gas by accompanying said minor at the time of acquirement.
- Deletes and replaces erroneous references.
- Revises statutory language to remove ambiguities.
- Makes other technical, non-substantive changes.



### **Humane Officers: Wooden Clubs and Batons**

Animal Control Officers (ACOs) are authorized under current law to be trained to carry a baton in the course of their work. They receive this training through Commission on Peace Officer Standards and Training (POST). In many instances, ACOs respond to dangerous situations involving people and animals, and may have limited means to protect themselves. Batons, when used properly by trained professionals, can be a matter of preventing severe injury or even death. Like ACOs, Humane Officers respond to dangerous situations involving people and animals.

**AB 2349 (Chen), Chapter 20**, authorizes a humane officer to carry a wooden club or baton if he or she has satisfactorily completed the POST course of instruction on the carrying and use of a baton, and if authorized by his or her appointing society.

### **Municipal Animal Shelters: Animal Adoptions**

Individuals who are convicted of animal cruelty are prohibited from owning or caring for an animal for five years for a misdemeanor offense and 10 years for a felony offense. The penalty for violating this restriction is a \$1,000 fine. Despite these prohibitions, people with criminal convictions for animal cruelty are often able to obtain pets because there is no mechanism in place to identify a person who is prohibited from owning an animal prior to the pet being placed in their care.

**AB 2774 (Limón), Chapter 877**, clarifies that an animal shelter administered by a public animal control agency or specified nonprofit entities and an animal rescue or animal adoption organization may ask an individual who is attempting to adopt an animal from that entity whether he or she is prohibited from owning or possessing an animal based on an animal abuse conviction.

### **Law Enforcement Agencies: Public Records**

Although existing law provides that members of the public may use the California Public Records Act (“CPRA”) to request an opportunity to inspect police department training, policies and procedures, compliance with these requirements widely varies across the State. Community groups and individuals have voiced legitimate frustration that all of these public records are not all simply available online, as some jurisdictions have already done. Unless these state and local regulations are publicly available online, individual state and local law enforcement agencies must continue to expend significant staff resources and public funds to respond to requests for access to police regulations, which are already covered under CPRA.

**SB 978 (Bradford), Chapter 978**, requires, commencing January 1, 2020 the Commission on Peace Officer Standards and Training (POST) and each local law enforcement agency to conspicuously post on their Internet websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available if a request was made pursuant California Public Records Act (CPRA), and makes Legislative findings and declarations.

## **Missing Persons: Unidentified Remains**

There are over 25,000 missing and unidentified persons in the California Attorney General's repository of cold cases. Clarifying and updating the law in regards to how to handle investigations and autopsies involving unidentified bodies will help provide closure to families with missing loved ones.

Authorizing a forensic pathologist to direct the exhumation in the case where the circumstances surrounding the death affords a reasonable basis to suspect that the death was caused by or related to the criminal act of another, helps to ensure maximum recovery and protection of the human skeletal remains; skeletal analysis helps to identify the victim and determine how the victim may have died. Because of the nature of the cases that they work on--victims that are badly decomposed, skeletonized, or when body parts are missing--the forensic pathologist or anthropologist is often the victim's last chance for identification and justice.

**SB 1163 (Galgiani), Chapter 936**, places new requirements on local governments when performing an autopsy or post mortem examination upon an unidentified body or human remains. Specifically, this new law:

- States that an agency tasked with the exhumation of a body or skeletal remains of a deceased person that has suffered significant deterioration or decomposition, where the circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by or related to the criminal act of another, may perform the exhumation in consultation with a board-certified forensic pathologist and the board-certified forensic pathologist may suggest to the agency tasked with performing the exhumation consider retaining the services of an anthropologist.
- Requires that a postmortem dental examination be conducted by a qualified dentist as determined by the coroner or medical examiner.
- Authorizes the postmortem examination or autopsy of an unidentified body or remains to include computer tomography scans.
- Requires that the body of an unidentified deceased person shall not be cremated or buried until appropriate sample of tissue or bone is retained. The types of samples of tissue and bone that are taken shall be determined by the coroner or medical examiner, and the handling, processing and storage of these samples shall be within, and guided by, generally accepted standards of forensic pathology and death investigations.

## **Substance Use Disorder Treatment Programs: Patient Brokering**

In January 2018, the Senate Health Committee held an informational hearing to examine the substance use disorder (SUD) treatment system with a focus on treatment and services provided in residential treatment facilities, insurance coverage, patient referrals, and the state's regulation and oversight of the system. The hearing provided an overview of recent issues regarding unscrupulous facility operators and gave an opportunity for state regulators to highlight efforts they have undertaken to combat exploitation of the SUD system.

