



**Senate Committee on
Public Safety**

2004 Bill Summary

Measures Signed and Vetoed

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For your information, the staff of our Senate Committee on Public Safety has prepared this summary of bills sent to the Governor in 2004 pertaining to our Committee's subject-matter jurisdiction. I hope this compilation of public safety legislation will facilitate access to the new laws enacted this year. Most will take effect January 1, 2005.

Measures vetoed by the Governor are included to note disparate views between the Legislature and Governor. Moreover, vetoed bills are often reintroduced – in one form or another – in subsequent years.

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

- Copies of chaptered bills may be requested at no cost from the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814 or by calling (916) 445-2323. Copies of vetoed bills are available until February 2005.
- The Legislative Data Center maintains a website where these bills and analyses are available: <http://www.leginfo.ca.gov/bilinfo.html>

The text of this summary is also available at the Committee's list of publications at: <http://www.sen.ca.gov/htbin/testbin/seninfo?SEN.COMMITTEE.STANDING.PUBLICSAFETY>

I hope this legislative summary is useful to you, and to your constituents, as you – and they – prepare for 2005. I have enjoyed the challenges of chairing the Committee since 2001 and greatly appreciate the assistance of all of those interested in the Committee's work as they have sought to help me and the members of the committee write laws which are responsive to the needs of our state.

Cordially,

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EDITOR'S NOTES

- **Categorization of bills** – Many of the bills in this summary could fall under several different subject headings, but have been limited to one category in the interest of brevity. It is therefore hoped that anyone wishing to find all of the bills of interest to them may simply skim the entire document to identify any new laws. In addition, those who focus on specific code areas may skim the Table of Sections Affected information mentioned below.
- **Previous votes not relevant** – Refers to the committee/floor votes of a prior version of the measure which are not included in this summary. The votes that are shown in each bill summary refer to the committee/floor votes of the signed or vetoed measure. Simply put, the prior version of the measure was substantially amended (gutted) and replaced with new language. The measure number remains the same, but generally, the replacement language differs greatly from the measure's prior language. Thus a vote on a prior version of the bill does not provide useful information in determining the action of the Legislature on the enacted or vetoed version of the measure.
- **Effective date of bills – effect of urgency clause** – Article IV, Section 8(c) of the California Constitution provides that ". . . a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute" and "urgency statutes shall go into effect immediately upon their enactment." Regardless of the date a bill takes effect, some measures do have a **delayed "operative" date** for all or part of the measure; that is most common when a start-up period may be useful in order to prepare for the measure's impact.
- **Contingent measures** – Some bills have language added which makes them operative, if enacted, only if another measure – or measures – are also enacted.
- **Sunset dates** – Some measures have sunset dates that make them inoperative unless a later enacted statute becomes effective on or before the sunset date, which deletes or extends the date on which it becomes inoperative.
- **Conflicts and "double-jointing" language** – If two or more measures both amend the same statutory section in the same year, then whichever measure is chaptered/enacted last will "chapter out" any changes made by the earlier measure(s) unless the last enacted bill contains double-jointing language which provides that both the changes to the section made by the earlier measure(s) and the last enacted bill are to take effect. It may generally be assumed that measures in this summary which amend the same statutory section have the requisite double-jointing language so that all of the changes made by all of the measures will take effect.
- **Two votes in Appropriations Committee** – Some bills have two separate votes in the Senate and Assembly Appropriations Committees; the first generally reflects that the measure met the dollar threshold limit to be considered on the "suspense" file before final action. The second vote is the vote to pass the bill out of committee off of "suspense." This summary only lists the second vote if a bill was referred to suspense.

- **SR 28.8** – Senate Rule 28.8 allows the chair to move bills out of the Senate Appropriations Committee without a formal committee hearing or vote if the bill has no significant effect on state revenues. Thus, SR 28.8 is reflected, where appropriate, instead of a vote.
- **Not all bills that create a new crime are included in this summary** – The Senate Committee on Public Safety jurisdiction does not always include measures that involve misdemeanor and infraction criminal penalties. There are some bills, however, in this summary which were not heard in this committee, but which are included as FYI's since they are on related subjects that may be of interest.
- **Table of Sections Affected** – This summary does not contain a Table of Sections Affected (TOSA). However, the TOSA prepared by the Legislative Counsel is available online at the Legislative Counsel's "Official California Legislative Information" site at: www.leginfo.ca.gov/.

Go to that website, click on "Legislative Publications" and then on "Table of Sections Affected" and search by code section. That same site also offers a "Bill Information" option which allows a word search and can be searched by statutory section number and is an alternative to the TOSA for finding bills by a statute number.

- **Only "final" votes included in this summary** – There may be more than one vote on a bill in a given legislative location. For example, hostile amendments (not offered by the author) may be proposed on the Senate Floor and those amendments may be defeated or "tabled"; a bill may first fail in a committee or on the Senate or Assembly Floor, reconsideration may be granted, and the bill may be amended and subsequently approved; or a bill may pass the Legislature and be returned at the Governor's request with amendments then adopted before the bill is sent again to the Governor. This summary only reflects the final votes on a bill in each legislative location.
- **Legislative Counsel's Maintenance of the Codes bill** – AB 3082 (Committee on Judiciary) – Chapter 183. This annual clean-up bill makes technical and nonsubstantive changes to hundreds of code provisions; it is not included in this summary notwithstanding that it changes language in 12 sections of the Penal Code plus other code sections relevant to the criminal justice system. AB 3082 contains the following proviso:

Any section of any act enacted by the Legislature during the 2004 calendar year that takes effect on or before January 1, 2005, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2004 calendar year and takes effect on or before January 1, 2005, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

ANIMALS

SB 1520 (Burton): Chapter 904: Force-fed birds.

(Adds Chapter 13.4 (commencing with Section 25980) to Division 20 of the Health and Safety Code.)

Legislative History:

Senate Business & Professions (4-3)

Senate Floor (21-14)

Senate Concurrence (21-12)

Assembly Business & Professions (9-4)

Assembly Floor (46-28)

Existing law prohibits specified inhumane treatment of animals.

This bill prohibits the force feeding of birds for the purpose of enlarging the bird's liver beyond normal size, and would prohibit a person from hiring another person to do so. The bill would also prohibit a product from being sold in the state if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size. This bill provides that these prohibitions shall become operative on July 1, 2012.

AB 1801 (Pavley): Chapter 322: Guide dogs.

(Amends Sections 365.6, 600.2, and 600.5 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (76-0)

Assembly Concurrence (78-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Existing law makes it an infraction for interfering with a guide dog. The penalties vary depending on whether the conduct was intentional, or by a person or another animal.

This bill increases the penalties for offenses against a guide dog.

AB 1857 (Koretz): Chapter 876: Animal cruelty: exotic or native wild cat species: declawing.

(Adds Section 597.6 to the Penal Code.)

Legislative History:

Assembly Public Safety (4-2)

Assembly Appropriations (14-5)

Assembly Floor (48-28)

Senate Business & Professions (4-2)

Senate Appropriations, SR 28.8

Senate Floor (21-15)

Existing law prohibits cruelty to animals as specified.

This bill makes it a misdemeanor, punishable as specified, for any person to perform, procure, or arrange for surgical claw removal, declawing, onychectomy, or tendonectomy on an exotic or native wild cat species, as defined, or from altering such a cat's toes, claws, or paws in order to prevent their normal functioning. This bill exempts from the prohibition procedures performed solely for a therapeutic purpose, as defined.

ARSON CRIMES/FIRE PREVENTION

AB 1907 (Pacheco): Chapter 135: Amount of damages constituting aggravated arson.
(Amends Section 451.5 of the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Senate Public Safety (4-0)

Assembly Appropriations (18-0)

Senate Appropriations, SR 28.8

Assembly Floor (76-0)

Senate Floor (38-0)

Assembly Concurrence (76-0)

Existing law defines the crime of aggravated arson. One form of aggravated arson may be established where fire caused losses in excess of \$5,000,000. Without amendment, this property damage provision would sunset on January 1, 2005.

This bill increases the amount of property damage and other losses to \$5,650,000 and extends the repeal date for the provisions relating to property damage until January 1, 2010.

AB 1924 (Bogh): Chapter 90: Rural fire prevention: penalties.
(Amends Sections 4299 and 4376 of the Public Resources Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (4-0)

Assembly Natural Resources (10-0)

Senate Floor (31-0)

Assembly Floor (75-0)

Existing law authorizes the Governor, through the Director of Forestry and Fire Protection, by proclamation, upon a showing that unrestricted use of any grass-covered, grain-covered, brush-covered or forest-covered land is a menace to life or property due to severe fire danger, to require that the area be closed to hunting and fishing and to entry by any person, except as specified. A person who violates the closure proclamation shall be punished by a fine of not less than \$50 nor more than \$1000, or by imprisonment in the county jail, as provided, or by both the fine and the imprisonment.

This bill increases the fine to not less than \$100 nor more than \$2000.

Existing law provides that any person who maintains any solid waste facility in violation of specified laws relating to flammable solid waste shall be punished for a first conviction by a fine not to exceed \$250 and for a second or subsequent conviction within 5 years of a prior conviction, by a fine not less than \$250 or more than \$1000, or by imprisonment in the county jail, or both.

This bill increases the fines to not more than \$500 for a first conviction, and not less than \$500 or more than \$2000 for a second or subsequent conviction within 5 years of a prior conviction.

BACKGROUND CHECKS

SB 855 (Machado): Chapter 664: Community care facilities: crisis nurseries.

(Amends, repeals, and adds Section 1596.792 of, and adds and repeals Sections 1516 and 1526.8 of, the Health and Safety Code, and amends, repeals, and adds Sections 11400 and 11402 of, and adds and repeals Section 11462.7 of, the Welfare and Institutions Code.)

Legislative History:

Senate Public Safety (11-0)

Senate Appropriations, SR 28.8

Senate Floor (40-0)

Senate Concurrence (28-1)

Assembly Human Services (6-0)

Assembly Appropriations (21-0)

Assembly Human Services (5-0)

Assembly Floor (72-0)

Existing law provides for the licensure and regulation by the State Department of Social Services of community care facilities, including facilities that provide care for children.

This bill, among other things, permits the use of volunteers as caregivers in a crisis nursery if the volunteer has received a criminal background check and meets other specified requirements.

SB 1314 (Ortiz): Chapter 184: Criminal history information. Urgency.

(Amends Sections 11105, 11105.3, and 14203 of the Penal Code, amends Section 5164 of the Public Resources Code, and amends Sections 2432.3 and 13377 of the Vehicle Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Senate Concurrence (33-0)

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (78-0)

Existing law provides that the Department of Justice shall maintain "state summary criminal history information," and that the Attorney General shall furnish summary criminal history information to an agency, officer, official of state or local government, a public utility, or any other entity, as specified, to assist in fulfilling employment, certification, or other licensing duties.

This bill provides for the dissemination of criminal history information pursuant to any statute that incorporates specified criteria by reference, explicitly provides for federal background checks in provisions dealing with criminal history dissemination, reinstates previously deleted employment disqualification cross-references, and makes a number of technical and conforming changes to the relevant statutes.

This bill took effect immediately upon enactment as an urgency measure.

SB 1388 (Ortiz): Chapter 570: Criminal history information.
(Amends Section 11105 of the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Senate Concurrence (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (80-0)

Existing law provides public utilities are among those entities who may receive criminal history information when it is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences.

This bill adds "any cable corporation" to the provisions allowing public utilities to have access to criminal history information for employment purposes; expands the provisions giving public utilities access to criminal history information to include not just current or prospective employees but also contract employees or subcontract employees. It further expands the provisions giving public utilities access to criminal history information to include employees who not only seek entrance to private residences but also to those who may be seeking entrance to adjacent grounds. This bill will also allow public utilities and cable corporations to receive federal criminal history information.

AB 366 (Mullin): VETOED: Child care: substitute employee registry. Urgency.
(Amends Sections 1502 and 1522.02 of, and adds Sections 1596.7912 and 1596.7991 to, the Health and Safety Code.)

Legislative History:

Assembly Human Services (5-0)

Assembly Appropriations (24-0)

Assembly Floor (73-0)

Assembly Concurrence (57-22)

Senate Health & Human Services (11-0)

Senate Appropriations (10-0)

Senate Floor (34-0)

Existing law authorizes the State Department of Social Services to adopt regulations to create substitute employee registries for persons working at more than one facility licensed by the department, in order to permit these registries to submit fingerprint cards and child abuse index information for child care registries.

This bill would have authorized the department to adopt the above regulations in order to permit these registries, instead, to submit fingerprint images and related information to the Department of Justice, in accordance with prescribed provisions, for workers who are associated with the registries, and would have required the Department of Justice to assess all processing fees associated with these provisions. It would also have required that the responses from the Department of Justice be provided to the department, and would have permitted these responses to include information from specified sources.

Existing law additionally authorizes the department to operate a substitute childcare employee registry pilot program for the above purposes, pursuant to specified criteria, and to charge a reasonable annual licensing fee to participating registry facilities.

This bill, among other changes, would have instead required, until January 1, 2008, the department to operate this substitute child care employee registry pilot program, and on and after that date, would authorize the department, in its discretion, to operate the pilot program.

This bill would have taken effect immediately upon enactment as an urgency measure.

AB 1240 (Mullin): Chapter 653: Care facilities: criminal record clearances.

Urgency.

(Amends Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code.)

Legislative History:

Assembly Human Services (4-0)

Senate Public Safety (4-0)

Assembly Appropriations (22-0)

Senate Appropriations, SR 28.8

Assembly Floor (78-0)

Senate Floor (33-0)

Assembly Concurrence (78-0)

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or child day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in any of these facilities, except as specified. Under existing law, an individual is required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility. Existing law authorizes the department to permit an individual to transfer a current criminal record clearance, from one facility to another if certain conditions are met.

This bill authorizes, with respect to community care facilities and child day care facilities, any county office with department delegated licensing authority and the State Department of Social Services to accept a criminal record clearance or exemption from each other, and would authorize any county office with department delegated licensing authority to accept a criminal record clearance or exemption from another such county office.

Existing law authorizes the Department of Justice to provide subsequent arrest notification to any agency authorized to receive state summary criminal history information upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice.

This bill, with respect to community care facilities and child day care facilities, specifies conditions under which the Department of Justice would be required to substitute the department or another county with department delegated licensing authority as a recipient of notification under this provision.

Existing law specifies that a licensee's failure to submit fingerprints to the Department of Justice or to transfer a current criminal record clearance, when required, results in the citation of a deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The State Department of Social Services is authorized to assess additional civil penalties for continued violations. Existing law also specifies that a licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility shall be grounds for denying an application for, or suspending or revoking, a license.

This bill enhances the penalties for violating any of the above provisions by providing that a violation results in a citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation, per day, for a maximum of 5 days, or for a maximum of 30 days in the case of a second or subsequent violation, and by providing that a violation is grounds for denying an application for, or suspending or revoking, a license or administrator certificate.

This bill, in addition, imposes these penalties for failure of a foster family agency to submit fingerprints that a foster family agency is required under existing law to obtain from certified home applicants or to transfer a current criminal record clearance, when required.

This bill took effect immediately upon enactment as an urgency measure.

AB 1913 (Cohn): Chapter 373: Foster care providers: evaluation and criminal records checks.

(Amends Section 319 of, amends and repeals Section 309 of, and repeals and amends Section 361.4 of, the Welfare and Institutions Code.)

Legislative History:

Assembly Human Services (7-0)

Senate Health & Human Services (9-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (76-0)

Senate Floor (31-0)

Assembly Concurrence (78-0)

Existing law, among other things, provides until January 1, 2005, that the child shall not be placed in the home of the person if the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure as a community care facility, unless a criminal records exemption approved by the Director of Social Services has been granted by the county.

This bill, among other things, revises these provisions, including extending their application to January 1, 2010, authorizing the placement of a child, based on the results of the criminal records check, instead of the fingerprint clearance check, and making other, technical changes.

AB 1986 (Wolk): Chapter 298: Placement of children: background checks.

(Amends and repeals Section 361.4 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (7-0)

Senate Health & Human Services (9-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (77-0)

Senate Floor (33-0)

Assembly Concurrence (78-0)

Existing law generally provides that if a fingerprint clearance check indicates that a person has been convicted of a crime, as specified, a child who has been removed from the home of his or her parents may not be placed in the home of that person. However, existing law also provides an exception to that prohibition, only until January 1, 2005, if the county has granted a criminal records exemption based on substantial and convincing evidence to support a reasonable belief that the person with the criminal record is of such good character as to justify the placement and not present a risk of harm to the child, as specified. For purposes of that provision, a county may issue a criminal records exemption only if the county has been granted permission by the Director of Social Services to issue criminal records exemptions. Existing law authorizes a county to file a request with the Director of Social Services seeking permission to establish a procedure to evaluate and grant appropriate individual criminal records exemptions.

This bill extends the operative date of these provisions until January 1, 2010.

AB 2075 (Benoit): Chapter 419: Department of Motor Vehicles: employee qualifications.

(Adds Section 1040 to the Government Code.)

Legislative History:

Assembly Public Employees, Retirement & S.S. (7-0)

Assembly Appropriations (21-0)

Assembly Floor (74-0)

Assembly Concurrence (78-0)

Senate Transportation (8-1)

Senate Appropriations (10-0)

Senate Floor (29-0)

Existing law requires a classifiable set of fingerprints of every state, county, city, and city and county peace officer be furnished to the Department of Justice and to the Federal Bureau of Investigation by the agency employing the peace officer.

This bill authorizes the Department of Motor Vehicles to require fingerprint images and associated information from any employee or prospective employee whose duties include or would include access to certain confidential information, access to cash or checks, responsibility with respect to a critical automated system, or making decisions regarding licenses and other matters. This bill also authorizes those fingerprint images and associated information to be furnished to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and arrests, as specified. The bill authorizes the Department of Justice to assess a fee sufficient to cover the processing costs for providing that information.

BAIL

SB 761 (McPherson): Chapter 104: Bail.

(Amends Sections 1278 and 1287 of the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Assembly Public Safety (6-0)

Senate Appropriations, SR 28.8

Assembly Floor (78-0)

Senate Floor (37-0)

Senate Concurrence (38-0)

Existing law requires that certain information be provided in a written undertaking of bail.

This bill requires, in addition, that an undertaking of bail include the bail agent license number, address and phone number of the agency issuing bail.

SB 1744 (Dunn): VETOED: Bail forfeiture and related processes.

(Amends Sections 1305, 1306, and 1308 of, adds Sections 1305.5 and 1309 to, and repeals Section 1305.4 of, the Penal Code, and Uncodified Law.)

Legislative History:

Senate Public Safety (5-0)

Assembly Public Safety (5-0)

Senate Floor (38-0)

Assembly Floor (69-6)

Senate Concurrence (26-7)

Existing law provides for a right to bail. Bail may be forfeited in accordance with specified procedures, including that notice must be made to the surety or depositor of cash bail. If the surety for the bond is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then any required notice of the forfeiture shall be mailed to the surety at that address and to the bail agent.

This bill would have required the bond to plainly display the mailing addresses of both the statutory home office of the corporate surety and the bail agent if the surety is an authorized corporate surety. It would separately require notice to be sent to both addresses to comply with these provisions.

Existing law provides that when a defendant comes before the court or otherwise is brought within the court's control within 180 days after forfeiture or notice of forfeiture of bail, as specified, the court is authorized to vacate the forfeiture. A motion to vacate bail forfeiture be filed within the 180-day period and heard within 30 days of the expiration of that 180-day period. The 30-day period may be extended for good cause. A surety or depositor of bail may file a motion, based upon good cause, to extend the 180-day period of time for up to 180 days. The court may require that the moving party provide 10 days' prior notice to the applicable prosecuting agency as a condition precedent to granting a motion.

The law also currently provides that where a court, after the period provided in law for vacating the forfeiture has passed, has declared a bond forfeited, the court must enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound.

This bill would have repealed the procedure for applying to a court to extend for up to 180 days the time permitted (also 180 days) to vacate a forfeiture of bail. Instead, the bill would have provided that the surety or depositor of bail shall be given an additional 180 days to vacate the forfeiture upon the deposit with the court, prior to the expiration of the original 180 days, of the full amount of the undertaking of bail or the bail bond. The bill would have required that these funds have been kept in escrow and used by the court to satisfy any summary judgment order or appellate decision affirming the summary judgment. The forfeiture amount would have been returned upon exoneration of the bond or reversal of the summary judgment.

Existing law provides for an appeal procedure from a summary judgment against a surety or bondsman, and provides for an appeal bond to be supplied by a surety other than one filing the appeal, as specified.

This bill would also have provided that an appeal of an order of summary judgment against an undertaking of bail or bail bond must be accompanied by an appeal bond in compliance with specified requirements, or by the deposit described above.

Existing law precludes acceptance by a court or magistrate of any person or corporation as surety on bail if any summary judgment against that person or surety under these provisions is unpaid after 30 days, except upon appeal or as otherwise specified.

This bill would have required the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance if a summary judgment under those provisions remains unpaid after 30 days following the service of the notice of summary judgment.

AB 1694 (Wiggins): Chapter 165: Solicitation of bail by inmates.
(Adds Section 160 to the Penal Code.)

Legislative History:

Assembly Public Safety (5-2)

Assembly Appropriations (23-0)

Assembly Floor (74-0)

Assembly Concurrence (72-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law generally regulates persons who may offer bail services. Violation of the bail solicitation provisions is a crime.

This bill provides that no bail licensee may employ or use a jail or prison inmate to solicit bail; nor may a licensee compensate a jail or prison inmate to solicit bail. Violation of these prohibitions is a misdemeanor.

AB 2238 (Spitzer): Chapter 166: Extends sunset of Bail Recovery Persons' Act.
(Amends Section 1299.12 of, and adds Section 1299.14 to, the Penal Code.)

Legislative History:

Assembly Public Safety (4-1)

Assembly Appropriations (21-0)

Assembly Floor (76-0)

Assembly Concurrence (78-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law (Bail Fugitive Recovery Persons Act) authorizes a "bail fugitive recovery person" to apprehend, detain, or arrest a bail fugitive provided they meet specified requirements; a violation of the Act is a misdemeanor; the Act is scheduled to remain in effect only until January 1, 2005.

This bill provides for the Act to remain in effect until January 1, 2010. The bill also directs the California Research Bureau in the California State Library to conduct a study of the Bail Fugitive Recovery Act and to submit a report thereon to the Legislature no later than January 1, 2009.

CHILD ABUSE

SB 1313 (Kuehl): Chapter 842: Child Abuse and Neglect Reporting Act.

(Amends Sections 11165.3, 11165.5, 11165.6, 11165.7, 11165.12, 11166, 11166.01, 11166.05, 11166.5, 11167, 11167.5, 11169, 11170, 11170.5 and 11172 of, amends and renumbers Sections 11166.7, 11166.8, 11166.9, 11166.95 and 11174.4 of, adds an article heading immediately preceding Section 11174.32 to Chapter 2 of Title 1 of Part 4 of, and repeals Section 11170.6 of, the Penal Code, and amends Section 16513 of the Welfare and Institutions Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (29-0)

Assembly Public Safety (4-1)

Assembly Appropriations (16-0)

Assembly Floor (75-2)

Existing law establishes the Child Abuse and Neglect Reporting Act (CANRA), which generally is intended to protect children from abuse and neglect.

This bill makes numerous changes to CANRA to implement some of the recommendations of the CANRA Task Force, as specified.

SB 1413 (Brulte): Chapter 103: Abandoned babies.

(Amends Section 1255.7 of the Health and Safety Code and amends Section 271.5 of the Penal Code.)

Legislative History:

Senate Judiciary (6-0)

Senate Floor (38-0)

Assembly Judiciary (11-0)

Assembly Floor (75-0)

Existing law provides until January 1, 2006, that a parent or other individual having lawful custody of a minor child 72 hours old or younger who surrenders physical custody of the child to personnel at a safe-surrender site, as defined, may not be prosecuted for crimes related to child abandonment and neglect.

This bill provides that no person who, without compensation and in good faith, provides assistance for the purpose of effecting the safe surrender of a minor 72 hours old or younger shall be civilly liable for injury to, or the death of, the minor child as a result of any of his or her acts or omissions. The bill defines "assistance" as transporting the minor child to the safe-surrender site as a person with lawful custody, or transporting or accompanying the parent or person with lawful custody at the request of the parent to affect the safe surrender, or performing any other act in good faith for the purpose of effecting the safe surrender of the minor. This bill provides that this immunity does not apply to willful acts or omissions constituting gross negligence, recklessness, or willful misconduct.

Existing law provides that no parent or other individual having lawful custody of a minor child 72 hours old or younger may be prosecuted for a failure to furnish necessary clothing, food, shelter, or medical assistance to a child, or deserting a child with intent to abandon the child, or abandoning or refusing to maintain his or her child and representing the child as an orphan in certain circumstance, if he or she voluntarily surrenders physical custody of the child to personnel on duty at a safe-surrender site.

This bill defines lawful custody for those purposes.

AB 891 (Runner): Chapter 124: School employees.

(Amends Section 44010 of the Education Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (23-0)

Assembly Floor (79-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law sets forth the duties of various private and public entities, including, but not limited to, county boards of education and school districts, with regard to the employment and certification of persons who have been convicted of specified sex offenses.

This bill amends the definition of "sexual offense" used in the Education Code for purposes of these employment checks and limitations to include continuous sexual abuse of a child. (Penal Code § 288.5.) This section provides that any person who lives with or has recurring access to a child and engages in three or more acts of substantial sexual conduct, or commits three or more acts of lewd and lascivious conduct with a child under the age of 14 over a period of at least three months time, is guilty of the felony of continuous sexual abuse of a child, punishable by 6, 12, or 16 years in the state prison.

AB 2531 (Bates): Chapter 762: Child abuse reporting.
(Amends Sections 11165.7 and 11166.5 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (72-0)

Assembly Concurrence (79-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law establishes the Child Abuse and Neglect Reporting Act (CANRA), which requires specified persons to report to a specified agency whenever the 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.

This bill adds any person providing in-home supportive services to a child, as specified, to the list of individuals who are mandated reporters. However, this bill also provides that such a person shall not be required to make a report of child abuse or neglect unless he or she has received training or instructional materials, as specified, with respect to the duties imposed by these provisions.

AB 2749 (Dutton): Chapter 292: Child abuse and neglect investigations: child welfare training program.

(Amends Section 11167 of the Penal Code and amends Section 16206 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Human Services (7-0)

Assembly Appropriations (20-0)

Assembly Floor (77-0)

Senate Health & Human Services (10-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Existing law, the Child Abuse and Neglect Reporting Act (CANRA), requires designated professionals, known as mandated reporters, who have contact with children to report to law enforcement agencies known or suspected child abuse or neglect.

This bill requires a person performing an investigation that results from a report made pursuant to CANRA to, at the time of initial contact with the person subject to the investigation, advise the person of the complaints or allegations made against him or her in a manner that is consistent with law protecting the identity of a reporter under the Act.

Existing law requires the State Department of Social Services to select and award a grant to a private nonprofit or public entity for the purpose of establishing a statewide multipurpose child welfare training program. Existing law provides that the purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. Existing law also states the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services, and, in addition, to provide training programs for persons defined as a mandated reporter pursuant to CANRA. Existing law sets forth the subjects to be included in the training provided.

