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Public Safety 2001: Creating a Safer California

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Assembly Committee on Public Safety

PUBLIC SAFETY 2001

Creating a Safer California

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Chair

Jay La Suer
Vice-Chair

Gil Cedillo

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Committee Secretary

October 31, 2001

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ASSEMBLY COMMITTEE ON PUBLIC SAFETY

PUBLIC SAFETY 2001

CREATING A SAFER CALIFORNIA

MEMBERS

Carl Washington, *Chair*
Jay La Suer, *Vice Chair*
Gil Cedillo
Manny Diaz
Richard Dickerson
Fred Keeley
Paul Koretz

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Lucy Armendariz, *Counsel*

Sue Highland, *Committee Secretary*
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October 31, 2001

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ANIMAL ABUSE

Mischievous Animals: Death or Great Bodily Injury

Originally enacted in 1872, existing law relating to mischievous animals only holds the owner of the animal criminally liable if an attack results in death. Later enacted provisions relating to dogs trained to fight or kill recognize that the potential danger does not depend upon legal title and thus apply to "any person owning or having custody or control" of the dog.

AB 1709 (Migden), Chapter 257, expands the scope of the existing offense involving mischievous animals to include a person having custody or control of the animal and to the infliction of serious bodily injury. Specifically, this new law:

- Provides that in addition to an owner of a mischievous animal, any person having custody or control of such an animal who, knowing the animal's propensities, willfully suffers the animal to go at large, or keeps the animal without ordinary care, and the animal kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

- Provides that in addition to an owner of a mischievous animal, any person having custody or control of such an animal who, knowing the animal's propensities, willfully suffers the animal to go at large, or keeps the animal without ordinary care, and the animal causes serious bodily injury to any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of an alternate felony-misdemeanor.

BACKGROUND CHECKS

California Law Enforcement Telecommunications System Security

The California Law Enforcement Telecommunications System (CLETS) is a statewide telecommunications system used by law enforcement agencies and maintained by the Department of Justice (DOJ). The DOJ publishes operating practices and procedures that are conditions of participating in CLETS. Local agencies are primarily responsible for system security.

AB 147 (Longville), Chapter 34, grants a control agent or chief officer of any other law enforcement agency who has been granted direct access to CLETS the authority to ensure that the county's system complies with security requirements. Specifically, this new law:

- Provides that the person designated as a county's control agent, as defined by policies, practices, and procedures adopted by the Attorney General (AG), or the chief officer of any other law enforcement agency who has been granted direct access to CLETS, shall have the sole and exclusive authority to ensure that the county's equipment and information connecting to CLETS complies with all CLETS and country control agent security requirements and policies.

- Authorizes the control agent or chief officer to locate, manage, maintain, and provide security for any of the county's or other agency's equipment that connects to, and exchanges data, video, or voice information with CLETS. Such equipment includes, but is not limited to, telecommunications transmissions circuits, networking devices, computers, databases, and servers.

- Provides that a control agent or chief officer may not exercise the authority in a manner that conflicts with the policies, practices, and procedures specified in existing law.

Subsequent Arrest Notification

Under existing law, the Department of Justice (DOJ) is authorized to provide the criminal record of conviction for specified offenses, including elder abuse, to the employer of a person who provides in-home domestic care for an elderly or disabled adult. Existing law does not allow the DOJ to provide the same employer with subsequent arrest information which occurs after the initial background check was completed.

AB 530 (Reyes), Chapter 845, authorizes the DOJ to provide subsequent arrest notification to the employer of an unlicensed person who provides non-medical domestic or personal care to an aged or disabled adult in the adult's own home. Unrelated provisions of this new law extend the sunset date on the Central Valley Rural Crime Prevention Program until July 1, 2002, and it shall be repealed as of January 1, 2003 unless another statute deletes or extends that date.

CHILD ABUSE

Child Sexual Abuse: Statute of Limitations

In the late 1980's, lawmakers across the country became increasingly aware that young victims may delay reporting sexual abuse for a number of reasons, including the difficulty of remembering the crime and the trauma associated with reporting such an offense. In 1994, California enacted a longer statute of limitation that substantially increased the time in which criminal charges can be filed after the assault occurred. Existing law provides that a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she was the victim of a sexual offense while under the age of 18 years. Existing law also requires that there is "independent evidence that clearly and convincingly corroborates the victim's allegation." Different legal standards relating to the prosecution's burden of proof has created the potential for jury confusion.

AB 78 (Alquist), Chapter 235, lowers the standard required for corroborating evidence necessary to file an otherwise time-barred, child sexual abuse case when the complainant is under the age of 21. Specifically, this new law:

- Provides that a criminal complainant in a child sexual abuse case may be filed within one year of the date of the report to a law enforcement agency by a person under 21 years of age, alleging that he or she was a victim of child abuse while he or she was under the age of 18.

- Provides that the corroborating evidence need not be "clear and convincing" where, in an otherwise time-barred case, a complaint is filed before the victim's 21st birthday.

- Applies to a cause of action arising before, on, or after January 1, 2002 (the effective date of this new law) and shall revive any cause of action barred by Penal Code Section 800 or 801 if the complaint or indictment was filed within the specified time period.

Child Abuse and Neglect Reporting Law

AB 1241 (Rod Pacheco), Chapter 916, Statutes of 2000, made numerous substantive and non-substantive changes to the mandatory Child Abuse and Neglect Reporting Act (CANRA). Some provisions were in need of technical corrections.

AB 102 (Rod Pacheco), Chapter 133, restores an inadvertently deleted reporting provision of the CANRA. Specifically, this new law:

- Provides that whenever a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of

child abuse or neglect that endangers the child's emotional well-being, but does not amount to the infliction of mental suffering, the reporter may make a report to a child protective agency.

- Specifies that abuse or neglect in out-of-home care is defined as physical injury inflicted upon a child by another person by other than accidental means, including specific types of abuse and neglect.

- Makes numerous, non-substantive conforming and grammatical changes to CANRA.

Evidence of Prior Sex Offenses

Existing law permits a prosecuting attorney in a case in which a defendant is accused of committing certain sex offenses to admit evidence of prior specified sex offenses committed by the defendant. Currently, the list of sex offenses which may be admitted under Evidence Code Section 1108 includes virtually all serious sex offenses except for the offense of aggravated sexual assault of a child. Aggravated sexual assault of a child is defined as rape, rape in concert, forcible sodomy, oral copulation, or sexual penetration by a person who is 10 or more years older than a child under the age of 14.

AB 380 (Wright), Chapter 517, expands the admissibility of disposition or propensity evidence in sex offense cases. Specifically, this new law expands the definition of "sexual offense" for purposes of the exception to the rule against the admission of character evidence to include aggravated sexual assault of a child as defined in Penal Code Section 269.

Child Abuse Prosecution Program

The Child Abuse Prosecution Program, administered by the Office of Criminal Justice Planning (OCPJ), provides financial and technical assistance to district attorneys' offices. Under current law, a person may be prosecuted under the Child Abuse Prosecution Program for the sexual assault of a child.

AB 929 (Frommer), Chapter 210, expands permissible prosecutions under this program to include the following additional crimes:

- Child abuse.

- Child abuse resulting in death.

- Child abuse resulting in a traumatic condition.

- Sending harmful manner, including through the Internet, with the intent to seduce a minor when committed in conjunction with any other specified violation.

This new law requires OCJP to submit to the Legislature, on or before December 15, 2002, and within six months of the completion of subsequent funding cycles, an evaluation of the Child Abuse Prosecution Program. The evaluation must identify outcome measures to determine the effectiveness of the programs established under this new law, which shall include, but not be limited to:

- Child abuse conviction rates of Child Abuse Prosecution Program units compared to those of non-funded counties.

- Quantification of the annual per capita costs of the Child Abuse Prosecution Program compared to the costs of prosecuting child abuse crimes in non-funded counties.

Parole: Child Welfare Services Notification

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service agency when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

SB 432 (Monteith), Chapter 470, requires state correctional authorities to notify a county child welfare services agency that requests notification when persons who have been convicted of child abuse, domestic violence, or a sex offense against a minor are scheduled to be released on parole. Specifically, this new law:

- Requires the CDC or the BPT to notify a county child welfare services agency that requests notification whenever a person convicted of child abuse, domestic violence, or a sex offense perpetrated against a minor is scheduled to be released on parole.

- Allows agencies receiving notice of release to provide written comments to BPT or CDC regarding the impending release, as specified; requires BPT or CDC to respond in writing; and that those comments be considered in determining the community in which the parolee is going to be released on parole. Comments shall become part of the inmate's file.

- Provides that when a county child welfare services agency is providing one parent with reunification services and the other parent is serving a prison term, as specified, the county welfare services agency may request that CDC or the BPT provide the agency with notification that the person is scheduled to be released on parole.

COMPUTER CRIMES

High Technology Theft Apprehension and Prosecution Program

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high technology crime throughout California and to advise the Office of Criminal Justice Planning (OCJP) on the appropriate disbursement of funds to regional task forces.

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program (HTTAPP), a public-private administrative body under the auspices of the OCJP to distribute funding to develop regional high technology crime units in California law enforcement agencies.

AB 821 (Simitian), Chapter 556, authorizes the OCJP to allocate up to five percent of the funds available in the HTTAPP Trust Fund in order to fund education and training programs for prosecutors and law enforcement engaged in the investigation and prosecution of high-technology crime. This new law also adds a representative of the banking industry to the HTCAC.

CONTROLLED SUBSTANCES

Controlled Substances: Clonazepam

While clonazepam, a controlled substance, has a number of legitimate medical uses, it has been misused in a number of criminal cases throughout Southern California. More importantly, sexual predators can use this drug to incapacitate victims, causing amnesia in certain cases. In the last two years, this drug has been linked to eight sexual assaults. Existing law prohibits the unlawful possession for sale and sale of clonazepam, but the simple possession of clonazepam is not unlawful.

> **AB 98 (Zettel), Chapter 838,** makes the possession of specified benzodiazepines without a lawful prescription, including clonazepam, an alternate misdemeanor/infraction.

Controlled Substances: Gamma-Hydroxybutyric Acid

Several years ago, the State of California recognized the danger to public health posed by the recreational use of gamma-hydroxybutyric acid (GHB) by listing the substance in Schedule II. Since taking this legislative action, GHB abuse has evolved from the ingestion of a homemade chemical brew to the consumption of industrial chemicals. Simultaneously, people with rare diseases were learning the benefits of using medical GHB in Federal Drug Administration's (FDA) approved clinical trials.

Recognizing the danger posed by GHB, the federal Date-Rape Drug Prohibition Act of 2000 made the illicit form of GHB a Schedule I controlled substance and the FDA-approved medical form of GHB, used to treat cataplexy, a Schedule III controlled substance.

> **AB 258 (La Suer), Chapter 841,** reschedules GHB as a Schedule I controlled substance, and makes FDA-approved medical forms of GHB a Schedule III controlled substance. Specifically, this new law:
>
> - Reclassifies GHB, including its immediate precursors, isomers, esters, ethers and salts, from a Schedule II controlled substance to a Schedule I controlled substance.
>
> - Adds GHB, and its salts, isomers, and salts of isomers, contained in a drug product for which an application had been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.355.) to the Schedule III controlled substance list.
>
> - Increases the criminal penalties for the possession for sale and sale of illicit forms of GHB.

- Conforms the penalties for unlawful possession, possession for sale, and sale of FDA-approved GHB with the existing penalties for the unlawful possession, possession for sale, and sale of illicit GHB.

- Adds FDA-approved GHB to the list of controlled substances which subject a person to increased penalties for any controlled substance violations involving a minor.

- Adds gamma-butyrolactone to the list of specified regulated chemicals which required any manufacturer, wholesaler, retailer, or any other person who sold or transferred these chemicals to submit a report to the Department of Justice as to those transactions.

Drug Endangered Child Response Teams

Clandestine manufacture and distribution of methamphetamine and other controlled substances in home laboratories has created a public health and safety crisis in California. In California, 85 percent of clandestine laboratories seized are located in residences. Increasingly, children are present in these home laboratories where they are exposed to highly explosive, deadly chemicals used in drug manufacturing. In Los Angeles County in 1999, children were present in 40 percent of the labs seized by law enforcement. More than 300 children were placed in protective custody as a result of drug endangerment.

To help protect the children who live in homes where clandestine drug labs are located, seven counties established multi-agency Drug-Endangered Child Response teams consisting of representatives from law enforcement, district attorney's offices, and children's services agencies. These teams were funded by the state's Byrne Formula Grant Anti-Drug Abuse fund. The team approach not only ensures that the children living in homes containing clandestine drug laboratories receive immediate care and referrals to specialized programs but that specially-trained prosecutors handle these cases to reduce the need to have the children testify as witnesses at trial.

AB 1614 (Washington), Chapter 853, provides that the Office of Criminal Justice Planning (OCJP) may fund countywide Drug-Endangered Children (DEC) programs in the Counties of Butte, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Shasta. Specifically, this new law:

- Declares that the Counties of Los Angeles, San Diego, Orange, Riverside, San Bernardino, Butte, and Shasta have implemented multi-agency response teams consisting of law enforcement, prosecution and health or children's services, that respond effectively to clandestine laboratories where children are present.

- Provides that OCJP may fund countywide DEC programs in the Counties of Los Angeles, San Diego, Orange, Riverside, San Bernardino, Butte, and Shasta. Any funds that remain after funding the existing countywide programs may be distributed to up to five additional counties to fund DEC programs.

- Establishes in OCJP a pilot program of technical and financial assistance for counties, designated the "California Drug Endangered Child Protection Act" (Act). Any funds appropriated to OCJP shall be administered and disbursed by the executive director who is authorized to allocate funds to counties in which the Act was implemented.

- Provides that the allocation of funds shall be made upon application executed by the county's district attorney, or county sheriff, if the sheriff was currently the lead agency in the county's existing DEC program, and approved by its board of supervisors. Funds allocated shall not supplant local funds that would, in the absence of the Act, be made available to support the function of this program.

- Provides that district attorneys, or county sheriffs, receiving allocated funds shall coordinate multi-agency teams in cooperation with local, state and federal law enforcement agencies and the county departments of health and children's services.

- Requires district attorneys receiving funds to concentrate enhanced prosecution efforts and resources upon individuals who endanger children through exposure to the clandestine manufacture of controlled substances, their precursors, and analogs. Felony child endangerment charges shall be filed where appropriate.

- Provides that commencing one year after the effective date of this new law, the executive director of OCJP shall make an annual report to the Legislature on the fiscal and operational status of the program.

- Provides for a sunset date of July 1, 2006 and is repealed as of January 1, 2007 unless a later-enacted statute extends the dates.

Proposition 36: Funding for Drug Testing

In 2000, the voters overwhelmingly passed Proposition 36 that required treatment of nonviolent drug offenders rather than incarceration. One of the principal criticisms of Proposition 36 by opponents was that the initiative made no provision for funding drug testing. The language of Proposition 36 explicitly prohibited using specified funds for such testing. During legislative hearings, the sponsors of Proposition 36 stated that while recognizing the value of testing as a tool to assess the progress of a client in treatment, it was their intent to ensure that the funding went directly to historically under-funded treatment providers.

SB 223 (Burton), Chapter 721, creates the Substance Abuse Testing and Treatment Accountability Program to assist counties in preserving drug testing as part of their treatment and recovery system of services. Specifically, this new law:

- Appropriates $8.4 million from the Federal Substance Abuse Prevention and Treatment Block Grant during the 2000-01 fiscal year to be used by DDAP for drug testing and other purposes.

- States that where drug treatment is a condition of probation or parole, drug testing shall be used as a treatment tool. The results of any urinalysis shall not be given greater weight than other aspects of a person's treatment program. Specifies that drug treatment programs must be licensed or certified by California.

- Defines further the term "drug-related condition" of probation or parole to include the drug treatment regimen, employment, vocational training, educational programs, and counseling.

- Expands the types of activities that constitute drug-related probation and parole violations from committing a nonviolent drug possession offense to include a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or other specified activities.

- Requires proof that a person is unamenable to all forms of drug treatment before probation or parole may be revoked on these grounds. Eliminates the requirement that a probationer or parolee prove by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable to avoid revocation. Parole shall be revoked if the violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

- Exempts DDAP from specified provisions of the Administrative Procedure Act until July 1, 2002.

- Clarifies that the term "drug treatment program" or "drug treatment" includes programs operated by the Department of Veterans Affairs (DVA). Exempts programs operated by DVA from licensing or certification provisions provided by this new law.

CORRECTIONS

Board of Corrections

It is important for deputy sheriffs, probation officers, and correctional assistants to have sufficient representation on the Board of Corrections (BOC). The BOC establishes the safety standards for rank and file deputy sheriffs and probation officers, including issues of staffing levels. In recent years, the safety in jails and juvenile halls has been decreasing at an alarming level.

AB 153 (Nakano), Chapter 930, expands the BOC membership to 15 by adding an additional rank and file representative of a local correctional facility, and a representative of a community-based youth service organization. This new law also requires that of the two rank and file representatives on the BOC, one shall be a juvenile probation officer, and one shall be a deputy sheriff with a rank of sergeant or below.

Sexually Violent Predators: Local Detention Facilities

Existing law requires a person detained for a criminal trial or a person convicted and serving his or her sentence to be separated from persons committed upon a civil process. Sexually Violent Predator (SVP) Act proceedings are civil in nature. Existing law does not specify whether or not SVPs shall be segregated from the general population of a detention facility.

AB 659 (Correa), Chapter 248, requires county jails to house civilly committed persons classified as SVPs in administrative segregation. Specifically, this new law:

- Provides that "administrative segregation" is defined as separate and secure housing that does not involve any deprivation of privileges other than what is necessary to protect the inmates and staff.

- Allows civilly committed persons classified as SVPs to waive placement in administrative segregation and be placed with inmates charged with similar offenses or with similar criminal histories based on specified objective criteria.

Deducting from Awards to Parolees

Approximately 40 percent of California Department of Corrections (CDC) inmates owe either restitution fines (payable to the Restitution Fund) or restitution orders (payable to victims). Approximately, 11 percent of restitution claims are fully paid before inmates are paroled. The primary method of collecting restitution orders or fines is by deducting 20 percent of any amount deposited into inmates' trust accounts or wages. When Congress passed the Prison Litigation Reform Act in 1995, states were allowed to deduct victim restitution orders and fines from civil litigation awards to inmates, providing another source to satisfy claims.

AB 1003 (Frommer), Chapter 200, adds parolees to the existing provisions that require the Director of the CDC to deduct outstanding restitution fines and orders from court awards or settlements relating to imprisonment and to require that the existing administrative fee be deducted, as well. Specifically, this new law:

- Allows CDC to deduct any outstanding restitution orders or fines from any award (compensatory or punitive damages) or settlement resulting from a civil action against a jail, prison or correctional facility.

- Allows CDC to deduct five percent of an award or settlement resulting from a civil action against a jail, prison or correctional facility for administrative costs.

Corrections: Authorization to Move Male Condemned Prisoners from San Quentin State Prison

Condemned male inmates are required by law to be housed at San Quentin State Prison. While Condemned Row at San Quentin was originally designed to house less than 70 inmates, it currently houses approximately 570. Due to the condition and physical structure of the 150-year-old prison, facilities are inadequate for condemned inmates who jeopardize the safety or security of staff and other inmates. In other prison populations, if an inmate presents a serious threat to public safety or security, he or she is sent to a Security Housing Unit. No such unit exists at San Quentin.

AB 1460 (Nation), Chapter 934, authorizes the California Department of Corrections (CDC) to move no more than 15 condemned men to secure condemned housing at the California State Prison, Sacramento and authorizes the CDC to move a condemned prisoner whose medical or mental health needs are so critical as to endanger the inmate or others to the California Medical Facility or other appropriate institution for medical or mental health treatment. Specifically, this new law:

- Allows condemned male inmates who, while in prison, commit specified offenses, or who, as a member of a gang or disruptive group, order others to commit any of those offenses to be housed at the California State Prison, Sacramento. The transfer may only occur following disciplinary sanctions and classification actions at San Quentin State Prison pursuant to CDC regulations.

- Specifies the following predicate offenses for purposes of that transfer: (a) homicide; (b) assault with a weapon or with physical force capable of causing serious or mortal injury; (c) escape with force or attempted escape with force; and, (d) repeated serious rule violations that substantially threaten safety or security. No more than 15 condemned inmates who have committed specified acts while in prison may be rehoused.

- Specifies that the condemned housing program at California State Prison, Sacramento, must be fully operational before the transfer of any condemned inmates.

- Provides that specialized training protocols for supervising condemned inmates shall be provided to staff and supervisors at the California State Prison, Sacramento, who supervise condemned inmates on a regular basis.

- Provides that a condemned male inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to CDC regulations, be housed in the California Medical Facility (Vacaville) or other appropriate institution for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.

- Provides that condemned male inmates transferred from San Quentin to the California State Prison, Sacramento, or other facilities, shall have similar attorney-client access procedures that are afforded to condemned inmates housed at San Quentin.

- Provides that a condemned inmate housed outside of San Quentin pursuant to this new law shall be returned to San Quentin State Prison at least 60 days before his scheduled date of execution.

- Provides that prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180-degree housing unit facilities with an electrified perimeter shall be evaluated by the CDC for suitability for the secure housing and execution of condemned inmates.

Incarceration: Undocumented Alien Felons

In 1994, the Federal Government authorized reimbursing states for the costs of incarcerating undocumented immigrant felons in prison. Although California has received the largest share of federal funds, California has never been fully reimbursed for the costs of incarcerating these individuals. Currently, the California Department of Corrections (CDC) operates 33 state prisons. According to recent statistics, of the 161,039 inmates currently housed in its institutions 21,135 are Immigration and Naturalization Service holds. During the 2000-2001 fiscal year, CDC had a budget of $4.8 billion. The average yearly cost to house an inmate is $25,607.

AJR 12 (Firebaugh), Chapter 108, requests that the Federal Government transfer to the federal prison system all undocumented alien felons currently housed in CDC institutions.

Death Penalty Executions

Existing law provides that the warden of the state prison where an execution is to take place shall invite two physicians, the Attorney General, the members of the immediate family of the victim, and at least 12 reputable citizens. Current statutory requirements may present a dilemma for physicians: attend an execution and violate professional ethical principles or refuse participation and risk administrative action.

SB 129 (Burton), Chapter 71, deletes the requirement that two physicians be invited to an execution. Specifically, this new law:

- Deletes the requirement that the warden of the state prison where an execution is to take place shall invite two physicians.

- Provides that no physician or any other person invited to attend the execution, whether or not employed by the California Department of Corrections, shall be compelled to attend the execution.

- Provides that attendance of any physician shall be voluntary. A physician's refusal to attend the execution shall not be used in any disciplinary action or negative job performance citation.

Parole: Child Welfare Services Notification

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service agency when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

SB 432 (Monteith), Chapter 470, requires state correctional authorities to notify a county child welfare services agency that requests notification when persons who have been convicted of child abuse, domestic violence, or a sex offense against a minor are scheduled to be released on parole. Specifically, this new law:

- Requires the CDC or the BPT to notify a county child welfare services agency that requests notification whenever a person convicted of child abuse, domestic violence, or a sex offense perpetrated against a minor is scheduled to be released on parole.

- Allows agencies receiving notice of release to provide written comments to BPT or CDC regarding the impending release, as specified; requires BPT or CDC to respond in writing; and that those comments be considered in determining the community in which the parolee is going to be released on parole. Comments shall become part of the inmate's file.

- Provides that when a county child welfare services agency is providing one parent with reunification services and the other parent is serving a prison term, as specified, the county welfare services agency may request that CDC or the BPT provide the agency with notification that the person is scheduled to be released on parole.