There have been many stories in the media and there is much anecdotal evidence from the field about the practice of patient brokering. Generally, individuals (sometimes called "interventionists") receive payment for referring clients seeking SUD treatment services to facility operators that fraudulently bill insurance plans for the services.

**SB 1228 (Lara), Chapter 792**, prohibits a licensed alcoholism or drug abuse recovery and treatment facility (licensed treatment facility), an alcohol or other drug program certified (certified treatment program), and registered and certified counselors and licensed professionals from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services. Specifically, this new law:

- Prohibits the following persons, programs, or entities from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services:
  - A licensed treatment facility, as specified;
  - An owner, partner, officer, director, or shareholder who holds an interest of at least ten percent in a licensed treatment facility;
  - A person employed by, or working for, a licensed treatment facility including, but not limited to, registered and certified counselors and licensed professionals providing counseling services;
  - A certified treatment program by the Department of Health Care Services (DHCS); and,
  - An owner, partner, officer, director, or shareholder who holds an interest of at least ten percent in a certified treatment program, including but not limited to, registered and certified counselors and licensed professionals providing counseling services.
- Permits DHCS to investigate allegations of patient brokering or any regulation adopted for the furtherance of those provisions, and upon finding a violation do any of the following:
  - Assess a penalty on a licensed treatment facility;

- Suspend or revoke a license of a treatment facility, deny an application for licensure, extend the licensing period, or modification to a license;
- Assess a penalty up on a certified treatment program;
- Suspend or revoke the certification of a treatment program; and,
- Suspend or revoke the registration or certification of a counselor.
- Permits DHCS to investigate a licensed professional providing counseling services and recommend disciplinary actions including the termination of employment and suspension and revocation of licensure by the respective licensing board

### **Industrial Hemp Regulations**

Current law strictly regulates the cultivation and production of industrial hemp, probably because of the fact that it comes from the same plant as marijuana. Nonetheless, industrial hemp has no psychoactive qualities because it contains a miniscule amount of delta-9-tetrahydrocannabinol (THC), which is the active ingredient in marijuana. Over 30 other nations and 19 states in the U.S. grow industrial hemp and California represents the largest consumer and industrial market for hemp raw materials and products in the U.S. With the passage of proposition 64, California legalized the recreational use, production, and cultivation of marijuana, but it has yet to update its regulations regarding the production and use of industrial hemp.

**SB 1409 (Wilk), Chapter 986**, updates existing California law pertaining to the production and cultivation of industrial hemp. Specifically, this new law:

- Amends the definition of industrial hemp so that it is no longer defined as a fiber and oilseed crop.
- Allows the production of industrial hemp by clonal propagation of cultivars that are on the list of approved seed cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.
- Deletes the requirement that industrial hemp be grown as a "densely planted" crop.
- Deletes the requirement that industrial hemp be grown only for fiber or oilseed.
- Deletes the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013 in order to be on the approved list of cultivars.
- Deletes the requirement that an application for registration to grow industrial hemp include information about whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop.

- Deletes prohibitions on ornamental cultivations of industrial hemp plants, pruning and tending of individual hemp plants, and culling of industrial hemp.
- Adds the requirement that an application for registration to grow industrial hemp include the state or county of origin of the seed cultivar to be grown.
- Reduces the length of time for which registration to produce industrial hemp is valid from two years to one, at which time the registrant must apply for renewal.
- Allows a commissioner or the counties, as appropriate, to retain the amount of a registration fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.
- Authorizes the board of supervisors of a county to establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing specified provisions of law pertaining to cultivation of industrial hemp; the fee is to be charged and collected by the commissioner upon registrations or renewals required to produce industrial hemp.
- Requires a registered producer of industrial hemp, other than an established agricultural research institution, to obtain a laboratory test report indicating the Tetrahydrocannabinol (THC) levels of a random sampling of the industrial hemp grown no more than 30 days before harvest.
- Requires that the sampling be conducted with the grower present.
- Requires the Department of Food and Agriculture (CDFA) to establish sampling procedures by regulation that include the number of plants to be sampled per field, the portions of plants to be sampled, and the parts of the plants to be included in the sample.
- Requires that the laboratory providing the test report be approved by the CDFA, rather than registered with the federal Drug Enforcement Agency.
- Specifies that the destruction of industrial hemp which exceeds permitted THC levels must begin within 48 hours and be completed within seven days.
- Authorizes the CDFA, as part of the industrial hemp registration program, to establish and carry out an agricultural pilot program pursuant to the Federal Agricultural Act of 2014.
- Requires an established agricultural research institution, before cultivating industrial hemp, to notify the commissioner of the county in which the institution intends to engage in cultivation and include the Global Positioning System coordinates of the proposed cultivation site.