This bill adds to these subjects the legal duties of a child protective services social worker, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment.

CONTROLLED SUBSTANCES

(including needles)

SB 1159 (Vasconcellos): Chapter 608: Restricted non-prescription sale of needles. (Amends Sections 4145 and 4147 of, and repeals Section 4146 of, the Business and Professions Code, amends Section 11364 of, and adds Chapter 13.5 (commencing with Section 121285) to Part 4 of Division 105 of, the Health and Safety Code.)

Legislative History:

Senate Health & Human Services (8-2)

Assembly Health (13-4)

Senate Environmental Quality (5-1)

Assembly Appropriations (15-4)

Senate Appropriations (7-4)

Assembly Floor (43-34)

Senate Floor (22-13)

Senate Concurrence (22-14)

Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill, subject to authorization by a county or city, authorizes a licensed pharmacist, until December 31, 2010, to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which is created by the bill to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens. The bill requires a pharmacy that participates in the Disease and Demonstration Project pursuant to county or city authorization to comply with specified requirements, including registering with the local health department. The State Department of Health Services, in conjunction with an advisory panel, shall evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription. A report must be submitted to the Governor and the Legislature by January 15, 2010. The bill encourages the State Department of Health Services to seek funding from private and federal sources to pay for the evaluation. This bill imposes various other duties on local health departments. The demonstration program terminates on December 31, 2010. Alternatively, the bill also authorizes the sale or furnishing of hypodermic needles or syringes to a person for human use without a prescription if the person is known to the furnisher and has previously provided the furnisher with a prescription or other proof of a legitimate medical need. The bill makes it unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school. A knowing violation of this prohibition is a misdemeanor.

Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill deletes that requirement.

Existing law prohibits the possession and sale of drug paraphernalia.

This bill, until December 31, 2010, subject to authorization by a county or city, allows a person to possess 10 or fewer hypodermic needles or syringes if acquired through an authorized source.

SB 1362 (Figueroa): Chapter 157: Disposal of syringes and needles (medical sharps) used in private residences.

(Adds Section 25218.13 to the Health and Safety Code and adds Sections 40190.5, 41502, and 41512 to the Public Resources Code.)

Legislative History:

Senate Environmental Quality (6-0)

Senate Floor (38-0)

Senate Concurrence (37-0)

Assembly Natural Resources (10-0)

Assembly Floor (79-0)

Existing law (the California Integrated Waste Management Act of 1989) establishes an integrated waste management program. The Act is administered by the California Integrated Waste Management Board. The Act requires each county and city and county to prepare and submit to the board a countywide integrated waste management plan that includes, among other things, all city source reduction and recycling elements submitted to the county and the county's source reduction and recycling element. The Act also requires cities and counties to prepare a household hazardous waste element for adoption in the countywide plan and authorizes the hazardous waste element to include a program for the safe collection, treatment, and disposal of sharps waste, as defined, generated by households.

This bill authorizes the hazardous waste element to include a program for the safe collection, treatment, and disposal of sharps waste, as defined, generated by households. The bill authorizes a permitted household hazardous waste collection facility, as specified, to operate as a home-generated sharps consolidation point under certain conditions.

SB 1494 (Vasconcellos): VETOED: Medical marijuana distribution programs and standards.

(Amends Sections 11362.7 and 11362.77 of the Health and Safety Code.)

Legislative History:

Senate Health & Human Services(7-2)

Senate Floor (21-13)

Assembly Public Safety (4-2)

Assembly Health (11-0)

Assembly Floor (41-34)

Existing law (the Compassionate Use Act of 1996) provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana. The State Department of Health Services is required to establish and maintain a voluntary program for the issuance of identification cards to qualified medical marijuana patients, and to their primary caregivers, if any. A qualified patient or primary caregiver may possess no more than 8 ounces of dried marijuana and no more than 6 mature or 12 immature plants, unless a doctor recommends that those amounts do not meet the patient's needs. However, counties and cities may retain or enact medical marijuana guidelines allowing persons with an identification card to exceed these limits.

This bill would have recast these provisions relating to the amount of marijuana that may be possessed for personal medical purposes; would have provided that a qualified patient, person with an identification card, or any designated primary caregiver may possess any amount of marijuana consistent with the medical needs of that qualified patient or person with an identification card; would have provided that a person with an identification card or a designated primary caregiver with an identification card is not subject to arrest for possessing or maintaining certain amounts of marijuana; and would have provided that this provision is not intended to affect any city or county guidelines to the extent that the amounts contained in those guidelines exceed the quantities set forth in the bill.

Existing law, for purposes of the voluntary identification card program, defines a primary caregiver as an individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver may be a designated primary caregiver under these provisions if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

This bill would have redefined a primary caregiver to include an individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same county as the

primary caregiver or resides 25 miles or less from the primary caregiver. The bill would have provided that an individual may also be designated as a primary caregiver by a qualified patient or person with an identification card who resides in a county other than that of the primary caregiver or resides more than 25 miles from the primary caregiver only if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

SB 1782 (Aanestad): Chapter 864: Investigation and prosecution of crimes by physicians in the prescribing of medication.

(Adds Section 11161.5 to the Penal Code and Uncodified Law.)

Legislative History:

Senate Public Safety (4-0)

Senate Appropriations (9-0)

Senate Floor (33-1)

Senate Concurrence (33-0)

Assembly Public Safety (4-0)

Assembly Appropriations (21-0)

Assembly Floor (76-0)

Existing law provides that a physician may prescribe or administer controlled substances to a patient for a diagnosed condition causing intractable pain. The Division of Medical Quality is required to develop standards for review of pain management practices using current authoritative clinical practice guidelines. Special procedures protect the privacy of patient information and other privileged materials in the context of a search of a physician's records, when the physician is not reasonably suspected of involvement in criminal activity relating to those records.

This bill states the intent of the Legislature that the California District Attorneys Association, on or before January 1, 2006, shall collaborate with interested parties to develop protocols for the development and implementation of interagency investigations in connection with a physician's prescription of medication. In addition, this bill would specify that investigation protocol shall be designed to facilitate the timely return of medical records to a physician.

This bill also includes legislative findings that physicians, because of a fear of prosecution, have been reluctant to adequately treat patients for intractable pain. The Legislature declares in the bill that physicians, consistent with accepted standards, should fully treat patients for intractable pain and that a physician should not be prematurely denied access to his or her patients' records during an investigation of the physician's prescribing practices.

AB 30 (Richman): Chapter 573: Prescriptions for Schedule II controlled substances. Urgency.

(Amends Sections 11161, 11162.1, and 11190 of the Health and Safety Code.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (79-0)

Senate Appropriations (12-0)

Senate Floor (31-0)

Existing law provides that no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense such a prescription unless it complies with specified requirements, one of which is to issue prescriptions for Schedule II controlled substances on either triplicate prescription blanks issued by the Department of Justice or prescription forms for controlled substance prescriptions obtained from security printers approved by the Board of Pharmacy. The provision requiring the Department of Justice to issue triplicate prescription blanks to practitioners shall remain operative until July 1, 2004, and shall be repealed on January 1, 2005.

This bill provides that the provision requiring the Department of Justice to issue triplicate prescription blanks to practitioners shall instead remain operative until November 1, 2004.

Existing law provides that a prescriber designated by a licensed health care facility who orders controlled substance prescription forms for use by prescribers when treating patients in that facility shall maintain in that facility for 3 years a record containing specified information of the prescribers to whom controlled substance prescription forms are issued.

This bill provides that forms printed by a computerized prescription generation system shall not be subject to these record-keeping provisions and may, but are not required to, contain specified information.

Existing law provides that for each prescription for a Schedule II controlled substance that is dispensed by a practitioner in his or her office or place of practice, the prescriber shall record and maintain specified information, including the pharmacy prescription number, license number, and federal controlled substance registration number.

This bill no longer requires the practitioner who dispenses a Schedule II controlled substance in his or her office or place of practice to record and maintain the pharmacy prescription number, license number, and federal controlled substance registration number.

This bill took effect immediately upon enactment as an urgency measure.

AB 2136 (Goldberg): VETOED: Controlled substances: treatment.

(Amends Section 11880 of, and adds Sections 11758.421, 11758.425, 11839.20, and 11880.5 to, the Health and Safety Code.)

Legislative History:

Assembly Public Safety (4-0)

Assembly Health (11-3)

Assembly Appropriations (15-3)

Assembly Floor (46-32)

Assembly Concurrence (52-24)

Senate Health & Human Services (8-1)

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (22-11)

Existing law does the following:

- States that the Legislature finds and declares that it is in the best interests of the health and welfare of the people of this state to coordinate narcotic treatment programs to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription, and to establish and enforce minimum requirements for the operation of all narcotic treatment programs in this state.
- Provides that the following controlled substances are authorized for use in replacement narcotic therapy by licensed narcotic treatment programs: (a) Methadone; (b) Levoalphacetylmethadol (LAAM) as specified in paragraph (1) of subdivision (c) of Section 11055.
- Establishes the Drug Medi-Cal program administered by the Department of Alcohol and Drug Programs (DADP) to provide defined modes of treatment for low-income persons with a drug or alcohol abuse problem.
- Provides that DADP shall license all narcotic treatment programs.
- Provides that Medi-Cal reimbursement to narcotic treatment providers for narcotic replacement therapy dosing and ancillary services shall be limited to the lower of either the uniform statewide monthly reimbursement rate or the provider's usual and customary charge to the general public for the same or similar service.

This bill would have done the following:

- Added codified legislative findings and declarations regarding the value of narcotic treatment programs for non-Medi-Cal eligible indigent patients.
- Specified narcotic treatment program provider guidelines for developing a sliding indigency scale in compliance with federal and state law.

- Clarified existing law regarding licensed narcotic treatment programs which seek to end the improper use of legal drugs or the abuse of illicit drugs.
- Specified that a court may order a defendant or probationer to discontinue narcotic replacement therapy only when the defendant's or probationer's treatment provider recommends discontinuation and the court agrees that discontinuation is a necessary component of effective treatment.

AB 2523 (Frommer): Chapter 304: Unlawful detainer of tenant involved in drug offenses.

(Amends Section 11571.1 of the Health and Safety Code and Uncodified Law.)

Legislative History:

Assembly Judiciary (10-0)

Senate Judiciary (4-0)

Assembly Floor (70-0)

Senate Floor (33-0)

Assembly Concurrence (77-0)

Existing law – scheduled to be repealed by its own terms on January 1, 2005 – provides that the city prosecutor or city attorney of specified judicial districts in the County of Los Angeles may file, in the name of the people, an action for unlawful detainer against any tenant who is unlawfully engaged in specified controlled substance offenses, and shall maintain records of all actions filed. The city attorney and city prosecutor shall report annually to the Judicial Council information on these unlawful detainer actions, as specified.

This bill provides for the permanent continuation of this law, and expands the program to include actions by city prosecutors or city attorneys in courts in Alameda County that have jurisdiction over unlawful detainer actions involving real property situated in the City of Oakland.

This bill contains legislative findings as to the necessity of a special statute.

AB 2871 (Berg): VETOED: Needle exchange projects.

(Amends Section 11364.7 of the Health and Safety Code and adds Chapter 18 (commencing with Section 121349) to Part 4 of Division 105 of, the Health and Safety Code, and enacts Uncodified Law.)

Legislative History:

Assembly Health (12-4)

Assembly Appropriations (14-4)

Assembly Floor (44-33)

Assembly Concurrence (45-33)

Senate Health & Human Services(9-4)

Senate Appropriations, SR 28.8

Senate Floor (21-14)

Existing law generally prohibits pharmacists and physicians from furnishing hypodermic needles and syringes without a prescription. Existing law further prohibits any public entity, its agents, or employees from being subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would have authorized cities, counties, or cities and counties to have a clean needle and syringe exchange project that, in consultation with the State Department of Health Services, authorizes exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services and as part of a network of comprehensive services.

This bill would have enacted legislative findings and intent as to the prevention of AIDS and other infectious diseases through the distribution of clean needles.

CORRECTIONS

Local Corrections

AB 2401 (Harman): Chapter 424: Fire inspections: jails and places of detention.
(Amends Section 13146.1 of, and adds and repeals Sections 12606.1, 13188.4, and 13197.6 of, the Health and Safety Code.)

Legislative History:

Assembly GO (21-0)

Senate GO (12-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (72-0)

Senate Floor (37-0)

Assembly Concurrence (79-0)

Existing law requires the State Fire Marshal or an authorized representative to, at least annually, inspect every jail or place of detention for persons charged with or convicted of a crime, unless the chief of any city or county fire department or fire protection district, or that chief's authorized representative, indicates in writing to the State Fire Marshal that these inspections will be conducted by the chief or his or her representative and that the chief or his or her representative submits specified reports required under existing law.

This bill instead requires the inspections at least once every 2 years (and makes unrelated changes to the law).

AB 2861 (Koretz): Chapter 949: Local work furlough: access to personal information.
(Amends Section 4017.1 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (6-0)

Assembly Appropriations (21-0)

Senate Appropriations, SR 28.8

Assembly Floor (78-0)

Senate Floor (37-0)

Assembly Concurrence (77-0)

Existing law prohibits persons confined in a county jail, industrial farm, road camp, or city jail – or while performing local community service in lieu of a fine or custody – from having access to personal information of private individuals including, but not limited to, social security numbers, addresses, driver's license numbers, credit card numbers, telephone numbers, dates of birth and other listed information if the offender has been convicted of an offense involving: (a) forgery or fraud; (b) misuse of a computer; (c) sex offenses requiring registration; and (d) any misuse of the personal or financial information of another person. An exception is provided where incidental contact with personal information may occur.

This bill adds jail inmates assigned to work furlough to those persons subject to the limitations on access to specified personal information of private individuals.

Parole/Probation

SB 1516 (Machado): Chapter 289: "Lifer" parole hearings: additional victim representation.

(Amends Sections 3043, 3043.2, 3043.25, and 3043.3 of the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (37-0)

Assembly Public Safety (5-0)

Assembly Appropriations (19-0)

Assembly Floor (74-0)

Existing law provides specified rights and procedures with respect to victim notification and participation at Board of Prison Terms (BPT) "lifer" parole hearings.

This bill does the following:

- Adds "two representatives designated for a particular hearing by the victim in the event the victim is deceased or incapacitated or by the next of kin" to the list of persons who have the right to appear at BPT hearings.
- Provides that any statement submitted by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.
- Provides that the victim's representative is not allowed to attend a particular hearing if the victim, next of kin, or a member of the victims immediate family is present at the hearing or has submitted a statement.
- Expands the lists of persons whose statements BPT shall consider in deciding whether to release a person on parole to include designated representatives of the victim or next of kin.
- Expands the list of persons who may personally appear at any BPT hearing to review parole suitability or setting of a parole date to include "two representatives designated for a particular hearing by the victim or next of kin."
- Provides that a representative designated by the victim or the victim's next of kin must be either that person's legal counsel or a family or household member of the victim and defines "household member of the victim" as "a person who lives, or was living, at the time of the crime in the victim's household or who has, or for a deceased victim had, at the time of the crime an intimate or close relationship with the victim."
- Expands the list of persons who have the right to appear by means of videoconferencing to include "representatives designated for a particular hearing by the victim or next of kin."

AB 2 (Bogh): Chapter 1: "Lifer" parole hearings. Urgency.

(Amends Sections 1191.15, 3041, and 3043.2 of, and adds Section 3043.6 to, the Penal Code, and adds Section 1767.9 to the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Floor (71-0)

Assembly Concurrence (77-0)

Senate Public Safety (5-0)

Senate Appropriations (8-0)

Senate Floor (39-0)

Existing law provides specified rights and procedures with respect to victim participation at Board of Prison Terms (BPT) "lifer" parole hearings and at parole hearings for Department of Youth Authority wards.

This bill provides that victims – and specified victim representatives – authorized to appear at either an adult or youthful offender parole hearing shall have the right to speak last before the BPT and the Youth Authority Board (YAB); expands the type of information that victims may submit during a sentencing or parole hearing to specifically include a statement stored on a CD Rom, DVD, or any other recording medium as specified; and provides that nothing in statute shall prohibit the person presiding at the hearing from taking any steps he or she deems appropriate to ensure that only accurate and relevant statements are considered in determining parole suitability as provided in law, including, but not limited to, the rebuttal of inaccurate statements made by any party.

Existing law authorized the BPT, on an emergency basis, and only until December 31, 2003, to conduct life parole consideration hearings and life rescission hearings by a 2-person panel, as specified, in order to eliminate a backlog of inmates awaiting parole consideration, as specified, and required the BPT to report monthly on the backlog as specified including progress toward eliminating the backlog.

This bill extends the 2-person panel provisions until December 31, 2005; provides that the described reports are due on a quarterly basis; makes related changes in law; and took effect immediately upon enactment as an urgency measure.

AB 1796 (Leno): Chapter 932: Food Stamps: parolee and felony eligibility.

(Adds Section 18901.3 to the Welfare and Institutions Code.)

Legislative History:

Assembly Human Services (5-2)

Assembly Appropriations (14-5)

Assembly Concurrence (42-30)

Assembly Concurrence (43-32)

Senate Health & Human Services (9-2)

Senate Appropriations (7-5)

Senate Floor (21-12)

Existing law makes a person convicted of specified felonies related to controlled substances ineligible for aid under the Food Stamp Program (including parolees).

This bill makes convicted drug felons, with certain exceptions, eligible for Food Stamps.

AB 1865 (Spitzer): VETOED: Parole: employment of parolees.
(Adds Section 3069 to the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (72-0)

Assembly Concurrence (73-5)

Senate Public Safety (4-1)

Senate Appropriations, SR 28.8

Senate Floor (31-5)

Existing law provides for the parole and supervision on parole of state prison inmates, who may be returned to custody or face other sanctions for violations of parole conditions. Existing law makes certain treatment, training, and employment programs for parolees.

This bill would have forbidden the Department of Corrections or any employee or contractor of the department providing job placement services on behalf of the department to refer a parolee to any place of employment of a character inconsistent with an employment restriction attached to the parolee by reason of the nature of his or her criminal history and provided specific sanctions and relief for violations of those prohibitions.

AB 1901 (Ridley-Thomas): Chapter 74: Probation: "Ex-Offender Literacy Act."
(Amends Section 1203.1abc of the Penal Code and enacts Uncodified Law.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Floor (71-0)

Assembly Concurrence (78-0)

Senate Public Safety (5-0)

Senate Floor (33-0)

Existing law establishes an education pilot program that authorizes the court to require any adult who has been convicted of a non-violent or non-serious offense to participate in a program designed to assist the person in obtaining the equivalent of a 12th grade education as a condition of probation, as specified, and states that this section shall be operable in Los Angeles County as a pilot project upon a majority vote of the county's board of supervisors to be conducted in two courts within Los Angeles County.

This bill does the following:

- States that the pilot program is deemed successful if at least 10% of the persons participating in the pilot projects obtain the equivalent of a 12th grade education within three years or improve their academic performance by three grade levels within three years.
- Enacts uncodified language which titles Penal Code Section 1203.1abc the "Ex-Offender Literacy Act."

Prisons & Prisoners

SB 260 (Romero): Chapter 310: California Prison Inmate Health Service Reform Act.

(Adds Section 6534 to the Government Code and enacts Uncodified Law.)

Legislative History:

(Prior votes not relevant)

Senate Concurrence (36-0)

Assembly Health (17-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Existing law authorizes the formation of local health care districts and the establishment of municipal hospitals for the purpose of providing needed public health care services and the existing Joint Exercise of Powers Act permits 2 or more public agencies to enter into an agreement to jointly exercise any power common to the contracting parties.

This bill does the following:

- Enacts uncodified legislative findings and declarations which includes, among other declarations, that: "More extensive utilization of the rural public hospitals operated by health care districts for delivery of inmate health services leverages state inmate health care dollars to maximum effect ensuring the long-term survival of the state's rural health safety net while helping to reduce state General Fund expenditures for inmate health care."
- Creates the California Prison Inmate Health Service Reform Act which authorizes the Department of Corrections to enter into joint powers agreements, as specified, in order to establish regional inmate health service joint powers agencies.

SB 1164 (Romero): VETOED: Media access to prisoners.

(Adds Sections 2602 and 2603 to the Penal Code.)

Legislative History:

Senate Public Safety (4-1)

Senate Appropriations, SR 28.8

Senate Floor (23-11)

Senate Concurrence (22-7)

Assembly Public Safety (4-2)

Assembly Appropriations (14-4)

Assembly Floor (44-34)

Existing regulations of the Department of Corrections (CDC) do the following:

- Prohibit a prisoner from participating in a specific face-to-face interview with a media representative.

- Prohibit a media representative from using a camera or recording equipment during an interview without the prior approval of the institution head or designee.
- Permit media representatives to engage in interviews with random prisoners.
- Permit media representatives to engage in interviews with random prisoners encountered during tour of detention facility.

This bill would have done the following:

- Stated the Legislature finds and declares that: (A) Free exchange of information from behind prison walls benefits the public and fosters a safe and efficient prison system; (B) The CDC has historically permitted media access to state prisoners without endangering the safety of the prisons or the public; (C) Members of the news media should be permitted to interview state prisoners unless that access would pose an immediate and direct threat to the security of the institution or the safety of members of the public; and, (D) There is no legitimate reason for a blanket ban on media interviews with prisoners.
- Provided that the CDC shall permit the news media to interview prisoners in person, including prearranged interview with prisoners. An interview could have been denied if the department determines that it poses a direct threat to the security of the institution or the physical safety of a member of the public.
- Allowed news media to use necessary tools of the trade to conduct prisoner interviews, including writing materials and audio and video recording devices.
- Defined "representative of the news media" to include, but not be limited to, a journalist who works for, or is under contract to, a newspaper, magazine, wire service, book publisher, or radio or television program, or station or who, through press passes issued by a governmental or police agency, or through similar convincing means, can demonstrate that he or she is a bona fide journalist engaged in the gathering of information for distribution to the public.
- Provided that the department shall permit the news media to receive confidential correspondence from a prisoner unless to do so would pose an immediate and direct threat to the security of the institution or the safety of the public.
- Provided that no prisoner or parolee could have had his or her visitation limited or revoked because of a visit or potential visit from a representative of the news media, nor may a prisoner or parolee be punished, reclassified, disciplined, transferred to another prison against his or her wishes, or otherwise retaliated against for participating in a visit by a representative of the news media.
- Made related changes in law.

SB 1287 (Kuehl): VETOED: Prisoners: incarcerated parents.

(Adds Sections 858.2, 2057.5, and 2058 to the Penal Code and enacts Uncodified Law.)

Legislative History:

Senate Public Safety (4-0)

Senate Appropriations (8-5)

Senate Floor (23-12)

Senate Concurrence (24-10)

Assembly Public Safety (4-2)

Assembly Appropriations (14-5)

Assembly Floor (44-33)

Existing law generally establishes criminal procedures regarding pleas, including the requirement that the court advise the defendant – on the record and prior to acceptance of a plea of guilty or nolo contendere to any crime except infractions – that if the defendant is not a citizen, conviction may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Existing law generally regulates the confinement and treatment of prisoners.

This bill would have done the following:

- Enacted uncodified legislative findings and declarations which includes that "It is the intent of the Legislature in enacting this act to reduce recidivism and intergenerational patterns of incarceration."
- Required, at an arraignment where the defendant's charges could result in incarceration for a period of 6 months or more, the court to advise the defendant that, if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.
- Directed the Department of Corrections to make information available on the department's website for families of the incarcerated, and to provide, as specified, a child-friendly, positive environment for visits with prisoners and their minor children.

SB 1342 (Speier): Chapter 733: Inspector General: Youth and Adult Correctional Agency.

(Amends Sections 6125, 6126, 6128, and 6129 of the Penal Code.)

Legislative History:

Senate Public Safety (4-1)

Assembly Public Safety (5-0)

Senate Appropriations (8-1)

Assembly Appropriations (21-0)

Senate Floor (25-8)

Assembly Floor (77-3)

Senate Concurrence (32-0)

Existing law creates the Office of the Inspector General (OIG) which shall be responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits and investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board (now the Youth Authority Board), the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by either the secretary of the Youth and Adult Correctional Agency, a Member of the Legislature, or at the initiative of the Inspector General, under policies developed by the Inspector General, all as specified.

This bill does the following:

- Provides that the OIG shall be appointed to a six-year term, subject to Senate confirmation and may not be removed from office during that term, except for good cause.
- States that the OIG shall be responsible for conducting audits and investigations of the California Department of Corrections, California Youth Authority, Board of Prison Terms and other specified correctional agencies, as requested by either the Secretary of the Youth and Correctional Agency or a member of the Legislature and authorizes the OIG to initiate an investigation or an audit on his or her own accord.
- Revises certain provisions relating to what materials are deemed confidential in connection with investigations by the OIG and provides that all identifying information, and any personal papers or correspondence from any person who initiated the investigation shall not be disclosed except in those cases where the OIG determines that disclosure of the information is necessary in the interests of justice.
- Deletes provisions of law regarding investigations of specified employees and revises provisions regarding the communication to the OIG of information that may describe a variance from various departmental investigatory policies and procedures to apply instead to improper governmental activity, as defined.

- Revises procedures relating to the investigation of complaints of retaliation by certain employees and expands the definition of "retaliation" to include retaliation for refusing to obey an illegal order or directive.
- Requires the OIG to commence an investigative inquiry into a complaint of retaliation by an employee against management and to conduct a formal investigation where a legally cognizable cause of action is present.
- Provides that the OIG may refer all other matters for investigation by the appropriate employing agency, subject to investigative oversight by the OIG. If an employing entity declines to investigate the complaint, the entity shall, within 30 days of receipt of the referral by the OIG, notify the OIG of its decision. The OIG shall thereafter conduct his or her own inquiry into the complaint. If after reviewing the complaint the OIG determines there is no cause of action, the OIG shall notify the complainant and the State Personnel Board (SPB) that a formal investigation is not warranted.
- Provides a procedure for coordinating investigations by SPB, the OIG, and the appropriate employing entity, as specified. An employee may not be required to first file a retaliation complaint with the OIG before filing a complaint with SPB.
- Provides that disciplinary action regarding acts of retaliation, threats, or coercion, shall require, at a minimum, a suspension for not less than 30 days without pay, except in a case in which the employing entity determines that a lesser penalty is warranted, as specified. Where a lesser penalty is imposed, the employing entity shall provide written justification for that decision to the OIG. The OIG shall thereafter, with the consent of the complaining employee, forward the investigative report to SPB so that the complaining employee may request permission to file charges against the person found to have engaged in retaliation, threats, or similar acts.
- Requires the OIG, in consultation with the Department of Finance, to develop a methodology for producing a workload budget to be used for annually adjusting the budget of the OIG, beginning with the budget for the fiscal year 2005-06.