California Youth Authority: Special Education

Currently, the California Youth Authority (CYA) is identified by the federal Department of Education as one of 19 school districts in California with longstanding, systematic, non-compliance with federal special education law. In an attempt to address this problem, this new law provides the framework for a cooperative effort between the CYA and the California State University (CSU) to ensure that each child in CYA receives the education to which he or she is entitled.

SB 505 (Perata), Chapter 536, requires the California Department of Education (CDE) and CSU to enter into an interagency agreement to authorize the Center for the Study of Correctional Education (CSCE), located at the CSU, San Bernardino, campus, and provide technical assistance to the CDE and to the CYA in order to comply with state and federal special education laws and regulations. Specifically, this new law:

- Requires CDE to prepare the interagency agreement in consultation with CSU, San Bernardino, and the Superintendent of Education of CYA, and requires CSCE to provide all of the following services to the Special Education Division of CDE:
  - Assistance in performing reviews and assessments of special education at each school site in CYA;
  - Assistance in drafting reports of findings for each review;
  - Assistance in drafting corrective action plans, based on preliminary findings of noncompliance which include specific suggested outcomes to achieve compliance, and other instruments conveying recommendations and suggestions resulting from reviews and assessments;
  - On-site technical assistance and support to CYA, as authorized by the Special Education Division of CDE;
  - Identifying and developing suggested draft protocols and a best practices model for providing monitoring and technical assistance services for special education in youthful correctional settings;
  - Evaluating the training needs and priorities of educational personnel serving wards with exceptional needs at CYA; and,
  - Reviewing CYA's current special education local plan, policies, procedures and forms, and providing the Special Education Division of CDE with technical assistance by developing suggested draft revisions which comply with state and federal special education laws and reflect best practices in a correctional setting.
- Requires that the technical assistance provided by CSCE reflect adopted state and federal compliance standards, and requires that reviews and assessments include, but

not be limited to, the following special education services for wards at CYA with exceptional needs:

- Identification and assessment of wards with exceptional needs;
- Parent notification, consent and participation;
- Individual educational plan development and content, including behavior intervention and transition plans;
- Assessment of ward progress;
- Provision of services in the least restrictive environment maximizing inclusion;
- Services to pupils not proficient in English; and,
- Observance of procedural safeguards, and compliance with state and federal law.

- Provide interim status reports on the services received from CSCE to the Department of Finance and to the Legislature commencing no later than one year after entering into the interagency agreement and annually thereafter until the termination of the agreement CDE, with assistance of the CSCE.

- Requires CDE to submit a report to the Legislature on the usefulness of CSCE services pursuant to the interagency agreement no later than December 1, 2006.

- Requires that the interagency agreement be funded with federal funds available to state agencies, and shall not reduce the federal allocation to CYA under the Individuals with Disability Education Act, and funds appropriated through the annual Budget Act.

- States that this new law shall only remain in effect until January 1, 2007; and as of that date, is repealed unless a later statute is enacted which extends or deletes that date.

Department of Corrections' Rulemaking Procedures

In general, existing law provides all regulations shall be adopted pursuant to the Administrative Procedures Act but exempts California Department of Corrections (CDC) regulations relating to pilot programs or imminent danger. In addition, existing law exempts emergency regulations from certain requirements of the Administrative Procedures Act.

SB 563 (Morrow), Chapter 141, makes changes recommended by the California Law Revision Commission to the CDC's emergency rulemaking authority. Specifically, this new law:

- Adds a definition of "pilot program".

- Specifies that procedures for adopting a pilot program and emergency regulations also apply to the amendment or repeal of such regulations.

- Extends the period for Office of Administrative Law review of an emergency regulation promulgated by the CDC on the basis of its operational needs, rather than on the basis of an emergency.

Transfer of California Youth Authority Wards

Presently, there are approximately 80 persons who were originally committed to the California Youth Authority (CYA) as juvenile offenders but subsequently came within the jurisdiction of the California Department of Corrections (CDC) for having committed a criminal offense in a CYA institution after their 18th birthday. After serving their adult court sentence, these inmates are transferred back to CYA as CYA retains jurisdiction over the inmate. While some inmates desire to benefit from the available educational and vocational opportunities, others do not.

SB 768 (McPherson), Chapter 476, authorizes the Director of the CYA to transfer to CDC any person over 18 years of age who is scheduled to be returned, or has been returned, from CDC after serving a sentence imposed for committing a felony while in CYA custody. Specifically, this new law:

- Authorizes the Director of CYA to transfer to CDC any person 18 years of age or older who is subject to the custody, control, and discipline of CYA and scheduled to be returned, or has been returned, from an institution under the jurisdiction of CDC after serving a sentence imposed for committing a felony while in CYA custody.

- Provides that no person shall be transferred until and unless the person voluntarily, intelligently, and knowingly executes a written consent to the transfer, which shall be irrevocable.

- Before being returned to CYA, a person in the custody of CDC who is scheduled for return shall meet personally with a CYA parole agent or other appropriate staff member. The staff member shall explain, using language clearly understandable to the person, all of the following:

  - What will be expected from the person when he or she returns to a CYA institution in terms of cooperative, daily-living conduct and participation in applicable counseling, academic, vocational, work experience, or specialized programming.

  - The conditions of parole and how those conditions will be monitored and enforced while the person is in the custody of CYA.

- The right to voluntarily and irrevocably consent to continue to be housed in an institution under the jurisdiction of CDC instead of being returned to CYA.

- Provides that if a person consents to being housed in CDC, he or she shall be subject to CDC rules and regulations. The Youthful Offender Parole Board (YOPB) shall continue to determine parole eligibility; however, the YOPB shall not order any programming that is unavailable in the state prison where the person is housed or deny parole based solely on the failure to participate in programs that are unavailable.

- Provides upon notification by CDC that the person should no longer be housed in state prison, CYA shall immediately take custody of the person.

- Requires any person housed in CDC pursuant to this new law who has not attained a high school diploma or its equivalent to participate in educational or vocational programs, to the extent such programs are available.

Board of Prison Terms: Parole Hearings

Recently, the Inspector General (IG) issued a report noting the number of cases awaiting a parole consideration hearing. The report stated in part: "the Board of Prison Terms (BPT) backlog of hearings is so large that most of the hearings are delinquent. Although the BPT does not have reliable data for estimating its backlog, it is indisputable that the backlog is significant." According to information compiled from the institutions, the backlog increased from 204 on June 30, 1998, to 695 on June 30, 1999. The BPT staff projects the backlog to increase to 1050 by June 30, 2000. Because of the backlog most of the hearings are delinquent by more than six months.

The most recent anecdotal information indicates that the backlog has grown significantly and now numbers more than 2,000, with more than one-year delays. For example, a person who receives a one-year denial would not get his or her next hearing for more than two years. While there have been BPT vacancies that have contributed to the problem, the IG found that the BPT has a practice of routinely transferring Friday hearings to other days of the week.

SB 778 (Burton), Chapter 131, authorizes the BPT, until December 31, 2003, to conduct life parole consideration hearings by panels consisting of at least one commissioner, and requires each commissioner to participate in parole hearings each work day. Specifically, this new law:

- Authorizes BPT, on an emergency basis until December 31, 2003, to conduct life parole consideration or life rescission hearings by panels consisting of at least one commissioner. In the event of a tie vote, the matter shall be referred to the full BPT for a decision.

- Prohibits BPT from revoking a parole decision unless BPT finds that the parole panel made an error of law or fact, or new information has been presented to BPT where there is a substantial likelihood of a different decision upon re-hearing.

- Requires BPT to consult with the commissioners who conducted the parole consideration hearing prior to referring a parole decision for re-hearing, and requires a majority vote of BPT en banc at a public hearing before rescinding or referring a parole decision for re-hearing.

- Provides that any decision of the parole panel finding an inmate suitable for parole shall become final within 90 days of the date of the hearing.

- States legislative intent to increase the number of parole hearings conducted each month to eliminate the number of inmates awaiting hearings.

- Requires BPT to report monthly, as specified, on the number of hearings conducted in the previous month, the number scheduled in the current and subsequent months, the backlog of cases awaiting hearing, and progress toward eliminating the backlog.

- Requires each commissioner to participate in parole hearings each work day, except as specified.

- Requires the State Personnel Board (SPB) to conduct an investigation and review of the personnel practices of BPT with particular emphasis on the deputy commissioner classification including, but not limited to, hiring, transferring, promoting, and adverse actions.

- Requires SPB to complete the investigation and review of BPT and report to the Chair of the Senate Rules Committee, the Speaker of the Assembly, and the Governor, on or before December 1, 2001.

- Allows a parole consideration panel to return an inmate to a county other than to the county which was the last legal residence.

Peace Officers: Correctional Counselors

For nearly 20 years, every director of the California Department of Corrections (CDC) has designated correctional counselors with the CDC as correctional peace officers. As members of Bargaining Unit #6, those designated as correctional counselors have received all of the same benefits as the other members represented by the California Correctional Peace Officers Association (CCPOA).

SB 890 (McPherson), Chapter 119, designates correctional counselors employed by the CDC as peace officers, and allows them to carry firearms when not on duty. Specifically, this new law:

- Makes correctional counselor series employees of the CDC peace officers whose authority extends to any place in California while engaged in the performance of their duties or while carrying out the primary functions of their employment.

- Allows correctional counselors employed by the CDC to carry firearms while not on duty.

Custodial Facilities: Riverside County Deputy Sheriffs

Existing law provides that any deputy sheriff of a county of the first class (Los Angeles and San Diego Counties) is a peace officer whose authority extends to any place in California while engaged in the performance of his or her duties. These duties relate to custodial assignments and maintaining the operations of county custodial facilities. The duties also include the care, supervision, security, movement, and transportation of inmates.

SB 926 (Battin), Chapter 68, adds "any deputy sheriff of the County of Riverside" to the existing authority granted only to Los Angeles and San Diego Counties to employ deputy sheriffs to perform duties exclusively or initially relating to custodial assignments.

Corrections: Council on Mentally Ill Offenders

Every year, California spends $1.5 billion incarcerating the mentally ill. Mentally ill prisoners have a 94 percent chance of being arrested within two years of release. The Legislature has invested nearly $200 million over the last three years on innovative local programs to address this problem. Yet, there is no statewide agency responsible for dealing with this massive statewide problem.

The Little Hoover Commission found that local and state agencies have failed to integrate and coordinate mental health and criminal justice services.

SB 1059 (Perata and Ortiz), Chapter 860, establishes the Council on Mentally Ill Offenders within the Youth and Adult Correctional Agency (YACA). Specifically, this new law:

- Provides for the appointment of 11 members to the Council, including the Secretary of YACA, the Director of the Department of Mental Health, and law enforcement and mental health representatives.

- Provides that the Council's goal is to investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who either are offenders or are likely to become offenders.

- Requires the Council to report annually to the Legislature regarding its activities during the previous year and its recommendations for improving mental health and criminal justice programs.

- Establishes a sunset date of January 1, 2007.

COURT HEARINGS AND PROCEDURES

Victims: Courtroom Testimony

Existing law provides that in a case involving a sexual offense committed against a minor victim under the age of 11, the court may take special precautions to protect the minor from coercion, intimidation or undue influence as a witness. Such measures include allowing the victim to take breaks from questioning outside of the courtroom, relocating witnesses and parties within the courtroom to facilitate a more comfortable and personal environment for the child witness, and limiting the taking of testimony to the hours during which the child is normally in school.

AB 77 (Havice), Chapter 62, requires the court, in any case in which the defendant is charged with a violation of specified offenses, to take special precautions to provide for the comfort and safety of the victim. Specifically, this new law:

- Adds any crime of domestic violence committed against a person with a disability or a minor under the age of 11 to the list of crimes for which a judge must take the above precautions on behalf of the victim.

- Requires the court, in cases involving specified sex offenses, to take the above precautions when the victim is a person with a disability.

- Defines " person with a disability" by a cross-reference to existing law that describes a person having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

Domestic Violence: Protective Orders

Existing law provides that, in the course of a criminal prosecution for domestic violence, the court with jurisdiction over that matter has the discretion to issue orders restraining the defendant from contacting the victim, the victim's family, or witnesses in the case. Currently, a domestic violence restraining order has precedence over any other court order against the defendant and where there are both civil and criminal orders involving the same parties, a peace officer shall enforce the criminal order issued last.

AB 160 (Bates), Chapter 698, provides that a criminal order takes precedence over any and all civil and juvenile court orders with regard to the same defendant. Specifically, this new law provides that:

- A domestic violence restraining order issued by a criminal court has precedence in enforcement over any civil court order against a defendant.

- On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely

coordination of all orders against the same defendant and in favor of the same named victim or victims.

- The protocol shall include mechanisms for assuring appropriate sharing of information between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall require that any order permitting contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain any language violating a "no contact order" issued by a criminal court.

- A family or juvenile court may promulgate custody and visitation orders with respect to the defendant and his or her children consistent with this protocol.

- Where both civil and criminal orders exist regarding the same parties, a peace officer shall enforce the criminal order issued last, subject to the provisions of this section.

School Suspensions

Existing law specifies those acts for which a pupil may be suspended or expelled from school. Existing law also specifies the conditions of probation that may be imposed on a student who commits an assault while on school property.

AB 653 (Horton), Chapter 484, provides guidelines for the expulsion or suspension of students who aid and abet assaults and batteries that occur on school grounds and authorizes courts to order minors involved in such behavior to attend counseling. Specifically, this new law:

- Allows the superintendent or the principal of a school to suspend a pupil for aiding or abetting the infliction or attempted infliction of physical injury to another person.

- Allows the superintendent or the principal of a school to suspend or expel a pupil adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury.

- Provides that in appropriate circumstances, alternatives to suspension or expulsion including, but not limited to, counseling and an anger management program, may be required of a pupil.

- Provides that if a minor commits either an assault or battery on school property, the court may, in addition to any other fine, sentence, disposition, or condition of probation, order the minor to attend counseling at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay; however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling required by this new law.

Sexually Violent Predators: Local Detention Facilities

Existing law requires a person detained for a criminal trial or a person convicted and serving his or her sentence to be separated from persons committed upon a civil process. Sexually Violent Predator (SVP) Act proceedings are civil in nature. Existing law does not specify whether or not SVPs shall be segregated from the general population of a detention facility.

AB 659 (Correa), Chapter 248, requires county jails to house civilly committed persons classified as SVPs in administrative segregation. Specifically, this new law:

- Provides that "administrative segregation" is defined as separate and secure housing that does not involve any deprivation of privileges other than what is necessary to protect the inmates and staff.

- Allows civilly committed persons classified as SVPs to waive placement in administrative segregation and be placed with inmates charged with similar offenses or with similar criminal histories based on specified objective criteria.

Criminal Procedure

A defendant in a misdemeanor case may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure based on specified grounds. In Ellis v. Municipal Court (1995) 33 Cal.App. 4th 653, the Court of Appeal held that a stay pending appeal from denial of a suppression motion is not automatic. The trial court has discretion to grant or deny a stay of the trial.

AB 1304 (Rod Pacheco), Chapter 231, specifies that if a defendant in a misdemeanor case appeals the denial of his or her motion for a return of property or to suppress evidence, the trial court has discretion to grant a stay of the trial pending disposition of the appeal.

Post-Conviction DNA Testing

SB 1342 (Burton), Chapter 821, Statutes of 2000, required the court to grant a motion for DNA testing under specified conditions for any person convicted of a felony currently serving a term of imprisonment. SB 1342 also requires the appropriate governmental entity to preserve any biological material secured in a criminal case, except as specified.

SB 83 (Burton), Chapter 943, establishes a procedure for the court to appoint counsel for an indigent person in order to investigate and file a motion for post-conviction DNA testing. Specifically, this new law:

- Allows an indigent convicted person to request appointment of counsel by sending a written request for post-conviction DNA testing to the court. In the request, the

person must assert that he or she was not the perpetrator of the crime, that DNA testing is relevant to the issue of innocence, and whether counsel was previously appointed.

- Requires the court to return the request for counsel to the convicted person if any of the required information is absent and advise the person that the request cannot be considered without the missing information.

- Requires the court to appoint counsel to investigate and, if appropriate, file a motion for post-conviction DNA testing if the convicted person is indigent, the request contains the required information, and counsel has not been previously appointed. The appointment is discretionary if counsel has been previously appointed.

- States that nothing in this new law shall be construed to provide for a right to the appointment of counsel in a post-conviction collateral proceeding, or to set a precedent in any context other than post-conviction DNA proceedings.

- Requires that the motion for post-conviction DNA testing reveal the results of any prior DNA testing and state whether a motion for DNA testing has previously been filed.

- Clarifies that a hearing on a motion for post-conviction DNA testing shall be heard by the judge who accepted the plea of guilty or no contest if the person was convicted by entry of a plea.

- Prohibits the waiver of the right to file a motion for post-conviction DNA testing.

Battered Women's Syndrome

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

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

Women convicted of murder before passage of AB 785 might have been convicted of manslaughter instead of murder had BWS evidence been introduced at their trial. As a result, a

number of women convicted prior to 1992 are serving sentences that are substantially longer than those woman convicted today of the identical offense.

SB 799 (Karnette), Chapter 858, allows a writ of habeas corpus to be prosecuted on the grounds that evidence relating to BWS was not introduced at the trial, and had it been introduced, the results of the proceeding would have been different. Specifically, this new law:

- Provides that a writ of habeas corpus may be prosecuted on the basis that evidence relating to BWS, as defined, was not introduced at the trial relating to the prisoner's incarceration, and was of such substance that had it been introduced there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different.

- Limits application to judgments of conviction for the crime of murder resulting from a plea entered or a trial commenced prior to January 1, 1992.

- Allows a petition for habeas corpus to be denied if a petition filed prior to the effective date of this new law was denied on the grounds that the omission of evidence relating to BWS was not prejudicial.

- States that this new law shall only be in effect until January 1, 2005.

CRIME PREVENTION

Subsequent Arrest Notification

Under existing law, the Department of Justice (DOJ) is authorized to provide the criminal record of conviction for specified offenses, including elder abuse, to the employer of a person who provides in-home domestic care for an elderly or disabled adult. Existing law does not allow the DOJ to provide the same employer with subsequent arrest information which occurs after the initial background check was completed.

AB 530 (Reyes), Chapter 845, authorizes the DOJ to provide subsequent arrest notification to the employer of an unlicensed person who provides non-medical domestic or personal care to an aged or disabled adult in the adult's own home. Unrelated provisions of this new law extend the sunset date on the Central Valley Rural Crime Prevention Program until July 1, 2002, and it shall be repealed as of January 1, 2003 unless another statute deletes or extends that date.

DNA Data Bank

The DNA and Forensic Identification Data Base and Data Bank Act of 1998 provides for the collection of specified biological samples from certain convicted sex offenders and violent criminals in order to more effectively identify and apprehend the perpetrators of unsolved crimes.

AB 673 (Migden), Chapter 906, adds residential burglary, residential robbery, and robbery of a transit operator, carjacking, arson, and attempts to commit these offenses to the list of specified offenses requiring a convicted person to give samples to law enforcement for the purpose of deoxyribonucleic acid (DNA) identification analysis. Specifically, this new law:

- Makes it an alternate felony/misdemeanor to use an offender's DNA sample or profile for any purpose other than criminal identification or exclusion purposes, or to disclose DNA information to an unauthorized person or agency.

- Makes the use of an offender's DNA sample or profile for any purpose other than criminal identification or exclusion for the purpose of financial gain punishable by a fine of three times the gain or $10,000, whichever is greater.

- Makes the Department of Justice (DOJ) liable for use of an offender's DNA sample or profile for any purpose other than criminal identification or exclusion purposes, or to disclose DNA information to an unauthorized person or agency in the amount of $5,000 for each violation with a limit of $50,000.

- States that this new law shall be the sole and exclusive remedy against the DOJ and its employees for the misuse of DNA samples or information, and a DOJ employee violating this new law shall be absolutely immune from civil liability.

- States that it is not a violation of this new law to release DNA forensic information in the course of a criminal prosecution, as specified, and allows specified forensic laboratories to release anonymous DNA information for the purpose of training, research, or quality control.

Background Checks in Domestic Violence Restraining Order Cases

When a domestic violence victim requests a restraining order, the judge is not currently required to check the prior civil or criminal history of the respondent/defendant. Therefore, the judge may not know if the respondent/defendant has an extensive history of violence or violations of prior restraining orders. Consequently, the judge determines whether or not to issue a restraining order without having a complete history of the respondent/defendant.

A Massachusetts study found that many respondents/defendants have an established pattern of violent behavior. Almost one-half had previously committed a violent offense; one in seven had a prior criminal record of violating a restraining order. The study concluded that a civil restraining order defendant's prior criminal history has a significant impact on his/her likelihood of violating the order. The data shows that those with criminal records are more than twice as likely to violate restraining orders.

SB 66 (Kuehl), Chapter 572, requires a civil, criminal, or juvenile court to conduct a background check of the proposed subject of the restraining order (RO) to determine if he or she has a history of violence or RO violations prior to issuing a RO. Specifically, this new law:

- Requires the court to conduct a search prior to a domestic violence RO hearing in civil or juvenile court to determine if the person to be restrained:

  - Has a prior criminal conviction or convictions for a violent or serious felony, or a misdemeanor conviction involving domestic violence, weapons, or other violence;

  - Has outstanding warrants;

  - Is currently on probation or parole; or,

  - Is the subject of any current or prior restraining orders or has violated a prior restraining order.

- Requires the search to include all records and databases readily available, including:

- The Violent Crime Information Network (VCIN);
- The Supervised Release File;
- The state summary criminal history information maintained by the Department of Justice (DOJ);
- The Federal Bureau of Investigation's (FBI) nationwide database; and
- Locally maintained criminal history records or databases.

- Requires the court to consider the information from the criminal conviction search in determining whether to issue a restraining order and appropriate child custody and visitation orders.

- Allows the parties to request the search information considered by the court in issuing or denying the order, and requires the court to release the information. The court is required to admonish the parties that it is unlawful to willfully release the information. A party is allowed to release the information to his or her counsel, court personnel, or court-appointed mediators.

- Requires the court to store any information relied upon by the court in a confidential file. The information in the confidential files shall be disclosed to court-appointed mediators or child custody evaluators.

- Requires the clerk of the court to notify law enforcement of any outstanding warrants and law enforcement to take all actions necessary to execute the warrant.

- Requires the clerk of the court to immediately notify the parole agent or probation officer of the person to be restrained of the RO if issued and of any other information obtained through the search that the court deems is appropriate. The parole agent or probation officer is required to take all actions necessary to revoke parole or probation if appropriate.

- Provides that the granting of a RO shall not be delayed by the search; and if the court finds that a protective order should be granted based on the affidavit submitted by the person seeking the RO, the search shall be conducted prior to the hearing on the RO.

- Requires the district attorney (DA) in domestic violence cases to perform a thorough investigation of a defendant's history through the above-mentioned databases to find prior convictions for domestic or other violence, weapons offenses, and any current protective or ROs. The DA is required to provide the information to the court at the arraignment of in-custody defendants and upon consideration of any plea agreement.

- Requires the DA to send information about a domestic violence conviction or RO to any other court that has issued a RO restraining the defendant and involving the same or related parties.

Proposition 36: Funding for Drug Testing

In 2000, the voters overwhelmingly passed Proposition 36 that required treatment of nonviolent drug offenders rather than incarceration. One of the principal criticisms of Proposition 36 by opponents was that the initiative made no provision for funding drug testing. The language of Proposition 36 explicitly prohibited using specified funds for such testing. During legislative hearings, the sponsors of Proposition 36 stated that while recognizing the value of testing as a tool to assess the progress of a client in treatment, it was their intent to ensure that the funding went directly to historically under-funded treatment providers.