## Police Personnel Records: Disclosure

Events such as the death of Stephon Clark in Sacramento and the beating of Rodney King in Los Angeles underscore the immense public concern related to police and community interactions. Courts have long recognized that activity of police officers is of the highest public concern, particularly when they use serious or deadly force. And yet, under current law, the public has little ability to access records related to police misconduct and use of force, depriving the press of the ability to fully investigate the activity of powerful public institutions.

Law enforcement officials wield immense power. For that reason, they should be subject to the same level of scrutiny as all other public employees, whose personnel records are disclosable in cases of heightened public concern.

**SB 1421 (Skinner), Chapter 988**, subjects specified personnel records of peace officers and correctional officers to disclosure under the California Public Records Act (PRA). Specifically, this new law:

- Provides that, notwithstanding any other law, the following peace-officer or custodial-officer personnel records are not confidential and shall be made available for public inspection pursuant to the PRA:
  - A record relating to the report, investigation, or findings of either of the following:
    - An incident involving an officer's discharge of a firearm at a person; or,
    - An incident in which an officer's use of force against a person resulted in death or great bodily injury.
  - Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, as defined; and,
  - Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.
- States that the records requiring release include:
  - All investigative reports;
  - Photographic, audio, and video evidence;
  - Transcripts or recordings of interviews;

- Autopsy reports;
- All materials compiled and presented to the district attorney or to any person or body charged with determining:
  - Whether to file criminal charges against an officer in connection with an incident;
  - Whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action; or,
  - What discipline to impose or corrective action to take;
- Documents of findings and recommended findings; and,
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline, or other documentation reflecting implementation of corrective action.
- Prohibits the release of a record from a separate and prior investigation of a separate incident unless it is independently subject to disclosure.
- Provides that if an investigation or incident involves multiple officers, information requiring sustained findings for release must be found independently against each officer. However, factual information about an officer's actions during an incident, or an officer's statements about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release.
- Requires an agency to redact disclosed records for any of the following purposes:
  - To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers;
  - To preserve the anonymity of complainants and witnesses;
  - To protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by officers; and,
  - Where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.

- Allows redaction of records where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. This includes redaction of personal identifying information.
- Allows delayed disclosure for records relating to an investigation or court proceeding involving a use-of-force incident, as follows:
  - During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred, or until the prosecutor decides whether to file criminal charges, whichever occurs first. After 60 days from the use-of-force incident, disclosure may still be delayed if it could reasonably be expected to interfere with the investigation. However, at 180 day intervals as necessary, the agency must justify the continued delayed disclosure, as specified. Information withheld must be disclosed no later than 18 months after the date of the incident if the investigation involves the officer who used force. If the information involves someone other than the officer, then disclosure must occur no later than 18 months after the incident, unless there are extraordinary circumstances warranting continued delay;
  - If criminal charges are filed in relation to the use-of-force incident, the agency may delay disclosure until a verdict is reached at trial, or in the case involving an entry of plea, until the time to withdraw the plea; and,
  - During an administrative investigation into a use-of-force incident, the agency may delay disclosure until the agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force by a person authorized to initiate an investigation, or 30 days after the close of the criminal investigation related to the officer's use of force, whichever is later.
- Prohibits release of records if the complaint is frivolous, as specified, or is deemed to be unfounded.
- Specifies that these provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.
- Specifies that nothing in these provisions is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59.



## **Public Safety Omnibus Bill**

Existing law often contains technical and non-substantive errors due to newly enacted legislation or other reasons. These provisions need to be updated in order to correct those deficiencies.

**SB 1494 (Committee on Public Safety), Chapter 423**, makes technical and non-controversial changes to various code sections relating generally to criminal justice laws. Specifically, this new law:

- Changes Penal Code Section 288a (oral copulation) to Penal Code Section 287 and makes conforming changes;
- Clarifies an ambiguity in the Vehicle Code as to what the base fine is for not providing proof of insurance and whether such a violation was correctable;
- Updates a provision in the Penal Code pertaining to lost or stolen handguns in accordance with Proposition 63; and
- Makes other minor, technical changes.

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