SB 1344 (Margett): Chapter 490: Insurance fraud: Department of Corrections.
(Amends Section 1877.1 of the Insurance Code and Section 1543 of the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Judiciary (7-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Senate Concurrence (38-0)

Assembly Insurance (14-2)

Assembly Appropriations (21-0)

Assembly Floor (74-2)

Existing law requires insurers to provide specified agencies with relevant information relating to any specific workers' compensation insurance fraud investigation, upon written request. Agencies that insurers must respond to include the State Departments of Insurance, Employment Development, and Industrial Relations, and any agency that licenses professionals under the Business and Professions Code. Existing law provides that information provided to an agency under these provisions is not a public record and is privileged unless released by a court.

This bill includes the State Department of Corrections among the agencies authorized to request and receive insurance and medical information regarding workers' compensation fraud.

SB 1352 (Romero): Chapter 734: Inspector General: Youth and Adult Correctional Agency.

(Amends Sections 6126.3 and 6126.5 of, and adds Sections 6131 and 6132 to, and repeals Section 6126.6 of, the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations (9-0)

Senate Floor (38-0)

Senate Concurrence (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (75-0)

Existing law creates the Office of the Inspector General (OIG) which shall be responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits and investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board (now the Youth Authority Board), the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by either the secretary of the Youth and Adult Correctional Agency, a Member of the Legislature, or at the initiative of the Inspector General, under policies developed by the Inspector General, all as specified.

This bill does the following:

- Recasts existing provisions regarding materials used for OIG audits being public records, including by cross-reference various confidentiality acts and statutes; deletes current law that excluded papers and correspondence to the OIG requested to be confidential; and deletes language from current law that excluded various documents not used in any report resulting from the audit or investigation, including various documents pertaining to internal discussions between the IG and his or her staff and including various documents from any person requesting assistance from the IG, except as specified.
- Provides that no memorandum of understanding (MOU) nor any agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure, as specified.
- Provides that the OIG has discretion to redact identifying information of any person interviewed from any public report issued by the OIG in specified situations.
- Provides that the OIG is subject to specified Government Code sections regarding interrogations, lie detector tests, public safety officer photo identification, disclosure of financial status and locker searches, except that the IG shall not be subject to the provisions of any MOU or other agreements, as specified, when they are in conflict with, or add to the requirements of specified Government Code sections.
- Deletes an existing provision of law that makes it is a misdemeanor for the OIG, or any employee of the OIG, to release any information received pursuant to this chapter except as provided by this chapter, or otherwise prohibited by law from being disclosed.
- Provides that upon the completion of any OIG audit, the OIG shall submit a report, with the underlying materials which the OIG deems appropriate, to specified persons. Copies of these reports shall be posted on the OIG's website, as specified.
- Provides that the OIG shall prepare and issue on a quarterly basis a written report on completed investigations and the report, along with the underlying materials the OIG deems appropriate, to specified persons.
- Provides that the OIG shall prepare a public investigative report for each completed investigation. The public report shall differ from the complete investigative report only in that the OIG has the discretion to redact certain information, as specified.
- Provides for the procedures to be followed to make the public investigative report public.

- Provides that the OIG shall report annually to the Governor and the Legislature a summary of his or her investigations and audits and that the report shall be posted on the OIG's website and made available to the public upon its release to the Governor and Legislature.
- States that the OIG shall issue reports, no less than twice per year, to the Governor and Legislature summarizing its findings concerning its oversight of Youth and Adult Correctional Agency (YACA) disciplinary cases and shall post the reports summarizing disciplinary costs on its website.

SB 1399 (Vasconcellos): VETOED: Prisoners: evaluation: education: rehabilitation.
 (Adds Chapter 9 (commencing with Section 3090) to Title 1 of Part 3 of the Penal Code, adds Section 1768.5 to the Welfare and Institutions Code, and enacts Uncodified Law.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations (8-4)

Senate Floor (26-8)

Senate Concurrence (28-5)

Assembly Public Safety (4-1)

Assembly Appropriations (12-3)

Assembly Floor (49-29)

Existing law does the following:

- Vests the Director of the Department of Corrections (CDC) with the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein. The Director may prescribe and amend rules and regulations for the administration of the prisons.
- Provides for certain services for inmates, including academic training, vocational education, drug treatment and recovery, mental health treatment and job placement assistance.
- Finds and declares that the purpose of imprisonment for crime is punishment, as specified.
- Establishes the California Department of the Youth Authority, as specified.

This bill would have done the following:

- Enacted uncodified legislative findings and declarations, including that: "The purpose of our entire system of law enforcement and corrections ought to also be to promote the public safety of all Californians with appropriate offender accountability" and "The manner in which our current system of corrections has been operating is tragically counterproductive to the goal of promoting the public safety of all Californians."

- Required the CDC, for each inmate that became subject to CDC's jurisdiction on or after January 1, 2006, to evaluate the inmate's educational and vocational level of development and capacity, and psychosocial level of development and ability, as specified, and, based on the evaluations, would have required the CDC to prescribe and implement for each inmate a comprehensive rehabilitation program that addresses the inmate's educational, vocational, and psychosocial developmental deficiencies with the goal of preparing that person to lead a constructive and safe life upon release from prison, as specified.
- Required the CDC and the California Youth Authority to make a parenting education course available, as specified.
- Made numerous related changes in law.

SB 1400 (Romero): Chapter 736: Department of Corrections: Bureau of Independent Review.

(Adds Section 6133 to the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations (8-0)

Senate Floor (29-3)

Senate Concurrence (26-8)

Assembly Public Safety (5-0)

Assembly Appropriations (13-5)

Assembly Floor (55-22)

Existing law provides for the administration of a system of state prisons under the Department of Corrections within the Youth and Adult Correctional Agency; establishes the Office of the Inspector General, who is responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections and related state offices, as specified; existing statutory and case law provides for some of the procedures by which public employees may be disciplined and limits the release of certain types of information relating to public employment, including special provisions that protect against the release of information concerning complaints against peace officers, including correctional officers in state prisons.

This bill establishes the Bureau of Independent Review (BIR) within the Office of the Inspector General to provide public oversight of investigations conducted by the Department of Corrections and the Department of the Youth Authority, and to issue reports, as specified, to the Governor and the Legislature. The BIR has discretion to provide public oversight of other Youth and Adult Correctional Agency personnel investigations as needed.

SB 1426 (Ducheny): Chapter 383: Department of Corrections: drug utilization.
(Adds Section 5024.5 to the Penal Code and enacts Uncodified Law.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations (10-0)

Senate Floor (35-0)

Assembly Public Safety (5-0)

Assembly Health (17-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Existing law authorizes the Department of Corrections to adopt regulations requiring manufacturers of drugs to pay the department a rebate for the purchase of drugs for inmates and to implement other cost-effective strategies for the procurement of drugs and medical supplies, as specified.

This bill does the following:

- Requires the department to adopt policies, procedures, and criteria to identify selected medication categories for the development of utilization protocols based on best practices, and the use of generic and therapeutic substitutes, as appropriate, and requires the department to develop utilization and treatment protocols for select medication categories based on defined priority criteria, including, but not limited to, the cost of the medications.
- Requires the department, on or before April 1, 2006, to provide information, as part of the fiscal committee budget hearings for the 2006-07 budget year, on the impact of the adoption of these protocols.
- Requires the department to coordinate the implementation of these provisions with the Department of General Services' prescription drug bulk purchasing program in order to better achieve the goals and intent of that program.
- States legislative intent that the department shall complete the implementation of this section utilizing the existing resources of the department.

SB 1431 (Speier): Chapter 738: Department of Corrections and Department of the Youth Authority: code of conduct.

(Adds Section 5058.4 to the Penal Code, adds Section 1752.05 to the Welfare and Institutions Code, and enacts Uncodified Law.)

Legislative History:

Senate Public Safety (5-0)

Assembly Public Safety (6-0)

Senate Judiciary (7-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (80-0)

Senate Floor (38-0)

Senate Concurrence (38-0)

Existing law creates the California Department of Corrections and Department of the Youth Authority.

This bill does the following:

- Enacts uncodified findings and declarations, including that: "In order to break the code of silence, the Department of Corrections and the Department of the Youth Authority must adopt a code of conduct that would provide uniform guidance to all workers at these departments, including their duty to report wrongdoing at their workplace, and the protection that may be provided to those who discharge this duty in good faith."
- Requires the Directors of Corrections and the Youth Authority to require the directors of those departments to develop and implement disciplinary sanctions for misconduct by employees, as specified; requires the directors to ensure that employees who have reported improper governmental activities and who request services from the department are informed of the services available to them; requires the departments to adopt a code of conduct, as specified; and requires the departments to post the code of conduct in specified locations and to annually e-mail related information to departmental employees with e-mail access.

SB 1608 (Karnette): Chapter 924: Prisoners: foreign nationals.
(Amends Sections 2912 and 5028 of the Penal Code.)

Legislative History:

Senate Public Safety (4-2)

Senate Appropriations (8-4)

Senate Floor (23-11)

Senate Concurrence (23-13)

Assembly Public Safety (4-1)

Assembly Appropriations (13-5)

Assembly Floor (41-34)

Existing law requires that upon entry of any person who is an undocumented alien subject to deportation into a facility operated by the Department of Corrections, and at least every year thereafter, the Director of Corrections inform the person of his or her right to be transferred to his or her country of origin to serve the remainder of his or her prison term.

This bill does the following:

- Deletes the annual notification requirement and expands these provisions to include all foreign nationals, and provides the person the option to serve the remainder of his or her term in his or her current or former nation of citizenship.
- Imposes additional notification requirements, upon the request of a foreign consulate, as specified, on the director, including notifying consulates or embassies pursuant to the 1963 Vienna Convention on Consular Relations Treaty of the names and locations of all inmates in the department's custody that have self-identified that nation as his or her place of birth.

SB 1676 (Romero): VETOED: Department of Corrections: Department of the Youth Authority: lockdowns.
(Adds Section 5030 to the Penal Code.)

Legislative History:

(Prior votes not relevant)

Senate Concurrence (24-12)

Assembly Public Safety (4-1)

Assembly Appropriations (16-5)

Assembly Floor (44-32)

Existing law requires every public official in charge of a prison, jail, or other place of detention to keep a record of all disciplinary infractions and punishments administered.

This bill would have required the Department of Corrections and the Department of the Youth Authority to collect specified data regarding lockdowns and requires the departments to post the information to the respective websites, as specified.

AB 6 (Cohn): VETOED: Public contracts: Department of Corrections: medical care services.

(Adds Section 19135 to the Government Code.)

Legislative History:

(Prior votes not relevant)

Assembly Business and Professions (12-0)

Assembly Concurrence (78-1)

Senate Governmental Organization (7-0)

Senate Appropriations (12-0)

Senate Floor (36-0)

Existing law authorizes state agencies to enter into personal services contracts if certain conditions are met.

This bill would generally have prohibited the Department of General Services from authorizing the Department of Corrections to enter into contracts for medical care services without seeking competitive bids for those contracts. If the Department of Corrections demonstrated that compliance with competitive bidding procedures is not possible, the Department of General Services would have been required to authorize the Department of Corrections to enter into a contract for medical care services if, at a minimum, the Department of Corrections had conducted a market survey and prepared a price analysis that demonstrates, to the satisfaction of the Department of General Services, that a proposed contract for medical care services was in the best interest of the state.

AB 99 (Cox): Chapter 293: Inmate video court appearances.
(Amends Section 977.2 of the Penal Code.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (69-1)

Senate Public Safety (4-0)

Senate Floor (27-1)

Existing law provides that the Department of Corrections may arrange for the initial court appearance and arraignment for any defendant currently incarcerated in a state prison to be made by two-way electronic audiovideo communication, as specified.

This bill does the following:

- Authorizes the department, in all cases in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, to arrange for all court appearances, except for preliminary hearings, trials, judgment and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom.
- Retains the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom would be retained.

Requires the department, for those appearances that the department determines to conduct by two-way electronic audiovideo communication between the superior court and a state prison facility located in the county, to provide properly maintained equipment and adequately trained staff for that purpose.

AB 384 (Leslie): Chapter 798: Department of Corrections and Department of the Youth Authority: ban on tobacco products.

(Amends Section 7596 of the Government Code, amends Sections 308, 2762, 3326, and 5005 of the Penal Code, adds Section 5030.1 to the Penal Code, and amends Section 1752.5 of the Welfare and Institutions Code, and adds Section 1712.5 to the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (5-1)

Assembly Appropriations (22-1)

Assembly Floor (66-4)

Assembly Concurrence (68-6)

Senate Public Safety (4-0)

Senate Appropriations (7-4)

Senate Floor (23-6)

Existing law does the following:

- Allows the Director of the Department of Corrections to prescribe and amend rules and regulations for the administration of state prisons and includes tobacco products among the products that may be authorized for sale to inmates at state prison facilities.
- Allows the Director of the Department of the Youth Authority to make and enforce all rules appropriate to the proper accomplishment of the functions of the department, including the correction and rehabilitation of young persons who have committed public offenses and includes tobacco products among the products that may be authorized for sale to wards at Youth Authority facilities, as specified.

This bill does the following:

- Prohibits the possession or use of tobacco products by inmates and wards under the jurisdiction of the Department of Corrections and the Department of the Youth Authority and requires the directors of these departments to adopt regulations to implement this prohibition.
- Requires that these regulations include an exemption for departmentally approved religious ceremonies.
- Prohibits the use of tobacco products by any person – not otherwise incarcerated as an inmate or ward – on the grounds of any institution or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority, with the exception of residential staff housing where inmates or wards are not present.
- Provides that these provisions shall become operative on July 1, 2005, and makes related changes in law.

AB 854 (Koretz): Chapter 747: Purpose of imprisonment.
(Amends Section 1170 of the Penal Code.)

Legislative History:

Assembly Public Safety (5-2)

Assembly Floor (45-30)

Assembly Concurrence (75-3)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (30-4)

Existing law sets forth legislative findings, declarations, and expressions of intent regarding the purpose of imprisonment for crime – being punishment – not to preclude, however, programs, including educational programs, designed to rehabilitate nonviolent, first-time felony offenders.

This bill states legislative findings and declarations that programs should be available for inmates, as specified, and encourages the Department of Corrections to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment, as specified.

AB 1042 (Parra): VETOED: Inmates: Department of Corrections staff use of pepper spray in State Department of Mental Health facilities within prisons.
(Adds Title 8.5 (commencing with Section 7560) to Part 3 of the Penal Code.)

Legislative History:

Assembly Public Safety (7-0)

Senate Public Safety (4-1)

Assembly Appropriations (24-0)

Senate Appropriations (12-0)

Assembly Floor (73-0)

Senate Floor (34-1)

Assembly Concurrence (77-0)

Existing law designates medical technical assistants as peace officers (correctional officers) and as such authorizes them to carry firearms under terms and conditions as specified by the CDC and the CYA, and to use reasonable force to maintain custody of inmates, make arrests, and perform other tasks related to the operation of the detention facility.

This bill would have required the following:

- The State Department of Mental Health to issue OC pepper spray to all medical technical assistants while on duty and assigned to State Department of Mental Health facilities located within state prisons.
- The OC pepper spray dispenser to be of the same type and capacity as those used by medical technical assistants and correctional officers in Department of Corrections facilities.
- The State Department of Mental Health to establish procedures for the use of OC pepper spray on inmates housed in State Department of Mental Health facilities located within state prisons. Those procedures shall permit the use of OC pepper spray by medical technical assistants in cases of self-defense or the defense of others.

AB 1530 (Negrete McLeod): Chapter 297: Prisoners: community treatment programs.

(Amends Sections 3412, 3417, 3418, and 3419 of the Penal Code.)

Legislative History:

Assembly Public Safety (7-0)

Assembly Appropriations (24-0)

Assembly Floor (76-0)

Assembly Concurrence (76-0)

Senate Public Safety (6-0)

Senate Health & Human Services (9-0)

Senate Appropriations, SR 28.8

Senate Floor (39-0)

Existing law requires the Department of Corrections to establish and implement a community treatment program for women sentenced to state prison who have one or more children under the age of six years (CPMP – Community Prisoner Mother Program), as specified. CDC shall have as a prime concern the establishment of a safe and wholesome environment for the participating children.

This bill requires the Department of Corrections (CDC) – and community treatment programs – to comply with additional requirements regarding the Community Prisoner Mother Program (CPMP), as follows:

- Requires CDC to ensure that the children and mothers residing in CPMPs have access to – and are permitted by the community treatment program to – participate in available Head Start, Healthy Start, and programs for early childhood development pursuant to the California Children and Families Program and further provides that nothing in this section shall be construed as granting or requiring preferential access or enrollment for children of incarcerated mothers to any of the specified programs.
- Requires the community treatment program to provide each mother with written information about the available local programs, including the telephone numbers for enrolling a child in a program and to provide transportation to program services and otherwise assist and facilitate enrollment and participation for eligible children.
- Additionally requires that (1) mothers be allowed to participate in CPMP if the child was born after the receipt of the inmate by CDC and (2) pregnant women in CDC be allowed to participate in CPMP (pregnant inmates are now admitted at the discretion of the CDC).
- Requires CDC to provide a woman (in addition to currently required information) a written application for the CPMP.
- Requires that the CDC notice about the CPMP contain guidelines for qualification for the program and the timeframe for application and the process for appealing a denial of admittance to the program.
- Makes related changes in law.

AB 1914 (Montañez): VETOED: Education in state prisons.

(Amends Section 32500 of, and adds Sections 32501, 32502, and 32503 to, the Education Code, and amends Section 2053.4 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-2)

Assembly Appropriations (16-5)

Assembly Floor (43-34)

Assembly Concurrence (43-34)

Senate Public Safety (5-1)

Senate Appropriations (7-4)

Senate Floor (23-7)

Existing law does the following:

- Establishes the position of Superintendent of Correctional Education to oversee and administer all prison education programs. The Superintendent shall set both short- and long-term goals for inmate literacy and testing and establishes priorities for prison education programs.
- Requires that the Superintendent of Correctional Education shall be appointed by the Director of Corrections.
- Provides that in order to encourage greater involvement of educational institutions in planning and developing prison-based educational programs, the CDC Director, Chancellor of CSU, the Chancellor of the California Community Colleges, and the Superintendent of Public Instruction, with the advice of the California Postsecondary Education Commission, shall enter into interagency agreements; this section also states that "Notwithstanding the other provisions of this section, the Director of Corrections shall administer all prison-based education programs."

This bill would have done the following:

- Changed the position of Superintendent of Correctional Education to Deputy Director of Correctional Education and required the deputy director to report directly to the Director of Corrections. The deputy director was to oversee and administer all prison education programs in conjunction with the Robert E. Burton Correctional Education Committee, which would submit a list to the Director of Corrections of three to five recommended candidates from which the director would appoint one to serve as Deputy Director of Correctional Education.
- Enacted the Prison Education Reform Act, and renamed the existing advisory committee the Robert E. Burton Correctional Education Committee, to be composed of 15 members, appointed as specified, and established within DOC; required the Deputy Director of Correctional Education, in consultation with the committee, among other duties and responsibilities, to approve education programs in correctional institutions and adopt and enforce rules and regulations for the management and operation of education programs within the DOC.

- Required the Deputy Director of Correctional Education, in consultation with the committee and in conjunction with parole and other aftercare programs and consistent with the policies adopted by the committee, to develop and implement a plan for providing transitional educational services for inmates, including, but not limited to, counseling and placement services, as specified.
- Made numerous related changes in law and required the committee to submit a report to the Legislature on or before January 1, 2007, with recommendations for further restructuring of correctional education in this state and focusing on, among other items, attaining parallel education structures between correctional and public education, funding sources, and correctional education curriculum.

AB 1946 (Steinberg): VETOED: Inmates: "compassionate release."
(Amends Section 1170 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-2)

Senate Public Safety (6-0)

Assembly Appropriations (14-4)

Senate Appropriations, SR 28.8

Assembly Floor (42-32)

Senate Floor (22-13)

Assembly Concurrence (41-35)

Existing law provides that if the CDC Director, BPT, or both determine that the prisoner has six months or less to live and that the conditions under which the prisoner would be released do not pose a threat to public safety, the CDC Director or BPT may recommend to the court that the prisoner's sentence be recalled and states that the court shall have discretion to recall or re-sentence if the court finds both that the prisoner has six months or less to live and the conditions under which the prisoner would be released do not pose a threat to public safety, as specified.

This bill would have done the following:

- Provided that the court shall have the discretion to re-sentence or recall a prisoner's sentence when the prisoner is medically incapacitated by a medical condition that renders him or her permanently unable to move without assistance, permanently unable to perform activities of daily living such as dressing, eating, ambulating, or maintaining personal hygiene without assistance, or permanently ventilator-dependent if the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.
- Made additions to the procedures required to be completed prior to the recall of a prisoner's sentence for compassionate release, as specified.

AB 2742 (Mountjoy): VETOED: Prisons: medical treatment.

(Amends Section 2653 of the Penal Code.)

Legislative History:

Assembly Business and Professions (8-0)

Assembly Appropriations (20-0)

Assembly Floor (75-0)

Assembly Concurrence (58-17)

Senate Public Safety (6-0)

Senate Appropriations (12-0)

Senate Floor (31-1)

Existing law provides that the order of a physician for specified medical treatment may not be modified or canceled by any employee of the Department of Corrections or the Department of the Youth Authority without the approval of the Chief Medical Officer (CMO) of the institution or the physician in attendance, except as specified. A person violating this provision is subject to appropriate disciplinary action by CDC or the Youth Authority.

This bill would have provided that, if an inmate or ward is given a diagnosis and recommendation for treatment by a physician outside the department facility who is a specialist or consulting physician, and that treatment is available at the department facility or contract medical facility, and that treatment does not exceed the range of benefits provided by the department, if a decision is made to deny or modify the recommended treatment, that decision shall be communicated in writing to the physician recommending the treatment and to the patient; prohibited department facility staff other than a physician from interfering with the delivery of a treatment prescribed by a physician unless imminent risk of bodily harm to the physician, staff, or inmate requires alternate or modified procedures; provided that a person violating any of these provisions is subject to appropriate disciplinary action by the department, and is guilty of an infraction punishable by a fine of up to \$1,000 with a second or subsequent conviction for this offense would be punishable by a fine of up to \$2,000; and required that any action taken against a physician under these provisions to be reported by the employing department to the Medical Board of California within 30 days of that action.

AB 2897 (Bogh): Chapter 953: Prisoners: HIV medical testing. Urgency.

(Amends Sections 7500, 7503, 7510, 7511, and 7515 of, and repeals Section 7555 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Assembly Concurrence (78-0)

Senate Public Safety (5-0)

Senate Health & Hum Services (13-0)

Senate Appropriations, SR 28.8

Senate Floor (39-0)

Existing law does the following:

- Provides that the CDC, California Youth Authority (CYA), and county health officers shall adopt guidelines permitting a Chief Medical Officer (CMO) to delegate his or her medical responsibilities to other doctors.

- Provides that the CMO shall not delegate the duty to determine whether mandatory testing for HIV is required in situations where law enforcement personnel has come into contact with bodily fluids.
- Provides that when a law enforcement employee believes that he or she has come into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, or a person on probation or parole due to conviction of a crime, shall report the incident through a Department of Health Services (DHS) form. The form shall be directed to the CMO who serves the applicable law enforcement agency. Using this form, the employee may request an HIV test of the person who is the subject of the report, all as specified.
- Provides that the existing law pertaining to the HIV testing process "sunset" on January 1, 2005.

This bill does the following:

- Makes several technical changes to existing legislative findings and declarations as they relate to the spread of HIV and AIDS.
- Authorizes the CMO to delegate his/her otherwise non-delegable duty to determine whether mandatory testing is required to another qualified physician designated to act as CMO in the CMO's absence.
- Provides that processing a form by the CMO containing a request for HIV testing of the subject person shall not be delayed by the processing of other reports or forms.
- Requires that the CMO decide whether to order an HIV test of an inmate who is the subject of a report within 24 hours of receipt of the report.
- Requires appeals filed by a law enforcement employee to be heard within seven calendar days.
- Requires that within two calendar days of the notification, a physician and surgeon, as specified, reach agreement with DOC, the county, the city, or the county and city, on a hearing date for appeals filed by a law enforcement employee.
- Requires a decision on an appeal to be rendered within two days of the hearing.
- Repeals the existing legislative sunset and took effect immediately upon enactment as an urgency measure.

AB 2946 (Goldberg): VETOED: Correctional facilities: clergy access.
(Adds Section 10007 to the Penal Code.)

Legislative History:

Assembly Public Safety (4-0)

Assembly Appropriations (18-0)

Assembly Floor (55-22)

Assembly Concurrence (47-30)

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (28-7)

Existing law includes the following:

- Provides that all prisoners may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Penal Code § 2600; *In re Arias*, 42 Cal.3d 667, 675 (1986).)
- Declares that all prisoners, including prisoners confined in county, state, and CYA facilities, shall be afforded reasonable opportunities to exercise religious freedom.
- Provides that it is the intent of the Legislature that all prisoners shall be afforded reasonable opportunities to exercise religious freedom.
- Provides that, except in extraordinary circumstances, upon the transfer of an inmate to another State prison institution, any member of the clergy or spiritual adviser who has been previously authorized by the CDC to visit that inmate shall be granted visitation privileges at the institution to which the inmate is transferred within 72 hours of the transfer.

This bill would have done the following:

- Provided that a correctional facility may not deny a clergy member access to the facility because the clergy member lodges a complaint about the behavior of staff or of the operation of the facility, assists in efforts to modify the functions of the facility, or provides information to the public, including the media, on any aspect of the operation of the facility, provided the information did not create a clear and present danger to the safety and security of the facility, staff, inmates, or the public through a violation of facility rules, or violates state or federal law.
- Defined "clergy member" to mean a priest, minister, rabbi, imam, religious practitioner, lay chaplain, or similar functionary acting under the auspices of a church, temple, mosque, or other recognized religious denomination or organization.
- Defined "correctional facility" to mean a state prison, county jail, Department of the Youth Authority facility, county or city operated juvenile facility, including juvenile halls, camps, or schools, or other state or local correctional institution.
- Stated that legislative intent in enacting these provisions to assist state and local agencies in their compliance with the holding of *Hyland v. Wonder* (9th Cir. 1997) 117 F.3d 405.

CRIMINAL PROCEDURE

AB 20 (Lieber): Chapter 823: Victims of crime.

(Amends Sections 710, 765, 767, and 1109 of, and adds Section 177 to, the Evidence Code, amends Sections 288, 502.9, 515, 525, 859.1, 861.5, 868.7, 939.21, 1347.5 and 11166 of, adds Section 1127g to, the Penal Code, and amends Sections 15610.63 and 15630 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (24-0)

Assembly Floor (79-0)

Assembly Concurrence (79-0)

Senate Public Safety (5-0)

Senate Appropriations (13-0)

Senate Floor (38-0)

Existing law provides for specified accommodations or exemptions in court when the witness is a child who is a witness or victim in specified types of cases.

Existing law provides that evidence of a person's character or of a trait of his or her character is inadmissible when offered to prove his or her conduct on a specified occasion with certain exceptions, including when the defendant is accused of an offense involving abuse of an elder or dependent adult.

This bill provides that this evidence is admissible when the offense involves abuse of a dependent person regardless of age.