SB 223 (Burton), Chapter 721, creates the Substance Abuse Testing and Treatment Accountability Program to assist counties in preserving drug testing as part of their treatment and recovery system of services. Specifically, this new law:

- Appropriates $8.4 million from the Federal Substance Abuse Prevention and Treatment Block Grant during the 2000-01 fiscal year to be used by DDAP for drug testing and other purposes.

- States that where drug treatment is a condition of probation or parole, drug testing shall be used as a treatment tool. The results of any urinalysis shall not be given greater weight than other aspects of a person's treatment program. Specifies that drug treatment programs must be licensed or certified by California.

- Defines further the term "drug-related condition" of probation or parole to include the drug treatment regimen, employment, vocational training, educational programs, and counseling.

- Expands the types of activities that constitute drug-related probation and parole violations from committing a nonviolent drug possession offense to include a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or other specified activities.

- Requires proof that a person is unamenable to all forms of drug treatment before probation or parole may be revoked on these grounds. Eliminates the requirement that a probationer or parolee prove by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable to avoid revocation. Parole

shall be revoked if the violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

- Exempts DDAP from specified provisions of the Administrative Procedure Act until July 1, 2002.

- Clarifies that the term "drug treatment program" or "drug treatment" includes programs operated by the Department of Veterans Affairs (DVA). Exempts programs operated by DVA from licensing or certification provisions provided by this new law.

Penalties for Driving under the Influence

Judges have a variety of options under current law to address the problem of drinking and driving, including imposing fines and jail time, providing treatment for substance abuse, and rescinding driver's licenses. However, despite significant progress in reducing the incidence of driving under the influence (DUI); in 1999, there more than 190,000 DUI arrests. Of these arrests, more than 25 percent involved repeat offenders. These numbers highlight the need to continue efforts to assess, treat and make accountable those individuals who become intoxicated and drive.

SB 776 (Torlakson), Chapter 857, requires the Department of Motor Vehicles (DMV), in consultation with other agencies, to review the effectiveness of current programs, penalties, and sanctions relating to DUIs. Specifically, this new law:

- Requires the DMV, in consultation with law enforcement, public defenders, licensed DUI programs, and other appropriate entities to review scientific and other empirical evidence concerning the effectiveness of current programs, procedures, sanctions, fines, and fees relating to DUIs.

- Requires the DMV to recommend to the Legislature methods to increase individual accountability, improve treatment programs, sanctions, and public education, and reduce recidivism on or before July 1, 2002.

- Directs the DMV to recommend statutory changes that would modify the responsibilities of agencies or the courts so that violators will be sanctioned and treated appropriately.

- Expires on January 1, 2003.

Corrections: Council on Mentally Ill Offenders

Every year, California spends $1.5 billion incarcerating the mentally ill. Mentally ill prisoners have a 94 percent chance of being arrested within two years of release. The Legislature has

invested nearly $200 million over the last three years on innovative local programs to address this problem. Yet, there is no statewide agency responsible for dealing with this massive statewide problem.

The Little Hoover Commission found that local and state agencies have failed to integrate and coordinate mental health and criminal justice services.

SB 1059 (Perata and Ortiz), Chapter 860, establishes the Council on Mentally Ill Offenders within the Youth and Adult Correctional Agency (YACA). Specifically, this new law:

- Provides for the appointment of 11 members to the Council, including the Secretary of YACA, the Director of the Department of Mental Health, and law enforcement and mental health representatives.

- Provides that the Council's goal is to investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who either are offenders or are likely to become offenders.

- Requires the Council to report annually to the Legislature regarding its activities during the previous year and its recommendations for improving mental health and criminal justice programs.

- Establishes a sunset date of January 1, 2007.

CRIMINAL JUSTICE PROGRAMS

Domestic Violence Program Funding

Existing law provides that the Office of Criminal Justice Planning (OCJP) may expend funds for local domestic violence programs, subject to the availability of funds.

AB 664 (Dutra), Chapter 707, appropriates $2 million to the OCJP to fund local domestic violence programs that previously received funds but were not selected for funding in 2001. Specifically, this new law:

- States that it is the intent of the Legislature that when OCJP provides local assistance to existing service providers to maintain and expand comprehensive services and emergency shelters for victims of domestic violence and their children, that OCJP shall take into consideration specified factors.

- States that it is the intent of the Legislature that OCJP shall provide technical grant assistance for a currently funded service provider applying for a grant from OCJP before de-funding that provider.

High Technology Theft Apprehension and Prosecution Program

Existing law establishes the High Technology Crime Advisory Committee (HTCAC) for the purpose of formulating a comprehensive strategy for addressing high technology crime throughout California and to advise the Office of Criminal Justice Planning (OCJP) on the appropriate disbursement of funds to regional task forces.

Existing law also establishes the High Technology Theft Apprehension and Prosecution Program (HTTAPP), a public-private administrative body under the auspices of the OCJP to distribute funding to develop regional high technology crime units in California law enforcement agencies.

AB 821 (Simitian), Chapter 556, authorizes the OCJP to allocate up to five percent of the funds available in the HTTAPP Trust Fund in order to fund education and training programs for prosecutors and law enforcement engaged in the investigation and prosecution of high-technology crime. This new law also adds a representative of the banking industry to the HTCAC.

Asian Pacific Islander Anti-Hate Crimes Program

California does not have an established program for educating people in the Asian American communities about hate crimes. The California Attorney General's Civil Rights Commission on Hate Crimes Report found that victims of hate crimes do not report hate crimes partly due to a lack of knowledge and English language proficiency. According to the report, at local forums victims and family members of victims testified that they knew nothing about hate crime laws

and were not aware of the need to raise the issues when reporting the crime. The lack of awareness was widespread among new immigrants and people who did not speak English.

The study also found that greater awareness about civil remedies for hate incidents and hate crimes will improve the identification and reporting of hate crimes. The report concluded by recommending that the Department of Justice (DOJ) design a multilingual public education campaign to inform people about hate crimes and hate incidents and make them aware of community resources and criminal and civil remedies.

AB 1312 (Nakano), Chapter 566, creates an Asian Pacific Islander (API) Anti-Hate Crimes Program. Specifically, this new law:

- Provides that the DOJ develop the API Anti-Hate Crimes Program in partnership with a community-based organization designated by the DOJ.

- Defines "API" to include, but not be limited to, people of Chinese, Japanese, Filipino, Korean, Vietnamese, Asian American, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian descent.

- Provides that the DOJ create brochures and workbooks on hate crimes for API communities, and conduct training seminars on hate crimes for community organizations.

- Requires the DOJ to submit a report to the Legislature by March 1, 2004 on the program.

- Expires on January 1, 2005.

Drug Endangered Child Response Teams

Clandestine manufacture and distribution of methamphetamine and other controlled substances in home laboratories has created a public health and safety crisis in California. In California, 85 percent of clandestine laboratories seized are located in residences. Increasingly, children are present in these home laboratories where they are exposed to highly explosive, deadly chemicals used in drug manufacturing. In Los Angeles County in 1999, children were present in 40 percent of the labs seized by law enforcement. More than 300 children were placed in protective custody as a result of drug endangerment.

To help protect the children who live in homes where clandestine drug labs are located, seven counties established multi-agency Drug-Endangered Child Response teams consisting of representatives from law enforcement, district attorney's offices, and children's services agencies. These teams were funded by the state's Byrne Formula Grant Anti-Drug Abuse fund. The team approach not only ensures that the children living in homes containing clandestine drug

laboratories receive immediate care and referrals to specialized programs but that specially-trained prosecutors handle these cases to reduce the need to have the children testify as witnesses at trial.

AB 1614 (Washington), Chapter 853, provides that the Office of Criminal Justice Planning (OCJP) may fund countywide Drug-Endangered Children (DEC) programs in the Counties of Butte, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Shasta. Specifically, this new law:

- Declares that the Counties of Los Angeles, San Diego, Orange, Riverside, San Bernardino, Butte, and Shasta have implemented multi-agency response teams consisting of law enforcement, prosecution and health or children's services, that respond effectively to clandestine laboratories where children are present.

- Provides that OCJP may fund countywide DEC programs in the Counties of Los Angeles, San Diego, Orange, Riverside, San Bernardino, Butte, and Shasta. Any funds that remain after funding the existing countywide programs may be distributed to up to five additional counties to fund DEC programs.

- Establishes in OCJP a pilot program of technical and financial assistance for counties, designated the "California Drug Endangered Child Protection Act" (Act). Any funds appropriated to OCJP shall be administered and disbursed by the executive director who is authorized to allocate funds to counties in which the Act was implemented.

- Provides that the allocation of funds shall be made upon application executed by the county's district attorney, or county sheriff, if the sheriff was currently the lead agency in the county's existing DEC program, and approved by its board of supervisors. Funds allocated shall not supplant local funds that would, in the absence of the Act, be made available to support the function of this program.

- Provides that district attorneys, or county sheriffs, receiving allocated funds shall coordinate multi-agency teams in cooperation with local, state and federal law enforcement agencies and the county departments of health and children's services.

- Requires district attorneys receiving funds to concentrate enhanced prosecution efforts and resources upon individuals who endanger children through exposure to the clandestine manufacture of controlled substances, their precursors, and analogs. Felony child endangerment charges shall be filed where appropriate.

- Provides that commencing one year after the effective date of this bill, the executive director of OCJP shall make an annual report to the Legislature on the fiscal and operational status of the program.

- Provides for a sunset date of July 1, 2006 and is repealed as of January 1, 2007 unless a later-enacted statute extends the dates.

Proposition 36: Funding for Drug Testing

In 2000, the voters overwhelmingly passed Proposition 36 that required treatment of nonviolent drug offenders rather than incarceration. One of the principal criticisms of Proposition 36 by opponents was that the initiative made no provision for funding drug testing. The language of Proposition 36 explicitly prohibited using specified funds for such testing. During legislative hearings, the sponsors of Proposition 36 stated that while recognizing the value of testing as a tool to assess the progress of a client in treatment, it was their intent to ensure that the funding went directly to historically under-funded treatment providers.

SB 223 (Burton), Chapter 721, creates the Substance Abuse Testing and Treatment Accountability Program to assist counties in preserving drug testing as part of their treatment and recovery system of services. Specifically, this new law:

- Appropriates $8.4 million from the Federal Substance Abuse Prevention and Treatment Block Grant during the 2000-01 fiscal year to be used by DDAP for drug testing and other purposes.

- States that where drug treatment is a condition of probation or parole, drug testing shall be used as a treatment tool. The results of any urinalysis shall not be given greater weight than other aspects of a person's treatment program. Specifies that drug treatment programs must be licensed or certified by California.

- Defines further the term "drug-related condition" of probation or parole to include the drug treatment regimen, employment, vocational training, educational programs, and counseling.

- Expands the types of activities that constitute drug-related probation and parole violations from committing a nonviolent drug possession offense to include a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or other specified activities.

- Requires proof that a person is unamenable to all forms of drug treatment before probation or parole may be revoked on these grounds. Eliminates the requirement that a probationer or parolee prove by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable to avoid revocation. Parole shall be revoked if the violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

- Exempts DDAP from specified provisions of the Administrative Procedure Act until July 1, 2002.

- Clarifies that the term "drug treatment program" or "drug treatment" includes programs operated by the Department of Veterans Affairs (DVA). Exempts programs operated by DVA from licensing or certification provisions provided by this new law.

Juvenile Justice System Data Collection

It has been widely acknowledged that the State of California lacks an effective juvenile justice data collection system. The Little Hoover Commission, the California Task Force to Review Juvenile Crime, and the Legislative Analyst have all documented the lack of any meaningful data. In 1999, the California Youth Authority released the "Long-Range Plan for Juvenile Justice Data Collection, Analysis, and Dissemination in California" which set forth a number of comprehensive recommendations for the development and maintenance of an offender-based data system.

Furthermore, there is no statewide data on the disposition of cases involving minors prosecuted in adult criminal courts. The decision to prosecute a minor as an adult has major consequences, both for the minor subject to adult jurisdiction and for the agencies of the justice and correctional systems. In the absence of statewide information, it is impossible to measure these burdens or their related costs and the impact of the passage of the Juvenile Crime Initiative, Proposition 21.

SB 314 (Alpert), Chapter 468, directs the Department of Justice (DOJ) to collect statistical data regarding minors who are subject to the jurisdiction of the adult criminal court. Specifically, this new law:

- Adds to the data collection responsibilities of the DOJ by requiring statistical information concerning administrative actions taken by law enforcement, judicial, penal and correctional agencies in dealing with a minor who is the subject of a petition or hearing in the juvenile court to transfer his or her case to adult criminal court or whose cases are directly filed in adult criminal court.

- Requires the DOJ report to include statewide information regarding the annual number and outcomes of fitness hearings pursuant to Welfare and Institutions Code Section 707, the annual number of minors whose cases are filed directly in adult criminal court, and the outcomes of cases involving minors who are prosecuted in adult criminal court. All data will be cross-referenced to information about the age, gender, ethnicity, and offense category of the minors.

- Requires the DOJ annual report published pursuant to Penal Code Section 13010 et. seq. to include the specified information beginning with the report due on July 1, 2003 for the preceding calendar year.

Elder Death Review Teams

The responsibility for responding to and preventing elder abuse and neglect lies within the community as a whole, and requires communication between the various agencies that deal with elder issues. A careful examination of elder fatalities provides an opportunity to develop education, prevention, and - if necessary - prosecution strategies that will lead to improved coordination of services for families and the elder population.

SB 333 (Escutia), Chapter 301, authorizes counties to establish interagency elder death review teams to assist local agencies in identifying and reviewing suspicious elder deaths and to foster communication between coroners, law enforcement and other agencies. Specifically, this new law:

- Provides for interagency elder death review teams to assist local agencies in identifying and reviewing suspicious elder deaths, and facilitate communication between coroners and other agencies involved in elder abuse and neglect cases.

- Specifies that the elder death review teams may consist of, but are not limited to, medical experts, coroners and medical examiners, law enforcement, staff from adult protective services, county staff who work with elders, community care licensing staff, geriatric mental health experts, and criminologists.

- Provides that an oral or written document shared within the team, produced by the team, or provided by a third party to the team is confidential and not discoverable by a third party.

- Allows members of the team to share with other team members information otherwise deemed confidential, privileged, or prohibited by law from disclosure. Any information shared is confidential.

- Authorizes the team to make a written request for information. Authorizes agencies to release certain information, otherwise prohibited by law, to the team, including medical and mental health information; information from elder abuse reports and investigations; criminal history information; reports by health practitioners concerning physical injury inflicted by abuse, assault, or a firearm; information held by probation officers; records relating to in-home services; and information normally covered by the attorney-client, physician-patient, or psychotherapist privilege.

Corrections: Council on Mentally Ill Offenders

Every year, California spends $1.5 billion incarcerating the mentally ill. Mentally ill prisoners have a 94 percent chance of being arrested within two years of release. The Legislature has invested nearly $200 million over the last three years on innovative local programs to address this problem. Yet, there is no statewide agency responsible for dealing with this massive statewide problem.

The Little Hoover Commission found that local and state agencies have failed to integrate and coordinate mental health and criminal justice services.

SB 1059 (Perata and Ortiz), Chapter 860, establishes the Council on Mentally Ill Offenders within the Youth and Adult Correctional Agency (YACA). Specifically, this new law:

- Provides for the appointment of 11 members to the Council, including the Secretary of YACA, the Director of the Department of Mental Health, and law enforcement and mental health representatives.

- Provides that the Council's goal is to investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who either are offenders or are likely to become offenders.

- Requires the Council to report annually to the Legislature regarding its activities during the previous year and its recommendations for improving mental health and criminal justice programs.

- Establishes a sunset date of January 1, 2007.

CRIMINAL OFFENSES

Controlled Substances: Clonazepam

While clonazepam, a controlled substance, has a number of legitimate medical uses, it has been misused in a number of criminal cases throughout Southern California. More importantly, sexual predators can use this drug to incapacitate victims, causing amnesia in certain cases. In the last two years, this drug has been linked to eight sexual assaults. Existing law prohibits the unlawful possession for sale and sale of clonazepam, but the simple possession of clonazepam is not unlawful.

> **AB 98 (Zettel), Chapter 838,** makes the possession of specified benzodiazepines without a lawful prescription, including clonazepam, an alternate misdemeanor/infraction.

Identity Theft

In the early 1990's, the number of identity theft complaints to government, business and consumer groups greatly increased. In 1997, California was one of the first states to create the crime of identity theft. Prior to that time, law enforcement agencies had considered the creditor the victim, not the person whose identity had been stolen. Existing law provides that it is an alternate felony/misdemeanor for a person to willfully obtain the personal identifying information of another person and to use such information to obtain, or attempt to obtain, credit, goods, or services in the name of the other person without his or her consent.

"Personal identifying information" is defined as the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, maiden name, demand deposit account number, savings account number, or credit card number of an individual.

> **AB 245 (Wyland), Chapter 478,** eliminates the requirement that a perpetrator of identity theft obtain the victim's identifying information without authorization. This new law provides that it is an alternate felony/misdemeanor regardless of the manner in which the perpetrator obtained the information in order to commit identity theft.

Child Pornography

Existing law provides that every person who possesses or controls child pornography is guilty of a misdemeanor with imprisonment in the county jail up to one year or a fine not exceeding $2,500. If a person has a prior conviction, he or she is guilty of a felony and subject to imprisonment in the state prison for two, four, or six years.

> **AB 1012 (Corbett), Chapter 559,** allows enhanced punishment for a person convicted of a child pornography offense where the person has a prior conviction for specified sex crimes involving children.

Specifically, this new law provides that any person who possesses child pornography is guilty of a felony punishable by two, four, or six years in state prison if he or she has a prior conviction for:

- Possessing, producing or publishing child pornography with the intent to distribute or exhibit for commercial purposes.

- Using a minor to create child pornography for commercial purposes.

Driving under the Influence Penalties

A person convicted of vehicular manslaughter while intoxicated is treated as if the conviction never occurred once 10 years has expired. If he or she is arrested for a new driving under the influence (DUI) charge more than 10 years after committing vehicular manslaughter while intoxicated, he or she faces only a misdemeanor charge with a maximum penalty of six months in jail.

In Ventura County, a district attorney had to treat a defendant prosecuted in 2000 as a first-time DUI offender even though she had killed three boys and injured two others while driving intoxicated in 1989. The defendant had spent much of the time between 1989 and 2000 incarcerated for the 1989 victims' deaths.

AB 1078 (Jackson), Chapter 849, allows a district attorney to charge a DUI as a felony if the person has a prior conviction, of any age, for vehicular manslaughter while intoxicated. Specifically, this new law:

- Creates an alternate felony-misdemeanor for any person guilty of a DUI or DUI with injury if the person has a prior felony conviction for vehicular manslaughter while intoxicated or gross vehicular manslaughter while intoxicated.

- Reinstates the Department of Motor Vehicle's authority to revoke a person's license for up to five years, and requires the person to complete a program up to 30 months in length before receiving his or her license if he or she is convicted of a DUI and has a prior felony conviction for DUI with injury or any vehicular manslaughter offense.

Mischievous Animals: Death or Great Bodily Injury

Originally enacted in 1872, existing law relating to mischievous animals only holds the owner of the animal criminally liable if an attack results in death. Later enacted provisions relating to dogs trained to fight or kill recognize that the potential danger does not depend upon legal title and thus apply to "any person owning or having custody or control" of the dog.

AB 1709 (Migden), Chapter 257, expands the scope of the existing offense involving mischievous animals to include a person having custody or control of the animal and to the infliction of serious bodily injury. Specifically, this new law:

- Provides that in addition to an owner of a mischievous animal, any person having custody or control of such an animal who, knowing the animal's propensities, willfully suffers the animal to go at large, or keeps the animal without ordinary care, and the animal kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

- Provides that in addition to an owner of a mischievous animal, any person having custody or control of such an animal who, knowing the animal's propensities, willfully suffers the animal to go at large, or keeps the animal without ordinary care, and the animal causes serious bodily injury to any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of an alternate felony-misdemeanor.

Firearm Storage

A nationwide study found that 35 percent of homes with children have at least one firearm. Further, statistics show that firearms cause one in every four deaths of adolescents between the ages of 15 to 19. This age group is the second most likely age group to receive fatal and nonfatal injuries due to firearms, with only slightly lower rates than 20- to 24-year-olds. Further, 15- to 19-year-olds have the highest rate of accidental fatal and nonfatal firearm-related injuries.

Existing law provides criminal penalties for a firearm owner who stores his or her firearm in a manner that permits a child under the age of 16 to access the firearm, if the child takes the firearm and uses it in certain ways. Specifically, existing law provides an alternate felony-misdemeanor if a person keeps a loaded firearm on his or her premises, knowing that the firearm is accessible to a child, and the child takes the loaded firearm and causes death or great bodily injury to another person. Further, existing law provides a misdemeanor if the child takes the loaded firearm and either injures another person, brandishes the firearm, or takes the firearm to a public place. Existing law also provides a misdemeanor if a person stores any firearm, loaded or unloaded, knowing the firearm is accessible to a child, and the child takes the firearm off-premises.

SB 9 (Soto), Chapter 126, expands the scope of the firearm storage laws by changing the definition of a "child" from a person under age 16 to a person under age 18. In addition, SB 9 creates a new misdemeanor for any person who stores a firearm so that a child has access to the firearm if the child then takes the firearm to school or a school event. Specifically, this new law:

- Changes the definition of a "child" from a person under age 16 to a person under age 18 for the purposes of "criminal storage in the first degree", "criminal storage in the second degree", and negligent storage of a firearm if the firearm is taken off-premises by a minor.

- Provides that a person is guilty of a misdemeanor if he or she keeps a firearm on his or her premises, knows or should know that a child under age 18 could take the

firearm without the permission of a parent or guardian, and the child takes the firearm to school or to a school event.

- Requires licensed gun dealers to post specified language explaining the above laws.

Identity Theft

Existing law provides that it is an alternate felony/misdemeanor for a person to willfully obtain the personal identifying information of another person and to use such information to obtain, or attempt to obtain credit, goods, or services in the name of the other person without his or her consent. In recent years, legislation has been enacted to assist victims of this crime to clear their names. Penal Code Section 530.6 provides that a victim of identity theft may clear his or her name through a judicial process after obtaining a police report of an identity theft or related crime. Also, Penal Code Section 851.8 sets forth a process for a victim of identity theft accused of a crime to obtain a determination of factual innocence and to allow his or her criminal arrest records to be sealed and expunged.

SB 125 (Alpert), Chapter 493, allows an identity theft victim to obtain information about unauthorized requests for credit that have been made in his or her name. Specifically, this new law:

- Requires a credit card issuer to provide to the person or law enforcement officer copies of the wrongdoer's application information upon the request of a person who has filed and obtained a police report concerning identity theft. The requesting person is required to supply the police report and other validating information.

- Requires the information to be provided without charge and within 10 business days of the request.

- Requires the authorization of the person who is the subject of such information for information to be sent to a law enforcement officer. If such authorization is required, the credit card issuer shall supply a blank statement to the requester within two days of the request. The 10 business days mentioned above would not commence until the credit card issuer has received the police report, statement and identifying information.

- Provides the same process described above for supervised financial institutions, i.e., a state or federally regulated bank, savings association, savings bank, or credit union, or a subsidiary of any of the above.

- Provides the same process as described above for California finance lenders.

- Makes conforming amendments to California Governmental Access to Financial Records provisions to accommodate this new law.