Existing law provides that it is a crime for any person who is a caretaker to willfully and lewdly commit any lewd or lascivious act upon a dependent adult with specified intent punishable by imprisonment in the state prison for 1, 2, or 3 years or by imprisonment in a county jail. If the crime is committed by use of force, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, the crime is punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill makes these provisions applicable to all dependent persons regardless of age.

AB 883 (Runner): Chapter 65: Records: admissible hearsay.

(Adds Section 1550.1 to the Evidence Code, adds Section 11106.3 to the Penal Code and enacts Uncodified Law.)

Legislative History:

Assembly Public Safety (7-0)

Assembly Appropriations (24-0)

Assembly Floor (73-0)

Assembly Concurrence (78-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (33-0)

Existing law permits the Department of Justice and criminal justice agencies to use any system of microphotography, optical disk, or reproduction by other techniques that do not permit additions, deletions, or changes to the original document to record some or all instruments, papers, photographs, and notices that are required or permitted by law to be recorded or filed.

This bill permits fingerprints to be stored or created in an electronic format that does not permit additions, deletions, or changes to the original fingerprints so long as the storage medium complies with the minimum standards of quality approved by the National Institute of Standards and Technology.

Existing law sets forth the rules governing the proof of the content of a writing in a civil or criminal action or proceeding. Under existing law, if made in the regular course of business, as specified, a nonerasable optical image reproduction of a writing may be introduced in court as proof of a writing, provided that additions, deletions, or changes to the original document are not permitted by that technology. Recent changes in this law expand that category of admissible evidence to include any other reproduction of a public record by a trusted system, as specified, contingent on the adoption of specified standards regarding the storage of documents in electronic media by the Secretary of State.

This bill provides that reproductions of files, records, writings, photographs, fingerprints, or other instruments in the official custody of a criminal justice agency that were microphotographed or otherwise reproduced in a manner that conforms with the provisions referred to above that authorize record maintenance procedures for the Department of Justice and criminal justice agencies shall be admissible to the same extent and under the same circumstances as the original file, record, writing or other instrument would be admissible. This bill states that its provisions are declarative of existing law.

AB 1249 (Pacheco): Chapter 162: Criminal procedure: subpoenas.

(Amends Section 1560 of the Evidence Code and Section 1326 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (4-0)

Assembly Floor (74-0)

Senate Floor (37-0)

Assembly Concurrence (78-0)

Existing law provides that when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in a criminal action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena or within a time otherwise agreed upon, delivers a copy of all the records described in the subpoena to the clerk of the court, the judge, or to another person, as specified. Existing law further provides that, as an alternative to these procedures, the subpoenaing party may direct the witness to make the records available for inspection or copying at the witness' business address under reasonable conditions during normal business hours, as defined.

This bill precludes use of this alternative procedure in criminal actions. It provides that, when a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in-camera hearing to determine whether or not the defense is entitled to receive the documents. This bill also provides that the court may not order the documents disclosed to the prosecution, except as specified.

AB 1432 (Firebaugh): Chapter 511: Former jeopardy.

(Amends Sections 656 and 793 of, and adds Sections 656.5, 656.6, and 793.5 to, the Penal Code.)

Legislative History:

Assembly Public Safety (5-1)

Assembly Appropriations (22-1)

Assembly Floor (72-2)

Assembly Concurrence (77-0)

Senate Public Safety (4-1)

Senate Appropriations (11-0)

Senate Floor (28-2)

Existing law provides, under the California and United States Constitutions, that a person may not be put twice in jeopardy for the same offense. Existing statutory law provides that no prosecution or indictment of an accused person may be brought when a charged act is within the jurisdiction of another state, government, or country as well as this state, and the person has been acquitted or convicted of the same act in that other jurisdiction. A separate statute makes it a defense to any prosecution brought in this state that the accused was acquitted or convicted in a prosecution founded on the same act or omission in another state or country with concurrent jurisdiction.

This bill limits this immunity and defense to apply only upon a conviction or acquittal in a prosecution under the laws of the United States, or of another state or territory of the United States. It thus eliminates conviction or acquittal in another country as a bar to prosecution or indictment in California and as a defense in a trial in California based upon the same act or omission. With regard to a person acquitted or convicted in another country who, under this bill, is subject to prosecution in California for the same act or omission, it provides that he or she shall be entitled to credit for any actual time served in custody in a penal institution in that country in relation to the act or omission, and to any additional time credits that would have been awarded had the person been incarcerated in California.

AB 1504 (Spitzer): Chapter 628: Release of committed persons.
(Amends Section 1603 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (25-0)

Assembly Floor (78-0)

Assembly Concurrence (78-0)

Senate Public Safety (4-0)

Senate Appropriations (13-0)

Senate Floor (35-0)

Existing law provides that in any case in which the victim or next of kin of the victim of an offense for which the person was committed to a state hospital or other treatment facility has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility. If he or she has filed a request for notification with the court, he or she shall receive actual notice from the court before the committed person is placed on outpatient status. Existing law also requires that the director of a state hospital notify certain persons upon the release of a person who has been committed to a state hospital.

This bill requires the prosecutor to notify the victim or next of kin of the victim of the hearing date and pending release of the person.

AB 1884 (Spitzer): VETOED: Privacy offenses: immunity.
(Amends Section 633 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-1)

Assembly Floor (62-1)

Assembly Concurrence (74-1)

Senate Public Safety (4-0)

Senate Floor (36-0)

Existing law provides that with the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law. Existing law provides that the Attorney General, district attorney, or other specified law enforcement officers are not prohibited from overhearing or recording any communication that they could lawfully overhear or record prior to the enactment of specified prohibitions on the eavesdropping on, or recording of, specified communications.

This bill explicitly states that city attorneys prosecuting on behalf of the people of the State of California under the above-described authority as of January 1, 2005, would have had the same authority to record and use communications when investigating violations of consumer protection laws as has any district attorney as provided in the law described above.

AB 1894 (Longville): Chapter 372: Seizure of business records.
(Adds Section 1536.5 to the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Assembly Appropriations (16-3)

Assembly Floor (72-1)

Assembly Concurrence (79-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Existing law authorizes the seizure of business records by a governmental agency pursuant to a search warrant supported by probable cause to believe that the records constitute evidence of the commission of a crime. The court is authorized to order the seized property, including business records, returned upon a motion made on specified grounds, including the grounds that the property taken is not the same as that described in the warrant, the warrant was not supported by probable cause, the warrant or its execution violated state or federal constitutional standards, or the property has not been offered or will not be offered as evidence against the defendant.

This bill provides a procedure for an entity whose business records have been seized by a government agency to demand that agency provide to it, within a 10 court day period, copies of the business records or access to the original records so that the entity can make copies of the records.

AB 2160 (Reyes): Chapter 517: Foreign prosecution.
(Adds Section 11055 to the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (72-0)

Assembly Concurrence (79-0)

Senate Public Safety (4-0)

Senate Appropriations (8-0)

Senate Floor (29-0)

Existing law provides that the Attorney General may, upon the request of any local, state or federal law enforcement official, make available to that official the department's technical experts for the purpose of assisting in the investigation of criminal matters, the detection of crimes, and the apprehension or prosecution of criminals.

This bill creates the Foreign Prosecution and Law Enforcement Unit within the Department of Justice, responsible for assisting local law enforcement agencies with foreign prosecutions, child abduction recoveries and returns under the Hague Convention on the Civil Aspects of International Child Abduction, and law enforcement investigative matters, as specified. This bill also provides that the unit would collect information on a statewide basis regarding foreign prosecution cases for the primary purpose of analyzing the information it collects and disseminating its conclusions to local law enforcement agencies. Additionally, this bill provides that local law enforcement agencies shall retain the authority to prepare and present foreign prosecution cases without the unit's assistance.

AB 2829 (Bogh): Chapter 61: Rape: evidence: sexual conduct.
(Amends Section 782 of the Evidence Code.)

Legislative History:

Assembly Public Safety (5-0)
Assembly Floor (80-0)

Senate Public Safety (6-0)
Senate Floor (33-0)

Existing law sets forth the procedure required in any prosecution for rape or other specified offenses, with certain exceptions, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness. This procedure involves, among other things, the filing of a written motion by the defendant, accompanied by an affidavit stating an offer of proof, and, if the court determines that the offer is sufficient, a hearing out of the presence of the jury regarding the offer of proof. Existing law allows the court, at the conclusion of the hearing, to make an order stating what evidence may be introduced by the defendant.

This bill requires that the affidavit filed with the court in connection with the offer of proof be kept under seal and only unsealed by the court to determine whether the offer of proof is sufficient. The bill requires the affidavit to be resealed after that determination, and provides specified persons access to that affidavit only if the defendant raises an issue on appeal or collateral review regarding the offer of proof.

DEATH PENALTY

SR 44 (Burton): Adopted: Relative to the administration of justice.

(Resolution language.)

Legislative History:

Senate Floor (23-12)

This resolution creates the California Commission on the Fair Administration of Justice. The Commission shall be appointed by members of the Rules Committee. The Commission shall have the following duties:

- To study and review the administration of criminal justice in California to determine the extent to which that process has failed in the past, resulting in wrongful executions or the wrongful conviction of innocent persons.
- To examine ways of providing safeguards and making improvements in the way the criminal justice system functions.
- To make any recommendations and proposals designed to further ensure that the application and administration of criminal justice in California is just, fair and accurate.

DOMESTIC VIOLENCE

SB 914 (Bowen): Chapter 840: Domestic violence prevention grant programs. Urgency.

(Amends Sections 13823.15, 13823.16, and 13837 of the Penal Code and enacts Uncodified Law.)

Legislative History:

Senate Judiciary (6-0)

Senate Appropriations (13-0)

Senate Floor (37-0)

Senate Concurrence (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (79-0)

Existing law requires the Director of Finance to designate an agency or agencies to carry out the functions of the office. The Office of Criminal Justice Planning formerly administered certain grant programs relating to victims of domestic violence and sex offenses.

This bill states legislative intent concerning the administration of domestic violence prevention programs on a temporary basis, and that "violence programs within the Domestic Violence Branch and sexual assault/rape crisis programs within the Sexual Assault Branch of the Office of Criminal Justice Planning, and the Battered Women's Shelter Program in the Department of Health Services (DHS), be permanently consolidated into one office, branch, or department, within one state agency."

This bill additionally revises the administration of certain grant programs relating to victims of domestic violence and sex offenses as collaboratively administered by the Office of Emergency Services and advisory committees, as specified.

This bill took effect immediately upon enactment as an urgency measure.

SB 1385 (Burton): Chapter 609: Battering and its effects.

(Amends Section 1107 of the Evidence Code and amends Section 1473.5 of the Penal Code.)

Legislative History:

Senate Public Safety (4-0)

Assembly Public Safety (5-1)

Senate Floor (22-8)

Assembly Floor (71-2)

Senate Concurrence (22-4)

Existing law permits the admission in criminal actions of expert testimony regarding battered women's syndrome, including testimony on the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, as specified. Existing law defines terms for purposes of this law and provides that these provisions shall be known and may be cited as the Expert Witness Testimony on Battered Women's Experiences Section of the Evidence Code.

This bill instead makes these provisions known and citable as the Expert Witness Testimony on Intimate Partner Battering and Its Effects Section of the Evidence Code, and would change all references to "Battered Women's Syndrome" in that section to read "intimate partner battering and its effects." It also clarifies the definition of "domestic violence" as used in this provision.

Existing law, operative until January 1, 2010, includes among the circumstances under which a writ of habeas corpus may be prosecuted to inquire into the cause of a person's imprisonment the fact that evidence relating to battered women's syndrome, based on abuse committed on the perpetrator of a homicide by the victim of the homicide, was not introduced at trial, as specified.

This bill provides that, instead of "evidence relating to battered women's syndrome," "expert testimony relating to intimate partner battering and its effects" would be the basis for this writ. Furthermore, this bill permits the writ to be prosecuted concerning convictions for any violent felony offenses that were committed before August 29, 1996, as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability. It also provides this writ authority for the absence of expert testimony relating to intimate partner battering at any trial court proceedings relating to the prisoner's incarceration rather than only at the trial itself.

Existing law makes it grounds for denial of a new petition that a court determined on the merits of a prior petition for a writ of habeas corpus that the omission of evidence relating to battered women's syndrome at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

This bill instead permits this denial if the court found that the omission of expert testimony relating to battered women's syndrome or intimate partner battering and its effects at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus. This bill also states that its changes to the writ provisions are not intended to expand the uses or applicability of expert testimony on battering and its effects in criminal cases.

SB 1391 (Romero): Chapter 250: Protective orders.

(Amends Sections 6240 and 6389 of the Family Code and Section 13700 of the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Existing law provides that a judicial officer may issue an ex parte emergency protective order if a law enforcement officer asserts reasonable grounds to believe that a person, child, or elder or dependent adult is in immediate and present danger of domestic violence or abuse. Existing law excludes from the definition of law enforcement officer, for the purpose of these provisions, a peace officer of the Department of General Services of the City of Los Angeles.

Existing law requires every law enforcement agency in this state to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls requiring the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order, as specified, has been violated. Existing law excludes from the definition of law enforcement officer, for the purpose of these provisions, a peace officer of the Department of General Services of the City of Los Angeles.

This bill includes a peace officer of the Department of General Services of the City of Los Angeles in the definition of law enforcement officer for the purpose of these provisions.

Existing law provides that a person subject to a protective order, shall not own, possess, purchase, or receive a firearm while that protective order is in effect. Existing law provides that the Judicial Council shall provide a notice on all forms requesting a protective order that the respondent shall be required to relinquish possession or control of any firearms at the hearing for a protective order. Existing law provides that if the respondent is present in court at a duly noticed hearing, the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, as specified, and if the respondent is not present at the hearing, the respondent shall relinquish the firearm within 48 hours after being served with the order.

This bill instead requires the respondent to relinquish any firearm in his or her possession or control within 24 hours of being served with the order, and further clarifies these provisions by providing that the Judicial Council shall include a notice on all forms providing notice that a protective order has been requested or granted that the respondent shall be required to relinquish possession or control of any firearms upon service of the protective order, as specified.

SB 1441 (Kuehl): Chapter 159: Victims.
(Adds Section 679.05 to the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (34-0)

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (78-0)

Existing law sets forth certain rights of victims of, and witnesses to, crime. Existing law provides that the victim of sexual assault or spousal rape has the right to have advocates present at any evidentiary, medical, or physical examination or interview by law enforcement authorities or defense attorneys, as specified.

This bill provides that a victim of domestic violence or abuse has the right to have a domestic violence counselor and a support person of his or her choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys, as specified, and shall be notified orally or in writing by the attending law enforcement authority or district attorney of that right prior to the commencement of an initial interview, as specified.

AB 141 (Cohn): Chapter 116: Evidence.
(Amends Section 1109 of the Evidence Code.)

Legislative History:

Assembly Judiciary (14-0)

Assembly Floor (76-0)

Assembly Concurrence (75-0)

Senate Public Safety (5-0)

Senate Floor (33-0)

Existing law provides evidence of a person's character, such as opinion or specific instances of conduct, is generally not admissible to prove a defendant's conduct on a particular occasion, with specified exceptions. Existing law provides, however, that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, except as to the findings and declarations of a regulatory agency or when the acts occurred more than 10 years ago or the court exercises its discretion to exclude the evidence of prior acts, as specified.

This bill expands the definition of "domestic violence" for purposes of this section.

AB 2010 (Hancock): Chapter 830: Domestic violence response in Alameda and Solano Counties.

(Adds and repeals Sections 26840.10 and 26840.11 of the Government Code, Sections 103627 and 103628 of the Health and Safety Code, and Sections 18309 and 18309.5 of the Welfare and Institutions Code.)

Legislative History:

Assembly Judiciary (7-1)

Senate Judiciary (4-1)

Assembly Floor (43-33)

Senate Floor (21-13)

Assembly Concurrence (47-30)

Existing law provides for county domestic violence program special funds for the purpose of funding local domestic violence programs. Certain fees payable at the time a marriage license is issued may be collected by the county clerks for deposit into these funds. Existing law requires the collection of fees for certified copies of fetal death or death records and marriage or birth certificates. Existing law authorizes the board of supervisors of a county that has established a county children's trust fund to increase the fee for a certified copy of a birth certificate for purposes of the fund. Existing law, the Contra Costa County "Zero Tolerance for Domestic Violence" Act, authorizes the Board of Supervisors of Contra Costa County, until 2007, to increase fees, up to a maximum increase of \$2, for certified copies of marriage certificates, birth certificates, fetal death records, and death records, for the purposes of providing funding for governmental oversight and for the coordination of domestic violence prevention, intervention, and prosecution efforts in the county, as specified.

This bill authorizes the Boards of Supervisors of Alameda and Solano Counties to make similar fee increases, until January 1, 2010. The bill requires each board, by July 1, 2009, to submit a report on funds received and expended in connection with the fee increases, and the outcome of activities associated with the act, to the Assembly Judiciary Committee and the Senate Judiciary Committee.

DRUG TREATMENT

SB 519 (Vasconcellos): VETOED: Drug treatment of Youth Authority parolees.
(Adds Sections 1765.5 and 1765.6 to the Welfare and Institutions Code.)

Legislative History:

Senate Public Safety (5-0)

Assembly Public Safety (4-2)

Senate Appropriations (7-3)

Assembly Appropriations (12-5)

Senate Floor (27-11)

Assembly Floor (42-33)

Senate Concurrence (24-11)

Existing law (Substance Abuse and Crime Prevention Act [SACPA], Proposition 36 of the November 2000 General Election) provides the following:

- (1) A person convicted of a nonviolent drug possession offense shall receive probation with completion of a drug treatment program as a condition of that probation.
- (2) A person's parole may not be suspended or revoked for committing a nonviolent drug possession offense or for violating a drug-related condition of parole, but an additional condition of parole for those offenses or violations shall be the completion of a drug treatment program.

Existing law establishes the Youth Authority Board to exercise specified powers and duties, including the issuance of orders to parole and the conditions thereof, and the revocation or suspension of parole, for wards of the juvenile court.

This bill would have enacted substance abuse treatment provisions for Youth Authority parolees that would be similar or parallel to drug treatment provisions applicable under SACPA for prison parolees. The provisions applicable to Youth Authority parolees would have been implemented by the Youth Authority Board. Funding for the drug treatment program created by this bill would have been provided through the annual Budget Act.

AB 1306 (Leno): Chapter 30: Transfer of probation in mandatory drug treatment (Prop. 36 of March, 2000 Election). Urgency.
(Amends Section 1203.9 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (5-0)

Assembly Appropriations (24-0)

Senate Floor (34-0)

Assembly Floor (74-0)

Assembly Concurrence (69-1)

Existing law sets forth procedures under which a person released upon probation may be transferred to the care and custody of the probation officer of another county.

This bill provides special probation transfer procedures for people on probation under the initiative provisions relating to non-violent possession of controlled substance and related charges. Once transferred, the probationer would be under the jurisdiction of the court in the new county for all purposes, including probation supervision and treatment.

This bill took effect immediately upon enactment as an urgency measure.

ELDER & DEPENDENT ADULT ABUSE

SB 1475 (Vasconcellos): VETOED: Elder and Dependent Adult Abuse Prevention and Prosecution Coordinating Council.

(Adds and repeals Section 368.5 of the Penal Code.)

Legislative History:

Senate Judiciary (5-1)

Senate Appropriations (9-0)

Senate Floor (30-6)

Senate Concurrence (31-5)

Assembly Public Safety (5-1)

Assembly Appropriations (14-5)

Assembly Floor (57-20)

Existing law makes it a crime, punishable by imprisonment in a county jail, a fine, or both imprisonment and fine, to subject an elder or dependent adult to any of several forms of physical, mental, and financial abuse.

This bill would have required the office of the Attorney General and the California District Attorneys Association, in consultation with the California Health and Human Services Agency, to convene an Elder and Dependent Adult Abuse Prevention and Prosecution Coordinating Council, to bring together representatives of various entities responsible for investigating, reporting, and prosecuting elder and dependent adult abuse cases and other interested entities.

SB 1644 (Romero): VETOED: Records for elder death review teams.

(Adds Section 102336 to the Health and Safety Code and Section 11174.85 to the Penal Code.)

Legislative History:

Senate Health and Human Services (7-2)

Senate Public Safety (4-0)

Senate Appropriations (8-4)

Senate Floor (25-12)

Senate Concurrence (23-12)

Assembly Health (13-5)

Assembly Appropriations (14-5)

Assembly Floor (49-30)

Existing law requires each death to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found. Existing law requires the State Department of Health Services to implement an Internet-based electronic death registration system on or before January 1, 2005. Existing law authorizes each county to establish an interagency elder death team to assist local agencies in identifying and reviewing suspicious elder deaths. Under existing law, an oral or written communication or a document shared within or produced by an elder death review team, as well as certain communications and documents of a third party provided to an elder death review team, is confidential. Existing law provides that the disclosure of information relevant to the work of an elder death review team by any individual or agency is intended to be voluntary.

This bill would have required a local registrar of births and deaths in a county that elects to participate in the Internet-based electronic death registration system established by the state to provide, from information obtained from death certificates, to a county elder death review team, as specified, a report for a date period specified by the requester that shall contain all of, and be sorted by any one of, four specified elements.

This bill would have authorized an organization represented on an elder death review team to request, obtain and share subject existing confidentiality and disclosure provisions, as specified, copies of certificates of death from the local registrar of births and deaths, subject to any fee requirements, as specified.

AB 2611 (Simitian): Chapter 886: Abuse of the elderly.

(Amends Section 368 of the Penal Code, amends Sections 15656 and 15657 of the Welfare & Institutions Code, and adds Section 15657.5 to the Welfare and Institutions Code.)

Legislative History:

Assembly Aging & Long-Term Care (3-2)

Senate Public Safety (4-0)

Assembly Public Safety (4-2)

Senate Judiciary (4-0)

Assembly Appropriations (16-5)

Senate Appropriations (11-0)

Assembly Floor (70-4)

Senate Floor (31-1)

Assembly Concurrence (51-28)

Existing law defines crimes of physical and financial abuse of elders and dependent adults. Except where the defendant is a caretaker, knowledge that the victim is an elder or dependent adult is an element of these crimes. Where the defendant is the victim's caretaker, knowledge of the victim's status is reasonably presumed in such a case.

This bill provides that a person who is not a caretaker of an elder or dependent adult is guilty of elder or dependent adult abuse when the person does a prohibited act and *knows or reasonably should know* of the victim's status. This bill also provides that in any case in which a person is convicted of a crime against an elder or a dependent adult the court may order the defendant to engage in counseling as a condition of probation. A defendant shall pay the expense of the counseling program, as specified.

Existing law includes provisions concerning civil damages and attorney's fees where it is proven by clear and convincing evidence that a defendant is liable for physical abuse or neglect, or financial abuse, and the defendant was reckless, oppressive, fraudulent, or malicious.

This bill revises these provisions to make the standard of proof for the commission of financial abuse to a preponderance of the evidence. However, additional recovery is permitted where there is clear and convincing evidence of recklessness, oppression, fraud, or malice.

AB 2783 (Simitian): VETOED: Recording fees: Elder and Dependent Adult Financial Abuse Prevention Trust Fund.

(Adds Sections 27388.5 and 27388.7 to the Government Code.)

Legislative History:

Assembly Local Government (6-3)

Senate Judiciary (4-1)

Assembly Aging & Long Term Care (3-2)

Senate Floor (22-16)

Assembly Floor (41-32)

Assembly Concurrence (42-35)

Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse and provides that in addition to other recording fees, upon the adoption of a resolution by the county board of supervisors, a fee of up to \$2 shall be paid at the time of recording of every real estate instrument, as defined, with fees collected to be placed in the Real Estate Fraud Prosecution Trust Fund to be distributed by the county chief administrative officer, as determined by a Real Estate Fraud Prosecution Trust Fund Committee, to district attorneys and local law enforcement agencies for the purpose of determining, investigating, and prosecuting real estate fraud crimes.

This bill would have authorized imposition of a similar fee for purposes of funding programs to deter, investigate, and civilly prosecute elder or dependent adult financial abuse in the context of real estate transactions with the additional fee authorized by the bill to have been placed in the Elder and Dependent Adult Financial Abuse Prevention Trust Fund to be expended for these purposes, as specified.

AB 3095 (Committee on Aging and Long-Term-Care): Chapter 893: Counseling as probation condition in elder abuse cases.

(Amends Section 368 of the Penal Code.)

Legislative History:

Assembly Aging & Long-Term Care (5-0)

Senate Public Safety (4-0)

Assembly Public Safety (6-0)

Senate Appropriations, SR 28.8

Assembly Appropriations (21-0)

Senate Floor (38-0)

Assembly Floor (74-0)

Assembly Concurrence (79-0)

Existing law proscribes various crimes involving physical or financial abuse of an elder or dependent adult. These crimes generally include an element that the perpetrator has knowledge that the victim is an elder or dependent adult. These offense include causing or permitting an elder or dependent adult to suffer unjustifiable physical pain or mental suffering and violating any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft.

This bill expands these provisions to include a situation in which the perpetrator reasonably should have known that the victim was an elder or dependent adult. This bill also provides that in any case in which a person is convicted of elder abuse or abuse of a dependent adult, the court may order that the defendant be placed in an appropriate counseling program as a condition of probation and that the defendant pay the expense of counseling.

EMERGENCY PHONE CALL SYSTEM - "911"

AB 911 (Longville): Chapter 295: "911" system: misuse of the system.
(Adds Section 653y to the Penal Code and enacts Uncodified Law.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (23-0)

Assembly Floor (79-0)

Assembly Concurrence (77-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (39-0)

Existing law does the following:

- Provides that the digits "911" shall be the primary emergency telephone number, but a public agency may maintain a separate secondary backup number and shall maintain a separate number for non-emergency telephone calls.
- States that the 911 system provides a simplified means of procuring emergency services which will result in the saving of life, a reduction in the destruction of property, and quicker apprehension of criminals.
- Provides that local governments are encouraged to develop and improve emergency communication procedures so as to be able to quickly respond to any person calling 911 seeking police, fire, medical, rescue, and other emergency services.
- States that every local public agency may establish a non-emergency telephone system with the digits "311" dedicated as the non-emergency telephone number, and the location of the initial call is to be determined to provide a coordinated uniform delivery system.
- Provides that "non-emergency telephone system" is defined as a system structured to provide access to public safety agencies and to services provided by local public agencies, such as street maintenance and animal control.
- Provides that it is a misdemeanor to knowingly and maliciously interrupt or otherwise interfere with the transmission of emergency-related communication over an amateur or a citizen's band radio frequency. Provides that it is a felony if this offense results in serious bodily injury or property loss in excess of ten thousand dollars.
- Provides that it is a misdemeanor to telephone the 911 emergency line with the intent to annoy or harass another person, punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. Specifies that an intent to annoy or harass is established by proof of repeated calls over a period of time, however short, that are unreasonable under the circumstances.
- Provides that it is a misdemeanor to knowingly report a false emergency. Provides that it is a felony if this offense results in great bodily injury or death.

- Prohibits telephone and telegraph corporations from making specified subscriber information – including calling patterns, credit or other personal financial information, services purchased by the subscriber, and demographic information – available to any other person or corporation, without first obtaining the residential subscriber's written consent, except when that information is used for specified purposes, including when it is provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property, or when it is provided to a law enforcement agency in response to lawful process.

This bill does the following:

- Provides that any person who knowingly allows the use or who uses the 911 telephone system for any reason other than because of an emergency is guilty of an infraction.
- Provides that for a first or second violation, a written warning shall be issued to the violator by the public safety entity originally receiving the call describing the punishment for subsequent violations. The written warning shall inform the recipient to notify the issuing agency that the warning was issued inappropriately if the recipient did not make, or knowingly allow the use of the 911 telephone system for, the non-emergency 911 call. The law enforcement agency may also provide educational materials regarding the appropriate use of the 911 telephone system.
- Specifies that for a third or subsequent violation, a citation may be issued by the public safety entity originally receiving the call, pursuant to which the violator shall be subject to the following penalties that may be reduced by a court upon consideration of the violator's ability to pay: A. for a third violation, the person shall be subject to a fine of \$50. B. for a fourth violation, the person shall be subject to a fine of \$100. C. for a fifth or subsequent violation, the person shall be subject to a fine of \$200.
- States that the parent or legal guardian having custody and control of a minor shall be jointly and severally liable with the minor for the fine imposed.
- Defines "emergency" as any condition in which emergency services will result in the saving of a life, a reduction in the destruction of property, quicker apprehension of criminals, assistance with potentially life-threatening medical problems, a fire, a need for rescue, an imminent potential crime, or similar situations in which immediate assistance is required.
- Makes legislative findings and declarations stating that the purpose of the bill is to ensure the availability of an enhanced 911 telephone system for the prime purpose of a quick response to emergency situations and to reduce false or non-emergency use of the system; that the proper use of the 911 telephone system will allow the efficient use of available resources to respond to incidences of real emergencies; and that the improper use of the 911 telephone system unnecessarily delays and obstructs public safety entities in the performance of their duties.

FINES & PENALTIES

SB 246 (Escutia): Chapter 380: Courts: fines and penalties: collection.

(Amends Section 6159 of the Government Code, amends Section 1463.007 of the Penal Code, and amends Sections 19280 and 19283 of the Revenue and Taxation Code.)

Legislative History:

Senate Judiciary (6-0)

Senate Appropriations (13-0)

Senate Floor (37-0)

Senate Concurrence (31-1)

Assembly Judiciary (10-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Existing law provides, among other things, that a court is authorized to order fines, fees, penalties, surcharges, or assessments, under varying circumstances. Existing law provides a procedure for the collection of those fines, fees, penalties, surcharges, and assessments by the courts and counties. Until January 1, 2006, existing law provides that delinquent fines, penalties, or restitution imposed by a superior or municipal court or an individual for specified criminal offenses be referred by the county or the state to the Franchise Tax Board for collection in certain instances.

This bill, among other things, additionally authorizes a superior court to refer those delinquent fines, penalties, and restitution to the Franchise Tax Board for collection, as specified. This bill requires the Franchise Tax Board, in consultation with the Judicial Council, to seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts. The bill also deletes the repeal date of those provisions thereby extending the provisions indefinitely.

SB 256 (Escutia): Chapter 592: Court facilities.

(Amends Sections 15807, 15808.1, 15812, 15815, 15862, 70303, 70355, 70356, 70357, 70358, 70362, 70366, 70367, 70373, 70373.5, 70374, 70375, 70392, 70402, 71601, 76000, and 76100 of, adds Section 71626.1 to, adds and repeals Section 70404 of, and repeals Section 70046.2 of, the Government Code, and amends Section 42007 of the Vehicle Code.)

Legislative History:

Senate Judiciary (5-2)

Senate Appropriations, SR 28.8

Senate Floor (21-15)

Senate Concurrence (24-13)

Assembly Judiciary (13-0)

Assembly Appropriations (24-0)

Assembly Floor (78-0)

Existing law authorizes each county to establish a courthouse construction fund to assist in the acquisition, rehabilitation, construction, and financing of courtrooms and facilities necessary or incidental to the operation of the justice system, as specified. Existing law also provides for a transition from county funding to state funding for superior court facilities, as specified.

This bill, among other things, provides that no county may make any expenditure or encumber future funds from the county courthouse construction fund without the approval of the Administrative Director of the Courts, except as specified.

Existing law establishes an additional penalty to be assessed by each county on fines, penalties, and forfeitures imposed for criminal offenses for the local courthouse construction fund, as specified for each county.

This bill increases that additional penalty for Fresno County from \$5 to \$7.

SB 635 (Dunn): Chapter 524: Emergency medical services.

(Adds and repeals Section 76104.1 of the Government Code, amends, repeals, and adds Section 1797.98e of the Health and Safety Code, and adds and repeals Section 42007.5 of the Vehicle Code.)

Legislative History:

(Prior votes not relevant)

Senate Public Safety, SR 29.10 (4-0)

Senate Concurrence (21-13)

Assembly Public Safety (5-0)

Assembly Appropriations (13-3)

Assembly Floor (77-3)

Existing law authorizes each county to establish an emergency medical services fund, funded by specified revenue penalties, and makes money in the fund available for the reimbursement of physicians and surgeons and hospitals for losses incurred in the provision of emergency medical services when payment is not otherwise made for those services.

This bill provides that in Santa Barbara County there shall be an additional \$5 for every \$10 of fine, penalty or forfeiture collected for criminal offenses including Vehicle Code offenses; 42% of the funds collected shall be distributed to hospitals providing trauma and emergency medical services to uninsured patients.

SB 1707 (Aanestad): Chapter 51: Emergency response costs.

(Amends Section 53155 of, and adds Section 53159 to, the Government Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Floor (37-0)

Assembly Judiciary (10-0)

Assembly Floor (76-0)

Existing law provides that any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle, a boat or vessel, or a civil aircraft, caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate response, is liable for the expense of an emergency response by a public agency to the incident up to \$1,000.

This bill provides that any person who intentionally, knowingly, and willfully enters into any area that is closed or has been closed to the public by competent authority for any reason or that a reasonable person under the circumstances should have known was closed to the public, is liable to specified entities for the expenses of an emergency response, as defined, to search for or rescue the person or any passengers, and the removal of any inoperable vehicle. The bill also makes a person who drives a vehicle on a flooded public street or highway, as specified, liable for the expenses of any emergency response. Finally, this bill increases the limit of liability for the expense of an emergency response to \$12,000 per incident.

FIREARMS & DANGEROUS WEAPONS

SB 231 (Scott): Chapter 606: Entertainment firearms permit. Urgency.

(Amends Sections 12073 and 12078 of, and adds Section 12081 to, the Penal Code, and enacts Uncodified Law.)

Legislative History:

(Priors votes not relevant)

Senate Public Safety (5-0)

Senate Concurrence (31-2)

Assembly Public Safety (6-0)

Assembly Floor (78-0)

Existing law generally regulates the possession and transfer of firearms, including the following:

- Provides that it is a misdemeanor to sell, lease, or transfer firearms without a state-issued firearms dealer license, except as provided in specified exceptions, and sets forth the requirements of such a license.
- Exempts from the state-issued firearms licensure requirement the infrequent sale, lease, or transfer of firearms as well as the loan of an unloaded firearm or a firearm loaded with blanks for use solely as a prop for a motion picture, television, video production, or entertainment or theatrical event.
- Provides other exemptions in law pertaining to "prop" firearms, as specified.

This bill does the following:

- Creates an entertainment firearms permit, to be issued by the Department of Justice, authorizing the holder to possess firearms for use as props in motion picture, television, video, theatrical, or other entertainment productions, as specified.
- Recasts the existing exemption from the licensed firearm dealer transfer and handgun safety certificate requirements for firearms used as theatrical props into three distinct provisions, as specified.
- Makes numerous related changes in law and took effect immediately as an urgency measure.

This bill includes uncodified language which states the intent of the Legislature to encourage safety while facilitating the appropriate use of firearms by the entertainment industry by enacting a special permit program that will simplify that use for persons who are properly screened and that the Legislature finds and declares that the fees in this bill are set at a level that will cover only the costs of this program, and that any adjustment of the fees in the future shall provide only for the costs of the entertainment firearms permit program.

SB 1140 (Scott): VETOED: Minors: "criminal storage of a firearm."
(Amends Sections 12035, 12036, 12071, and 12078 of the Penal Code.)

Legislative History:

Senate Public Safety (4-2)

Senate Appropriations (7-4)

Senate Floor (23-13)

Senate Concurrence (21-15)

Assembly Public Safety (4-2)

Assembly Appropriations (13-5)

Assembly Floor (41-34)

Existing law does the following pertaining to "criminal storage of a firearm":

- Provides that "criminal storage of a firearm in the first degree" occurs when a person keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows, or reasonably should know, that a child under eighteen years of age is likely to gain access to the firearm without the permission of his or her parent or guardian, and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.
- Provides that "criminal storage of a firearm in the second degree" occurs when a person keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows, or reasonably should know, that a child under eighteen years of age is likely to gain access to the firearm without the permission of his or her parent or guardian, and the child gains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either in a public place or brandishes it in violation of Penal Code Section 417 (regarding public displays of the firearm).
- Provides various exceptions and conditions are provided, such as a defense if the firearm is stored in a locked container or with a locking device on the weapon; if the child entered the premises illegally; or if the child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.
- Contains additional requirements and definitions pertaining to "criminal storage of a firearm."

This bill would have done the following:

- Deleted the requirement now in existing law that for the offense of criminal storage of a firearm to occur the child must gain access to the firearm "without the permission of his or her parent or guardian."
- Deleted the requirement now in existing law that for the offense of criminal storage of a firearm to occur the firearm must be loaded, but adds an exception or defense if the firearm is stored unloaded and not in proximity to ammunition for that firearm in a location that a reasonable person would believe to be secure.

- Defined "proximity to ammunition" as "a firearm that is stored in such a manner that gaining access to the firearm also provides immediate access to ammunition for that firearm."
- Amended the existing exception or defense to the criminal storage of a firearm law for persons who have no reasonable expectation that a child is likely to be present to apply the exception to both loaded and unloaded firearms.
- Deleted the requirement now in law that for the offense related to a child obtaining a handgun and carrying it off-premises to occur that the child must gain access to the firearm "without the permission of his or her parent or guardian."
- Deleted the requirement now in law that for the offense related to a child obtaining a firearm and carrying it off-premises to a school or to a school event to occur that the child must gain access to the firearm "without the permission of his or her parent or guardian."
- Established a new misdemeanor offense where a person keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to that firearm and the child obtains access to that firearm but does not take it off-premises, punishable by imprisonment in a county jail not exceeding six months; by a fine not exceeding \$1,000; or by both that imprisonment and fine.
- Added to the list of exceptions or defenses to the criminal storage provisions of both Penal Code Sections 12035 and 12036: a) where the minor is in legal possession of the handgun pursuant to Penal Code Section 12101, which generally requires presence of an adult and/or written permission of his or her parents or guardian, as specified; and, b) for rifles or shotguns, the minor received possession of that firearm in accordance with Penal Code Section 12078(p), which generally involves transfers or loans involving family members or with parental or guardian consent.
- Clarified that the exceptions and nuisance provisions apply to firearms rather than just handguns in recognition that the school-related, off-premises provision applies to firearms.
- Made numerous other related changes in law, as specified.

SB 1152 (Scott): VETOED: Ammunition: retail sales records: related changes in law.

(Amends Sections 12071 and 12316 of, and adds Section 12326 to, the Penal Code.)

Legislative History:

Senate Public Safety (4-2)

Assembly Public Safety (4-2)

Senate Appropriations, SR 28.8

Assembly Appropriations (13-5)

Senate Floor (22-16)

Assembly Floor (41-38)

Senate Concurrence (21-15)

Existing law provides the following pertaining to firearms ammunition:

- "Handgun ammunition" means ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined, notwithstanding that the ammunition may also be used in some rifles.
- For purposes of specified prohibitions on selling and possessing ammunition, "ammunition" includes, but is not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.
- Makes it a crime for persons who are prohibited from possessing firearms to possess ammunition.
- Makes it a misdemeanor for any person, corporation, or licensed firearms dealer to (1) sell ammunition to a person "knowing" that the person is under 18 years of age and (2) sell handgun ammunition to a person "knowing" that the person is under 21 years of age; proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this law; "bona fide evidence of majority and identity" is defined.

This bill would have done the following:

- Required that retail sellers of handgun ammunition at the time of purchase record the following information on a form provided by the Department of Justice (DOJ): a) the date of the transaction; b) the name, address, and date of birth of the transferee; c) the transferee's driver's license or other identification number and the state in which it was issued; d) the brand, type, and amount of ammunition transferred; e) the transferee's signature; f) the name of the salesperson who processed the transaction; and, g) the vendor shall also at the time of purchase or transfer obtain the right thumbprint of the purchaser or transferee on the form unless the purchaser presents a valid sportsman's or hunting license.

- Required that the records of the transaction be maintained on the premises of the vendor for a period of not less than two years from the date of the transfer and provides that transaction records shall be subject to inspection, at any time during normal business hours, by a peace officer, as specified; district attorney; or, a peace officer or employee of DOJ conducting an investigation where access to the records may be relevant to that investigation is seeking information regarding persons prohibited from owning or possessing firearms or ammunition or is engaged in ensuring compliance with the Dangerous Weapons Control Law.
- Stated that no person shall knowingly make a false entry in, fail to make a required entry, fail to obtain the required thumbprint, or fail to maintain the required manner records prepared in accordance herewith.
- Provided that no person shall refuse to permit a peace officer to examine any record prepared in accordance with this section during any inspection conducted pursuant to this section, or refuse to permit the use of any record or information therefrom by the peace officer.
- Defined "firearm ammunition" as assembled live ammunition, other than a .22 caliber, primarily used in a handgun.
- Exempted wholesale sales and transfers of firearms, and the sale or transfer to a peace officer or a person licensed to carry a concealed handgun.
- Made a violation of any of the above provisions a misdemeanor punishable by imprisonment in the county jail for a period not to exceed six months; by a fine not to exceed \$1,000; or, by both.
- Deleted the phrase "knowing that person to be" under the minimum age regarding the sale of ammunition to persons to be under 18 and 21 years of age.
- Required that reliance on bona fide evidence of majority be "reasonable."

SB 1177 (Scott): VETOED: School safety plans: gun violence prevention.
(Amends Section 35294.21 of the Education Code.)

Legislative History:

Senate Education (8-2)
Senate Floor (21-8)

Assembly Education (9-0)
Assembly Floor (48-16)

Existing law encourages a schoolsite council to consider including certain components in its school safety plan when it next reviews and updates its school safety plan and one of these components is the inclusion of a no guns allowed policy.

This bill would have additionally encouraged a schoolsite council to consider including, when it next reviews and updates its school safety plan, gun violence prevention in health education programs in high schools.

SB 1781 (Knight): Chapter 496: Flamethrowing devices.

(Amends Section 13137 of, and adds Part 3 (commencing with Section 12750) to Division 11 of, the Health and Safety Code, and amends Section 12301 of the Penal Code.)

Legislative History:

Senate Public Safety (4-0)
Senate Appropriations, SR 28.8
Senate Floor (31-0)
Senate Concurrence (38-0)

Assembly Public Safety (5-0)
Assembly Appropriations (19-0)
Assembly Floor (78-0)

Existing law provides for the licensing and oversight of pyrotechnic operators in the state, according to specified criteria with the State Fire Marshal required to adopt regulations with respect to the licensing of pyrotechnic operators and provides for the regulation of the sale, purchase, rental, lending, possession, transportation, storage, or use of, or manufacture, importation or exportation of, destructive devices, which are defined to include flamethrowing devices, by the Department of Justice.

This bill deletes flamethrowing devices from the definition of destructive devices in the Penal Code; requires the State Fire Marshal to adopt regulations governing the possession and use of flamethrowing devices in this regard; prohibits the use or possession of a flamethrowing device without a valid permit issued by the State Fire Marshal; and makes related changes in law.

SB 1797 (Committee on Public Safety): Chapter 593: Public safety: omnibus bill: firearms.

(Amends Sections 832.15, 11108.3, 12010, 12011, 12021 and 12082 of, adds Section 832.17 to, and repeals Section 12076.5 of, the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (38-0)

Assembly Public Safety (5-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

This bill makes a number of clarifying and technical amendments to the Penal Code relating to firearms.

SB 1858 (Dunn): Chapter 607: Imitation firearms. Urgency.

(Amends Section 53071.5 of the Government Code, amends Section 417.4 of, adds Sections 12550, 12553, 12554, 12555, and 12556 to, repeals Section 417.2 of, and amends the heading of Article 1 (commencing with Section 12550) of Chapter 6 of Title 2 of Part 4 of, the Penal Code.)

Legislative History:

(Prior votes not relevant)

Senate Public Safety (5-0)

Senate Concurrence (28-9)

Assembly Public Safety (5-0)

Assembly Appropriations (16-3)

Assembly Floor (71-3)

Existing law includes the following:

- Provides that an imitation firearm is a replica of a firearm so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- Provides that any person who, for commercial purposes, purchases, sells, manufactures, distributes or receives, by mail order or any other manner, an imitation firearm shall be liable for a civil fine of not more than \$10,000 for each violation.
- States that the manufacturing, purchasing, selling, shipping, transporting, distributing, or receiving of imitation firearms is permitted if the devices are sold or received:
 - a) solely for export in interstate or foreign commerce;
 - b) solely for lawful use in theatrical productions, including motion picture, television, and stage productions;
 - c) for use in a certified or regulated athletic event or competition;
 - d) for use in military or civil defense activities; or,
 - e) for public displays authorized by public or private schools.

- Provides that imitation firearm does not include any of the following:
 - a) a non-firing collector's replica of a firearm designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case;
 - b) a non-firing collector's replica of a firearm designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization, and is offered for sale in conjunction with a wall plaque or presentation;
 - c) a BB device defined as an instrument that expels a metallic projectile, such as a BB or pellet, not exceeding 6mm caliber, through the force of air pressure, carbon dioxide pressure, or spring action, or any spot marker gun;
 - d) an imitation firearm where the coloration of the entire exterior surface of the device is bright orange or bright green, either singly or in combination; or,
 - e) an instrument that expels a projectile, such as a BB or pellet, through the force of air pressure, gas pressure, or spring action, or a spot marker gun.

- Provides that every person who, except in self-defense, draws or exhibits an imitation firearm in a threatening manner against another person in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor, punishable by imprisonment in a county jail for a term of not less than 30 days.

- Grants the Legislature exclusive authority to regulate the manufacture, sale, or possession of imitation firearms, as specified.

This bill creates a new definition for imitation firearms, generally criminalizes the open display or exposure of imitation firearms in public places, and make numerous other changes related to imitation firearms, as follows:

- Defines "imitation firearm" as "any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm."

- Creates a misdemeanor for a person to alter or remove any required coloration or markings on an imitation firearm or another device, as specified, to make it look more like a firearm. This does not apply to manufacturers, importers, or distributors, or to use of imitation firearms in theatrical productions.

- Creates a misdemeanor for any manufacturer, importer, or distributor of imitation firearms that fails to comply with federal marking requirements.

- Provides that for any imitation firearm manufactured after July 1, 2005, and offered for sale in California shall, at the time of sale, be accompanied by a "conspicuous advisory" in writing, as specified, that explains the imitation firearm may be mistaken for a real firearm, that altering the coloration or markings is dangerous and may be a crime, and that brandishing or displaying the imitation firearm in public may cause confusion and may be a crime.

- Provides that any manufacturer, importer, or distributor that fails to comply with the advisory requirement shall be liable for a civil fine for each action brought by a city attorney or district attorney. The fine schedule would be a maximum of \$1,000 for a first offense; a maximum \$5,000 for a second offense; and a maximum of \$10,000 for a third or subsequent offense.
- Relocates, renumbers, and amends the existing statute regulating the purchase, sale, manufacture, transport, or receipt of an imitation firearm, and:
 - a) Retains the existing limited circumstances under which an imitation firearm may be purchased, sold, shipped, transported, distributed, or received, but also adds the "ceremonial activities" as a permissible circumstance, as well as replacing "athletic event" with "sporting event;"
 - b) Deletes the definition of "imitation firearm" from this section in recognition of the applicability of the new definition established in this bill;
 - c) Recasts and consolidates the exception related to a nonfiring collector's replica that is historically significant, deleting the requirement that such firearms designed after 1898 may only be issued as a commemorative by a nonprofit organization;
 - d) Deletes the descriptive definition of a "BB device" and retains the cross-reference definition in the exception; and,
 - e) Expands the current coloration exception for imitation firearms where the entire surface is either bright orange or bright green, either singly or in combination, to also include "a device" where its entire exterior surface is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device's complete contents, as provided by federal regulations governing imitation firearms.
- Creates the offense of openly displaying or exposing an imitation firearm in a public place, punishable as an infraction for the first two offenses, carrying a fine of \$100 and \$300, respectively. A third or subsequent violation would be punishable as a misdemeanor.
- Provides that these penalties are not intended to preclude prosecution under specified provisions that prescribe a higher penalty for possessing or carrying a BB device or imitation firearm in specified locations such as public buildings, airports, or school grounds.
- Defines "public place" for purposes of the offense as "an area open to the public and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings."

- Provides that the "public place" prohibition shall not apply under numerous specified circumstances.
- Amends the existing brandishing statute to incorporate the revised definition of "imitation firearm".
- Amends the existing statute that grants the Legislature exclusive authority to regulate the manufacture, sale, or possession of imitation firearms to cross-reference the revised definition.
- Makes other related changes in law and took effect immediately as an urgency measure.

AB 50 (Koretz): Chapter 494: .50 caliber BMG rifles.

(Amends Sections 245, 12011, 12022, 12022.5, 12275, 12275.5, 12280, 12285, 12286, 12287, 12288, 12288.5, 12289, and 12290 of, and adds Section 12278 to, the Penal Code.)

Legislative History:

Assembly Public Safety (5-2)

Senate Public Safety (4-2)

Assembly Appropriations (17-7)

Senate Appropriations (7-5)

Assembly Floor (43-28)

Senate Floor (21-14)

Assembly Concurrence (45-32)

Existing law includes the following:

- Defines a "restricted" destructive device as any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a "destructive device" found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term "antique cannon" means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term "antique rifle" means a firearm conforming to the definition of an "antique firearm" in Section 479.11 of Title 27 of the Code of Federal Regulations.
- Provides that any person, firm or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any fixed ammunition of a caliber greater than .60 caliber, except as provided in this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the county jail for a term not to exceed six months or by a fine not to exceed \$1,000, or by both such fine and imprisonment. A second or subsequent conviction shall be punished by imprisonment in the county jail for a term not to exceed one year, or by imprisonment in the state prison, or by a fine not to exceed \$3,000, or by both such fine and imprisonment.
- Prohibits selling, manufacturing, distributing, transporting, importing, possessing or lending semi-automatic assault weapons in California, as specified. (The Roberti-Roos Assault Weapons Control Act of 1989.)

This bill does the following:

- Re-titles the existing assault weapons law the "Roberti-Roos Assault Weapons Control Act of 1989 and the .50 Caliber BMG Regulation Act of 2004."

- Adds legislative findings and declarations to the law including that "the proliferation and use of .50 BMG rifles . . . [as defined] . . . poses a clear and present terrorist threat to the health, safety, and security of all residents of, and visitors to, this state, based upon findings that those firearms have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure.
- Adds an assault with a .50 BMG rifle to existing laws which make it an offense for any person to commit an assault upon the person of another with a machine gun or an assault weapon or to commit an assault upon the person of a peace officer or firefighter, as specified, with a machine gun or assault weapon.
- Adds .50 BMG rifles to the Prohibited Armed Persons File database that tracks possession or ownership of firearms and assault weapons, as specified.
- Defines ".50 BMG rifle" and ".50 BMG cartridge" for purposes of regulation and adds those items to the existing assault weapons law, as specified.
- Adds .50 BMG rifles to the existing prohibitions for any person to manufacture or cause to be manufactured, import into this state, transport, distribute, keep for sale, offer or expose for sale, give, lend, or possess an assault weapon, as specified, and provides a sentence enhancement for anyone who transfers, lends, sells, or gives an assault weapon to a minor, as specified.
- Provides that the addition of .50 BMG rifles to the assault weapons law prohibiting importation into this state does not apply during the first 180 days of the 2005 calendar year to the importation into California by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005, as specified.
- Provides that the possession of a .50 BMG rifle that is not otherwise defined as an assault weapon is not prohibited prior to May 1, 2006, if specified provisions are met and that such weapons may be registered with the Department of Justice no later than April 30, 2006.
- Provides a scheme for registration and issuance of permits in connection with .50 BMG rifles, as specified.
- Provides that any person who, within this state, possesses any .50 BMG rifle, except as provided in this bill, is punishable by a fine of \$1,000, imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding \$500, if the person was found in possession of no more than two firearms lawfully possessed prior to January 1, 2005, and the person meets the following requirements:

(1) the person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005; (2) the person has not previously been convicted of a violation of the assault weapons law; and (3) the person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period of April 30, 2006. Firearms seized pursuant to this subdivision from persons who meet all of those conditions shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions for the step-down first violation punishment shall be destroyed, as specified.

- Authorizes the State Department of Justice to charge a registration fee not exceeding \$25 for the registration of a .50 BMG rifle, as specified.
- Makes numerous conforming cross-references and related changes in law.

AB 1232 (Lowenthal): Chapter 247: Cross-reference corrections regarding federal regulations. Urgency.

(Amends Sections 21626, 21628, 21636, and 21641 of the Business and Professions Code, amends Sections 12000 and 12081 of the Health and Safety Code, amends Sections 12020, 12026.2, 12070, 12071, 12072, 12078, 12125, 12133, 12301, and 12807 of the Penal Code, and amends Section 31600 of the Vehicle Code.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (77-0)

Senate Public Safety (6-0)

Senate Floor (37-0)

Existing law contains cross-references to federal regulations for definitional and other purposes pertaining to firearms, ammunition, explosives, and destructive devices.

This bill conforms existing cross-references to the Federal Code of Regulations in those provisions to reflect the recent renumbering of certain sections of those federal regulations.

This bill took effect immediately as an urgency bill.

AB 2431 (Steinberg): Chapter 602: Firearms in control or custody of law enforcement or courts: procedures for return or disposal.

(Amends Sections 12028, 12028.5, 12028.7, 12030, and 12084 of, and adds Section 12021.3 to, the Penal Code, and repeals Section 8107 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (5-1)

Senate Public Safety (6-0)

Assembly Appropriations (16-2)

Senate Appropriations (11-0)

Assembly Floor (64-10)

Senate Floor (39-0)

Assembly Concurrence (78-0)

Existing law generally regulates the possession and transfer of firearms, including procedures for the seizure of firearms in specified circumstances, such as domestic violence situations, and the seizure of firearms used in crimes.