California Freedom of Access to Clinic and Church Entrances Act

California leads the nation in abortion clinic arsons and bombings, with more than twice as many as in Texas, the second most populous state. According to a recent survey, one-half of California abortion providers experienced anti-reproductive rights crimes between 1995 and 2000. Fifty percent of the providers who reported the crimes to the police were dissatisfied with the response.

SB 780 (Ortiz), Chapter 899, enacts the California Freedom of Access to Clinic and Church Entrances Act (California FACE Act) which provides criminal and civil penalties for injuring, intimidating, or interfering with a reproductive health services client or provider or a person entering a place of worship. This new law also enacts the Reproductive Rights Law Enforcement Act which requires the Attorney General to collect and analyze information regarding anti-reproductive rights crimes and requires the Commission on Peace Officer Standards and Training (POST) to train law enforcement officers about such offenses. The California FACE Act:

- Punishes as a misdemeanor any person who, by use of force, threat of force, or physical obstruction, attempts to or actually injures, intimidates, or interferes with any person because the person is a reproductive health services client or provider, or is entering a place of worship. Terms are defined as follows:
  - "Interferes with" is restricting a person's freedom of movement;
  - "Intimidate" is placing a person in reasonable apprehension of bodily harm to herself or himself or to another; and,
  - "Physical obstruction" is rendering ingress to or egress from a reproductive health services facility or a place of religious worship impassable or unreasonably difficult or hazardous to another person.
- Punishes as a misdemeanor any person who attempts to or actually damages or destroys the property of a person, entity, or facility because he or she is a reproductive health services client, provider, or facility, or the property of a place of religious worship.
- Provides that the state jurisdiction is concurrent with federal jurisdiction under the federal FACE Act, and provides that state law enforcement shall cooperate with federal authorities in prosecution and seek federal prosecution when appropriate.
- Provides a civil cause of action for injunctive relief and compensatory and punitive damages for the above-described conduct.

- Requires the court in which a criminal or civil proceeding is filed to take all action reasonably necessary to protect a party under this Act, including issuing restraining orders and allowing the plaintiff to use a pseudonym. Provides the restraining orders may include provisions prohibiting photographing the party.

The California FACE Act shall not be construed to:

- Impair constitutionally-protected activity or any other legally-protected activity;

- Provide exclusive civil or criminal remedies or preempt city or county laws;

- Interfere with federal, state, or local laws regulating the performance of abortions;

- Create additional or limit existing civil or criminal remedies for any activity that interferes with the exercise of any other rights protected by the United States or California Constitution; and,

- Negate or interfere with the laws relating to unlawful acts during labor disputes.

The Reproductive Rights Law Enforcement Act:

- Requires the Attorney General to:

  - Collect and analyze information relating to anti-reproductive rights crimes and make this information available to local law enforcement agencies and prosecutors.

  - Direct local law enforcement agencies to report information relating to anti-reproductive rights crimes to the Department of Justice;

  - Submit a report to the Legislature analyzing the information on or before July 1, 2003 and annually thereafter;

  - Develop a plan to prevent and prosecute anti-reproductive rights crimes. A report on the plan must be submitted to the Legislature by December 1, 2002;

  - Make a report to the Legislature in 2005 that evaluates the implementation of the Reproductive Rights Law Enforcement Act, contains any legislation recommended, details the plan developed to prevent and prosecute anti-reproductive-rights crimes, and recommends whether to extend or repeal the sunset date for the Act; and,

  - Consult with the Governor, POST, and other subject matter experts.

- Requires POST to develop a two-hour telecourse on anti-reproductive rights crimes and make the course available to all California law enforcement agencies as soon as practicable.

- Provides that the Reproductive Rights Law Enforcement Act sunsets on January 1, 2007.

DEATH PENALTY

Corrections: Authorization to Move Male Condemned Prisoners from San Quentin State Prison

Condemned male inmates are required by law to be housed at San Quentin State Prison. While Condemned Row at San Quentin was originally designed to house less than 70 inmates, it currently houses approximately 570. Due to the condition and physical structure of the 150-year-old prison, facilities are inadequate for condemned inmates who jeopardize the safety or security of staff and other inmates. In other prison populations, if an inmate presents a serious threat to public safety or security, he or she is sent to a Security Housing Unit. No such unit exists at San Quentin.

AB 1460 (Nation), Chapter 934, authorizes the California Department of Corrections (CDC) to move no more than 15 condemned men to secure condemned housing at the California State Prison, Sacramento and authorizes the CDC to move a condemned prisoner whose medical or mental health needs are so critical as to endanger the inmate or others to the California Medical Facility or other appropriate institution for medical or mental health treatment. Specifically, this new law:

- Allows condemned male inmates who, while in prison, commit specified offenses, or who, as a member of a gang or disruptive group, order others to commit any of those offenses to be housed at the California State Prison, Sacramento. The transfer may only occur following disciplinary sanctions and classification actions at San Quentin State Prison pursuant to CDC regulations.

- Specifies the following predicate offenses for purposes of that transfer: (a) homicide; (b) assault with a weapon or with physical force capable of causing serious or mortal injury; (c) escape with force or attempted escape with force; and, (d) repeated serious rule violations that substantially threaten safety or security. No more than 15 condemned inmates who have committed specified acts while in prison may be rehoused.

- Specifies that the condemned housing program at California State Prison, Sacramento, must be fully operational before the transfer of any condemned inmates.

- Provides that specialized training protocols for supervising condemned inmates shall be provided to staff and supervisors at the California State Prison, Sacramento, who supervise condemned inmates on a regular basis.

- Provides that a condemned male inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to CDC regulations, be housed in the California Medical Facility (Vacaville) or other appropriate institution

for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.

- Provides that condemned male inmates transferred from San Quentin to the California State Prison, Sacramento, or other facilities, shall have similar attorney-client access procedures that are afforded to condemned inmates housed at San Quentin.

- Provides that a condemned inmate housed outside of San Quentin pursuant to this new law shall be returned to San Quentin State Prison at least 60 days before his scheduled date of execution.

- Provides that prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180-degree housing unit facilities with an electrified perimeter shall be evaluated by the CDC for suitability for the secure housing and execution of condemned inmates.

Death Penalty Executions

Existing law provides that the warden of the state prison where an execution is to take place shall invite two physicians, the Attorney General, the members of the immediate family of the victim, and at least 12 reputable citizens. Current statutory requirements may present a dilemma for physicians: attend an execution and violate professional ethical principles or refuse participation and risk administrative action.

SB 129 (Burton), Chapter 71, deletes the requirement that two physicians be invited to an execution. Specifically, this new law:

- Deletes the requirement that the warden of the state prison where an execution is to take place shall invite two physicians.

- Provides that no physician or any other person invited to attend the execution, whether or not employed by the California Department of Corrections, shall be compelled to attend the execution.

- Provides that attendance of any physician shall be voluntary. A physician's refusal to attend the execution shall not be used in any disciplinary action or negative job performance citation.

DNA

DNA Laboratory Employees: Risk of Infectious Disease Transmission

A laboratory technician at the Department of Justice's (DOJ) DNA laboratory accidentally came into contact with blood that was being typed for DNA. In a hospital or correctional setting, existing law provides for testing for the HIV virus upon request by specified employees.

AB 453 (Correa), Chapter 482, permits DOJ laboratory employees who come into contact with blood, where there is the risk of transmission of infectious disease, to request testing of the blood sample for the acquired immune deficiency syndrome (AIDS) virus. Specifically, this new law:

- Permits any forensic scientist, criminalist, toxicologist, pathologist, or any other employee required to handle or perform DNA or other forensic evidence analysis within the scope of his or her duties who comes into contact with blood or other bodily fluids on the skin or membranes to seek an ex parte court order for authorized testing. Before filing a petition for testing, the requesting party shall make a reasonable effort to obtain the consent of the person whose blood or bodily fluids is to be tested

- Requires the court to promptly consider any petition filed. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the forensic evidence collected and the employee, the court shall order that the existing forensic evidence be tested for communicable diseases as provided for under existing law.

- Requires copies of the test results to be sent to the defendant or minor, each requesting employee named in the petition, and his or her employing agency, officer, or entity. A copy of the test results shall be sent to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

- Provides that the person shall be advised that he or she will only be informed of the HIV test results if he or she wishes to be so informed. Declining to be informed shall be documented. Refusing to sign such a form shall be construed as a request to be informed of the results.

- Includes the test results obtained pursuant to this new law in provisions of existing law pertaining to maintaining the confidentiality of test results, prohibiting test results from being admissible evidence in any criminal proceeding, and granting immunity from civil liability to specified persons.

DNA Data Bank

The DNA and Forensic Identification Data Base and Data Bank Act of 1998 provides for the collection of specified biological samples from certain convicted sex offenders and violent criminals in order to more effectively identify and apprehend the perpetrators of unsolved crimes.

AB 673 (Migden), Chapter 906, adds residential burglary, residential robbery, and robbery of a transit operator, carjacking, arson, and attempts to commit these offenses to the list of specified offenses requiring a convicted person to give samples to law enforcement for the purpose of deoxyribonucleic acid (DNA) identification analysis. Specifically, this new law:

- Makes it an alternate felony/misdemeanor to use an offender's DNA sample or profile for any purpose other than criminal identification or exclusion purposes, or to disclose DNA information to an unauthorized person or agency.

- Makes the use of an offender's DNA sample or profile for any purpose other than criminal identification or exclusion for the purpose of financial gain punishable by a fine of three times the gain or $10,000, whichever is greater.

- Makes the Department of Justice (DOJ) liable for use of an offender's DNA sample or profile for any purpose other than criminal identification or exclusion purposes, or to disclose DNA information to an unauthorized person or agency in the amount of $5,000 for each violation with a limit of $50,000.

- States that this new law shall be the sole and exclusive remedy against the DOJ and its employees for the misuse of DNA samples or information, and a DOJ employee violating this new law shall be absolutely immune from civil liability.

- States that it is not a violation of this new law to release DNA forensic information in the course of a criminal prosecution, as specified, and allows specified forensic laboratories to release anonymous DNA information for the purpose of training, research, or quality control.

Post-Conviction DNA Testing

SB 1342 (Burton), Chapter 821, Statutes of 2000, required the court to grant a motion for DNA testing under specified conditions for any person convicted of a felony currently serving a term of imprisonment. SB 1342 also requires the appropriate governmental entity to preserve any biological material secured in a criminal case, except as specified.

SB 83 (Burton), Chapter 943, establishes a procedure for the court to appoint counsel for an indigent person in order to investigate and file a motion for post-conviction DNA testing. Specifically, this new law:

- Allows an indigent convicted person to request appointment of counsel by sending a written request for post-conviction DNA testing to the court. In the request, the person must assert that he or she was not the perpetrator of the crime, that DNA testing is relevant to the issue of innocence, and whether counsel was previously appointed.

- Requires the court to return the request for counsel to the convicted person if any of the required information is absent and advise the person that the request cannot be considered without the missing information.

- Requires the court to appoint counsel to investigate and, if appropriate, file a motion for post-conviction DNA testing if the convicted person is indigent, the request contains the required information, and counsel has not been previously appointed. The appointment is discretionary if counsel has been previously appointed.

- States that nothing in this new law shall be construed to provide for a right to the appointment of counsel in a post-conviction collateral proceeding, or to set a precedent in any context other than post-conviction DNA proceedings.

- Requires that the motion for post-conviction DNA testing reveal the results of any prior DNA testing and state whether a motion for DNA testing has previously been filed.

- Clarifies that a hearing on a motion for post-conviction DNA testing shall be heard by the judge who accepted the plea of guilty or no contest if the person was convicted by entry of a plea.

- Prohibits the waiver of the right to file a motion for post-conviction DNA testing.

Missing Persons DNA Database

SB 1818 (Speier), Chapter 822, Statutes of 2000 established a DNA data base for cases involving unidentified deceased persons and high-risk missing persons. The law required the Department of Justice (DOJ) to compare the DNA samples taken from the unidentified deceased persons with DNA samples taken from the parents or relatives of high-risk missing persons. All DNA samples are confidential and can only be disclosed to DOJ personnel, law enforcement officers, coroners, medical examiners, and district attorneys. All samples must be destroyed after a positive identification is made and a report is issued.

When there is an active criminal investigation or prosecution in connection with the identification of the deceased or when the coroner or a law enforcement agency determines that the death occurred by criminal means, it may be necessary to preserve rather than destroy samples and the resulting profiles. The prosecution may need the evidence to prove the identity of the victim; and if the defense contests the identification of the victim, the sample could be subject to re-testing

SB 297 (Speier), Chapter 467, revises evidence retention, confidentiality, and civil and criminal liability provisions of the missing persons DNA database law. Specifically, this new law:

- Permits the DOJ to include genetic markers that predict gender in the missing persons database.

- Provides that all retained samples and DNA extracted from a living person, and profiles developed therefrom, shall be used solely for the purpose of identification of the deceased's remains. The DOJ release form shall state that the sample and profile will be destroyed upon request.

- Provides that all samples, DNA, and genetic profiles shall be destroyed after a positive identification of the deceased's remains is made and a report is issued unless any of the following has occurred:

  - The coroner has made a report to a law enforcement agency that there is reasonable ground to suspect that the identified person's death has been occasioned by another by criminal means;

  - A law enforcement agency makes a determination that the identified person's death has been occasioned by another by criminal means;

  - The evidence is needed in an active criminal investigation to determine whether the identified person's death has been occasioned by another person by criminal means; or,

  - A governmental entity is required to retain the material for post-conviction DNA testing pursuant to Penal Code Section 1417.9.

- Allows any living person who submits a DNA sample to the missing persons database to request that his or her sample and profile be removed from the database. The parent or guardian of a child who submits a DNA sample of the child may also request that the sample and profile be removed from the database.

- Expands the categories of persons entitled to disclosure to include persons who need access to a DNA sample for purposes of prosecution or defense of a criminal case. Public disclosure of the fact of a DNA profile match is permitted after taking reasonable measures to first notify the family of the unidentified deceased or missing person.

- Recasts criminal liability provisions to delete the misdemeanor of intentionally failing to destroy a sample after a positive identification is made and a report is issued. The unauthorized disclosure of specified information is a misdemeanor.

- Provides that specified civil liability provisions are the sole and exclusive remedy for wrongful disclosure or failure to destroy DNA samples.

DOMESTIC VIOLENCE

Victims: Courtroom Testimony

Existing law provides that in a case involving a sexual offense committed against a minor victim under the age of 11, the court may take special precautions to protect the minor from coercion, intimidation or undue influence as a witness. Such measures include allowing the victim to take breaks from questioning outside of the courtroom, relocating witnesses and parties within the courtroom to facilitate a more comfortable and personal environment for the child witness, and limiting the taking of testimony to the hours during which the child is normally in school.

AB 77 (Havice), Chapter 62, requires the court, in any case in which the defendant is charged with a violation of specified offenses, to take special precautions to provide for the comfort and safety of the victim. Specifically, this new law:

- Adds any crime of domestic violence committed against a person with a disability or a minor under the age of 11 to the list of crimes for which a judge must take the above precautions on behalf of the victim.

- Requires the court, in cases involving specified sex offenses, to take the above precautions when the victim is a person with a disability.

- Defines " person with a disability" by a cross-reference to existing law that describes a person having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

Domestic Violence: Protective Orders

Existing law provides that, in the course of a criminal prosecution for domestic violence, the court with jurisdiction over that matter has the discretion to issue orders restraining the defendant from contacting the victim, the victim's family, or witnesses in the case. Currently, a domestic violence restraining order has precedence over any other court order against the defendant and where there are both civil and criminal orders involving the same parties, a peace officer shall enforce the criminal order issued last.

AB 160 (Bates), Chapter 698, provides that a criminal order takes precedence over any and all civil and juvenile court orders with regard to the same defendant. Specifically, this new law provides that:

- A domestic violence restraining order issued by a criminal court has precedence in enforcement over any civil court order against a defendant.

- On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely

coordination of all orders against the same defendant and in favor of the same named victim or victims.

- The protocol shall include mechanisms for assuring appropriate sharing of information between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall require that any order permitting contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain any language violating a "no contact order" issued by a criminal court.

- A family or juvenile court may promulgate custody and visitation orders with respect to the defendant and his or her children consistent with this protocol.

- Where both civil and criminal orders exist regarding the same parties, a peace officer shall enforce the criminal order issued last, subject to the provisions of this section.

Domestic Violence: Firearms

At the scene of a domestic violence incident, existing law requires peace officers to confiscate firearms or other deadly weapons that are in plain view or discovered as a result of a consensual search. Officers are not required to ascertain if firearms or other deadly weapons are present at the location.

AB 469 (Cohn), Chapter 483, requires a peace officer who responds to a domestic violence incident and finds it necessary for the safety of the officer or other persons present to inquire of the victim, the abuser, or both, as to whether a firearm or other deadly weapon is present at the location and to make a notation on the incident report as to the inquiry.

Criminal Procedure: Protective Orders

Current law generally requires persons accused of felonies to be present at the arraignment, sentencing and other specified times in criminal proceedings. However, persons accused of misdemeanors are allowed to appear through counsel. Where a person is charged with a specified misdemeanor offense involving domestic violence or violation of a protective order, the court may order through counsel that the accused personally appear after a showing of necessity. If the defendant is present, a protective order can be served without utilizing additional court time.

AB 477 (Cohn), Chapter 82, removes judicial discretion and, instead, requires persons accused of misdemeanor domestic violence-related offenses to be present in court for arraignment and sentencing. Protective orders can be served at arraignment or sentencing without utilizing additional court time.

Domestic Violence Program Funding

Existing law provides that the Office of Criminal Justice Planning (OCJP) may expend funds for local domestic violence programs, subject to the availability of funds.

AB 664 (Dutra), Chapter 707, appropriates $2 million to the OCJP to fund local domestic violence programs that previously received funds but were not selected for funding in 2001. Specifically, this new law:

- States that it is the intent of the Legislature that when OCJP provides local assistance to existing service providers to maintain and expand comprehensive services and emergency shelters for victims of domestic violence and their children, that OCJP shall take into consideration specified factors.

- States that it is the intent of the Legislature that OCJP shall provide technical grant assistance for a currently funded service provider applying for a grant from OCJP before de-funding that provider.

Domestic Violence Batterer's Program Requirements

Current law requires any person convicted of a domestic violence offense to complete a 12-month batterer's program as a condition of probation. However, current law does not explicitly require a defendant to complete the program in a timely manner.

AB 1570 (Pavley), Chapter 568, sets time requirements for the completion of the batterer's program. Specifically, this new law:

- Requires any defendant ordered to complete a batterer's program to attend consecutive weekly sessions and complete the program within 18 months, unless the court finds good cause to modify these requirements.

- Allows the program to grant a defendant up to three excused absences for good cause.

Background Checks in Domestic Violence Restraining Order Cases

When a domestic violence victim requests a restraining order, the judge is not currently required to check the prior civil or criminal history of the respondent/defendant. Therefore, the judge may not know if the respondent/defendant has an extensive history of violence or violations of prior restraining orders. Consequently, the judge determines whether or not to issue a restraining order without having a complete history of the respondent/defendant.

A Massachusetts study found that many respondents/defendants have an established pattern of violent behavior. Almost one-half had previously committed a violent offense; one in seven had a prior criminal record of violating a restraining order. The study concluded that a civil restraining order defendant's prior criminal history has a significant impact on his/her likelihood

of violating the order. The data shows that those with criminal records are more than twice as likely to violate restraining orders.

SB 66 (Kuehl), Chapter 572, requires a civil, criminal, or juvenile court to conduct a background check of the proposed subject of the restraining order (RO) to determine if he or she has a history of violence or RO violations prior to issuing a RO. Specifically, this new law:

- Requires the court to conduct a search prior to a domestic violence RO hearing in civil or juvenile court to determine if the person to be restrained:
  - Has a prior criminal conviction or convictions for a violent or serious felony, or a misdemeanor conviction involving domestic violence, weapons, or other violence;
  - Has outstanding warrants;
  - Is currently on probation or parole; or,
  - Is the subject of any current or prior restraining orders or has violated a prior restraining order.
- Requires the search to include all records and databases readily available, including:
  - The Violent Crime Information Network (VCIN);
  - The Supervised Release File;
  - The state summary criminal history information maintained by the Department of Justice (DOJ);
  - The Federal Bureau of Investigation's (FBI) nationwide database; and
  - Locally maintained criminal history records or databases.
- Requires the court to consider the information from the criminal conviction search in determining whether to issue a restraining order and appropriate child custody and visitation orders.
- Allows the parties to request the search information considered by the court in issuing or denying the order, and requires the court to release the information. The court is required to admonish the parties that it is unlawful to willfully release the information. A party is allowed to release the information to his or her counsel, court personnel, or court-appointed mediators.

- Requires the court to store any information relied upon by the court in a confidential file. The information in the confidential files shall be disclosed to court-appointed mediators or child custody evaluators.

- Requires the clerk of the court to notify law enforcement of any outstanding warrants and law enforcement to take all actions necessary to execute the warrant.

- Requires the clerk of the court to immediately notify the parole agent or probation officer of the person to be restrained of the RO if issued and of any other information obtained through the search that the court deems is appropriate. The parole agent or probation officer is required to take all actions necessary to revoke parole or probation if appropriate.

- Provides that the granting of a RO shall not be delayed by the search; and if the court finds that a protective order should be granted based on the affidavit submitted by the person seeking the RO, the search shall be conducted prior to the hearing on the RO.

- Requires the district attorney (DA) in domestic violence cases to perform a thorough investigation of a defendant's history through the above-mentioned databases to find prior convictions for domestic or other violence, weapons offenses, and any current protective or ROs. The DA is required to provide the information to the court at the arraignment of in-custody defendants and upon consideration of any plea agreement.

- Requires the DA to send information about a domestic violence conviction or RO to any other court that has issued a RO restraining the defendant and involving the same or related parties.

Parole: Child Welfare Services Notification

Existing law requires the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) to notify local law enforcement when any person convicted of child abuse or any sex offense where the victim is a minor is scheduled to be paroled. Further, existing law requires all parole officers to report to the appropriate child protective service agency when a person paroled for a conviction of child abuse or a sex offense where the victim is a minor has violated the conditions of parole by having contact with the victim or victim's family.

SB 432 (Monteith), Chapter 470, requires state correctional authorities to notify a county child welfare services agency that requests notification when persons who have been convicted of child abuse, domestic violence, or a sex offense against a minor are scheduled to be released on parole. Specifically, this new law:

- Requires the CDC or the BPT to notify a county child welfare services agency that requests notification whenever a person convicted of child abuse, domestic violence, or a sex offense perpetrated against a minor is scheduled to be released on parole.

- Allows agencies receiving notice of release to provide written comments to BPT or CDC regarding the impending release, as specified; requires BPT or CDC to respond in writing; and that those comments be considered in determining the community in which the parolee is going to be released on parole. Comments shall become part of the inmate's file.

- Provides that when a county child welfare services agency is providing one parent with reunification services and the other parent is serving a prison term, as specified, the county welfare services agency may request that CDC or the BPT provide the agency with notification that the person is scheduled to be released on parole.

Uniform Medical Examination Protocols

In the United States, domestic violence constitutes one of the most serious threats to women's health. Although health professionals are trained in and mandated to report domestic violence, there is no standardized reporting procedure for documenting examination findings. Injuries are often treated symptomatically. As a result, intervention and prosecution is hindered. Victims continue to suffer adverse health consequences of physical and emotional abuse.