This bill enacts a procedure in the Dangerous Weapons Control Law which specifies a process for returning – or allowing the disposal of – a firearm which is in the custody of the courts or law enforcement agency to a person who claims title to the firearm, including the following:

- Requires a person requesting the return of a firearm in the custody of the court or law enforcement to make an application to the Department of Justice (DOJ) to determine if that person is eligible to possess a firearm, and provides for the disposal of firearms belonging to persons prohibited from possessing a firearm, as specified.
- Sets the DOJ fee for processing the firearm clearance request at \$20 plus \$3 for each additional handgun being processed as part of the request and allows for future increases based on the California Consumer Price Index.
- Exempts an individual seeking to retrieve a stolen firearm from the processing fee if the firearm was reported stolen to a law enforcement agency, as specified.
- Allows the imposition of a storage fee; however, it may be waived by the local or state agency upon proof that the firearm was stolen, and limits the storage fee, as specified.
- Allows the DOJ 30 days to complete the background check except as specified.
- Makes a number of related changes in law, as specified.

AJR 56 (Frommer): Resolution Chapter 188: Relative to the extension of the 1994 Federal ban on assault weapons.

(Resolution language.)

Legislative History:

Assembly Public Safety (4-1)

Senate Public Safety (4-1)

Assembly Floor (48-15)

Senate Floor (21-11)

Assembly Concurrence (50-23)

Previously existing federal law (which expired on September 13, 2004) did the following:

- Restricted the manufacture, transfer, and possession of certain semiautomatic assault weapons, as defined (but did not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of the subsection, as specified [enacted Sept. 13, 1994]). (18 United States Code § 922(v)(1).)
- Made it unlawful for any person to transfer or possess a large capacity ammunition feeding device, as defined. (18 United States Code § 922(w)(1).)

This resolution memorializes the Congress and the President of the United States to enact legislation that would extend and strengthen the 1994 act banning assault weapons.

HATE CRIMES

SB 1234 (Kuehl): Chapter 700: Crimes: civil rights.

(Amends Section 52.1 of the Civil Code, amends Sections 200 and 220 of the Education Code, amends Section 12926 of the Government Code, and amends Sections 190.03, 422.6, 422.7, 422.75, 594.3, 11410, 11413, 13023, 13515.25, and 13519.4 of, amends and renumbers Sections 422.95, 1170.75, and 13873 of, adds Sections 422.77, 422.78, 422.86, 422.89, 422.91, 422.93, 13519.64, and 13519.65 to, adds Chapter 1 (commencing with Section 422.55) to Title 11.6 of Part 1 of, adds a chapter heading to Chapter 2 immediately preceding Section 422.6 of Title 11.6 of Part 1 of, adds Chapter 3 (commencing with Section 422.88) to Title 11.6 of Part 1 of, repeals Sections 422.76, 13870, and 13871 of, repeals and adds Section 422.9 of, the Penal Code.)

Legislative History:

Senate Public Safety (4-0)

Senate Appropriations (8-5)

Senate Floor (22-10)

Senate Concurrence (24-14)

Assembly Public Safety (4-2)

Assembly Appropriations (14-5)

Assembly Floor (51-23)

Existing law creates a number of crimes or enhancements for offenses committed because of specified characteristics or perceived characteristics of a person. These offenses are often referred to as "hate crimes."

This bill makes numerous substantive and technical changes in the "hate crime" statutes including creating a uniform definition for a "hate crime."

AB 1920 (La Malfa): Chapter 115: Interference with civil rights: hate crimes.

(Amends Section 422.6 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Floor (74-0)

Senate Public Safety (5-0)

Senate Floor (33-0)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, or oppress any person in the free exercise or enjoyment of a right or privilege secured by constitution or other law because of the person's actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. It is also a misdemeanor to knowingly deface, damage, or destroy another person's property for the purpose of intimidating or interfering with the rights and privileges described above. These misdemeanors are punishable by not more than one year in a county jail, a fine not exceeding \$5,000, or by both that fine and imprisonment. The court also must order community service be performed by each violator, as specified.

This bill states that conduct amounting to one of these offenses that also violates any other provision of law may be charged under all applicable provisions, but may only be punished once.

AB 2288 (Pacheco): Chapter 780: Hate crimes.
(Amends Section 422.7 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Assembly Concurrence (76-0)

Senate Public Safety (4-1)

Senate Appropriations (13-0)

Senate Floor (36-0)

Existing law provides certain hate crimes are punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed \$10,000, or by both, if the crime is committed (1) against the person or property of another to intimidate or interfere with that other person's free exercise or enjoyment of any legal or constitutional right, and (2) because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, and (3) under specified circumstances, including, among other things, that the crime against property causes damage in excess of \$500.

This bill lowers the property damage amount to \$400.

AB 2428 (Chu): Chapter 809: Conditions of parole or probation for persons convicted of hate crimes and the like.

(Amends and renumbers Section 422.95 of, and adds Sections 422.865, 422.96, and 3053.4 to, the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (77-0)

Assembly Concurrence (78-1)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (27-6)

Existing law provides that a court, except in specified circumstances, may grant probation, with any reasonable conditions, to a convicted defendant. If a probationer violates a condition of probation, sentence may be imposed, or other conditions of probation may be added. In the case of a person on probation for crimes involving interference with civil rights, religious expression, etc., racial or ethnic sensitivity training is specifically authorized.

This bill authorizes racial or ethnic sensitivity training as a condition of probation for any offense committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation.

This bill also requires a court that grants probation in such a case, absent compelling circumstances stated on the record, to make an order protecting the victim, or known immediate family or domestic partner of the victim. The order may include any stay-away conditions.

Existing law provides for a period of parole following commitment to state prison.

This bill authorizes the parole authority to require, as to parolees who were convicted of felony violations of the same offenses described above, that they complete a class or program on ethnic or racial sensitivity. It would further require the parole authority to order a parolee, absent compelling circumstances, to refrain from further acts of violence, harassment and the like of the victim or the known immediate family or domestic partner of the victim. Stay-away conditions may be ordered when appropriate.

Existing law provides that a person may be committed to a state hospital after being found not guilty of an offense by reason of insanity, and provides a procedure for finding that a person so committed has been restored to sanity. The procedure for a finding of restoration of sanity generally involves a one-year release to outpatient status on the recommendation of the director of the treatment facility to which the patient was committed with the concurrence of the community program director.

This bill authorizes racial or ethnic sensitivity training requirements and protective orders, similar to that authorized for probationers and parolees, for persons on outpatient status or conditional release from an insanity commitment.

AJR 64 (Chu): Resolution Chapter 93: Bias-motivated crimes.
(Resolution language.)

Legislative History:

Assembly Public Safety (5-0)
Assembly Floor (72-0)

Senate Public Safety (5-0)
Senate Floor (33-0)

Existing law in California defines and criminalizes hate crimes.

This resolution (1) calls upon local, state, and federal law enforcement authorities to work to prevent bias-motivated crimes and to vigorously prosecute all crimes committed against Arab-Americans, Muslim-Americans, South Asian-Americans, and Sikh-Americans and (2) makes findings and resolutions regarding the contributions of Arab-American, Muslim-American, South Asian-American, and Sikh-American communities to American society, as specified.

HUMAN REMAINS

AB 1493 (Runner): Chapter 413: Sexual contact.

(Amends Section 7052 of the Health and Safety Code.)

Legislative History:

Assembly Public Safety (6-1)

Assembly Appropriations (23-1)

Assembly Floor (78-1)

Assembly Concurrence (78-0)

Senate Public Safety (4-1)

Senate Appropriations (13-0)

Senate Floor (31-0)

Existing law provides that, with certain exceptions, every person who willfully mutilates, disinters, or removes from the place of interment any human remains, without authority of law, is guilty of a felony.

This bill provides that "sexual contact" for the purposes of this crime would mean "any willful touching by a person of an intimate part of a dead human body for the purpose of sexual arousal, gratification, or abuse."

AB 2811 (Runner): Chapter 307: Human remains: disposition.

(Amends Sections 7100 and 7105 of the Health and Safety Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Assembly Concurrence (75-0)

Senate Judiciary (6-0)

Senate Appropriations, SR 28.8

Senate Floor (39-0)

Existing law lists the persons who, in order of succession, have the right to control the disposition of the remains of a deceased person, the location and conditions of interment, and the arrangements for funeral goods and services to be provided if the deceased has not left other directions and provides that the person with the right to control is also vested with the duty of disposition and the liability for the reasonable costs of the disposition of the remains.

This bill does the following:

- Adds the surviving competent adult siblings of the deceased person to the list of persons who may control the disposition of the decedent's remains.
- Provides that if the person or persons who control the disposition of the decedent's remains fail to act or cannot be found within 7 days of the death, or in the case of a competent surviving spouse within 10 days of the death, the right to control the disposition shall pass to the next person or persons in accordance with the order of succession provided by statute, and authorizes certain parties to petition the court to determine who has the right to control interment if persons with equal right fail to agree on disposition of the remains, as specified.

INCOMPETENT TO STAND TRIAL/ NOT GUILTY BY REASON OF INSANITY

SB 1794 (Perata): Chapter 486: Persons incompetent to stand trial: involuntary administration of anti-psychotic medication.

(Amends Sections 1369, 1370, and 1370.01 of the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations (12-0)

Senate Floor (37-0)

Senate Concurrence (38-0)

Assembly Public Safety (4-0)

Assembly Appropriations (20-1)

Assembly Floor (78-0)

Existing law provides that anti-psychotic medications can be involuntarily administered to patients in various circumstances, consistent with constitutional standards. Existing California statutory law also authorizes a process for determining a defendant's mental competence to stand trial. Separate, but related, processes are employed depending on whether the defendant has been charged with a misdemeanor or a felony. However, regardless of whether the defendant faces misdemeanor or felony charges, at least two psychologists, psychiatrists, or a combination of both must examine the possibly incompetent defendant. If the defendant is found mentally incompetent, criminal proceedings are suspended until the person becomes competent. In the meantime, the court must order that the defendant delivered to a state mental hospital, or to another public or private treatment facility approved by the community program director, or be placed on outpatient status. Under existing law, the court in the initial competence proceeding is not directed to determine whether anti-psychotic medication should be administered to the defendant.

This bill requires mental health professionals appointed to examine a possibly incompetent defendant to consider and evaluate various issues. In particular, evaluating experts must inform the court of their opinions regarding the potential side effects of any anti-psychotic medication that might be administered to the defendant. Prior to making an order committing the defendant for psychiatric treatment, a court shall determine whether anti-psychotic medication should be administered to the defendant. The bill further specifies procedures for determining the appropriateness of administering anti-psychotic medications during treatment.

AB 2191 (Chu): VETOED: Victim statement concerning outpatient release of person found not guilty by reason of insanity.

(Adds Section 1604.5 to the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (20-0)

Assembly Floor (77-0)

Assembly Concurrence (79-0)

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law provides a hearing procedure regarding outpatient status for various defendants, including those found incompetent to stand trial (IST) and those found not guilty by reason of insanity (NGI).

This bill would have provided that for outpatient status hearings involving persons found not guilty by reason of insanity, the victim could submit a written statement to the court, or to the director of the state hospital or other treatment facility. (The next of kin of a deceased victim would have been allowed to submit the statement.) The court or director of the treatment facility would have been required to consider the submitted statement to the extent that it was relevant to the issues in the outpatient status hearing.

INSURANCE

SB 1273 (Scott): Chapter 730: Misrepresentation in solicitation of insurance contracts.

(Amends Sections 780, 781, and 782 of the Insurance Code.)

Legislative History:

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Senate Concurrence (34-0)

Assembly Public Safety (6-0)

Assembly Insurance (15-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Existing law prohibits an insurer or agent from misrepresenting the terms of a policy issued by the insurer or offered by the person making or permitting the misrepresentation. The law further prohibits an insurer or agent from making any misrepresentation for the purpose of inducing a person to take out a policy of insurance or to induce that person to surrender or forfeit a policy. A violation of these prohibitions is a crime, punishable by a fine not exceeding \$1500, or imprisonment in a county jail for a period not exceeding six months.

This bill increases penalties for the insurance misrepresentation crimes described above and adds a scienter (criminal knowledge) element to the offenses. In particular, the crime applies to a statement that is known, or should have been known, to be a misrepresentation. This crime is punishable by a fine of up to \$25,000, or if the loss of the victim exceeds \$10,000, by a fine of up to 3 times that loss, by imprisonment in a county jail for a period of up to one year, or by both that fine and imprisonment. Finally, the bill provides that restitution to the victim shall be satisfied before the criminal fine is collected.

**SBX4 2 (Speier): Chapter 2, Statutes of 2003-04 Fourth Extraordinary Session:
Worker's compensation: insurance fraud.**

(Amends Sections 1871.4 and 1871.8 of the Insurance Code, amends Sections 3700.5 and 3711 of the Labor Code, and amends Sections 549, 550, 803, and 1524 of the Penal Code.)

Legislative History:

Senate Labor & Industrial Relations (7-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (34-0)

Senate Concurrence (32-0)

Assembly Insurance (14-0)

Assembly Public Safety (6-0)

Assembly Appropriations (16-0)

Assembly Floor (78-0)

Existing law does the following:

- Prohibits making or causing to be made certain false or fraudulent statements regarding workers' compensation claims, and provides for penalties and specified restitution for violating these prohibitions; such statements include statements made with the intent to discourage an injured worker from claiming benefits or pursuing a claim.
- Provides that an insurer or self-insured employer may provide a notice to an injured worker on or with a check for temporary disability benefits warning of penalties for workers' compensation fraud, as specified.
- Makes it a crime to fail to secure the payment of workers' compensation by one who knew or should have known of the obligation to do so, punishable as a misdemeanor by imprisonment in the county jail for up to one year, or by a fine of up to \$10,000, or by both that imprisonment and fine.
- Provides that the Director of the State Department of Industrial Relations may, at any time, require an employer to furnish a written statement showing the name of his or her insurer or the manner in which the employer has complied with the requirements to provide coverage for workers' compensation.
- Provides that any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Penal Code Section 550 (fraudulent insurance claims) or Insurance Code Section 1871.4 (false/fraudulent statements pertaining to workers' compensation coverage) is guilty of a crime punishable as a misdemeanor/felony for a first offense and subsequent offenses punishable as a felony only including a potential line of up to \$50,000 for the first offense and a fine of \$50,000 for a second and subsequent offense.

- Makes it a crime to aid, abet, solicit, or conspire with any person to knowingly submit false insurance claims, as specified, with violations punishable by different penalties depending on the type of insurance fraud, or where the amount at issue is over or under \$400. Where the amount at issue is over \$400, the punishment is imprisonment in the state prison for two, three, or five years and/or a fine of up to \$50,000, or as a misdemeanor. Where the offense involves written or oral statements in support or opposition to a claim under an insurance policy or that the person seeking to obtain a motor vehicle insurance policy claims to reside in this state when in fact they do not, the punishment is imprisonment in the state prison for two, three, or five years, and/or by a fine not exceeding \$50,000, unless the value of the fraud exceeds \$50,000, in which event the fine may not exceed double of the value of the fraud.
- Generally provides for a statute of limitations (generally within three years after commission for felonies [Section 801], one year after commission for misdemeanors with exceptions [Section 802] during which a prosecution must be commenced and further specifies crimes in which that time limit commences upon the discovery of an offense rather than the date of the offense itself, including felony insurance fraud pursuant to Penal Code Section 549 or 550 and Insurance Code Section 1871.1 or 1871.4.
- Provides that a search warrant may be issued upon enumerated grounds.

This bill does the following:

- Authorizes the court to charge the person convicted of fraud to be charged the cost of investigation in addition to any other penalties.
- Requires, commencing January 1, 2005, rather than authorizes, an insurer or self-insured employer to provide a specified notice regarding workers' compensation fraud with the temporary disability benefit check and revises the notice and requires that the notice be provided in both English and Spanish.
- Increases the fine for failure to provide workers' compensation to be double the amount of premium, as determined by the court, that would otherwise have been due to secure the payment of compensation during the time compensation was not secured, but not less than \$10,000.
- Provides that a second or subsequent violation shall be punishable by imprisonment in the county jail for a period not to exceed one year, by a fine of triple the amount of premium, as determined by the court, that would otherwise have been due to secure the payment of compensation during the time payment was not secured, but not less than \$50,000 or by both imprisonment and fine.

- Provides that upon a first conviction of a person under this section, the person may be charged the costs of investigation at the discretion of the court and upon a subsequent conviction, the person shall be charged the costs of investigation in addition to any other penalties pursuant to this section. Provides that the costs of investigation shall be paid only after the payment of any benefits that may be owed to injured workers, any reimbursement that may be owed to the Director of the Department of Industrial Relations (DIR) for benefits provided to the injured worker, and any other penalty assessments that may be owed.
- Adds to those who may require an employer to furnish a written statement showing the name of his or her insurer or the manner in which the employer has complied with the requirements to provide coverage for workers' compensation an investigator for the Department of Insurance (DOI) Fraud Bureau or its successor, or a district attorney investigator assigned to investigate workers' compensation fraud.
- Increases the fines under Penal Code sections relating to crimes against insured property or insurers for a first violation of that section to not exceed \$50,000 or double the amount of the fraud, whichever is greater and increases the fine for a second or subsequent offense to \$50,000 or double the amount of the fraud, whichever is greater. Adds that restitution shall be ordered as specified, including restitution for any medical evaluation or treatment services obtained or provided and that the court shall determine the amount of restitution and to whom the restitution shall be paid.
- Adds the crime of money laundering to the list of crimes where the statute of limitations commences upon discovery of the offense.

NOTE: Non-urgency bills in a special session which are enacted take effect on the 91st day after adjournment sine die of the special session; the 2003-04 Fourth Extraordinary Session adjourned on November 30, 2004. Non-urgency bills from that session will take effect on March 1, 2005. SBX4 2 will chapter out changes made to Penal Code Section 803 by AB 1667 – Chapter 803, Statutes of 2004 – unless further legislation is enacted to rectify that conflict.

AB 664 (Lowenthal): Chapter 827: Unemployment insurance fraud and related crimes.

(Amends Sections 976.5, 976.8, 977, 982, 1036, and 1052 of, and adds Sections 336, 1061, 1145, and 2101.6 to, the Unemployment Insurance Code.)

Legislative History:

(Prior votes not relevant)

Senate Floor (22-14)

Assembly Insurance, AR 77.2 (9-4)

Assembly Concurrence (48-29)

Existing law, with limited exceptions, provides that every person who willfully violates the Unemployment Insurance Law or implementing regulations is guilty of a misdemeanor.

This bill imposes a penalty of either \$5000 or 10% of the amount of any resulting underreporting of contributions, penalties, and interest, whichever is greater, on a person or business entity that knowingly advises another person to violate any provision of the Unemployment Insurance Code. This bill also makes it a violation for any person to willfully counsel, advise, procure, or coerce anyone to willfully make a false statement or representation, or knowingly fail to disclose a material fact for the purpose of lowering or avoiding any required contribution, or to avoid being or remaining subject to specific requirements, as provided, and would thereby establish a new crime.

This bill includes numerous other provisions concerning unemployment insurance that are not in the jurisdiction of this Committee.

NOTE: This bill was gutted and amended in the Senate. The Assembly Insurance Committee heard the bill in its present form pursuant to Assembly Rule 77.2.

AB 2316 (Chan): Chapter 835: Life and Annuity Consumer Protection Fund.
(Adds and repeals Section 10127.17 of the Insurance Code.)

Legislative History:

Assembly Insurance (9-5)

Assembly Appropriations (15-5)

Assembly Floor (43-33)

Assembly Concurrence (45-34)

Senate Insurance (6-3)

Senate Appropriations (7-4)

Senate Floor (22-13)

Existing law generally regulates the sale and marketing of life insurance and annuities and requires the Insurance Commissioner to collect certain fees and assessments from insurers for regulatory purposes.

This bill creates the Life and Annuity Consumer Protection Fund as a special account within the Insurance Fund, and requires that the moneys deposited in that fund from a \$1 fee levied against insurers based upon each individual life insurance and annuity product worth \$15,000 or more issued to a resident of this state be dedicated to protecting consumers of insurance products; requires an insurer that chooses to charge purchasers this fee to set forth the charge separately. The Insurance Commissioner shall distribute 50% of the funds within the department for consumer protection functions related to individual life insurance and annuity products, as specified, and 50% of the funds to district attorneys for investigating and prosecuting individual life insurance and annuity product financial abuse cases involving licensees and for other projects beneficial to insurance consumers, as specified. These provisions shall remain in effect until January 1, 2010.

AB 2557 (Koretz): Chapter 279: Licensing of insurance agents.

(Amends Sections 1633 and 1749.1 of, and adds Section 1729.2 to, the Insurance Code.)

Legislative History:

Assembly Insurance (16-0)

Assembly Appropriations (20-0)

Assembly Floor (77-0)

Assembly Concurrence (77-0)

Senate Insurance (8-0)

Senate Appropriations, SR 28.8

Senate Floor (33-0)

Existing law makes it a misdemeanor to act, offer to act, or assume to act in a capacity for which a license as an insurance agent, broker, solicitor, or life agent is required without being properly licensed to do so. This misdemeanor is punishable by imprisonment of not more than six months in a county jail, a fine of not more than \$1000, or both that imprisonment and fine.

This bill makes the transaction of insurance without a valid license punishable as a misdemeanor by imprisonment in a county jail for not more than one year, a fine of not more than \$50,000, or both that fine and imprisonment.

This bill includes numerous other provisions not within the jurisdiction of the Senate Public Safety Committee which are not noted in this summary.

JUVENILE JUSTICE

SB 215 (Alpert): VETOED: Youth policy.

(Adds and repeals Chapter 4 (commencing with Section 2200) of Division 2.5 of the Welfare and Institutions Code.)

Legislative History:

Senate Health & Human Services (10-3)

Senate Appropriations, SR 28.8

Senate Floor (22-11)

Senate Concurrence (21-14)

Assembly Human Services (4-1)

Assembly Appropriations (14-3)

Assembly Floor (48-29)

Existing law sets forth specified provisions concerning minors.

This bill would have enacted the Youth Policy Act, which sets forth a number of legislative findings and declarations concerning the importance of research-based developmental programs for children and youth. This bill would have created the Youth Policy Council "to serve as a vehicle for policymakers across state systems, including education, health, human services, youth employment, juvenile justice, and community services, to think, plan, and act in new, cross-sector ways," as specified.

SB 382 (Oller): Chapter 120: Community care facilities.

(Amends Section 1520.5 of the Health and Safety Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Assembly Human Services (5-0)

Assembly Local Government (9-0)

Assembly Floor (77-0)

Existing law requires the director or county licensing agency, before approving an application for a new residential care facility, to notify the city or county of the proposed location of the facility, and authorizes a city or county to request denial of the license on the basis of over concentration of residential care facilities.

This bill makes technical, nonsubstantive changes to existing law.

SB 449 (Escutia): VETOED: Education for wards of the juvenile court.

(Amends Sections 202, 207.1, 636, 706, 707.1, 727, 729.2, and 740 of the Welfare and Institutions Code.)

Legislative History:

(Prior votes not relevant)

Senate Public Safety, SR 29.10 (4-1)

Senate Concurrence (21-12)

Assembly Public Safety (4-1)

Assembly Appropriations (16-5)

Assembly Floor (48-32)

Existing law provides that the purpose of the provisions governing juvenile law is to provide for the protection and safety of the public and each minor who is under the jurisdiction of the juvenile court, as specified.

This bill would have required the juvenile court, probation and others to make specified determinations, recommendations and actions concerning the educational needs of juvenile court wards, as specified.

SB 1151 (Kuehl): VETOED: Judicial waiver to adult court.

(Amends Section 707 of the Welfare and Institutions Code.)

Legislative History:

Senate Public Safety (5-1)

Senate Appropriations (9-3)

Senate Floor (25-10)

Assembly Public Safety (4-2)

Assembly Appropriations (13-3)

Assembly Floor (42-34)

Existing law establishes the criteria by which the juvenile court may find that specified minors, including a person who has committed one of specified violent offenses when he or she was 16 years of age or older, two or more felony offenses under certain circumstances, or specified violent offenses at 14 years of age or older, are unfit for treatment in juvenile court.

This bill would have specified that the criterion for evaluating the circumstances and gravity of the offense includes the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter that may affect the circumstances and gravity of the offenses.

SB 1285 (Margett): Chapter 154: Criminal records.
(Amends Section 13010.5 of the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (35-0)

Assembly Public Safety (5-0)

Assembly Appropriations (19-0)

Assembly Floor (77-0)

Existing law requires the juvenile court to report the complete criminal history of any minor found to be a person adjudged to be a ward of the court because of the commission of a felony offense. Existing law requires the Department of Justice to retain this information and make it available, as specified. Existing law also requires the department to collect data pertaining to the juvenile justice system for statistical purposes.

This bill expands existing law to include "criminal history" as a use for the juvenile justice system data collected by the Department of Justice, and allows this data to be used by the DOJ to comply with the requirements of Welfare and Institutions Code Section 602.5, which requires the DOJ to retain and make available juvenile court-reported criminal history information.

AB 129 (Cohn): Chapter 468: Dual jurisdiction.

(Amends Sections 241.1, 387, and 11401 of, and adds Sections 241.2 and 366.5 to, the Welfare and Institutions Code.)

Legislative History:

Assembly Judiciary (13-0)

Assembly Appropriations (23-0)

Assembly Floor (79-0)

Assembly Concurrence (79-0)

Senate Health & Human Services (10-0)

Senate Judiciary (6-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Existing law provides that whenever a minor appears to come within the descriptions of both a dependent child and a ward of the juvenile court, the county probation department and the child protective services department shall initially determine which status will serve the best interests of the minor and the protection of society, as specified.

This bill authorizes the probation department and the child welfare services department in any county to create a protocol which would permit a minor who meets specified criteria to be designated as both a dependent child and a ward of the juvenile court, as specified. A minor who is designated as both a dependent child and a ward of the juvenile court will be known as a dual status child. This bill also requires the Judicial Council to collect and compile data, to evaluate the results of implementing the protocol, and to report its findings and any resulting recommendations to the Legislature within 2 years of the date participating counties first deem a child to be a dual status child.

AB 1012 (Steinberg): VETOED: Pupil interrogation.
(Adds Section 48906.5 to the Education Code.)

Legislative History:

Assembly Education (8-3)

Assembly Appropriations (17-7)

Assembly Floor (49-19)

Assembly Concurrence (49-28)

Senate Education (9-1)

Senate Public Safety (5-1)

Senate Appropriations (7-4)

Senate Floor (25-9)

Existing law, with certain exceptions, requires a principal or other school official to immediately notify a pupil's parent or guardian if the official releases a pupil to a peace officer for the purpose of removing the pupil from the school premises.

This bill, with certain exceptions, would have required the principal of a school to take immediate steps to seek the consent of the parent or guardian of an elementary school pupil prior to making the pupil available to a peace officer for questioning, and with certain exceptions, prohibits making the pupil available for questioning if the parent or guardian requests that the pupil not be questioned until he or she can be present. The bill would have permitted a member of the school administration, a school counselor, or a school teacher, selected by the pupil, to be present at the questioning under prescribed circumstances. This bill also would have required the principal, prior to making a minor high school pupil available for questioning by a peace officer, to inform the pupil of the pupil's right to have a person, as prescribed, present during the questioning. This bill would have made a school officer or staff member who is present in the questioning immune from civil or criminal liability arising from participation in that questioning.