Additionally, elderly or dependent adults are particularly vulnerable to mistreatment in the form of physical assault, psychological or emotional abuse, sexual abuse, financial manipulation, or neglect. Although multiple types of abuse are reportable crimes against elder and dependent adults, health care providers have not been required to report and document abuse in a comprehensive uniform manner.

SB 502 (Ortiz), Chapter 579, establishes a uniform medical examination protocol for the purpose of collecting evidence for victims of domestic violence and elder abuse. Specifically, this new law:

- Requires the Office of Criminal Justice Planning (OCJP) on or before January 1, 2003, in cooperation with specified state and local agencies and associations to establish uniform forms, instructions, and medical protocol for the examination of victims of domestic violence and elder and dependent adult abuse and neglect.

- Requires OCJP, in developing the medical forensic forms, instructions, and examination protocol, to use the existing examination and treatment protocol for sexual assault victims as a guideline. The form should include, but not be limited to, a place for a notation concerning the following:

  - Notification of injuries, and a report of suspected domestic violence or elder abuse to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures;

  - Obtaining consent for the examination, the treatment of injuries, the collection of evidence, and the photographing of injuries. Consent for treatment shall be obtained in accordance with the usual hospital policy. A victim shall be informed

that he or she may refuse to consent to an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease if the person wishes to obtain treatment and consents thereto;

- Taking a patient history of domestic violence or elder or dependent abuse, and other relevant medical history;

- Performance of the physical examination for evidence of domestic violence or elder abuse;

- Collection of physical evidence of domestic violence or elder or dependent adult abuse;

- Collection of other medical specimens; and,

- Procedures for the preservation and disposition of physical evidence.

- Requires OCJP to determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult abuse and neglect.

- Requires the medical forensic forms to become part of the patient's medical record pursuant to guidelines established by the OCJP advisory committee, and subject to the confidentiality laws pertaining to the release of medical forensic examination records.

- Requires the forms to be made accessible for use on the Internet.

Battered Women's Syndrome

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

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

Women convicted of murder before passage of AB 785 might have been convicted of manslaughter instead of murder had BWS evidence been introduced at their trial. As a result, a number of women convicted prior to 1992 are serving sentences that are substantially longer than

those woman convicted today of the identical offense.

SB 799 (Karnette), Chapter 858, allows a writ of habeas corpus to be prosecuted on the grounds that evidence relating to BWS was not introduced at the trial, and had it been introduced, the results of the proceeding would have been different. Specifically, this new law:

- Provides that a writ of habeas corpus may be prosecuted on the basis that evidence relating to BWS, as defined, was not introduced at the trial relating to the prisoner's incarceration, and was of such substance that had it been introduced there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different.

- Limits application to judgments of conviction for the crime of murder resulting from a plea entered or a trial commenced prior to January 1, 1992.

- Allows a petition for habeas corpus to be denied if a petition filed prior to the effective date of this new law was denied on the grounds that the omission of evidence relating to BWS was not prejudicial.

- States that this new law shall only be in effect until January 1, 2005.

ELDER ABUSE

Subsequent Arrest Notification

Under existing law, the Department of Justice (DOJ) is authorized to provide the criminal record of conviction for specified offenses, including elder abuse, to the employer of a person who provides in-home domestic care for an elderly or disabled adult. Existing law does not allow the DOJ to provide the same employer with subsequent arrest information which occurs after the initial background check was completed.

AB 530 (Reyes), Chapter 845, authorizes the DOJ to provide subsequent arrest notification to the employer of an unlicensed person who provides non-medical domestic or personal care to an aged or disabled adult in the adult's own home. Unrelated provisions of this new law extend the sunset date on the Central Valley Rural Crime Prevention Program until July 1, 2002, and it shall be repealed as of January 1, 2003 unless another statute deletes or extends that date.

Elder Death Review Teams

The responsibility for responding to and preventing elder abuse and neglect lies within the community as a whole, and requires communication between the various agencies that deal with elder issues. A careful examination of elder fatalities provides an opportunity to develop education, prevention, and - if necessary - prosecution strategies that will lead to improved coordination of services for families and the elder population.

SB 333 (Escutia), Chapter 301, authorizes counties to establish interagency elder death review teams to assist local agencies in identifying and reviewing suspicious elder deaths and to foster communication between coroners, law enforcement and other agencies. Specifically, this new law:

- Provides for interagency elder death review teams to assist local agencies in identifying and reviewing suspicious elder deaths, and facilitate communication between coroners and other agencies involved in elder abuse and neglect cases.

- Specifies that the elder death review teams may consist of, but are not limited to, medical experts, coroners and medical examiners, law enforcement, staff from adult protective services, county staff who work with elders, community care licensing staff, geriatric mental health experts, and criminologists.

- Provides that an oral or written document shared within the team, produced by the team, or provided by a third party to the team is confidential and not discoverable by a third party.

- Allows members of the team to share with other team members information otherwise deemed confidential, privileged, or prohibited by law from disclosure. Any information shared is confidential.

- Authorizes the team to make a written request for information. Authorizes agencies to release certain information, otherwise prohibited by law, to the team, including medical and mental health information; information from elder abuse reports and investigations; criminal history information; reports by health practitioners concerning physical injury inflicted by abuse, assault, or a firearm; information held by probation officers; records relating to in-home services; and information normally covered by the attorney-client, physician-patient, or psychotherapist privilege.

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In the United States, domestic violence constitutes one of the most serious threats to women's health. Although health professionals are trained in and mandated to report domestic violence, there is no standardized reporting procedure for documenting examination findings. Injuries are often treated symptomatically. As a result, intervention and prosecution is hindered. Victims continue to suffer adverse health consequences of physical and emotional abuse.

Additionally, elderly or dependent adults are particularly vulnerable to mistreatment in the form of physical assault, psychological or emotional abuse, sexual abuse, financial manipulation, or neglect. Although multiple types of abuse are reportable crimes against elder and dependent adults, health care providers have not been required to report and document abuse in a comprehensive uniform manner.

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  - Notification of injuries, and a report of suspected domestic violence or elder abuse to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures;

  - Obtaining consent for the examination, the treatment of injuries, the collection of evidence, and the photographing of injuries. Consent for treatment shall be

obtained in accordance with the usual hospital policy. A victim shall be informed that he or she may refuse to consent to an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease if the person wishes to obtain treatment and consents thereto;

- Taking a patient history of domestic violence or elder or dependent abuse, and other relevant medical history;

- Performance of the physical examination for evidence of domestic violence or elder abuse;

- Collection of physical evidence of domestic violence or elder or dependent adult abuse;

- Collection of other medical specimens; and,

- Procedures for the preservation and disposition of physical evidence.

- Requires OCJP to determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult abuse and neglect.

- Requires the medical forensic forms to become part of the patient's medical record pursuant to guidelines established by the OCJP advisory committee, and subject to the confidentiality laws pertaining to the release of medical forensic examination records.

- Requires the forms to be made accessible for use on the Internet.

EVIDENCE

Child Sexual Abuse: Statute of Limitations

In the late 1980's, lawmakers across the country became increasingly aware that young victims may delay reporting sexual abuse for a number of reasons, including the difficulty of remembering the crime and the trauma associated with reporting such an offense. In 1994, California enacted a longer statute of limitation that substantially increased the time in which criminal charges can be filed after the assault occurred. Existing law provides that a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she was the victim of a sexual offense while under the age of 18 years. Existing law also requires that there is "independent evidence that clearly and convincingly corroborates the victim's allegation." Different legal standards relating to the prosecution's burden of proof has created the potential for jury confusion.

AB 78 (Alquist), Chapter 235, lowers the standard required for corroborating evidence necessary to file an otherwise time-barred, child sexual abuse case when the complainant is under the age of 21. Specifically, this new law:

- Provides that a criminal complainant in a child sexual abuse case may be filed within one year of the date of the report to a law enforcement agency by a person under 21 years of age, alleging that he or she was a victim of child abuse while he or she was under the age of 18.

- Provides that the corroborating evidence need not be "clear and convincing" where, in an otherwise time-barred case, a complaint is filed before the victim's 21st birthday.

- Applies to a cause of action arising before, on, or after January 1, 2002 (the effective date of this new law shall revive any cause of action barred by Penal Code Section 800 or 801 if the complaint or indictment was filed within the specified time period.

Evidence of Prior Sex Offenses

Existing law permits a prosecuting attorney in a case in which a defendant is accused of committing certain sex offenses to admit evidence of prior specified sex offenses committed by the defendant. Currently, the list of sex offenses which may be admitted under Evidence Code Section 1108 includes virtually all serious sex offenses except for the offense of aggravated sexual assault of a child. Aggravated sexual assault of a child is defined as rape, rape in concert, forcible sodomy, oral copulation, or sexual penetration by a person who is 10 or more years older than a child under 14.

AB 380 (Wright), Chapter 517, expands the admissibility of disposition or propensity evidence in sex offense cases. Specifically, this new law expands the definition of "sexual offense" for purposes of the exception to the rule against the admission of

character evidence to include aggravated sexual assault of a child as defined in Penal Code Section 269.

Criminal Procedure

A defendant in a misdemeanor case may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure based on specified grounds. In Ellis v. Municipal Court (1995) 33 Cal.App. 4th 653, the Court of Appeal held that a stay pending appeal from denial of a suppression motion is not automatic. The trial court has discretion to grant or deny a stay of the trial.

AB 1304 (Rod Pacheco), Chapter 231, specifies that if a defendant in a misdemeanor case appeals the denial of his or her motion for a return of property or to suppress evidence, the trial court has discretion to grant a stay of the trial pending disposition of the appeal.

HATE CRIMES

Asian Pacific Islander Anti-Hate Crimes Program

California does not have an established program for educating people in the Asian American communities about hate crimes. The California Attorney General's Civil Rights Commission on Hate Crimes Report found that victims of hate crimes do not report hate crimes partly due to a lack of knowledge and English language proficiency. According to the report, at local forums victims and family members of victims testified that they knew nothing about hate crime laws and were not aware of the need to raise the issues when reporting the crime. The lack of awareness was widespread among new immigrants and people who did not speak English.

The study also found that greater awareness about civil remedies for hate incidents and hate crimes will improve the identification and reporting of hate crimes. The report concluded by recommending that the Department of Justice (DOJ) design a multilingual public education campaign to inform people about hate crimes and hate incidents and make them aware of community resources and criminal and civil remedies.

AB 1312 (Nakano), Chapter 566, creates an Asian Pacific Islander (API) Anti-Hate Crimes Program. Specifically, this new law:

- Provides that the DOJ develop the API Anti-Hate Crimes Program in partnership with a community-based organization designated by the DOJ.
- Defines "API" to include, but not be limited to, people of Chinese, Japanese, Filipino, Korean, Vietnamese, Asian American, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian descent.
- Provides that the DOJ create brochures and workbooks on hate crimes for API communities, and conduct training seminars on hate crimes for community organizations.
- Requires the DOJ to submit a report to the Legislature by March 1, 2004 on the program.
- Expires on January 1, 2005.

Victims of Terrorist Attacks

The California Victim Compensation and Government Claims Board provides reimbursement for financial losses for crime victims and their family members. Many California families suffered losses when the nation experienced multiple terrorist attacks on September 11, 2001.

SB 551 (Machado), Chapter 346, authorizes the Board to reimburse certain expenses of victims of terrorism and their families. Specifically, this new law:

- Provides financial assistance for pecuniary losses to California resident family members of victims of the terrorist attacks on the World Trade Center, the Pentagon, and in Pennsylvania on September 11, 2001, whether or not the victims were California residents.

- Reimburses each member of the California trauma and search and rescue teams who where dispatched to the above-mentioned terrorist act sites for mental health counseling.

- Makes a one-time allocation of $1 million to the New York Victim Compensation Fund.

- Reimburses counties for providing group mental health counseling for people suffering as a result of terrorist acts against the United States or terrorist acts involving weapons of mass destruction.

- Reimburses counties for the costs of providing technical assistance to promote tolerance for individuals who may be targets of discrimination based on national origin or religion due to certain terrorist acts.

- Provides that this new law expires January 1, 2004.

California Freedom of Access to Clinic and Church Entrances Act

California leads the nation in abortion clinic arsons and bombings, with more than twice as many as in Texas, the second most populous state. According to a recent survey, one-half of California abortion providers experienced anti-reproductive rights crimes between 1995 and 2000. Fifty percent of the providers who reported the crimes to the police were dissatisfied with the response.

SB 780 (Ortiz), Chapter 899, enacts the California Freedom of Access to Clinic and Church Entrances Act (California FACE Act) which provides criminal and civil penalties for injuring, intimidating, or interfering with a reproductive health services client or provider or a person entering a place of worship. This new law also enacts the Reproductive Rights Law Enforcement Act which requires the Attorney General to collect and analyze information regarding anti-reproductive rights crimes and requires the Commission on Peace Officer Standards and Training (POST) to train law enforcement officers about such offenses. The California FACE Act:

- Punishes as a misdemeanor any person who, by use of force, threat of force, or physical obstruction, attempts to or actually injures, intimidates, or interferes with any person because the person is a reproductive health services client or provider, or is entering a place of worship. Terms are defined as follows:

- "Interferes with" is restricting a person's freedom of movement;

- "Intimidate" is placing a person in reasonable apprehension of bodily harm to herself or himself or to another; and,

- "Physical obstruction" is rendering ingress to or egress from a reproductive health services facility or a place of religious worship impassable or unreasonably difficult or hazardous to another person.

- Punishes as a misdemeanor any person who attempts to or actually damages or destroys the property of a person, entity, or facility because he or she is a reproductive health services client, provider, or facility, or the property of a place of religious worship.

- Provides that the state jurisdiction is concurrent with federal jurisdiction under the federal FACE Act, and provides that state law enforcement shall cooperate with federal authorities in prosecution and seek federal prosecution when appropriate.

- Provides a civil cause of action for injunctive relief and compensatory and punitive damages for the above-described conduct.

- Requires the court in which a criminal or civil proceeding is filed to take all action reasonably necessary to protect a party under this Act, including issuing restraining orders and allowing the plaintiff to use a pseudonym. Provides the restraining orders may include provisions prohibiting photographing the party.

The California FACE Act shall not be construed to:

- Impair constitutionally-protected activity or any other legally-protected activity;

- Provide exclusive civil or criminal remedies or preempt city or county laws;

- Interfere with federal, state, or local laws regulating the performance of abortions;

- Create additional or limit existing civil or criminal remedies for any activity that interferes with the exercise of any other rights protected by the United States or California Constitution; and,

- Negate or interfere with the laws relating to unlawful acts during labor disputes.

The Reproductive Rights Law Enforcement Act:

- Requires the Attorney General to:

- Collect and analyze information relating to anti-reproductive rights crimes and make this information available to local law enforcement agencies and prosecutors.

- Direct local law enforcement agencies to report information relating to anti-reproductive rights crimes to the Department of Justice;

- Submit a report to the Legislature analyzing the information on or before July 1, 2003 and annually thereafter;

- Develop a plan to prevent and prosecute anti-reproductive rights crimes. A report on the plan must be submitted to the Legislature by December 1, 2002;

- Make a report to the Legislature in 2005 that evaluates the implementation of the Reproductive Rights Law Enforcement Act, contains any legislation recommended, details the plan developed to prevent and prosecute anti-reproductive-rights crimes, and recommends whether to extend or repeal the sunset date for the Act; and,

- Consult with the Governor, POST, and other subject matter experts.

- Requires POST to develop a two-hour telecourse on anti-reproductive rights crimes and make the course available to all California law enforcement agencies as soon as practicable.

- Provides that the Reproductive Rights Law Enforcement Act sunsets on January 1, 2007.

JUVENILES

School Suspensions

Existing law specifies those acts for which a pupil may be suspended or expelled from school. Existing law also specifies the conditions of probation that may be imposed on a student who commits an assault while on school property.

AB 653 (Horton), Chapter 484, provides guidelines for the expulsion or suspension of students who aid and abet assaults and batteries that occur on school grounds and authorizes courts to order minors involved in such behavior to attend counseling. Specifically, this new law:

- Allows the superintendent or the principal of a school to suspend a pupil for aiding or abetting the infliction or attempted infliction of physical injury to another person.

- Allows the superintendent or the principal of a school to suspend or expel a pupil adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury.

- Provides that in appropriate circumstances, alternatives to suspension or expulsion including, but not limited to, counseling and an anger management program, may be required of a pupil.

- Provides that if a minor commits either an assault or battery on school property, the court may, in addition to any other fine, sentence, disposition, or condition of probation, order the minor to attend counseling at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay; however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling required by this new law.

Juveniles: Booking and Fingerprinting

Current law provides a peace officer with the discretion to handle a delinquent minor in a number of ways, ranging from release, transfer to specified service locations, release with a notice to appear before the probation officer, or detention and delivery to the probation officer. Nothing specifically prohibits photographing or fingerprinting minors taken into custody.

AB 701 (Dickerson), Chapter 334, authorizes the photographing and fingerprinting of minors taken into temporary custody for a felony, as specified. Specifically, this new law expressly provides that a minor taken into temporary custody who is cited and released by a peace officer may be photographed and fingerprinted in the same manner as specified in Penal Code Section 853.6(g) if all of the following circumstances are present:

- The minor is a person described in Welfare and Institutions Code (WIC) Section 602;

- The minor is taken into custody upon reasonable cause for the commission of a felony; and,

- The minor is taken before a probation officer pursuant to WIC Code Section 626.

Juvenile Justice: Foster Care Requirements

Last year, the Legislature brought California into compliance with the statutory requirements of the Adoptions and Safe Families Act (ASFA) and Title IV-E of the Social Security Act. Subsequent to the enactment of the new law, the United States Department of Health and Human Services issued regulations requiring additional statutory changes if California is to remain in compliance with federal law. As Title IV-E is the federal funding mechanism for children in foster care, compliance with its requirements for California's children in the delinquency system was crucial for monetary as well as policy reasons.

AB 1696 (Assembly Human Services Committee), Chapter 831, clarifies certain provisions in current law relating to efforts by a probation officer to prevent or eliminate the need for removing a minor from his or her home. Other provisions relating to foster care placement and permanency planning for wards of the court further conform state law to federal law.

Juvenile Justice System Data Collection

It has been widely acknowledged that the State of California lacks an effective juvenile justice data collection system. The Little Hoover Commission, the California Task Force to Review Juvenile Crime, and the Legislative Analyst have all documented the lack of any meaningful data. In 1999, the California Youth Authority released the "Long-Range Plan for Juvenile Justice Data Collection, Analysis, and Dissemination in California" which set forth a number of comprehensive recommendations for the development and maintenance of an offender-based data system.

Furthermore, there is no statewide data on the disposition of cases involving minors prosecuted in adult criminal courts. The decision to prosecute a minor as an adult has major consequences, both for the minor subject to adult jurisdiction and for the agencies of the justice and correctional systems. In the absence of statewide information, it is impossible to measure these burdens or their related costs and the impact of the passage of the Juvenile Crime Initiative, Proposition 21.

SB 314 (Alpert), Chapter 468, directs the Department of Justice (DOJ) to collect statistical data regarding minors who are subject to the jurisdiction of the adult criminal court. Specifically, this new law:

- Adds to the data collection responsibilities of the DOJ by requiring statistical information concerning administrative actions taken by law enforcement, judicial, penal and correctional agencies in dealing with a minor who is the subject of a

petition or hearing in the juvenile court to transfer his or her case to adult criminal court or whose cases are directly filed in adult criminal court.

- Requires the DOJ report to include statewide information regarding the annual number and outcomes of fitness hearings pursuant to Welfare and Institutions Code Section 707, the annual number of minors whose cases are filed directly in adult criminal court, and the outcomes of cases involving minors who are prosecuted in adult criminal court. All data will be cross-referenced to information about the age, gender, ethnicity, and offense category of the minors.

- Requires the DOJ annual report published pursuant to Penal Code Section 13010 et. seq. to include the specified information beginning with the report due on July 1, 2003 for the preceding calendar year.

California Youth Authority: Special Education

Currently, the California Youth Authority (CYA) is identified by the federal Department of Education as one of 19 school districts in California with longstanding, systematic, non-compliance with federal special education law. In an attempt to address this problem, this new law provides the framework for a cooperative effort between the CYA and the California State University (CSU) to ensure that each child in CYA receives the education to which he or she is entitled.

SB 505 (Perata), Chapter 536, requires the California Department of Education (CDE) and CSU to enter into an interagency agreement to authorize the Center for the Study of Correctional Education (CSCE), located at the CSU, San Bernardino, campus, and provide technical assistance to the CDE and to the CYA in order to comply with state and federal special education laws and regulations. Specifically, this new law:

- Requires CDE to prepare the interagency agreement in consultation with CSU, San Bernardino, and the Superintendent of Education of CYA, and requires CSCE to provide all of the following services to the Special Education Division of CDE:

  - Assistance in performing reviews and assessments of special education at each school site in CYA;

  - Assistance in drafting reports of findings for each review;

  - Assistance in drafting corrective action plans, based on preliminary findings of noncompliance which include specific suggested outcomes to achieve compliance, and other instruments conveying recommendations and suggestions resulting from reviews and assessments;

  - On-site technical assistance and support to CYA, as authorized by the Special Education Division of CDE;

- Identifying and developing suggested draft protocols and a best practices model for providing monitoring and technical assistance services for special education in youthful correctional settings;

- Evaluating the training needs and priorities of educational personnel serving wards with exceptional needs at CYA; and,

- Reviewing CYA's current special education local plan, policies, procedures and forms, and providing the Special Education Division of CDE with technical assistance by developing suggested draft revisions which comply with state and federal special education laws and reflect best practices in a correctional setting.

- Requires that the technical assistance provided by CSCE reflect adopted state and federal compliance standards, and requires that reviews and assessments include, but not be limited to, the following special education services for wards at CYA with exceptional needs:

  - Identification and assessment of wards with exceptional needs;

  - Parent notification, consent and participation;

  - Individual educational plan development and content, including behavior intervention and transition plans;

  - Assessment of ward progress;

  - Provision of services in the least restrictive environment maximizing inclusion;

  - Services to pupils not proficient in English; and,

  - Observance of procedural safeguards, and compliance with state and federal law.

- Provide interim status reports on the services received from CSCE to the Department of Finance and to the Legislature commencing no later than one year after entering into the interagency agreement and annually thereafter until the termination of the agreement CDE, with assistance of the CSCE.

- Requires CDE to submit a report to the Legislature on the usefulness of CSCE services pursuant to the interagency agreement no later than December 1, 2006.

- Requires that the interagency agreement be funded with federal funds available to state agencies, and shall not reduce the federal allocation to CYA under the Individuals with Disability Education Act, and funds appropriated through the annual Budget Act.

- States that this new law shall only remain in effect until January 1, 2007; and as of that date, is repealed unless a later statute is enacted which extends or deletes that date.

Transfer of California Youth Authority Wards

Presently, there are approximately 80 persons who were originally committed to the California Youth Authority (CYA) as juvenile offenders but subsequently came within the jurisdiction of the California Department of Corrections (CDC) for having committed a criminal offense in a CYA institution after their 18th birthday. After serving their adult court sentence, these inmates are transferred back to CYA as CYA retains jurisdiction over the inmate. While some inmates desire to benefit from the available educational and vocational opportunities, others do not.

SB 768 (McPherson), Chapter 476, authorizes the Director of the CYA to transfer to CDC any person over 18 years of age who is scheduled to be returned, or has been returned, from CDC after serving a sentence imposed for committing a felony while in CYA custody. Specifically, this new law:

- Authorizes the Director of CYA to transfer to CDC any person 18 years of age or older who is subject to the custody, control, and discipline of CYA and scheduled to be returned, or has been returned, from an institution under the jurisdiction of CDC after serving a sentence imposed for committing a felony while in CYA custody.

- Provides that no person shall be transferred until and unless the person voluntarily, intelligently, and knowingly executes a written consent to the transfer, which shall be irrevocable.

- Before being returned to CYA, a person in the custody of CDC who is scheduled for return shall meet personally with a CYA parole agent or other appropriate staff member. The staff member shall explain, using language clearly understandable to the person, all of the following:

  - What will be expected from the person when he or she returns to a CYA institution in terms of cooperative, daily-living conduct and participation in applicable counseling, academic, vocational, work experience, or specialized programming.

  - The conditions of parole and how those conditions will be monitored and enforced while the person is in the custody of CYA.

  - The right to voluntarily and irrevocably consent to continue to be housed in an institution under the jurisdiction of CDC instead of being returned to CYA.

- Provides that if a person consents to being housed in CDC, he or she shall be subject to CDC rules and regulations. The Youthful Offender Parole Board (YOPB) shall continue to determine parole eligibility; however, the YOPB shall not order any

programming that is unavailable in the state prison where the person is housed or deny parole based solely on the failure to participate in programs that are unavailable.

- Provides upon notification by CDC that the person should no longer be housed in state prison, CYA shall immediately take custody of the person.

- Requires any person housed in CDC pursuant to this new law who has not attained a high school diploma or its equivalent to participate in educational or vocational programs, to the extent such programs are available.

PEACE OFFICERS

Domestic Violence: Firearms

At the scene of a domestic violence incident, existing law requires peace officers to confiscate firearms or other deadly weapons that are in plain view or discovered as a result of a consensual search. Officers are not required to ascertain if firearms or other deadly weapons are present at the location.

AB 469 (Cohn), Chapter 483, requires a peace officer who responds to a domestic violence incident and finds it necessary for the safety of the officer or other persons present to inquire of the victim, the abuser, or both, as to whether a firearm or other deadly weapon is present at the location and to make a notation on the incident report as to the inquiry.

Animal Control Officers

Current law authorizes animal control officers, if properly trained, to use firearms but not wooden clubs or batons.

AB 1023 (Canciamilla), Chapter 527, allows animal control officers to carry wooden clubs or batons if properly trained. Specifically, this new law:

- Authorizes an animal control officer to carry a baton or wooden club if the animal control officer has completed a course of instruction certified by the Department of Consumer Affairs in carrying and using a club or baton.

- Allows the training institution to charge fees for the cost of the training course.

Minimum Educational Standards for Peace Officers

Existing law requires a peace officer to be a United States citizen; at least 18 years old; of good moral character; and free of any physical, emotional, or mental conditions that might adversely affect the exercise of peace officer powers. In addition, the peace officer must have satisfied educational requirements: have a high school diploma, pass the General Education Development Test at the high-school graduation level, or have a two- or four-year degree from an accredited college or university. However, the requirements for accreditation under existing law are outdated, and have prevented law enforcement agencies from hiring the most qualified peace officers.

AB 1152 (Vargas), Chapter 29, updates the accreditation requirements relating to schools attended by peace officer candidates and allows a person who has passed the California High School Proficiency Examination (CHSPE) to qualify to become a peace officer. Specifically, this new law:

- Establishes that a person who passes the CHSPE satisfies the minimum education requirement to become a peace officer. A person may take the CHSPE if he or she is 16 years of age or older and is enrolled in or has completed the second semester of 10th grade.

- Provides that a two- or four-year degree from any college or university accredited by any accrediting association recognized by the Secretary of the federal Department of Education (DOE) will satisfy the education requirement.

- Requires that the high school from which a peace officer candidate graduates be either a United States public school that meets the high school standards set by the state in which the high school is located, an accredited United States Department of Defense high school, or a nonpublic high school accredited by an accrediting association recognized by the Secretary of the federal DOE.

Public Employees: Punitive Action

Existing law establishes the right of local public employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Oftentimes, leaders of public safety associations are directed by their members to take positions which may be critical of public safety management in that particular city or county, such as directing a vote of no confidence or addressing issues of collective bargaining or employee rights.

AB 1184 (Oropeza), Chapter 788, provides that no public employee shall be subject to punitive action because of lawful action as a representative of an employee bargaining unit. Specifically, this new law:

- Adds a provision to the Government Code to provide that no public employee shall be subject to punitive action, denied promotion, or threatened with any such treatment for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

- States that the Legislature finds and declares that the provisions of this new law are declaratory of existing law.

Procedural Protections: Civilian Employees of Police Departments

Existing law establishes the Public Safety Officers Procedural Bill of Rights Act that sets forth procedural protections for employees subject to adverse personnel actions brought by the employing agency.

SB 379 (Alarcon), Chapter 801, extends certain similar provisions of the peace officers bill of rights to civilian employees of police departments. Specifically, this new law:

- Defines "police employee" as civilian employees of the police department of any city.

- Provides that, except as specified, no punitive action, or denial of promotion on grounds other than merit, shall be undertaken for alleged misconduct unless the investigation is completed within one year of discovery by the public agency.

- Provides that the one-year limitation period applies if the act, omission, or other misconduct occurred on or after January 1, 2002. The public agency must complete its investigation and notify the police employee of its proposed disciplinary action within that year with the following exceptions that toll the time period:

  - If the misconduct is also the subject of a criminal investigation or prosecution;

  - If the police employee executes a written waiver;

  - If the investigation is multi-jurisdictional or involves more than one employee and requires a reasonable extension;

  - If the employee under investigation is incapacitated or otherwise unavailable; and,

  - If the investigation involves a matter in civil litigation in which the police employee is named as a party defendant or allegations of workers compensation fraud by the employee.

- Provides that when a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this new law.

- Authorizes re-opening an investigation after the expiration of the one-year time period if significant new evidence has been discovered that is likely to affect the outcome of the investigation and the evidence could not have been reasonably discovered during the normal course of the investigation, as specified.

Assault Weapons: "Large-Capacity Magazines"

SB 23 (Perata), Chapter 129, Statutes of 1999, prohibited the manufacture or importation into California of large-capacity magazines. The ban on the sale or transfer of large-capacity magazines was never intended to apply to law enforcement; while there is an exemption for the transfer or sale of such magazines to law enforcement, the law does not allow for the manufacture of these magazines in California for sale to law enforcement.

SB 626 (Perata), Chapter 937, exempts tubular magazines contained in lever-action firearms from the large-capacity magazine restrictions, and exempts the manufacture of large-capacity magazines for export or for sale to law enforcement agencies, government agencies, peace officers, or the military. Specifically, this new law:

- Provides that a large-capacity magazine shall not include a tubular magazine that is contained in a lever-action firearm.

- Exempts the manufacture of a large-capacity magazine for any federal, state, county, city and county, or city agency charged with the enforcement of any law, for use by any employee in the discharge of his or her official duties whether on or off duty, and the use is authorized by the agency and is within the course and scope of those duties.

- Exempts the manufacture of a large-capacity magazine for use by a sworn peace officer, as defined, who is authorized to carry a firearm in the course and scope of his or her duties.

- Exempts the manufacture of a large-capacity magazine for export or for sale or resale to government agencies, or the military pursuant to federal regulations.

- Exempts the manufacture of a large-capacity magazine for purchase by the holders of special weapons permits, or the loan for use solely as a prop for a motion picture, television, or video production.

- Exempts the delivery, transfer, or sale of an assault weapon to a sworn peace officer who is a member of specified law enforcement agencies provided that the peace officer has verifiable written authorization from his or her employer to possess or receive the specific assault weapon.

- Specifies that nothing in this new law shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess an assault weapon.

- Requires that a peace officer who possesses or receives an assault weapon pursuant to departmental authorization prior to January 1, 2002 to register the weapon prior to April 1, 2002, and an officer who possesses or receives an assault weapon after January 1, 2002 to register the weapon within 90 days of possession or receipt.

- Allows a retired peace officer, who lawfully possesses an assault weapon, to loan that weapon at a target range as specified.

Dental Board Peace Officers

Peace officers employed by the Dental Board of California investigate cases involving fraud, impersonating a dentist, drugs, grand theft, and sexual assault. Past legislation limited the number of peace officers on the Board's investigative unit. A study was conducted by an outside entity to determine the investigative unit's need for peace officer employees, but the results were inconclusive.

SB 826 (Margett), Chapter 859, extends the limited term appointment of peace officers on the Board until January 1, 2004. A follow-up study expanding and refining the recommendations of a previous study on the need for peace officers on the investigations unit is authorized. Specifically, this new law:

- Extends the limited term appointment of each peace officer on the Board from July 1, 2002 to January 1, 2004.

- Requires the Board to contract with the same entity that completed the independent study required by AB 900 (Alquist), Chapter 840, Statutes of 1999, to conduct a follow-up study to further refine the findings and recommendations of the original study to be submitted to the Legislature by August 1, 2002. The study shall expand upon the following:

  - The number and type of enforcement positions, including peace officer and non-peace officer positions, needed;

  - The extent to which the Board needs sworn peace officers for its enforcement program;

  - Trends in dental-related crimes reported to the Board;

  - Comparison of the Board's enforcement program to similar agencies;

  - Recommendations for improving the Board's enforcement program; and,

  - The fiscal impact to the Board from recommended changes to its enforcement program.

- Requires the entity performing the study to consult with all interested parties including consumer representatives, dental professionals, law enforcement, the Department of Consumer Affairs, and other state agencies with sworn peace officers and non-peace officer investigators.

- Appropriates $75,000 from the State Dentistry Fund to the Board to conduct the study and prepare the report.

Peace Officers: Correctional Counselors

For nearly 20 years, every director of the California Department of Corrections (CDC) has designated correctional counselors with the CDC as correctional peace officers. As members of Bargaining Unit #6, those designated as correctional counselors have received all of the same benefits as the other members represented by the California Correctional Peace Officers Association (CCPOA).

SB 890 (McPherson), Chapter 119, designates correctional counselors employed by the CDC as peace officers, and allows them to carry firearms when not on duty. Specifically, this new law:

- Makes correctional counselor series employees of the CDC peace officers whose authority extends to any place in California while engaged in the performance of their duties or while carrying out the primary functions of their employment.

- Allows correctional counselors employed by the CDC to carry firearms while not on duty.

Custodial Facilities: Riverside County Deputy Sheriffs

Existing law provides that any deputy sheriff of a county of the first class (Los Angeles and San Diego Counties) is a peace officer whose authority extends to any place in California while engaged in the performance of his or her duties. These duties relate to custodial assignments and maintaining the operations of county custodial facilities. The duties also include the care, supervision, security, movement, and transportation of inmates.

SB 926 (Battin), Chapter 68, adds "any deputy sheriff of the County of Riverside" to the existing authority granted only to Los Angeles and San Diego Counties to employ deputy sheriffs to perform duties exclusively or initially relating to custodial assignments.

RESTITUTION

Deducting from Awards to Parolees

Approximately 40 percent of California Department of Corrections (CDC) inmates owe either restitution fines (payable to the Restitution Fund) or restitution orders (payable to victims). Approximately, 11 percent of restitution claims are fully paid before inmates are paroled. The primary method of collecting restitution orders or fines is by deducting 20 percent of any amount deposited into inmates' trust accounts or wages. When Congress passed the Prison Litigation Reform Act in 1995, states were allowed to deduct victim restitution orders and fines from civil litigation awards to inmates, providing another source to satisfy claims.

AB 1003 (Frommer), Chapter 200, adds parolees to the existing provisions that require the Director of the CDC to deduct outstanding restitution fines and orders from court awards or settlements relating to imprisonment and to require that the existing administrative fee be deducted, as well. Specifically, this new law:

- Allows CDC to deduct any outstanding restitution orders or fines from any award (compensatory or punitive damages) or settlement resulting from a civil action against a jail, prison or correctional facility.

- Allows CDC to deduct five percent of an award or settlement resulting from a civil action against a jail, prison or correctional facility for administrative costs.

Victims of Crime

The California Victim Compensation and Government Claims Board (Board) administers the Victims of Crime Program (VCP), which reimburses victims for specified out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include, among others, medical, mental-health counseling, funeral/burial costs, and wage or support losses not covered by any other source.

AB 1017 (Jackson), Chapter 712, makes a number of changes to the eligibility and reimbursement provisions of the VCP. Specifically, this new law:

- Expands the definition of "derivative victim" by including grandparents and grandchildren and removes the residency requirement for purposes of receiving specified benefits from the VCP Fund.

- Extends the sunset date relative to primary caretaker and mental health service claims from January 1, 2003 to January 1, 2004.

- Authorizes reimbursement for mental-health counseling benefits to a nonresident of the United States who otherwise meets the requirements for reimbursement until January 1, 2007.

- Expands the description of a licensed mental health professional under this new law, as specified.

- Provides for reimbursement claims submitted beyond the three-year deadline where the victim or derivative victim affirms the debt and he or she is liable for the debt.

- Authorizes cash payment or reimbursement for:

  - Rental housing security deposits up to $2,000 for relocation expenses;

  - Expenses to renovate or retrofit a residence or vehicle to make it accessible accessible and operational for a victim permanently disabled as a result of the crime; removes the $5,000 threshold; and,

  - Crime scene clean up where the crime occurred in a residence.

- Makes other minor technical and clarifying changes to the VCP.

Bribery: Public Officials

Existing law provides for restitution in criminal cases. However, in official bribery cases, the ability of the court to order restitution may not preclude the offender from profiting from his or her criminal activity. For example, if a member of the Legislature receives a bribe to cast a vote, it may be difficult, if not impossible, to determine if there has been any monetary loss to the public or other individuals that could be the subject of a restitution order.

SB 923 (McPherson), Chapter 282, increases the restitution fines applicable to bribery to ensure that public official defendants do not profit from their crimes despite suffering a conviction. Specifically, this new law:

- Provides that in a case where the defendant did not actually receive a bribe, the court shall impose a restitution fine of not less than $2,000 or not more than $10,000.

- Provides in a case where the defendant actually received the bribe, the minimum restitution fine is $2,000, or the amount of the bribe, whichever is greater. The maximum fine shall be double the amount of any bribe received or $10,000, whichever is greater. In imposing the restitution fine, the court will be required to consider the defendant's ability to pay the fine.

SEX OFFENSES

Sex Offender Registration: College Campuses

Existing law requires any person convicted of specified sex offenses to register within five working days of coming into a city or county with law enforcement officials. Existing law also requires persons required to register as sex offenders in other states to register in California if they are out-of-state residents employed in California on a full- or part-time basis for more than 14 days, or for an aggregate period exceeding 30 days in a year. Persons required to register as sex offenders in other states shall register in California if they are out-of-state residents enrolled in specified educational institutions on a full- or part-time basis.

Recently enacted federal legislation requires that "any person required to register in a state shall provide notice as required under state law to each institution of higher education at which the person is employed, carries on a vocation, or is a student." The person is also required to provide notice of each change of enrollment or employment status at the institution. Any state that fails to implement the aforementioned provisions risks forfeiting 10% of the funds that would otherwise be allocated to the state under the Omnibus Crime Control and Safe Streets Act of 1968. The State of California could lose approximately $5.5 million for failure to comply with the new federal mandates.

AB 4 (Bates), Chapter 544, requires sex offenders residing, enrolled, employed, or carrying on a vocation in any university or college to register with the campus police department, thereby complying with federal law. Specifically, this new law:

- Provides that, commencing July 1, 2002, every person required to register as a sex offender who resides at, is a transient located upon, or is enrolled as a student of any university, college, community college, or other institution of higher learning shall, in addition to other specified registration requirements, register with the chief of police of the campus police department within five working days of coming onto the campus to live or commencing enrollment.

- Provides that every person required to register as a sex offender who is an employee of any university, college, community college, or other institution of higher learning, with or without compensation, on a full-time or part-time basis for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, in addition to other specified registration requirements, shall register with the chief of police of the campus police department within five working days of commencing employment.

- Requires the registrant to notify the campus police department within five working days of changing his or her residence or location upon the campus, or of ceasing enrollment or employment.

- States that the requirements of this new law regarding institutions of higher learning are in addition to the person's duty to register as a sex offender.

- Provides that the penalty for failing to register with the campus police department is a misdemeanor, punishable as follows:

  - First offense: A fine not to exceed $1,000;

  - Second offense: Imprisonment in a county jail up to six months and a fine not to exceed $1,000; and,

  - Third or subsequent offense: Imprisonment in a county jail up to one year and a fine not to exceed $1,000.

- Provides that if the university, college, community college or other institution of higher learning has no campus police department, the registrant shall instead register with and provide notice of changes to the chief of police of the city where the campus is located. If the campus is located in an unincorporated area or in a city that has no police department, the person shall register with the county sheriff.

- Requires the written statement submitted to law enforcement by the registrant enrolled as a student at an institution of higher learning to include the name and address of the institution.

- Requires college and university police departments to forward specified information to the Department of Justice.

- Adds a sex offender's enrollment or employment status with an institution of higher learning to the list of information that may be disclosed under specified circumstances.

Child Sexual Abuse: Statute of Limitations

In the late 1980's, lawmakers across the country became increasingly aware that young victims may delay reporting sexual abuse for a number of reasons, including the difficulty of remembering the crime and the trauma associated with reporting such an offense. In 1994, California enacted a longer statute of limitation that substantially increased the time in which criminal charges can be filed after the assault occurred. Existing law provides that a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she was the victim of a sexual offense while under the age of 18 years. Existing law also requires that there is "independent evidence that clearly and convincingly corroborates the victim's allegation." Different legal standards relating to the prosecution's burden of proof has created the potential for jury confusion.

AB 78 (Alquist), Chapter 235, lowers the standard required for corroborating evidence necessary to file an otherwise time-barred, child sexual abuse case when the complainant is under the age of 21. Specifically, this new law:

- Provides that a criminal complainant in a child sexual abuse case may be filed within one year of the date of the report to a law enforcement agency by a person under 21 years of age, alleging that he or she was a victim of child abuse while he or she was under the age of 18.

- Provides that the corroborating evidence need not be "clear and convincing" where, in an otherwise time-barred case, a complaint is filed before the victim's 21st birthday.

- Applies to a cause of action arising before, on, or after January 1, 2002 (the effective date of this new law) and shall revive any cause of action barred by Penal Code Section 800 or 801 if the complaint or indictment was filed within the specified time period.

Sex Offender Registration Information

Information provided by registered sex offenders at the annual registration must be current as sex offenders often re-offend and updated information aids law enforcement in their apprehension.

AB 349 (La Suer), Chapter 843, requires convicted sex offenders to provide the Department of Justice with current information, as required, including updated vehicle registration information, when annually re-registering with specified law enforcement agencies.

Evidence of Prior Sex Offenses

Existing law permits a prosecuting attorney in a case in which a defendant is accused of committing certain sex offenses to admit evidence of prior specified sex offenses committed by the defendant. Currently, the list of sex offenses which may be admitted under Evidence Code Section 1108 includes virtually all serious sex offenses except for the offense of aggravated sexual assault of a child. Aggravated sexual assault of a child is defined as rape, rape in concert, forcible sodomy, oral copulation, or sexual penetration by a person who is 10 or more years older than a child under the age of 14.

AB 380 (Wright), Chapter 517, expands the admissibility of disposition or propensity evidence in sex offense cases. Specifically, this new law expands the definition of "sexual offense" for purposes of the exception to the rule against the admission of character evidence to include aggravated sexual assault of a child as defined in Penal Code Section 269.

Sexually Violent Predators: Local Detention Facilities

Existing law requires a person detained for a criminal trial or a person convicted and serving his or her sentence to be separated from persons committed upon a civil process. Sexually Violent Predator (SVP) Act proceedings are civil in nature. Existing law does not specify whether or not SVPs shall be segregated from the general population of a detention facility.

AB 659 (Correa), Chapter 248, requires county jails to house civilly committed persons classified as SVPs in administrative segregation. Specifically, this new law:

- Provides that "administrative segregation" is defined as separate and secure housing that does not involve any deprivation of privileges other than what is necessary to protect the inmates and staff.

- Allows civilly committed persons classified as SVPs to waive placement in administrative segregation and be placed with inmates charged with similar offenses or with similar criminal histories based on specified objective criteria.

Child Abuse Prosecution Program

The Child Abuse Prosecution Program, administered by the Office of Criminal Justice Planning (OCPJ), provides financial and technical assistance to district attorneys' offices. Under current law, a person may be prosecuted under the Child Abuse Prosecution Program for the sexual assault of a child.

AB 929 (Frommer), Chapter 210, expands permissible prosecutions under this program to include the following additional crimes:

- Child abuse.

- Child abuse resulting in death.

- Child abuse resulting in a traumatic condition.

- Sending harmful manner, including through the Internet, with the intent to seduce a minor when committed in conjunction with any other specified violation.

This new law requires OCJP to submit to the Legislature, on or before December 15, 2002, and within six months of the completion of subsequent funding cycles, an evaluation of the Child Abuse Prosecution Program. The evaluation must identify outcome measures to determine the effectiveness of the programs established under this new law, which shall include, but not be limited to:

- Child abuse conviction rates of Child Abuse Prosecution Program units compared to those of non-funded counties.

- Quantification of the annual per capita costs of the Child Abuse Prosecution Program compared to the costs of prosecuting child abuse crimes in non-funded counties.

Transient Sex Offenders

Existing law requires any person required to register as a sex offender who does not have a residence address to update his or her registration no less than once every 90 days with local law enforcement. Any person who willfully fails to do so is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months.

AB 1004 (Bates), Chapter 485, shortens the time requirement for transients to register as sex offenders from once every 90 days to once every 60 days. In addition, this new law states legislative intent to engage transient persons on probation for sex offenses in treatment.

Child Pornography

Existing law provides that every person who possesses or controls child pornography is guilty of a misdemeanor with imprisonment in the county jail up to one year or a fine not exceeding $2,500. If a person has a prior conviction, he or she is guilty of a felony and subject to imprisonment in the state prison for two, four, or six years.

AB 1012 (Corbett), Chapter 559, allows enhanced punishment for a person convicted of a child pornography offense where the person has a prior conviction for specified sex crimes involving children.

Specifically, this new law provides that any person who possesses child pornography is guilty of a felony punishable by two, four, or six years in state prison if he or she has a prior conviction for:

- Possessing, producing or publishing child pornography with the intent to distribute or exhibit for commercial purposes.

- Using a minor to create child pornography for commercial purposes.

Sexual Assault: Relocation Expenses

Existing law provides for reimbursement of relocation expenses for domestic violence victims. Sexual assault victims do not similarly receive reimbursement if they are forced to relocate.

AB 1019 (Corbett), Chapter 419, allows for a cash payment or reimbursement not to exceed $2,000 to any victim of sexual assault for expenses incurred in relocating if the expenses were determined by law enforcement to be necessary for the personal safety of the victim or by a mental health provider as necessary for the emotional well being of the victim.

Teacher Credentialing

As used in provisions relating to school employees, existing law defines the term "sex offense", in part, by referring to specified Penal Code provisions. That definition includes any offense committed or attempted in any other state which if committed or attempted in California would have been punishable as one of the offenses referred to in the Penal Code.

SB 299 (Scott), Chapter 342, makes technical and programmatic changes to the laws governing the Commission on Teacher Credentialing (CTC). Specifically, this new law:

- Clarifies that the term "sex offense" includes violations of federal law as offenses in which credentials are automatically suspended upon charging and revoked upon conviction.

- Corrects a code reference to petty theft to accurately refer to petty theft with a prior conviction which is punishable as an alternate felony/misdemeanor.

- Permits pre-intern credential candidates to complete subject matter requirements by taking appropriate courses. Existing law requires only an examination.