AB 1948 (Aghazarian): Chapter 375: Group home placements.
(Amends Section 740 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (5-0)

Assembly Floor (69-0)

Senate Public Safety (5-0)

Senate Floor (33-0)

Existing law authorizes the juvenile court to place a minor who has been adjudged a ward of the court under the care, custody, and control of the probation officer for placement in a licensed community care facility, such as a group home, as specified.

This bill authorizes the probation officer of the county where a minor adjudicated for a felony is to be placed to share specified information about the minor and the minor's placement with local law enforcement. The bill specifies that the information only can be used for law enforcement purposes, and could not be used in any manner that would be inconsistent with the minor's rehabilitation.

PEACE OFFICERS

SB 58 (Johnson): Chapter 507: Police reports: confidentiality. Urgency.
(Adds Section 964 to the Penal Code.)

Legislative History:

(Prior votes not relevant)

Senate Public Safety, SR 29.10 (5-0)

Senate Concurrence (39-0)

Assembly Public Safety (5-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Existing law exempts specified records from public disclosure. Existing constitutional and case law make court records generally accessible unless there is a compelling need shown. Existing Rules of Court establish procedures for filing records under seal and state that the court may order that a record be filed under seal only if it makes express finding. Existing Rule of Court 243.1 provides that an order sealing the record must specifically set forth the factual findings that support the order, and direct the sealing of only those documents and pages – or if reasonably practicable, portions of those documents and pages – that contain material that needs to be placed under seal. All other portions of each document or page must be included in the public file. The Rules of Court also create exceptions to the above rules.

This bill creates an exception to Rule of Court 243.1 providing instead that in each county, the district attorney and the courts, in consultation with local law enforcement agencies, shall establish a mutually agreeable procedure to protect confidential personal information regarding any witness or victim contained in a police report, arrest report, or investigative report if one of these reports is submitted to a court by a prosecutor in support of a criminal complaint, indictment, or information, or by a prosecutor or law enforcement officer in support of a search warrant or an arrest warrant.

The bill took effect immediately as an urgency statute.

NOTE: As requested by the Senate Committee on Public Safety, Senators Johnson and Burton submitted a letter to the Journal on August 23, 2004, stating, in pertinent part, that the procedure created by this bill "must, of course, be implemented in a manner that is consistent with the state and federal constitutions."

SB 1768 (Romero): Chapter 510: Peace officers.
(Amends Section 830.33 of the Penal Code.)

Legislative History:

(Prior votes not relevant)

Senate Public Safety, SR 29.10 (6-0)

Senate Concurrence (39-0)

Assembly Public Safety (5-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Existing law defines various categories of peace officers, including their powers and authority.

This bill authorizes railroad police officers, as specified, and their employing agencies, to access the California Law Enforcement Telecommunications System.

AB 1075 (Matthews): VETOED: Local law enforcement costs: state reimbursement. Urgency.

(Adds Section 15202.3 to, and adds and repeals Section 15202.4 of, the Government Code and enacts Uncodified Law.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (78-0)

Senate Local Government (6-0)

Senate Appropriations (11-0)

Senate Floor (28-3)

Existing law provides that counties can seek partial reimbursement from the Controller for the costs of homicide trials, and counties with populations of less than 200,000 are eligible for increased reimbursements.

This bill would have done the following:

- Stated legislative intent to ensure public safety through the apprehension of murderers of peace officers, and make findings and declarations to that end.
- Authorized, to the extent funds were appropriated by the Legislature for this purpose – until July 1, 2006, a county with a population of 200,000 or less, or a city with a population of 65,000 or less, that is responsible for the costs of the investigation and apprehension of a person suspected of the murder of a peace officer to apply to the State Controller for reimbursement of costs incurred by the county or city on and after January 1, 2004, in excess of normal salaries and expenses, so long as any claim for reimbursement did not exceed \$500,000 per murdered officer.
- Required the Legislative Analyst to report to Local Government and Budget Committees of the Legislature on the use of this provision by January 1, 2006.
- Repealed the above provisions on January 1, 2007, unless subsequent legislation was enacted to extend that sunset.

- Directed funds appropriated in the Budget Act of 2004 for reimbursement of 100% of the costs incurred by Stanislaus County for the homicide prosecution of Scott Peterson.
- Required the Controller to review requests for reimbursement of county costs for homicide trials prior to payment and prohibited the Controller from reimbursing costs that exceed the California Victim Compensation and Government Claims Board's standards for travel and per diem expenses, except as specified.
- Limited reimbursements for attorney services, investigators, and expert witnesses to a county's average hourly costs, or the hourly rate charged to state agencies by the Attorney General, whichever is less, as specified.
- Would have taken effect immediately upon enactment as an urgency measure.
- Would have been contingent upon the enactment of SB 592 (Denham), which did not pass in the Legislature.

AB 1119 (Nation): Chapter 799: Municipal water districts: park rangers. Urgency.
 (Amends Section 830.34 of the Penal Code and adds Section 71341.5 to the Water Code.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (73-7)

Senate Public Safety (5-0)

Senate Floor (29-1)

Existing law does the following:

- Creates municipal water districts which may be organized by the people of any county or counties, or portions thereof, as specified.
- Provides that municipal water districts are a "district of limited powers" as are such other districts as airport districts, community, municipal utility districts, public utilities districts, and other specified districts.
- Grants limited peace officer status to "A person designated by a local agency as a park ranger and regularly employed and paid in that capacity, if the primary duty of the officer is the protection of park and other property of the agency and the preservation of the peace therein." Park rangers and the other officers in the same section must complete specified training and may only carry firearms if authorized, and under the terms and conditions specified, by their employing agency.

This bill authorizes a municipal water district to employ park rangers who are peace officers, as specified, and requires a municipal water district to adhere to certain standards for recruitment and training of peace officers for the purposes of exercising that authority. The bill took effect immediately as an urgency statute.

AB 1383 (Wesson): VETOED: Antiterrorism funding.
(Amends Section 5066 of the Vehicle Code.)

Legislative History:

(Prior votes not relevant)

Assembly Appropriations (17-0)

Assembly Concurrence (79-0)

Senate Appropriations (8-1)

Senate Floor (25-7)

Existing law establishes the California Memorial License Plate designed to honor the victims of the September 11th terrorist attacks and creates the California Antiterrorism fund, as specified.

This bill would have appropriated \$1,025,000 to specified sheriffs and city police departments – and other local entities – from the Antiterrorism Fund for use in "antiterrorism activities," all as specified.

AB 1931 (La Malfa): Chapter 516: Correctional deputy sheriffs.
(Amends Section 830.1 of the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Assembly Floor (65-0)

Assembly Concurrence (77-0)

Senate Public Safety (4-0)

Senate Floor (38-0)

Existing law provides that any deputy sheriff of the County of Los Angeles and the Counties of Kern, Humboldt, Imperial, Mendocino, Plumas, Riverside, San Diego, Santa Barbara, Siskiyou, Solano, Sonoma, Sutter, and Tehama, who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state-of-emergency. (Penal Code § 830.1(c).)

This bill adds Butte County and Tuolumne County to the authority to utilize Section 830.1(c) correctional deputy sheriffs.

AB 2031 (Cogdill): Chapter 326: Sheriffs: search and rescue.
(Amends Section 26614 of the Government Code.)

Legislative History:

Assembly Local Government (9-0)
Assembly Appropriations (21-0)
Assembly Floor (77-0)
Assembly Concurrence (78-0)

Senate Local Government (7-0)
Senate Appropriations, SR 28.8
Senate Floor (33-0)

Existing law provides that the board of supervisors of a county may authorize the sheriff to search for and rescue persons who are lost or are in danger of their lives.

This bill requires that the authorization for search and rescue activities be consistent with guidelines and operating plans developed and adopted by the Office of Emergency Services except as provided; requires that office to make the plan available to counties and fire protection and law enforcement agencies for use and adoption by the board of supervisors and the governing boards of all search and rescue providers; states that counties are encouraged to adopt and review their plans on a regular basis; and makes related changes in law.

AB 2104 (Committee on Budget): Chapter 702: Homeland security: director and deputy director. Urgency.
(Adds Section 12016 to the Government Code.)

Legislative History:

(Prior votes not relevant)
Assembly Concurrence (75-3)

Senate Floor (27-2)

Existing law sets forth the powers and duties of the Governor, including the appointment of various executive officers.

This bill requires the Governor to appoint an executive officer to be the Director of Homeland Security to serve at the pleasure of the Governor, and to appoint a deputy director of homeland security to serve at the pleasure of the director. The Director of Homeland Security shall be in charge of homeland security and shall be the state coordinator of all homeland security activities, including, but not limited to, homeland security strategy, information analysis related to terrorism, and protection of critical infrastructure from terrorism.

This bill took effect immediately upon enactment as an urgency measure.

NOTE: This bill is a budget trailer bill which included other changes in law in addition to the new Government Code Section 12016 noted here.

AB 2893 (Montañez): VETOED: Public Safety Officers Procedural Bill of Rights Act: coroners and deputy coroners.
(Amends Section 3301 of the Government Code.)

Legislative History:

Assembly Public Safety (5-0)

Senate Public Safety (5-0)

Assembly Appropriations (16-5)

Senate Appropriations (8-1)

Assembly Floor (70-7)

Senate Floor (22-8)

Existing law establishes the Public Safety Officers Procedural Bill of Rights Act (POBOR), specifying the procedures to be followed whenever any public safety officer is subject to investigation and interrogation for alleged misconduct which may result in punitive action and defines "public safety officer" for purposes of the Act to mean specified peace officers, including all city police, deputy sheriffs, court marshals, district attorney investigators, California Highway Patrol, university police, state regulatory investigators, park rangers, housing authority police, community college and school district police, port and transportation officers, public utility security officers, and parole and state correctional officers. No persons who are not "peace officers" are included in the statutory provisions of the Act.

This bill would have added coroners and deputy coroners to the list of peace officers included in the Public Safety Officers Procedural Bill of Rights Act.

AB 2930 (Koretz): VETOED: Public Safety Officers Procedural Bill of Rights Act: designated representatives.
(Amends Sections 3303 and 3304 of the Government Code.)

Legislative History:

Assembly Public Safety (4-0)

Senate Public Safety (4-1)

Assembly Floor (75-3)

Senate Floor (27-3)

Assembly Concurrence (77-2)

Existing law does the following:

- Establishes the Public Safety Officers Procedural Bill of Rights Act (POBOR or the "Act"), specifying the procedures to be followed whenever any public safety officer is subject to investigation and interrogation for alleged misconduct which may result in punitive action. "Punitive action" is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer as punishment.

- States that whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer shall have the right to be represented by a representative of his or her choice. Provides that the representative may be present at all times during the investigation.
- Provides that the representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. States that this section does not apply to an investigation concerned solely and directly with alleged criminal activities.

This bill would have done the following:

- Specified in the Public Safety Officers Procedural Bill of Rights Act that listed conditions of the Act apply to an "employee representative" who is also a public safety officer and is representing a public safety officer who is subject to formal charges or an interrogation focussing on matters that are likely to result in punitive actions.
- Prohibited an "employee representative" from being "a person who was a witness to events relating to the investigation" (currently the Act prohibits persons who are subject to the same investigation).
- Provided that an "employee representative" may not be required to disclose, nor be subject to punitive action for refusing to disclose, any information not related to criminal activity received in a representational capacity from the officer under investigation, except in criminal investigations or proceedings and would have prohibited this information from being used in any subsequent punitive action, as specified.
- Specified that no "public safety employee representative" – in addition to the existing prohibition regarding public safety officers – shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.
- Made conforming changes in law.

PEEPING (viewing/video)

SB 1484 (Ackerman): Chapter 666: Surreptitious filming.
(Amends Sections 647 and 647.7 of the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (80-0)

Existing law makes it a misdemeanor for anyone to look through a hole or opening into, or view with any instrument, the interior of any of specified rooms or any other interior place where the occupant has a reasonable expectation of privacy, with the intent to invade that privacy.

This bill specifically adds bedrooms to the enumerated rooms to which this prohibition is applicable.

Existing law, in addition to the offense described above for viewing into protected rooms, makes it a misdemeanor for a defendant to secretly videotape, photograph, etc., an identifiable person under or through his or her clothing, for the purpose of viewing the body of, or the undergarments worn by, the person, without the consent or knowledge of that other person, and with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the defendant. The crime includes these two elements 1) the defendant must intend to invade the privacy of the person; and 2) the prohibited activity must be done under circumstances in which the victim has a reasonable expectation of privacy. This crime, and the above-described offense of viewing the interior of specified rooms or places, can be punished by imprisonment in a county jail not exceeding 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment, but authorizes a longer jail term of one year if the offense is committed after one or more prior convictions for these offenses or for the offense of peeking into an inhabited structure while loitering, wandering, or prowling upon private property.

This bill makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. This new offense is punished exactly as are the above-described offenses, except that the maximum fine would be \$5,000 if the offense were committed after one or more prior convictions for the same offense, or for an offense referenced above.

AB 2403 (Jackson): VETOED: Surreptitious installation of viewing devices in residences.

(Amends Section 647.7 of, and adds Section 647.05 to, the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Senate Public Safety (4-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (77-0)

Senate Floor (39-0)

Assembly Concurrence (78-0)

Existing law provides that it is a misdemeanor – punishable by a jail term of up to six months, a fine of up to \$1,000, or both – for a person to secretly videotape, film, photograph, or record, another person under or through the other person's clothing, for the purpose of viewing his or her body or undergarments, without his or her consent or knowledge, and with sexual intent or the intent to invade his or her privacy.

This bill would have provided that it is a misdemeanor – punishable by a maximum jail term of up to one year, a fine of up to \$2,000, or both – to install, use, etc., an imaging device in a residence without the consent or knowledge of the resident, and to view, broadcast, or record another person with the intent to invade the person's privacy. This bill would also have provided that it is a crime – with a maximum jail term of up to one year, a fine up to \$2,000, or both – to disseminate an image with knowledge of the unlawful conduct by which it was obtained. These provisions would not have applied to law enforcement engaged in the conduct of their authorized duties, a security system if a written notice is posted, or a video surveillance device installed in a manner that makes its presence clearly and immediately obvious. Finally, the bill would not have precluded a person who is in lawful possession of a dwelling from surreptitiously recording the conduct of an employee or caretaker, as specified.

NOTE: See author's letter printed in the Assembly Journal on August 19, 2004 (page 7338) which includes, in part, that: "It is not the intention of this legislation to criminalize surreptitious videotaping when the person who is the subject of the videotape later consents voluntarily."

PUBLIC RECORDS

SCA 1 (Burton): Resolution Chapter 1: Access to government information.

(Amends Section 3 of Article I of the California Constitution.)

Legislative History:

Senate Governmental Organization (10-0)

Assembly Governmental Organization (18-0)

Senate Constitutional Amendments (4-0)

Assembly E., R. & C.A. (4-0)

Senate Appropriations (11-0)

Assembly Appropriations (24-0)

Senate Floor (34-0)

Assembly Floor (78-0)

Existing law includes the California Public Records Act, the Legislative Open Records Act, the Bagley-Keene Open Meeting Act, and the Ralph M. Brown Act, which provide, with some exceptions, for public access to government records and meetings of government bodies.

This amendment to the Constitution generally provides that the people have a right of access to information concerning the conduct of the people's business, and requires meetings of public bodies and the writings of public officials and agencies to be open to public scrutiny and provides specified "exceptions" including that this amendment:

- Does not supersede or modify the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
- Does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

This amendment also (1) requires that a statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest and (2) takes effect if approved by the electorate on November 2, 2004. Proposition 59 was approved by the voters on November 2, 2004.

AB 1933 (Pacheco): Chapter 937: Law enforcement records.
(Amends Sections 6252 and 6254 of the Government Code.)

Legislative History:

Assembly Governmental Organization (15-4)

Senate Judiciary (5-0)

Assembly Floor (65-8)

Senate Floor (34-0)

Assembly Concurrence (79-0)

Existing law (the California Public Records Act) provides that except for exempt records, every state or local agency, upon request, is required to make records available to any person upon payment of fees to cover costs. Records that are exempt from disclosure include law enforcement investigatory records, although address information of a crime victim and of an individual arrested for a crime may be disclosed to a licensed private investigator or to a requester declaring under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, subject to specified restrictions, including that the address information obtained under these provisions remain confidential and not be used directly or indirectly to sell a product or service.

This bill "clarifies" existing law by providing that address information may not be used directly or indirectly, or furnished to another, to sell a product or service and further provides that nothing in these provisions shall be construed to prohibit or limit a scholarly, journalistic, political, or governmental use of address information obtained pursuant to this bill.

SEX OFFENSES

AB 1667 (Kehoe): Chapter 368: Limitations period.

(Amends Section 803 of, adds Sections 801.1 and 803.6 to, and repeals Section 805.5 of, the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (6-0)

Assembly Floor (74-0)

Senate Floor (37-0)

Assembly Concurrence (78-0)

Existing law establishes various statutes of limitations for various offenses. Certain provisions of existing law extend the statutes of limitations for certain sex offenses, and revive, for purposes of prosecution, certain offenses for which the statute of limitations had expired. The provisions reviving expired statutes of limitations have been held by the United States Supreme Court to be unconstitutional.

This bill repeals those provisions of law that have been held to be unconstitutional. It also reorganizes certain other provisions relating to time limitations on filing criminal charges.

NOTE: AB 1667 takes effect on January 1, 2005. SBX4 2 (Speier) is a non-urgency bill enacted in the 2003-04 Fourth Extraordinary Session which adjourned on November 30, 2004. SBX4 2 will take effect on March 1, 2005, and will chapter out changes made to Penal Code Section 803 by AB 1667 unless further urgency legislation is enacted in the 2005-05 Legislative Session to rectify that conflict. See comment at end of the SBX4 2 entry in this summary under INSURANCE.

Sex Crimes (minors/pornography)

AB 1499 (Liu): Chapter 751: Forfeiture of computers used in child pornography.
(Amends Section 502.01 of the Penal Code.)

Legislative History:

(Prior votes not relevant)

Assembly Public Safety, AR 77.2 (6-0)

Assembly Concurrence (80-0)

Senate Public Safety (4-0)

Senate Floor (32-0)

Existing law provides that any computer, computer system or network, or any software or data owned by a defendant used in the commission of specified offenses shall be subject to forfeiture.

This bill adds specified crimes to the list of computer-related offenses for which forfeiture may be sought. These offenses are possession and trafficking of obscene matter depicting sexual conduct by a minor, harmful matter sent with the intent to seduce a minor, and lewd and lascivious acts committed upon a child.

NOTE: This bill was gutted and amended in the Senate. The Assembly Public Safety vote was taken after a hearing on Senate amendments pursuant to Assembly Rule 77.2.

AB 3042 (Yee): Chapter 769: Sex crimes against children: enhancement for payment of money or other consideration.
(Adds Section 675 to the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (79-0)

Senate Public Safety (4-0)

Senate Appropriations (13-0)

Senate Floor (36-0)

Existing law defines the offenses of sodomy, lewd and lascivious acts, oral copulation and unlawful sexual intercourse (commonly called statutory rape).

This bill provides that where the defendant is convicted of a felony for any of those offenses, and the offense was committed with a minor for money or other consideration, the court may impose a one-year enhancement of the defendant's prison sentence.

Sex Offender Registration

SB 1289 (Machado): Chapter 731: Multiple residences: additional provisions.

(Amends Sections 290 and 290.4 of the Penal Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (38-0)

Assembly Public Safety (5-0)

Assembly Appropriations (20-0)

Assembly Floor (79-0)

Existing law requires persons convicted of certain sex offenses to register with specified law enforcement agencies in the location in which the person resides or, if the person has no residence, where he or she is located, within 5 days of changing residence or location.

Existing law further provides that if the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in each of the jurisdictions in which he or she regularly resides or is located.

Existing law provides that if any person who is required to register changes his or her residence address or location, the person shall inform, in writing within 5 working days, the law enforcement agency or agencies with which he or she last registered of the new address or location.

Existing law provides that any person who is required to register who willfully violates any requirement of this section is guilty of a continuing offense.

This bill provides that the registration requirement for multiple places applies regardless of the number of days or nights spent in each residence or location, as specified.

This bill also provides that if the person does not know the new residence address or location, the registrant shall inform the last registering agency or agencies that he or she is moving within 5 working days of the move, and shall later notify the agency or agencies of the new address or location within 5 working days of moving into the new residence address or location, whether temporary or permanent, as specified.

This bill provides that any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense as to each requirement he or she violated.

This bill makes additional technical changes to these laws.

AB 488 (Parra): Chapter 745: Internet disclosure. Urgency.
(Adds Section 290.46 to the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Assembly Appropriations (23-1)

Assembly Floor (73-2)

Assembly Concurrence (77-2)

Senate Public Safety (4-0)

Senate Appropriations (13-0)

Senate Floor (35-1)

Existing law requires persons convicted or adjudicated of specified sex offenses to register with local law enforcement, as specified. Existing law further requires that certain information concerning these persons is subject to public disclosure, as specified.

This bill requires the Department of Justice to make specified information about certain sex offenders available to the public via the Internet website and to update that information on an ongoing basis. This information would include all of the information currently available to the public via the CD-ROM, and would also include the home address of specified offenders. With regard to certain offenders whose residence addresses are to go on the Internet website only under specified circumstances relating to their criminal histories, the department is required to put that address information on the Internet website on or before July 1, 2006. This bill also provides that certain offenders with less serious sexual offense histories, as specified, may apply to the Department of Justice for exclusion from the Internet website. This bill provides that such an individual would bear the burden of proving the facts that make him or her eligible for exclusion. This bill requires the department to make a reasonable effort to provide notice to affected sex offenders that the department is required to make information about him or her available to the public via an Internet website and that he or she may be eligible for exclusion from the Internet website, as specified. This bill additionally provides for enhanced penalties for misuse of information derived from the website.

This bill took effect immediately upon enactment as an urgency measure.

AB 1937 (Corbett): Chapter 127: Government information.

(Adds Section 290.9 to the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (19-0)

Assembly Floor (76-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Existing law requires a person convicted of any of certain specified sexual offenses to register with local law enforcement for the rest of his or her life while residing, located, attending school, or working in California, as specified.

This bill requires any state or local governmental agency, upon written request, to provide to the Department of Justice the address of any person represented by the department to be a person who is in violation of his or her duty to register under these provisions.

AB 2395 (Correa): Chapter 761: Out-of-state convictions.

(Amends Section 290 of the Penal Code.)

Legislative History:

Assembly Public Safety (5-0)

Assembly Appropriations (20-1)

Assembly Floor (74-0)

Assembly Concurrence (76-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Existing law requires persons convicted of certain sex offenses in California to register as a sex offender, as specified. Existing law also requires persons convicted of certain sex offenses in other jurisdictions to register as a sex offender, as specified. Violations of certain of the registration requirements are crimes, as specified.

This bill, subject to exceptions, requires persons to register as a sex offender if the person has suffered a conviction in another state for a sex offense that would require the person to register as a sex offender in that state.

AB 2527 (Frommer): Chapter 429: Transient registrants.

(Amends Section 290 of the Penal Code and enacts Uncodified Law.)

Legislative History:

Assembly Public Safety (4-0)

Assembly Appropriations (20-0)

Assembly Floor (72-0)

Assembly Concurrence (78-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Existing law requires every person who has been convicted of any of a specified group of sexual offenses to register with local law enforcement agencies for the rest of his or her life while residing, or if he or she has no residence while located, attending school, or working, in California within 5 working days of coming into, or changing his or her residence or location within, California. Existing law requires a person who has no residence to update his or her registration no less than once every 60 days, as specified. Existing law also requires that, beginning on his or her first birthday following registration or change of address, the person is required to update his or her registration annually within 5 working days of his or her birthday. Willful violation of the requirement to register under these provisions is punishable by imprisonment in a county jail for a period not to exceed one year or by imprisonment in the state prison for 16 months, or 2 or 3 years, as specified. A California Court of Appeal decision, *People v. North* (2003) 112 Cal.App.4th 621, held that the terms "located" or "location" as used in these provisions are unconstitutionally vague.

This bill states legislative intent that this bill address that holding. This bill recasts these provisions with respect to persons who have no residence or who are living as transients in California. This bill requires a transient to register, and reregister, no less than once every 30 days, except as specified, regardless of the length of time he or she has been physically present in a particular jurisdiction, with the chief of police of a city, the sheriff of a county, or the chief of police of a campus, if he or she is physically present within their jurisdiction within a 30-day period, unless he or she was required to register at an earlier date because he or she reregistered on his or her birthday. This bill requires a transient who moves out of state to inform the chief of police of the city or the sheriff of the county, as specified, within 5 working days of his or her move out of state. Violation of this requirement is a crime. The bill also requires the law enforcement agency to forward, within 3 days after receipt of the information, a copy of the change of location information to the Department of Justice. The department is required to forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location. This bill also provides that it is a crime, punishable by imprisonment in a county jail for a period of at least 30 days, but not to exceed one year, for a sex offender who is required to register pursuant to these provisions to fail to provide the information required, or to provide false information, on the registration and re-registration forms of the Department of Justice.

Sexually Violent Predators

SB 446 (Machado): VETOED: Law enforcement costs occasioned by conditional release of sexually violent predator patient.

(Adds and repeals Section 6609.5 of the Welfare and Institutions Code.)

Legislative History:

Senate Local Government (4-3)

Senate Appropriations, SR 28.8

Senate Floor (22-15)

Senate Concurrence (34-0)

Assembly Local Government (9-0)

Assembly Appropriations (13-3)

Assembly Floor (79-0)

Existing law provides for the involuntary civil commitment for mental health treatment of a person found to be a sexually violent predator (SVP). Specified notice must be given to local law enforcement agencies and other entities if the SVP patient will be, or may be, conditionally released into the community.

This bill would have, until January 1, 2007, allowed a city or county eligible to claim state reimbursement for reasonable local law enforcement costs when a sexually violent predator is released from state custody for community placement into the city or county.

AB 493 (Salinas): Chapter 222: Sexually violent predators: placement of conditionally released SVP patients. Urgency.

(Adds Section 6608.5 to the Welfare and Institutions Code.)

Legislative History:

(Prior votes not relevant)

Assembly Public Safety, AR 77.2 (4-0)

Assembly Concurrence (65-2)

Senate Public Safety (5-0)

Senate Health & Human Services (10-0)

Senate Appropriations (10-0)

Senate Floor (32-0)

Existing law provides for the commitment of persons found to be sexually violent predators (SVP) to the custody of the Department of Mental Health (DMH) for treatment. The commitment process begins at the end of an inmate's prison term. If the Director of DMH determines that the person's mental disorder has so changed that he or she is not likely to commit predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release to the superior court of the county from which the person was committed to prison. An SVP patient may personally petition the court for conditional release. Upon receipt of a petition from the Director, or a non-frivolous petition from an SVP patient, the court must hold a hearing to determine whether it is likely that the SVP patient will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court does not find that the patient presents such a danger, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year.