- Requires participants in the Paraprofessional Teacher Training Program to commit to earning a bachelor's degree as a condition of entering the program.

Sex Offenders: Prohibited Employment

A person required to register as a convicted sex offender for a crime committed against a minor may be employed or volunteer in a position working directly with minors in an unaccompanied setting on more than an occasional basis as long as he or she reveals his or her status as a registrant.

SB 1192 (Figueroa), Chapter 224, prohibits any person required to register as a sex offender for a conviction where the victim was under 16 years of age from being employed or serving as a volunteer with any group or organization where the registrant would be working directly in an unaccompanied setting with minor children.

SEXUALLY VIOLENT PREDATORS

Sexually Violent Predators: Evaluators

Existing law provides for the involuntary civil commitment for psychiatric treatment of a person found to be a sexually violent predator (SVP) after the person has served his or her prison commitment. The Director of the Department of Mental Health (DMH) is required to designate qualified clinicians to perform evaluations of a person alleged to be a SVP and to establish a protocol for such evaluations. Originally, the DMH Director assigned both DMH employees and clinicians in private practice to perform the evaluations. Later, DMH employees were reassigned to other duties; currently, the evaluations are performed exclusively by clinicians in private practice.

AB 1142 (Runner), Chapter 323, clarifies when supplemental evaluations may be performed in SVP cases. Specifically, this new law:

- States the following legislative intent:
  - Clarify existing law with respect to the authority of the DMH Director to replace evaluators in SVP cases.
  - Prevent courts in SVP cases from compelling the State to use witnesses found unfit or unsuitable by the Director.
  - Ensure that the State can present the best evidence in SVP cases.
- Provides, for purposes of updating or replacing evaluations and evaluators of alleged SVPs, that a mental health professional is considered unavailable to testify when the evaluator is no longer authorized DMH to perform SVP evaluations because:
  - The evaluator has failed to adhere to DMH protocols;
  - The evaluator's license has been suspended or revoked; or,
  - The evaluator is unavailable as a witness pursuant to Evidence Code Section 240.
- Expands the definition of "unavailable" to include when a SVP evaluator has been removed from DMH's panel list.
- Provides that a determination that an evaluator is unavailable does not prevent an alleged SVP from presenting any relevant evidence.

VEHICLES

Driving under the Influence Penalties

A person convicted of vehicular manslaughter while intoxicated is treated as if the conviction never occurred once 10 years has expired. If he or she is arrested for a new driving under the influence (DUI) charge more than 10 years after committing vehicular manslaughter while intoxicated, he or she faces only a misdemeanor charge with a maximum penalty of six months in jail.

In Ventura County, a district attorney had to treat a defendant prosecuted in 2000 as a first-time DUI offender even though she had killed three boys and injured two others while driving intoxicated in 1989. The defendant had spent much of the time between 1989 and 2000 incarcerated for the 1989 victims' deaths.

AB 1078 (Jackson), Chapter 849, allows a district attorney to charge a DUI as a felony if the person has a prior conviction, of any age, for vehicular manslaughter while intoxicated. Specifically, this new law:

- Creates an alternate felony-misdemeanor for any person guilty of a DUI or DUI with injury if the person has a prior felony conviction for vehicular manslaughter while intoxicated or gross vehicular manslaughter while intoxicated.

- Reinstates the Department of Motor Vehicle's authority to revoke a person's license for up to five years, and requires the person to complete a program up to 30 months in length before receiving his or her license if he or she is convicted of a DUI and has a prior felony conviction for DUI with injury or any vehicular manslaughter offense.

Penalties for Driving under the Influence

Judges have a variety of options under current law to address the problem of drinking and driving, including imposing fines and jail time, providing treatment for substance abuse, and rescinding driver's licenses. However, despite significant progress in reducing the incidence of driving under the influence (DUI); in 1999, there more than 190,000 DUI arrests. Of these arrests, more than 25 percent involved repeat offenders. These numbers highlight the need to continue efforts to assess, treat and make accountable those individuals who become intoxicated and drive.

SB 776 (Torlakson), Chapter 857, requires the Department of Motor Vehicles (DMV), in consultation with other agencies, to review the effectiveness of current programs, penalties, and sanctions relating to DUIs. Specifically, this new law:

- Requires the DMV, in consultation with law enforcement, public defenders, licensed DUI programs, and other appropriate entities to review scientific and other empirical

evidence concerning the effectiveness of current programs, procedures, sanctions, fines, and fees relating to DUIs.

- Requires the DMV to recommend to the Legislature methods to increase individual accountability, improve treatment programs, sanctions, and public education, and reduce recidivism on or before July 1, 2002.

- Directs the DMV to recommend statutory changes that would modify the responsibilities of agencies or the courts so that violators will be sanctioned and treated appropriately.

- Expires on January 1, 2003.

VICTIMS

Victims: Courtroom Testimony

Existing law provides that in a case involving a sexual offense committed against a minor victim under the age of 11, the court may take special precautions to protect the minor from coercion, intimidation or undue influence as a witness. Such measures include allowing the victim to take breaks from questioning outside of the courtroom, relocating witnesses and parties within the courtroom to facilitate a more comfortable and personal environment for the child witness, and limiting the taking of testimony to the hours during which the child is normally in school.

AB 77 (Havice), Chapter 62, requires the court, in any case in which the defendant is charged with a violation of specified offenses, to take special precautions to provide for the comfort and safety of the victim. Specifically, this new law:

- Adds any crime of domestic violence committed against a person with a disability or a minor under the age of 11 to the list of crimes for which a judge must take the above precautions on behalf of the victim.

- Requires the court, in cases involving specified sex offenses, to take the above precautions when the victim is a person with a disability.

- Defines " person with a disability" by a cross-reference to existing law that describes a person having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.

Victims of Crime: Extension of Filing Period

The Victims of Crime Program (VCP) governs the procedure by which crime victims obtain restitution from the Restitution Fund. For crimes committed before January 1, 2001, the total of all payments to, or on behalf of, a direct victim cannot exceed the maximum VCP payment of $46,000 per claim. For crimes committed on or after January 1, 2001, the maximum payment is $70,000 per claim.

The application for an adult victim (18 years or older at the time of crime) must be filed with the VCP within one year of the crime. The California Victim Compensation and Government Claims Board may, for "good cause," grant an extension to file an application up to three years after the date of the crime. The application for a minor victim (under 18 years of age at the time of the crime) must be filed with the VCP before the minor's 19th birthday. The Board may similarly grant an extension to file an application up to the minor's 21st birthday. The Board may grant an additional extension of time to submit claims for victims and derivative victims called to testify after January 1, 2001, for crimes that could have occurred at any time under specified circumstances.

AB 409 (Correa), Chapter 552, authorizes the extended filing of claims to the Victims of Crime Program (VCP) under specified circumstances. Specifically, this new law:

- Adds victims or derivative victims of crimes in which the perpetrator is sentenced to death or life without the possibility of parole to those victims and circumstances where the California Victim Compensation and Government Claims Board may grant an additional extension to file a claim, as specified; and

- Extends the sunset date which allows such extraordinary extensions from January 1, 2003, to January 1, 2004.

Victims of Crime

The California Victim Compensation and Government Claims Board (Board) administers the Victims of Crime Program (VCP), which reimburses victims for specified out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include, among others, medical, mental-health counseling, funeral/burial costs, and wage or support losses not covered by any other source.

AB 1017 (Jackson), Chapter 712, makes a number of changes to the eligibility and reimbursement provisions of the VCP. Specifically, this new law:

- Expands the definition of "derivative victim" by including grandparents and grandchildren and removes the residency requirement for purposes of receiving specified benefits from the VCP Fund.

- Extends the sunset date relative to primary caretaker and mental health service claims from January 1, 2003 to January 1, 2004.

- Authorizes reimbursement for mental-health counseling benefits to a nonresident of the United States who otherwise meets the requirements for reimbursement until January 1, 2007.

- Expands the description of a licensed mental health professional under this new law, as specified.

- Provides for reimbursement claims submitted beyond the three-year deadline where the victim or derivative victim affirms the debt and he or she is liable for the debt.

- Authorizes cash payment or reimbursement for:

  - Rental housing security deposits up to $2,000 for relocation expenses;

- Expenses to renovate or retrofit a residence or vehicle to make it accessible accessible and operational for a victim permanently disabled as a result of the crime; removes the $5,000 threshold; and,

- Crime scene clean up where the crime occurred in a residence.

- Makes other minor technical and clarifying changes to the VCP.

Sexual Assault: Relocation Expenses

Existing law provides for reimbursement of relocation expenses for domestic violence victims. Sexual assault victims do not similarly receive reimbursement if they are forced to relocate.

AB 1019 (Corbett), Chapter 419, allows for a cash payment or reimbursement not to exceed $2,000 to any victim of sexual assault for expenses incurred in relocating if the expenses were determined by law enforcement to be necessary for the personal safety of the victim or by a mental health provider as necessary for the emotional well being of the victim.

Missing Persons DNA Database

SB 1818 (Speier), Chapter 822, Statutes of 2000 established a DNA data base for cases involving unidentified deceased persons and high-risk missing persons. The law required the Department of Justice (DOJ) to compare the DNA samples taken from the unidentified deceased persons with DNA samples taken from the parents or relatives of high-risk missing persons. All DNA samples are confidential and can only be disclosed to DOJ personnel, law enforcement officers, coroners, medical examiners, and district attorneys. All samples must be destroyed after a positive identification is made and a report is issued.

When there is an active criminal investigation or prosecution in connection with the identification of the deceased or when the coroner or a law enforcement agency determines that the death occurred by criminal means, it may be necessary to preserve rather than destroy samples and the resulting profiles. The prosecution may need the evidence to prove the identity of the victim; and if the defense contests the identification of the victim, the sample could be subject to re-testing

SB 297 (Speier), Chapter 467, revises evidence retention, confidentiality, and civil and criminal liability provisions of the missing persons DNA database law. Specifically, this new law:

- Permits the DOJ to include genetic markers that predict gender in the missing persons database.

- Provides that all retained samples and DNA extracted from a living person, and profiles developed therefrom, shall be used solely for the purpose of identification of

the deceased's remains. The DOJ release form shall state that the sample and profile will be destroyed upon request.

- Provides that all samples, DNA, and genetic profiles shall be destroyed after a positive identification of the deceased's remains is made and a report is issued unless any of the following has occurred:

  - The coroner has made a report to a law enforcement agency that there is reasonable ground to suspect that the identified person's death has been occasioned by another by criminal means;

  - A law enforcement agency makes a determination that the identified person's death has been occasioned by another by criminal means;

  - The evidence is needed in an active criminal investigation to determine whether the identified person's death has been occasioned by another person by criminal means; or,

  - A governmental entity is required to retain the material for post-conviction DNA testing pursuant to Penal Code Section 1417.9.

- Allows any living person who submits a DNA sample to the missing persons database to request that his or her sample and profile be removed from the database. The parent or guardian of a child who submits a DNA sample of the child may also request that the sample and profile be removed from the database.

- Expands the categories of persons entitled to disclosure to include persons who need access to a DNA sample for purposes of prosecution or defense of a criminal case. Public disclosure of the fact of a DNA profile match is permitted after taking reasonable measures to first notify the family of the unidentified deceased or missing person.

- Recasts criminal liability provisions to delete the misdemeanor of intentionally failing to destroy a sample after a positive identification is made and a report is issued. The unauthorized disclosure of specified information is a misdemeanor.

- Provides that specified civil liability provisions are the sole and exclusive remedy for wrongful disclosure or failure to destroy DNA samples.

Uniform Medical Examination Protocols

In the United States, domestic violence constitutes one of the most serious threats to women's health. Although health professionals are trained in and mandated to report domestic violence, there is no standardized reporting procedure for documenting examination findings. Injuries are often treated symptomatically. As a result, intervention and prosecution is hindered. Victims continue to suffer adverse health consequences of physical and emotional abuse.

Additionally, elderly or dependent adults are particularly vulnerable to mistreatment in the form of physical assault, psychological or emotional abuse, sexual abuse, financial manipulation, or neglect. Although multiple types of abuse are reportable crimes against elder and dependent adults, health care providers have not been required to report and document abuse in a comprehensive uniform manner.

SB 502 (Ortiz), Chapter 579, establishes a uniform medical examination protocol for the purpose of collecting evidence for victims of domestic violence and elder abuse. Specifically, this new law:

- Requires the Office of Criminal Justice Planning (OCJP) on or before January 1, 2003, in cooperation with specified state and local agencies and associations to establish uniform forms, instructions, and medical protocol for the examination of victims of domestic violence and elder and dependent adult abuse and neglect.

- Requires OCJP, in developing the medical forensic forms, instructions, and examination protocol, to use the existing examination and treatment protocol for sexual assault victims as a guideline. The form should include, but not be limited to, a place for a notation concerning the following:

  - Notification of injuries, and a report of suspected domestic violence or elder abuse to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures;

  - Obtaining consent for the examination, the treatment of injuries, the collection of evidence, and the photographing of injuries. Consent for treatment shall be obtained in accordance with the usual hospital policy. A victim shall be informed that he or she may refuse to consent to an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease if the person wishes to obtain treatment and consents thereto;

  - Taking a patient history of domestic violence or elder or dependent abuse, and other relevant medical history;

  - Performance of the physical examination for evidence of domestic violence or elder abuse;

  - Collection of physical evidence of domestic violence or elder or dependent adult abuse;

  - Collection of other medical specimens; and,

  - Procedures for the preservation and disposition of physical evidence.

- Requires OCJP to determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult abuse and neglect.

- Requires the medical forensic forms to become part of the patient's medical record pursuant to guidelines established by the OCJP advisory committee, and subject to the confidentiality laws pertaining to the release of medical forensic examination records.

- Requires the forms to be made accessible for use on the Internet.

Victims of Terrorist Attacks

The California Victim Compensation and Government Claims Board provides reimbursement for financial losses for crime victims and their family members. Many California families suffered losses when the nation experienced multiple terrorist attacks on September 11, 2001.

SB 551 (Machado), Chapter 346, authorizes the Board to reimburse certain expenses of victims of terrorism and their families. Specifically, this new law:

- Provides financial assistance for pecuniary losses to California resident family members of victims of the terrorist attacks on the World Trade Center, the Pentagon, and in Pennsylvania on September 11, 2001, whether or not the victims were California residents.

- Reimburses each member of the California trauma and search and rescue teams who where dispatched to the above-mentioned terrorist act sites for mental health counseling.

- Makes a one-time allocation of $1 million to the New York Victim Compensation Fund.

- Reimburses counties for providing group mental health counseling for people suffering as a result of terrorist acts against the United States or terrorist acts involving weapons of mass destruction.

- Reimburses counties for the costs of providing technical assistance to promote tolerance for individuals who may be targets of discrimination based on national origin or religion due to certain terrorist acts.

- Provides that this new law expires January 1, 2004.

WEAPONS

Firearms: Handgun Safety Certificate

Handgun owners are not required to possess a license or to register their firearms under current California law. Existing law provides that "[no] permit or license to purchase, own, possess, keep, or carry either openly or concealed shall be required of any citizen of the United States or legal resident over the age of 18 years within the person's place of residence or business, or on private property owned or possessed by that person." However, commencing April 1, 1994, any person seeking to purchase or receive from some other type of transfer a handgun is required to obtain a basic firearms safety certificate after taking a two- to four-hour course of instruction.

AB 35 (Shelley), Chapter 940, establishes a statewide handgun safety certificate program which requires any person who wants to purchase or otherwise transfer a concealable firearm to obtain a Handgun Safety Certificate (HSC). Specifically, this new law:

- Provides that, effective January 1, 2003, no person may purchase, receive, transfer, or sell a handgun, without a valid HSC issued by the Department of Justice (DOJ).
- Requires an applicant for a HSC to:
  - Complete and pass a written test (a passing grade is 75 percent), as developed by DOJ. The test must be administered by an instructor certified by the DOJ and offered in English or Spanish. If the person taking the test is unable to read, the test may be taken orally; and,
  - Perform a safe handling demonstration for a DOJ-certified instructor, including safe handling and storage, use of force, and injury prevention strategies (not including a shooting or proficiency test).
- Requires the person receiving the handgun to present documentation of California residency and to provide a thumbprint on the record of sale.
- Requires the purchaser's name, date of birth, California driver's license or identification to be obtained from the magnetic strip of the purchaser's driver's license or identification.
- Prohibits the issuance of a HSC to any person under the age of 18 or to any person included in any of the classes of persons prohibited from possessing a gun.
- Conforms the required signage at firearms dealer locations to reflect existing law.
- Provides that it is a misdemeanor to receive a handgun without a valid HSC.

- Authorizes a certified instructor to charge a fee of up to $25; of that amount, $15 is to be forwarded to DOJ for enforcement of this new law.

- Specifies that a HSC expires in five years. An applicant for renewal must again pass the written test. A certified instructor may charge up to $25 for a renewal; of that amount, $15 is to be forwarded to DOJ for enforcement of this new law.

- Authorizes DOJ to assess a fee of up to $115 for costs associated with maintaining the certificate list and inspection of firearms dealers.

- Authorizes DOJ to require gun dealers to charge each person who obtains a handgun a fee of up to $5 for each transaction. Revenue from this fee would be deposited in the Firearms Safety and Enforcement Special Fund, created by this new law, administered by DOJ, and continuously appropriated to implement and enforce the provisions of this new law.

- Requires DOJ to:

  - Develop a HSC to be issued by DOJ-certified instructors;

  - Develop the course content and instructional materials in English and Spanish for the HSC course and update materials every five years;

  - Develop an instructional manual and audiovisual materials for HSC instructors certified by DOJ, and make the instructional manual available to gun dealers who must make the manual available to the public;

  - Prescribe a minimum level of skill, knowledge, and competency for all HSC instructors, and develop and provide guidelines to be used to certify instructors; and,

  - Solicit input in the development of the HSC course from reputable associations or organizations that promote gun safety.

- Specifies standard exemptions for law enforcement, military, collectors, museums, short-term loans, antiques, props, dealer to dealer transactions, etc.

- Creates express procedures whereby museums, non-profit historical societies, institutional collections and wholesalers may acquire deactivated or inoperable firearms from any person other than a law enforcement agency.

Domestic Violence: Firearms

At the scene of a domestic violence incident, existing law requires peace officers to confiscate firearms or other deadly weapons that are in plain view or discovered as a result of a consensual

search. Officers are not required to ascertain if firearms or other deadly weapons are present at the location.

AB 469 (Cohn), Chapter 483, requires a peace officer who responds to a domestic violence incident and finds it necessary for the safety of the officer or other persons present to inquire of the victim, the abuser, or both, as to whether a firearm or other deadly weapon is present at the location and to make a notation on the incident report as to the inquiry.

Animal Control Officers

Current law authorizes animal control officers, if properly trained, to use firearms but not wooden clubs or batons.

AB 1023 (Canciamilla), Chapter 527, allows animal control officers to carry wooden clubs or batons if properly trained. Specifically, this new law:

- Authorizes an animal control officer to carry a baton or wooden club if the animal control officer has completed a course of instruction certified by the Department of Consumer Affairs in carrying and using a club or baton.

- Allows the training institution to charge fees for the cost of the training course.

Firearm Storage

A nationwide study found that 35 percent of homes with children have at least one firearm. Further, statistics show that firearms cause one in every four deaths of adolescents between the ages of 15 to 19. This age group is the second most likely age group to receive fatal and nonfatal injuries due to firearms, with only slightly lower rates than 20- to 24-year-olds. Further, 15- to 19-year-olds have the highest rate of accidental fatal and nonfatal firearm-related injuries.

Existing law provides criminal penalties for a firearm owner who stores his or her firearm in a manner that permits a child under the age of 16 to access the firearm, if the child takes the firearm and uses it in certain ways. Specifically, existing law provides an alternate felony-misdemeanor if a person keeps a loaded firearm on his or her premises, knowing that the firearm is accessible to a child, and the child takes the loaded firearm and causes death or great bodily injury to another person. Further, existing law provides a misdemeanor if the child takes the loaded firearm and either injures another person, brandishes the firearm, or takes the firearm to a public place. Existing law also provides a misdemeanor if a person stores any firearm, loaded or unloaded, knowing the firearm is accessible to a child, and the child takes the firearm off-premises.

SB 9 (Soto), Chapter 126, expands the scope of the firearm storage laws by changing the definition of a "child" from a person under age 16 to a person under age 18. In addition, SB 9 creates a new misdemeanor for any person who stores a firearm so that a child has

access to the firearm if the child then takes the firearm to school or a school event. Specifically, this new law:

- Changes the definition of a "child" from a person under age 16 to a person under age 18 for the purposes of "criminal storage in the first degree", "criminal storage in the second degree", and negligent storage of a firearm if the firearm is taken off-premises by a minor.

- Provides that a person is guilty of a misdemeanor if he or she keeps a firearm on his or her premises, knows or should know that a child under age 18 could take the firearm without the permission of a parent or guardian, and the child takes the firearm to school or to a school event.

- Requires licensed gun dealers to post specified language explaining the above laws.

Firearms: Handgun Safety Certificate

Existing law generally requires that the sale, loan or transfer of a firearm (handguns, rifles and shotguns) in California be conducted through a state-licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 population. A 10-day waiting period, background check and handgun safety certificate for handgun transfers are required prior to delivery of the firearm. In order to obtain a certificate, the person must complete a course or pass a written test.

SB 52 (Scott), Chapter 942, effective January 1, 2003, repeals the Basic Firearms Safety and Certificate (BFSC) program administered by the Department of Justice (DOJ) and replaces it with a Handgun Safety Licensing Program funded from fees. Specifically, this new law:

- Provides that, effective January 1, 2003, no person may purchase, receive, transfer, or sell a handgun without a valid Handgun Safety Certificate (HSC) issued by DOJ.

- Requires an applicant for a HSC to:

  - Complete and pass a written test (a passing grade is 75 percent), as developed by DOJ. The test must be administered by an instructor certified by the DOJ and offered in English or Spanish. If the person taking the test is unable to read, the test may be taken orally; and,

  - Perform a safe handling demonstration for a DOJ-certified instructor, including safe handling and storage, use of force, and injury prevention strategies (not including a shooting or proficiency test).

- Requires the person receiving the handgun to present documentation of California residency and to provide a thumbprint on the record of sale.

- Requires the purchaser's name, date of birth, California driver's license or identification to be obtained from the magnetic strip of the purchaser's driver's license or identification.

- Prohibits the issuance of a HSC to any person under the age of 18 or to any person included in any of the classes of persons prohibited from possessing a gun.

- Conforms the required signage at firearm dealer locations to reflect existing law.

- Provides that it is a misdemeanor to receive a handgun without a valid HSC.

- Authorizes a certified instructor to charge a fee of up to $25; of that amount, $15 is to be forwarded to DOJ for enforcement of this new law.

- Specifies that a HSC expires in five years. An applicant for renewal must again pass the written test. A certified instructor may charge up to $25 for a renewal; of that amount, $15 is to be forwarded to DOJ for enforcement of this new law.

- Authorizes DOJ to assess a fee of up to $115 for costs associated with maintaining the certificate list and inspection of firearms dealers.

- Authorizes DOJ to require gun dealers to charge each person who obtains a handgun a fee of up to $5 for each transaction. Revenues from this fee would be deposited in the Firearms Safety and Enforcement Special Fund, created by this new law, administered by DOJ, and continuously appropriated to implement and enforce the provisions of this new law.

- Requires DOJ to:

  - Develop a HSC to be issued by DOJ-certified instructors;

  - Develop the course content and instructional materials in English and Spanish for the HSC course and update materials every five years;

  - Develop an instructional manual and audiovisual materials for HSC instructors certified by DOJ, and make the instructional manual available to gun dealers who must make it available to the public;

  - Prescribe a minimum level of skill, knowledge, and competency for all HSC instructors, and develop and provide guidelines to be used to certify instructors; and,

  - Solicit input in the development of the HSC course from reputable associations or organizations that promote gun safety.

- Specifies standard exemptions for law enforcement, military, collectors, museums, short-term loans, antiques, props, dealer to dealer transactions, etc.

- Creates express procedures whereby museums, non-profit historical societies, institutional collections and wholesalers may acquire deactivated or inoperable firearms from any person other than a law enforcement agency.

Switchblade Knives

It is a misdemeanor to possess, carry, sell, or transfer a switchblade knife that has a blade over two inches in length. In 1996, the Legislature amended Penal Code Section 653k to create an exemption to the switchblade knife law for a knife designed to open with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade. The intent of this provision was to include knives widely used by law enforcement and persons participating in sporting events and for lawful purposes such as hunting or fishing. The exemption resulted in some knives being manufactured or modified to open by a "flip of the wrist" while still having a thumb opening or thumb stud.

SB 274 (Karnette), Chapter 128, clarifies the definition of a knife not considered a switchblade to require the knife to open by thumb action and have a detent or other mechanism that provides resistance to opening the blade or biases the blade back toward its closed position.

Prohibited Weapons: Flechette Darts

Existing law defines a "flechette dart" as a dart capable of being fired from a firearm, which measures approximately one inch in length, with tail fins, and takes up 5/16ths of an inch of the body. Recently, the District Court of Appeals reversed a conviction for possession of a flechette dart after concluding that the word "approximately" in the definition only applies to the overall dart length, not to the tail fin length.

SB 578 (Figueroa), Chapter 130, changes the definition of a flechette dart by adding the word "approximately" before the tail fin length of 5/16ths of an inch in order to clarify that measurements of the dart need only be approximate.

Assault Weapons: "Large-Capacity Magazines"

SB 23 (Perata), Chapter 129, Statutes of 1999, prohibited the manufacture or importation into California of large-capacity magazines. The ban on the sale or transfer of large-capacity magazines was never intended to apply to law enforcement; while there is an exemption for the transfer or sale of such magazines to law enforcement, the law does not allow for the manufacture of these magazines in California for sale to law enforcement.

SB 626 (Perata), Chapter 937, exempts tubular magazines contained in lever-action firearms from the large-capacity magazine restrictions, and exempts the manufacture of large-capacity magazines for export or for sale to law enforcement agencies, government

agencies, peace officers, or the military. Specifically, this new law:

- Provides that a large-capacity magazine shall not include a tubular magazine that is contained in a lever-action firearm.

- Exempts the manufacture of a large-capacity magazine for any federal, state, county, city and county, or city agency charged with the enforcement of any law, for use by any employee in the discharge of his or her official duties whether on or off duty, and the use is authorized by the agency and is within the course and scope of those duties.

- Exempts the manufacture of a large-capacity magazine for use by a sworn peace officer, as defined, who is authorized to carry a firearm in the course and scope of his or her duties.

- Exempts the manufacture of a large-capacity magazine for export or for sale or resale to government agencies, or the military pursuant to federal regulations.

- Exempts the manufacture of a large-capacity magazine for purchase by the holders of special weapons permits, or the loan for use solely as a prop for a motion picture, television, or video production.

- Exempts the delivery, transfer, or sale of an assault weapon to a sworn peace officer who is a member of specified law enforcement agencies provided that the peace officer has verifiable written authorization from his or her employer to possess or receive the specific assault weapon.

- Specifies that nothing in this new law shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess an assault weapon.

- Requires that a peace officer who possesses or receives an assault weapon pursuant to departmental authorization prior to January 1, 2002 to register the weapon prior to April 1, 2002, and an officer who possesses or receives an assault weapon after January 1, 2002 to register the weapon within 90 days of possession or receipt.

- Allows a retired peace officer, who lawfully possesses an assault weapon, to loan that weapon at a target range as specified.

Firearms: Database Cross-Referencing

Existing law establishes various automated information systems in regard to the transfer and possession of firearms, and persons who are prohibited from owning or possessing firearms.

SB 950 (Brulte), Chapter 944, establishes the Prohibited Armed Persons File to assist law enforcement agencies' investigation of persons prohibited from owning or possessing

a firearm who may have been involved in the sale or transfer of a firearm. Specifically, this new law:

- Requires the Department of Justice (DOJ) to determine if any person listed in the "Automated Criminal History System" as prohibited from owning a firearm is also listed in the "Automated Firearms Systems" indicating possession or ownership of a firearm on or after January 1, 1991.

- Provides that, where DOJ enters the name of a person prohibited from owning a firearm into any automated information system, the DOJ shall determine if the subject has an entry in the Automated Firearms System indicating ownership or possession of a firearm on or after January 1, 1991 or an assault weapon registration.

- Provides that, where DOJ finds that a person in a prohibited class has been involved in the transfer of a firearm or the registration of an assault weapon, DOJ shall enter the following information about the person in the Prohibited Armed Persons File:

  - Name, date of birth, physical description, other necessary identifying information.

  - Basis of any firearm restriction.

  - Description of any firearms owned by the person.

- Provides that DOJ shall assist local agencies in investigating an individual who is armed yet prohibited from possessing or owning a firearm.

- Requires the court, at the time judgment is imposed, to provide the convicted defendant with a notice regarding that firearm prohibition and a form to facilitate the transfer. Firearm dealers are required to provide such notice under specified circumstances.

MISCELLANEOUS

California Law Enforcement Telecommunications System Security

The California Law Enforcement Telecommunications System (CLETS) is a statewide telecommunications system used by law enforcement agencies and maintained by the Department of Justice (DOJ). The DOJ publishes operating practices and procedures that are conditions of participating in CLETS. Local agencies are primarily responsible for system security.

AB 147 (Longville), Chapter 34, grants a control agent or chief officer of any other law enforcement agency who has been granted direct access to CLETS the authority to ensure that the county's system complies with security requirements. Specifically, this new law:

- Provides that the person designated as a county's control agent, as defined by policies, practices, and procedures adopted by the Attorney General (AG), or the chief officer of any other law enforcement agency who has been granted direct access to CLETS, shall have the sole and exclusive authority to ensure that the county's equipment and information connecting to CLETS complies with all CLETS and country control agent security requirements and policies.

- Authorizes the control agent or chief officer to locate, manage, maintain, and provide security for any of the county's or other agency's equipment that connects to, and exchanges data, video, or voice information with CLETS. Such equipment includes, but is not limited to, telecommunications transmissions circuits, networking devices, computers, databases, and servers.

- Provides that a control agent or chief officer may not exercise the authority in a manner that conflicts with the policies, practices, and procedures specified in existing law.

DNA Laboratory Employees: Risk of Infectious Disease Transmission

A laboratory technician at the Department of Justice's (DOJ) DNA laboratory accidentally came into contact with blood that was being typed for DNA. In a hospital or correctional setting, existing law provides for testing for the HIV virus upon request by specified employees.

AB 453 (Correa), Chapter 482, permits DOJ laboratory employees who come into contact with blood, where there is the risk of transmission of infectious disease, to request testing of the blood sample for the acquired immune deficiency syndrome (AIDS) virus. Specifically, this new law:

- Permits any forensic scientist, criminalist, toxicologist, pathologist, or any other employee required to handle or perform DNA or other forensic evidence analysis within the scope of his or her duties who comes into contact with blood or other

bodily fluids on the skin or membranes to seek an ex parte court order for authorized testing. Before filing a petition for testing, the requesting party shall make a reasonable effort to obtain the consent of the person whose blood or bodily fluids is to be tested

- Requires the court to promptly consider any petition filed. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the forensic evidence collected and the employee, the court shall order that the existing forensic evidence be tested for communicable diseases as provided for under existing law.

- Requires copies of the test results to be sent to the defendant or minor, each requesting employee named in the petition, and his or her employing agency, officer, or entity. A copy of the test results shall be sent to the officer in charge and the chief medical officer of the facility in which the person is incarcerated or detained.

- Provides that the person shall be advised that he or she will only be informed of the HIV test results if he or she wishes to be so informed. Declining to be informed shall be documented. Refusing to sign such a form shall be construed as a request to be informed of the results.

- Includes the test results obtained pursuant to this new law in provisions of existing law pertaining to maintaining the confidentiality of test results, prohibiting test results from being admissible evidence in any criminal proceeding, and granting immunity from civil liability to specified persons.

Public Employees: Punitive Action

Existing law establishes the right of local public employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Oftentimes, leaders of public safety associations are directed by their members to take positions which may be critical of public safety management in that particular city or county, such as directing a vote of no confidence or addressing issues of collective bargaining or employee rights.

AB 1184 (Oropeza), Chapter 788, provides that no public employee shall be subject to punitive action because of lawful action as a representative of an employee bargaining unit. Specifically, this new law:

- Adds a provision to the Government Code to provide that no public employee shall be subject to punitive action, denied promotion, or threatened with any such treatment for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

- States that the Legislature finds and declares that the provisions of this new law are declaratory of existing law.

Juvenile Justice: Foster Care Requirements

Last year, the Legislature brought California into compliance with the statutory requirements of the Adoptions and Safe Families Act (ASFA) and Title IV-E of the Social Security Act. Subsequent to the enactment of the new law, the United States Department of Health and Human Services issued regulations requiring additional statutory changes if California is to remain in compliance with federal law. As Title IV-E is the federal funding mechanism for children in foster care, compliance with its requirements for California's children in the delinquency system was crucial for monetary as well as policy reasons.

> **AB 1696 (Assembly Human Services Committee), Chapter 831,** clarifies certain provisions in current law relating to efforts by a probation officer to prevent or eliminate the need for removing a minor from his or her home. Other provisions relating to foster care placement and permanency planning for wards of the court further conform state law to federal law.

Code Maintenance

Periodically, it is necessary to amend code provisions which are obsolete, outdated, or in need of clarification or correction.

> **SB 205 (McPherson), Chapter 854,** makes numerous non-substantive technical changes to the Business and Professions, Evidence, Government, Penal, Revenue and Taxation, Vehicle, and Welfare and Institutions Codes.

Switchblade Knives

It is a misdemeanor to possess, carry, sell, or transfer a switchblade knife that has a blade over two inches in length. In 1996, the Legislature amended Penal Code Section 653k to create an exemption to the switchblade knife law for a knife designed to open with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade. The intent of this provision was to include knives widely used by law enforcement and persons participating in sporting events and for lawful purposes such as hunting or fishing. The exemption resulted in some knives being manufactured or modified to open by a "flip of the wrist" while still having a thumb opening or thumb stud.

> **SB 274 (Karnette), Chapter 128,** clarifies the definition of a knife not considered a switchblade to require the knife to open by thumb action and have a detent or other mechanism that provides resistance to opening the blade or biases the blade back toward its closed position.

Teacher Credentialing

As used in provisions relating to school employees, existing law defines the term "sex offense", in part, by referring to specified Penal Code provisions. That definition includes any offense

committed or attempted in any other state which if committed or attempted in California would have been punishable as one of the offenses referred to in the Penal Code.

SB 299 (Scott), Chapter 342, makes technical and programmatic changes to the laws governing the Commission on Teacher Credentialing (CTC). Specifically, this new law:

- Clarifies that the term "sex offense" includes violations of federal law as offenses in which credentials are automatically suspended upon charging and revoked upon conviction.

- Corrects a code reference to petty theft to accurately refer to petty theft with a prior conviction which is punishable as an alternate felony/misdemeanor.

- Permits pre-intern credential candidates to complete subject matter requirements by taking appropriate courses. Existing law requires only an examination.

- Requires participants in the Paraprofessional Teacher Training Program to commit to earning a bachelor's degree as a condition of entering the program.

Procedural Protections: Civilian Employees of Police Departments

Existing law establishes the Public Safety Officers Procedural Bill of Rights Act that sets forth procedural protections for employees subject to adverse personnel actions brought by the employing agency.

SB 379 (Alarcon), Chapter 801, extends certain similar provisions of the peace officers bill of rights to civilian employees of police departments. Specifically, this new law:

- Defines "police employee" as civilian employees of the police department of any city.

- Provides that, except as specified, no punitive action, or denial of promotion on grounds other than merit, shall be undertaken for alleged misconduct unless the investigation is completed within one year of discovery by the public agency.

- Provides that the one-year limitation period applies if the act, omission, or other misconduct occurred on or after January 1, 2002. The public agency must complete its investigation and notify the police employee of its proposed disciplinary action within that year with the following exceptions that toll the time period:

  - If the misconduct is also the subject of a criminal investigation or prosecution;

  - If the police employee executes a written waiver;

- If the investigation is multi-jurisdictional or involves more than one employee and requires a reasonable extension;

- If the employee under investigation is incapacitated or otherwise unavailable; and,

- If the investigation involves a matter in civil litigation in which the police employee is named as a party defendant or allegations of workers compensation fraud by the employee.

- Provides that when a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this new law.

- Authorizes re-opening an investigation after the expiration of the one-year time period if significant new evidence has been discovered that is likely to affect the outcome of the investigation and the evidence could not have been reasonably discovered during the normal course of the investigation, as specified.

Omnibus Penal Code Revisions

The Senate Public Safety Committee's annual omnibus bill is introduced to make only technical or minor changes to the Health and Safety, Penal, and Vehicle Codes.

SB 485 (Senate Committee on Public Safety), Chapter 473, makes technical, corrective changes to various sections of the Penal Code and Vehicle Code. Specifically, this new law:

- Recasts provisions that describe the various duties of probation officers currently in the Code of Civil Procedure into the Penal Code without making any substantive changes.

- Eliminates the requirement that the Commission on Peace Officer Standards and Training (POST) develop a supplemental course for specified Level I reserve peace officers as subsequent legislation has made that requirement unnecessary.

- Provides that the court, not the clerk of the court, shall make the determination whether a photograph of any minor introduced or filed as an exhibit in any criminal matter is harmful matter.

- Clarifies that custodial officers are permitted to use less than lethal force while on duty when authorized and makes a technical cross-reference correction to the definition of "less than lethal force".

- Requires the Department of Motor Vehicles (DMV) to make available to the courts and law enforcement agencies any conviction of specified vehicle offenses involving alcohol and drugs.

- Codifies the existing DMV practice of treating specified out-of-state, driving-under-the-influence (DUI) related offenses as priors for specified enhanced DUI penalties.

- Deletes the obsolete provision creating the Joint Legislative Committee for the Revision of the Penal Code.

- Changes the reporting date for a review of the changes to the Ignition Interlock law to provide for an interim report on July 1, 2002 and a final report on January 1, 2004.

- Makes numerous corrections to cross-references.

Department of Corrections' Rulemaking Procedures

In general, existing law provides all regulations shall be adopted pursuant to the Administrative Procedures Act but exempts California Department of Corrections (CDC) regulations relating to pilot programs or imminent danger. In addition, existing law exempts emergency regulations from certain requirements of the Administrative Procedures Act.

SB 563 (Morrow), Chapter 141, makes changes recommended by the California Law Revision Commission to the CDC's emergency rulemaking authority. Specifically, this new law:

- Adds a definition of "pilot program".

- Specifies that procedures for adopting a pilot program and emergency regulations also apply to the amendment or repeal of such regulations.

- Extends the period for Office of Administrative Law review of an emergency regulation promulgated by the CDC on the basis of its operational needs, rather than on the basis of an emergency.

Tobacco Control

Twenty-nine million packs of cigarettes are sold to California children every year. These sales generate $1.2 billion in profits for tobacco manufacturers and retailers. Youth access to tobacco products must be restricted in order to reduce youth smoking.

SB 757 (Ortiz), Chapter 376, expands the authority of the Department of Health Services (DHS) to investigate the illegal sale of tobacco products to minors. Specifically, this new law:

- Authorizes the DHS to conduct on-site "sting" inspections in response to public complaints or at retail sales sites where violations have previously occurred and investigate illegal sales of tobacco products to minors by telephone, mail, or the Internet.

- Provides that a minor participating in an inspection, if questioned about his or her age, need not state his or her actual age. However, the minor shall present a true and correct identification if verbally asked to present it.

- Requires the DHS to notify a retail establishment that has been the subject of a sting inspection that such an inspection has occurred.

- Deletes the requirement that after a sale of tobacco or tobacco products to a minor, the peace officer accompanying the minor shall identify the minor to the seller.

- Prohibits the sale or display of tobacco products from self-service displays.

- Extends the prohibition on the non-sale distribution of cigarettes or smokeless tobacco products to include private property open to the general public, except for private property where minors are not permitted.

- Prohibits the sale of any cigarette in packages of less than 20 cigarettes, and loose tobacco in packages of less than 0.60 ounces.

- Prohibits a person, firm, or corporation from selling or furnishing tobacco, cigarettes, cigarette papers, tobacco preparations, or tobacco paraphernalia under circumstances where he or she should have known the purchaser was a minor.

Board of Prison Terms: Parole Hearings

Recently, the Inspector General (IG) issued a report noting the number of cases awaiting a parole consideration hearing. The report stated in part: "the Board of Prison Terms (BPT) backlog of hearings is so large that most of the hearings are delinquent. Although the BPT does not have reliable data for estimating its backlog, it is indisputable that the backlog is significant." According to information compiled from the institutions, the backlog increased from 204 on June 30, 1998, to 695 on June 30, 1999. The BPT staff projects the backlog to increase to 1050 by June 30, 2000. Because of the backlog most of the hearings are delinquent by more than six months.

The most recent anecdotal information indicates that the backlog has grown significantly and now numbers more than 2,000, with more than one-year delays. For example, a person who receives a one-year denial would not get his or her next hearing for more than two years. While there have been BPT vacancies that have contributed to the problem, the IG found that the BPT has a practice of routinely transferring Friday hearings to other days of the week.

SB 778 (Burton), Chapter 131, authorizes the BPT, until December 31, 2003, to conduct life parole consideration hearings by panels consisting of at least one commissioner, and requires each commissioner to participate in parole hearings each work day. Specifically, this new law:

- Authorizes BPT, on an emergency basis until December 31, 2003, to conduct life parole consideration or life rescission hearings by panels consisting of at least one commissioner. In the event of a tie vote, the matter shall be referred to the full BPT for a decision.

- Prohibits BPT from revoking a parole decision unless BPT finds that the parole panel made an error of law or fact, or new information has been presented to BPT where there is a substantial likelihood of a different decision upon re-hearing.

- Requires BPT to consult with the commissioners who conducted the parole consideration hearing prior to referring a parole decision for re-hearing, and requires a majority vote of BPT en banc at a public hearing before rescinding or referring a parole decision for re-hearing.

- Provides that any decision of the parole panel finding an inmate suitable for parole shall become final within 90 days of the date of the hearing.

- States legislative intent to increase the number of parole hearings conducted each month to eliminate the number of inmates awaiting hearings.

- Requires BPT to report monthly, as specified, on the number of hearings conducted in the previous month, the number scheduled in the current and subsequent months, the backlog of cases awaiting hearing, and progress toward eliminating the backlog.

- Requires each commissioner to participate in parole hearings each work day, except as specified.

- Requires the State Personnel Board (SPB) to conduct an investigation and review of the personnel practices of BPT with particular emphasis on the deputy commissioner classification including, but not limited to, hiring, transferring, promoting, and adverse actions.

- Requires SPB to complete the investigation and review of BPT and report to the Chair of the Senate Rules Committee, the Speaker of the Assembly, and the Governor, on or before December 1, 2001.

- Allows a parole consideration panel to return an inmate to a county other than to the county which was the last legal residence.

Dental Board Peace Officers

Peace officers employed by the Dental Board of California investigate cases involving fraud, impersonating a dentist, drugs, grand theft, and sexual assault. Past legislation limited the number of peace officers on the Board's investigative unit. A study was conducted by an outside entity to determine the investigative unit's need for peace officer employees, but the results were inconclusive.

SB 826 (Margett), Chapter 859, extends the limited term appointment of peace officers on the Board until January 1, 2004. A follow-up study expanding and refining the recommendations of a previous study on the need for peace officers on the investigations unit is authorized. Specifically, this new law:

- Extends the limited term appointment of each peace officer on the Board from July 1, 2002 to January 1, 2004.

- Requires the Board to contract with the same entity that completed the independent study required by AB 900 (Alquist), Chapter 840, Statutes of 1999, to conduct a follow-up study to further refine the findings and recommendations of the original study to be submitted to the Legislature by August 1, 2002. The study shall expand upon the following:

  - The number and type of enforcement positions, including peace officer and non-peace officer positions, needed;

  - The extent to which the Board needs sworn peace officers for its enforcement program;

  - Trends in dental-related crimes reported to the Board;

  - Comparison of the Board's enforcement program to similar agencies;

  - Recommendations for improving the Board's enforcement program; and,

  - The fiscal impact to the Board from recommended changes to its enforcement program.

- Requires the entity performing the study to consult with all interested parties including consumer representatives, dental professionals, law enforcement, the Department of Consumer Affairs, and other state agencies with sworn peace officers and non-peace officer investigators.

- Appropriates $75,000 from the State Dentistry Fund to the Board to conduct the study and prepare the report.

Corrections: Council on Mentally Ill Offenders

Every year, California spends $1.5 billion incarcerating the mentally ill. Mentally ill prisoners have a 94 percent chance of being arrested within two years of release. The Legislature has invested nearly $200 million over the last three years on innovative local programs to address this problem. Yet, there is no statewide agency responsible for dealing with this massive statewide problem.

The Little Hoover Commission found that local and state agencies have failed to integrate and coordinate mental health and criminal justice services.

SB 1059 (Perata and Ortiz), Chapter 860, establishes the Council on Mentally Ill Offenders within the Youth and Adult Correctional Agency (YACA). Specifically, this new law:

- Provides for the appointment of 11 members to the Council, including the Secretary of YACA, the Director of the Department of Mental Health, and law enforcement and mental health representatives.

- Provides that the Council's goal is to investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who either are offenders or are likely to become offenders.

- Requires the Council to report annually to the Legislature regarding its activities during the previous year and its recommendations for improving mental health and criminal justice programs.

- Establishes a sunset date of January 1, 2007.

Privacy Protections: Satellite Television

Existing law provides privacy protections for cable television subscribers. However, these laws do not cover companies that own, control, operate, or manage a satellite television corporation or companies that lease channels on a satellite system. While current law provides opt-in privacy protections for cable subscribers, no such protections exist for satellite TV subscribers.

SB 1090 (Bowen), Chapter 731, prohibits all companies that provide cable or satellite services from disclosing any personal information or television viewing habits to anyone but the individual customer unless the customer "opts in" to allow that information to be collected and sold. Specifically, this new law:

- Expands the scope of the prohibition, in the absence of express consent, against monitoring by cable television providers of subscribers of services to include satellite television providers.

- Expands the scope of the prohibition, in the absence of express consent, against recording, transmitting, or observing any events or listening to, recording, or monitoring any conversations which take place inside a subscriber's residence, workplace, or place of business, to include satellite television providers.

- Expands the scope of the prohibition, in the absence of express consent, against providing any third party with individually identifiable information regarding any of its subscribers including, but not limited to, the subscriber's television viewing habits, shopping choices, interests, opinions, energy uses, medical information, banking data or information, or any other personal or private information, to include satellite television providers.

- Makes other conforming changes to provisions regarding retaining personal information for business purposes, keeping subscriber information confidential absent a court order or subpoena, permitting subscribers to inspect their records, privacy notices, and civil and criminal penalties for invasion of privacy, to include satellite television providers.

- Modifies the definition of "individually identifiable information" to exclude anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

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