This bill requires a conditionally released SVP patient (except a parolee) to be placed in the county of the domicile unless the court finds that extraordinary circumstances require placement outside the county of domicile. Extraordinary circumstances are those that would prevent release under the terms and purposes of the governing law. The bill requires the department to consider concerns of the victim or the victim's next of kin in making a placement. The county of domicile must designate a county agency or program to provide assistance and consultation to DMH in the process of locating and securing housing within the county for conditionally released SVP patients.

This bill took effect immediately as an urgency measure.

NOTE: This bill was gutted and amended in the Senate. The amended version was heard in Assembly Public Safety pursuant to Assembly Rule 77.2.

AB 2450 (Canciamilla): Chapter 425: Community comment on release of a conditionally released sexually violent predator patient, including community comment on the proposed specific residence.

(Amends Section 6609.1 of the Welfare and Institutions Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Assembly Concurrence (79-0)

Senate Public Safety (6-0)

Senate Appropriation, SR 28.8

Senate Floor (38-0)

Existing law requires the State Department of Mental Health (DMH) to notify local law enforcement officials when it makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when it is aware that such a person has petitioned a court for release to the community.

This bill requires notice to be given when DMH or its designee makes a recommendation for placement in a particular conditional release program, or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal. This bill requires the notice to include, among other things, the date, place, and time of an applicable court hearing. This bill further requires that notice also be given to the Department of Justice. Local agencies may provide written comment to DMH as to conditional release and placement. DMH shall issue a written statement in response to comment and the court shall consider those comments and statements. This bill permits a single agency in the community of the proposed placement to suggest alternate locations within that community. Finally, this bill deletes the prohibition against notice being given after the release date.

VEHICLE OFFENSES/DMV

Driving under the Influence (DUI)

SB 1623 (Johnson): Chapter 337: Laboratories: licensing and accreditation.

(Amends Section 100425 of, adds Sections 100701, 100702, and 100703 to, repeals Sections 100710, 100715, 100720, 100730, 100735, 100740, 100745, 100750, 100755, 100760, 100765, and 100770 of, and repeals and adds Section 100700 of, the Health and Safety Code.)

Legislative History:

Senate Health & Human Services (9-1)

Senate Appropriation, SR 28.8

Senate Floor (27-1)

Senate Concurrence (28-1)

Assembly Health (15-0)

Assembly Appropriations (20-0)

Assembly Floor (75-0)

Existing law requires the State Department of Health Services to create regulations for approving and governing the operation of laboratories engaging in the performance of tests by or for law enforcement of blood, urine, tissue, or breath samples for the purposes of determining the concentration of ethyl alcohol in the blood of persons involved in traffic accidents or in traffic violations, including the qualifications of the employees who perform the tests, that the department determines are reasonably necessary to ensure the competence of the laboratories and employees to prepare, analyze, and report the results of the tests. Existing regulations require the laboratories to be licensed and periodically inspected by DHSS.

This bill instead requires laboratories engaging in the performance of forensic alcohol analysis tests by or for law enforcement agencies on blood, urine, tissue, or breath for the purposes of determining the concentration of ethyl alcohol in persons involved in traffic accidents or in traffic violations to comply with various existing department regulations regarding inspection of laboratories, collection and handling of samples, methods of analysis, and laboratory records. The bill prohibits the department from requiring laboratories to be licensed. The bill requires each laboratory to ensure that breath alcohol instruments and list in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation and would require all laboratories to follow the American Society of Crime Laboratory Directors/Laboratory Accreditation Board guidelines for proficiency testing, and to meet other proficiency test requirements.

SB 1694 (Torlakson): Chapter 550: Driving under the influence: sanction.

(Amends Section 68152 of the Government Code and amends Sections 1808, 13352, 13352.6, 13353, 13353.1, 13353.3, 13353.7, 13353.8, 23217, 23502, 23540, 23546, 23550, 23560, 23566, 23575, 23612, 23622, and 23646 of the Vehicle Code.)

Legislative History:

Senate Public Safety (6-0)

Assembly Public Safety (4-1)

Senate Appropriations (12-0)

Assembly Appropriations (18-1)

Senate Floor (35-0)

Assembly Floor (76-1)

Senate Concurrence (38-0)

Existing law provides that it is unlawful to drive a motor vehicle while under the influence of alcohol, a drug, or both, or 0.08% or more, by weight, of alcohol in one's blood, or while addicted to the use of a drug. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, of alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, (DUI) a court may impose sanctions, as specified. Existing law imposes increased sanctions on persons who have previously been convicted of DUI offenses within 7 years of the commission of the current offense.

This bill imposes increased sanctions for repeat offenses occurring within 10 years instead of within 7 years.

Existing law authorizes a court to order a person convicted of a DUI offense to attend an alcohol and drug problem assessment program.

This bill requires a court to order a person who has previously been convicted of either a DUI offense that occurred over 10 years ago or disorderly conduct based on being found in a public place under the influence of alcohol or drugs, and who is currently convicted of a DUI offense to attend and complete that program. The bill requires the court to rely on certain information and records regarding the existence of a previous conviction occurring more than 10 years ago. The bill authorizes a court, if the program assessment recommends additional treatment, to order the person to enroll, participate, and complete an enhanced treatment program.

SB 1696 (Torlakson): Chapter 403: Vehicles: driving under the influence: license restriction.

(Amends Sections 13352.5, 13352.6, 23538, and 23542 of, and adds Section 13352.2 to, the Vehicle Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (36-0)

Senate Concurrence (38-0)

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (78-0)

Existing law requires the Department of Motor Vehicles to immediately suspend, revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of an abstract of the record of any court showing that the person has been convicted of specified provisions prohibiting driving under the influence (DUI). Existing law prohibits the reinstatement of that privilege until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of a driving-under-the-influence program, as specified.

This bill allows DMV to receive proof of attendance from drinker driver treatment program by direct transmission.

SB 1697 (Torlakson): Chapter 551: Vehicles: driving under the influence: driver's license sanctions.

(Amends Section 11837 of the Health and Safety Code and amends Sections 1803, 13352, 13352.5, 13353, 13353.3, 13353.5, 13353.7, 13954, 14601.2, 23521, 23536, 23538, 23540, 23542, 23548, 23552, 23556, 23562, 23568, 23660, and 23665 of, amends, repeals, and adds Section 13352.4 of, and amends and repeals Section 13354 of, the Vehicle Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations (10-0)

Senate Floor (36-0)

Senate Concurrence (38-0)

Assembly Public Safety (5-0)

Assembly Transportation (13-0)

Assembly Appropriations (19-0)

Assembly Floor (79-0)

Existing law requires the Department of Motor Vehicles to suspend the driver's license of any person arrested for driving under the influence (DUI). The department, under certain circumstances, is also required to suspend, restrict, or revoke the driver's license of any person convicted of DUI. A court is authorized to order, as a condition of probation for a conviction of DUI, that the defendant's driver's license be restricted, as specified.

This bill consolidates the driver's license suspension, restriction, and revocation functions for DUI arrests and convictions under the department. While the licensing sanctions are consolidated under DMV, the court will be authorized to disallow the issuance of a restricted license if the court determines that a person would present a traffic safety or public safety risk if allowed to operate a motor vehicle during a suspension period.

AB 371 (La Suer): Chapter 14: Blood tests. Urgency

(Amends Section 1246 of the Business and Professions Code and amends Section 23158 of the Vehicle Code.)

Legislative History:

Assembly Public Safety (7-0)

Assembly Floor (77-0)

Assembly Concurrence (68-0)

Senate Business & Professions (7-0)

Senate Public Safety (5-0)

Senate Floor (37-0)

Existing law provides only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of "certified phlebotomy technicians." In the context of clinical laboratory work, certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician and surgeon, nurse, or clinical laboratory licensee.

This bill permits a person who has been issued a "certified phlebotomy technician" certificate to withdraw blood in certain locations, following policies and procedures approved by a physician and surgeon and with general supervision, as defined, at the direction and in the presence of a peace officer, for forensic purposes, regardless of whether the person is employed by a clinical laboratory.

This bill took effect immediately upon enactment as an urgency measure.

AB 2173 (Parra): Chapter 502: Driving under the influence: statement.

(Adds Section 23593 to the Vehicle Code.)

Legislative History:

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (78-0)

Assembly Concurrence (77-0)

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (33-0)

Existing law provides it is unlawful for a person who is under the influence of an alcoholic beverage or drug, or under the combined influence of an alcoholic beverage and drug, who has 0.08% or more, by weight, of alcohol in his or her blood, or who is addicted to the use of a drug, to drive a vehicle (DUI). Existing law imposes various sanctions on persons convicted of a DUI offense.

This bill requires a court to provide a person convicted of a reckless driving offense, as specified, or a DUI offense with a specified advisory statement. The bill would allow the advisory statement to be included in a plea form, if used, or would allow the fact that the advice was given to be specified on the record. This bill requires the court to include on the abstract of the conviction or violation submitted to the Department of Motor Vehicles that the person has been so advised.

Vehicles

SB 1085 (Murray): Chapter 391: Vehicles: official traffic control signals: interruptive devices.

(Amends Sections 21464 and 42001 of the Vehicle Code.)

Legislative History:

Senate Transportation (10-0)

Senate Appropriations, SR 28.8

Senate Floor (32-0)

Senate Concurrence (37-0)

Assembly Transportation (11-0)

Assembly Appropriations (20-0)

Assembly Floor (74-0)

Existing law prohibits a person from using, and prohibits any vehicle, other than an authorized emergency vehicle, from being equipped with, any device capable of sending a signal that interrupts or changes the sequence patterns of an official traffic control signal, unless that device or use is authorized by the Department of Transportation or local authorities, as specified. A willful violation of this prohibition that results in injury to, or the death of, a person is punishable by imprisonment in the state prison, or by imprisonment in a county jail for a period of not more than 6 months, and by a fine of not less than \$5,000 nor more than \$10,000. A willful violation of this prohibition that does not result in injury to, or the death of, a person is punishable by a fine of not more than \$3,000.

This bill makes a number of changes to this prohibition including increasing to \$5,000 the maximum fine for a willful violation of the specified prohibition that does not result in injury to, or the death of, a person, exempting a public transit passenger vehicle from the prohibition and making it a felony or a misdemeanor, or an infraction, punishable as specified above, for a person to buy, possess, manufacture, install, sell, offer for sale, or otherwise distribute the above described devices, including a MIRT, unless the purchase, possession, manufacture, installation, sale, offer for sale, or distribution is for the use of the device by a peace officer or other person authorized to operate an authorized emergency vehicle or a public transit passenger vehicle in the scope of his or her duties.

SB 1269 (Morrow): Chapter 665: Traffic violators: Judicial Council report.
(Adds Section 11205.4 to the Vehicle Code.)

Legislative History:

Senate Judiciary (4-0)

Senate Appropriations (9-0)

Senate Floor (38-0)

Senate Concurrence (39-0)

Assembly Judiciary (10-1)

Assembly Transportation (10-0)

Assembly Appropriations (19-0)

Assembly Floor (80-0)

Existing law authorizes a court to order a person to attend a traffic violator school licensed under certain provisions of the Vehicle Code, in lieu of adjudicating a traffic offense, or after conviction of a traffic offense. Existing law also permits a court to order a continuance against a person who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and after that attendance, to dismiss the complaint, as specified. Existing law requires the clerk of the court to collect a fee from a person who is ordered or permitted to attend a traffic violator school, as specified, or who attends any other court-supervised program of traffic safety instruction.

This bill requires the Judicial Council, by June 1, 2005, to collect and compile specified data and information in a report that provides a clear understanding of the current system involving the collection and expenditure of traffic violator fees and to recommend one or more approaches to setting a fiscal policy for the fees charged to those traffic violators. Furthermore, this bill requires this data and information be made available by the Judicial Council to a person upon request and payment of a fee.

SB 1541 (Margett): Chapter 595: Vehicles: motor vehicle speed contest: punishment.

(Amends Sections 13352 and 23109 of the Vehicle Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations (11-0)

Senate Floor (37-0)

Senate Concurrence (38-0)

Assembly Public Safety (4-0)

Assembly Appropriations (19-0)

Assembly Floor (75-0)

Existing law prohibits a person from engaging in a motor vehicle speed contest, aiding or abetting in that contest, engaging in motor vehicle exhibition of speed on a highway or aiding or abetting in that conduct, and obstructing or placing a barricade or obstruction or assisting in the same, upon a highway incident to a motor vehicle speed contest or speed exhibition upon a highway and imposes various sanctions on persons convicted of the above, including requiring a person convicted of engaging in a motor vehicle contest to be imprisoned in county jail for not less than 24 hours nor more than 90 days.

This bill requires, in addition to the above, a person to perform 40 hours of community service and also requires a person convicted of a motor vehicle contest offense to provide proof of financial responsibility as a condition to the restoration of the privilege to operate a motor vehicle.

SB 1848 (Ashburn): Chapter 594: Vehicles: driver's license violations: referral program. Urgency.

(Adds and repeals Section 14601.9 of the Vehicle Code.)

Legislative History:

Senate Public Safety (5-0)

Senate Floor (38-0)

Senate Concurrence (29-3)

Assembly Public Safety (6-0)

Assembly Transportation (11-0)

Assembly Floor (78-0)

Existing law imposes specified sentencing and fine sanctions upon persons found guilty of violating provisions prohibiting the driving of vehicles without a license, as specified.

This bill authorizes, until January 1, 2008, the district attorneys of certain counties, and the city attorneys of certain cities, with the approval of the board of supervisors or city council, to establish a pilot program for persons who plead guilty or no contest or are convicted of violations of specified provisions prohibiting driving without a valid driver's license. Under the program, and subject to the approval of the court, the district attorney or city attorney is authorized to enter into a written agreement with a person in a case involving a violation of the specified provisions in which the person agrees to the following, in lieu of the imposition of a county jail sentence: (1) a home detention program utilizing an electronic monitoring program for not less than the minimum jail sentence, and not more than the maximum jail sentence, provided for a violation of the specified provisions, and (2) a class or classes relating to driving without a valid driver's license, as specified.

This bill took effect immediately upon enactment as an urgency measure.

AB 340 (Frommer): Chapter 338: Vehicles: official traffic control signals: interruptive devices.

(Amends Sections 21464 and 42001 of the Vehicle Code.)

Legislative History:

Assembly Transportation (19-0)

Assembly Appropriations (22-0)

Assembly Floor (79-0)

Assembly Concurrence (76-0)

Senate Transportation (12-0)

Senate Appropriations, SR 28.8

Senate Floor (39-0)

Existing law prohibits a person from using, and prohibits any vehicle, other than an authorized emergency vehicle, from being equipped with, any device capable of sending a signal that interrupts or changes the sequence patterns of an official traffic control signal, unless that device or use is authorized by the Department of Transportation or local authorities, as specified.

This bill specifies that this prohibition applies to a mobile infrared transmitter (MIRT) and increases the penalties.

AB 2237 (Parra): Chapter 300: Excessive speed: enhancements: provisions.

(Amends Section 22348 of the Vehicle Code.)

Legislative History:

Assembly Transportation (12-0)

Assembly Floor (66-3)

Assembly Concurrence (73-4)

Senate Public Safety (4-0)

Senate Floor (30-1)

Existing law provides, upon a second conviction of the offense of driving upon a highway at a speed greater than 100 miles per hour within 3 years of the prior offense, a person is punished by a fine not to exceed \$500 and upon a second or more convictions that occurred within 5 years of the prior offenses by a fine not to exceed \$500.

This bill increases the amount of the fine for the second conviction occurring within 3 years of the prior offense to \$750, and increases the amount of the fine for 2 or more prior convictions, occurring within 5 years of the prior offenses, to \$1,000.

AB 2591 (Leno): Chapter 603: Charter-party carriers: limousines.

(Amends Sections 5371.4, 5411.5, 5412.2, and 5413.5 of, and adds Section 5381.5 to, the Public Utilities Code.)

Legislative History:

Assembly Local Government (9-0)

Assembly Transportation (8-1)

Assembly Appropriations (15-0)

Assembly Floor (75-1)

Assembly Concurrence (74-3)

Senate Energy, Utilities & Communications (8-1)

Senate Public Safety (6-0)

Senate Appropriations (7-0)

Senate Floor (28-7)

Existing law generally governs charter party carriers and, in addition to other things, requires that when a person is convicted of operating a charter-party carrier of passengers or a taxicab, as defined, without a valid certificate or permit, if the court determines the operator has the ability to pay, the court impose a fine not exceeding \$1,000 for the first conviction, a fine not exceeding \$2,000 for the second conviction, a fine not exceeding \$3,000 for the third conviction, a fine not exceeding \$4,000 for the fourth conviction, and a fine not exceeding \$5,000 for the fifth conviction.

This bill instead requires that, when a person is convicted of operating a charter-party carrier of passengers or a taxicab, as defined, without a valid certificate or permit, if the court determines the operator has the ability to pay, the court impose a fine not exceeding \$2,500 for a first conviction or \$5,000 for a subsequent conviction.

AB 2895 (Nuñez): VETOED: Vehicles: driver's license.

(Amends Section 197 of the Civil Code, and amends Sections 1653.5, 12800, and 12801.5 of, adds Sections 1672.6, 1808.10, 12801.2, 12801.9, and 12801.10 to, repeals and adds Section 12801 of, and repeals Section 14610.7 of, the Vehicle Code.)

Legislative History:

(Prior votes not relevant)

Assembly Concurrence (43-35)

Senate Floor (22-14)

Existing law requires a person to have a social security number in order to get a California driver's license.

This bill would have allowed a person who signs a specified affidavit, presents a birth certificate and who completes a background check to get a California driver's license.

VICTIMS OF CRIME

SB 631 (McPherson): Chapter 223: Victims of Crime Program: victims restitution. Urgency.

(Amends Section 13903 of the Government Code, and amends Sections 1202.4, 1202.45, 1214, and 2085.5 of, and adds Section 1202.44 to, the Penal Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations (11-0)

Senate Floor (37-0)

Senate Concurrence (38-0)

Assembly Public Safety (5-0)

Assembly Appropriations (18-1)

Assembly Floor (73-0)

Existing law creates the Victims of Crime Program, administered by the California Victim Compensation and Government Claims Board to reimburse victims of crime for the pecuniary losses they suffer as a direct result of criminal acts, as specified. Indemnification is made from the Restitution Fund, which is continuously appropriated to the California Victim Compensation and Government Claims Board for these purposes.

This bill does the following:

- Requires a defendant who has an unpaid balance on a restitution order or fine 120 days prior to the time of his or her release from probation or to complete a current financial statement at least 90 days before release, as specified.
- Makes it a misdemeanor punishable by up to six months in the county jail or a fine not to exceed \$1,000 for willfully making false material statements on the required financial statement.
- Allows, specifically, a person to be prosecuted for the crime of perjury if applicable.
- Permits the victim and Victim Compensation and Government Claims Board (VCGCB) to have access to both the initial financial disclosure statement and the current financial statement.
- Clarifies that Victims Crime Program (VCP) can be reimbursed from restitution fines for payments, as specified.
- Requires the court clerk to notify VCGCB of a restitution order, as specified.
- Requires that a probation revocation restitution fine be assessed at the time the court imposes sentence and judgment, and provides that the probation revocation restitution fine shall only become effective at the time of probation revocation.

- Provides that probation revocation restitution fines shall only be waived or reduced when the court finds compelling and extraordinary reasons, as specified.
- Adds specific references to fines ordered to the existing provision of law that states that judgments may be enforced in the manner, as specified.
- Permits the Director of the Department of Corrections (CDC) to deduct moneys from a ward that was transferred from California Youth Authority to CDC and who had a fine assessed against him or her pursuant to Welfare and Institutions Code Sections 730 *et seq.*, as specified.
- Makes the Secretary of the State and Consumer Services Agency the chair of VCGCB.
- Makes technical clarifying changes and took effect immediately upon enactment as an urgency measure.

MISCELLANEOUS

SB 111 (Knight): Chapter 193: State reports.

(Amends Sections 653.1, 1247k, 2053, 3053.2, 5010, 5066, 7514, 13508, and 14210 of, and repeals Sections 1174.6, 3424, 4497.40, 7009, 11108.7, 11110, 13013, 13828.2, and 13871 of, the Penal Code.)

Legislative History:

Senate Governmental Organization (13-0)

Senate Appropriations, SR 28.8

Senate Floor (37-0)

Senate Concurrence (33-0)

Assembly Business & Professions (13-0)

Assembly Appropriations (19-0)

Assembly Floor (78-0)

Existing law requires various state agencies to prepare and submit reports to the Legislature and Governor on various topics throughout the year and establishes, for specified time periods, pilot and demonstration projects regarding specified issues.

This bill is an omnibus measure which amends or deletes many sections of law including the Penal Code sections noted above to delete various reporting requirements and to repeal various pilot projects.

SB 1102 (Committee on Budget and Fiscal Review): Chapter 227: Budget trailer bill: booking fees: Victims of Crime Program: courts: Department of Corrections and Department of the Youth Authority: medical care. Urgency.

(Amends Sections 905.2, 29550, 29550.4 of the Government Code, amends Sections 4750, 4751, 4752, 4753, and 6005 of, and adds Sections 4751.5, 4753.5, and 5023.5 to, the Penal Code, and adds Section 10108.8 to the Public Contract Code.)

Legislative History:

(Prior votes not relevant)

Senate Concurrence (31-5)

Assembly Floor (78-1)

Existing law establishes the California Victim Compensation and Government Claims Board that provides, pursuant to specified procedures, for compensation to claimants who are victims or derivative victims, as defined, who sustain injury or death as a direct result of a crime.

This bill requires a filing fee by claimants who do not proceed in forma pauperis and authorizes the board to assess a surcharge not to exceed 15% of the total approved claim, as specified, to support the expense of administering the government claims program for all claims filed after the effective date of this bill (August 16, 2004).

Existing law authorizes a county to impose, among other fees with respect to criminal justice services, a booking fee upon other local agencies and colleges and universities for county costs incurred in processing or booking persons arrested by employees of those entities and brought to county facilities for booking and detention. Existing law continuously appropriates up to \$50,000,000 annually from the General Fund to the Controller commencing with the 1999-2000 fiscal year for allocation to cities and qualified special districts for actual booking and processing costs paid to the counties.

This bill limits the booking fees that may be imposed in the 2004-05 and 2005-06 fiscal years, as specified, and repeals that continuous appropriation for the 2005-06 and subsequent fiscal years.

Existing law authorizes cities and counties to be reimbursed for specified costs incurred by them in connection with court proceedings involving a prisoner of a state prison or a person confined to a Department of the Youth Authority correctional institution.

This bill authorizes superior courts to be reimbursed by the Administrative Office of the Courts for specified costs incurred by the courts in connection with those proceedings and amends the provision in law pertaining to those specified costs.

Existing law generally requires the Department of Corrections and the Department of the Youth Authority to provide health care to inmates and wards under their care.

This bill allows these departments to contract with providers of emergency health care services; requires hospitals that do not contract with the departments to provide these services on the same basis as they are required to provide them pursuant to specified provisions of federal law; requires a provider of ambulance or any other emergency or non-emergency response service that does not contract with the departments to be reimbursed at the rate established by Medicare; and prohibits the departments from reimbursing a hospital or provider of emergency or non-emergency response services that the departments have not contracted with at a rate that exceeds the hospital's reasonable and allowable costs, as defined.

Existing law (the State Contract Act) governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies and requires the Department of Corrections to require, among the general conditions under which bids will be received, that any person making a bid or offer to perform a contract include specified information in his or her bid or offer.

This bill requires the Department of Corrections, where feasible, to enter into two or more procurement contracts for the purchase and development of the Business Information System (BIS) Project and requires that the BIS project be developed to allow integration with other relevant statewide financial and personnel systems.

This bill took effect immediately upon enactment as an urgency measure.

NOTE: This bill is a budget trailer bill which included other changes in law in addition to the provisions noted here.

SB 1376 (Perata): Chapter 813: Elections: voting systems.

(Amends Sections 19102, 19103, and 19201 of, and adds Sections 18564.5, 19214, 19214.5, and 19215 to, the Elections Code, and enacts Uncodified Law.)

Legislative History:

Senate Elections & Reapportionment (5-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (32-0)

Assembly E., R. and C.A. (6-0)

Assembly Judiciary (10-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

Existing law specifies that the Secretary of State (SOS) is the chief elections officer of the state, that he or she shall not approve any voting system, or part of a voting system, unless it fulfills the requirements of the Elections Code and the regulations of the SOS, and that the SOS has broad authority to withdraw approval of any voting system he or she deems unacceptable.

This bill does the following:

Declares this Act shall be known as the "Voting System Security Act of 2004."

- Enacts legislative findings and declarations that (1) the integrity of California's voting systems is of paramount concern to all state voters; (2) any action that undermines that integrity must be addressed in the most expeditious manner available to state authorities; and (3) the SOS, elections officials, and legal authorities shall be empowered to thwart any effort that casts or could cast doubt on the validity of the elections process and each voter's right to have his or her vote counted.
- Authorizes the SOS, the Attorney General (AG) and local elections officials to bring a civil action, with a penalty of up to \$50,000 and injunctive relief, against any party tampering with or altering voting equipment and software.
- Authorizes the SOS to seek injunctive relief: (a) when a voting system has been compromised by the addition or deletion of hardware, software or firmware without prior approval; (b) to require any vendor or manufacturer of a voting machine, voting system or vote tabulating device to comply with the requirements relating to the placing of source codes in escrow; and (c) to require an elections official, or any vendor or manufacturer of a voting machine, voting system, or vote tabulating device, to comply with the requirements of the Elections Code, the regulations of the SOS, and the specifications for voting equipment.
- Allows the SOS, following an unauthorized change in hardware, software or firmware to any voting system certified in California, to seek specified relief, including immediate commencement of de-certification proceedings and a prohibition on the vendor doing any elections-related business in the state for up to three years.
- Prohibits a jurisdiction from purchasing or contracting for any voting system, in whole or in part, unless it has received the approval of the SOS.
- Requires an exact copy of the source code to all ballot tally software programs to be placed in an escrow facility prior to its use.

SB 1506 (Murray): Chapter 617: Internet file sharing of recordings and audiovisual works.

(Adds and repeals Section 653aa of the Penal Code.)

Legislative History:

Senate Public Safety (4-0)

Senate Judiciary (5-0)

Senate Appropriations, SR 28.8

Senate Floor (33-0)

Senate Concurrence (33-1)

Assembly Public Safety (6-0)

Assembly Arts, Entertainment, Sports,

Tourism, & Internet Media (12-0)

Assembly Appropriations (21-0)

Assembly Floor (76-1)

Existing federal copyright law gives authors of "original works of authorship" certain rights and protections. These include the right to reproduce a work and distribute it to the public. Under specified conditions, federal law limits the infringement liability of an Internet service provider for transmitting protected material. Existing law also provides for the forfeiture and destruction of articles used in copyright.

Existing California law (Pen. Code § 653w) provides that a person is guilty of a crime when he or she knowingly attempts to sell, rent or manufacture, or possess for these purposes, an audio recording or audiovisual work without disclosure of the true name and address of the manufacturer and the name of the artist. A violation of Section 653w involving at least 1000 copies of an audio recording or 100 copies of an audiovisual work is an alternative felony-misdemeanor, punishable by imprisonment for up to one year in the county jail, or in state prison for 2, 3, or 5 years, or a fine of up to \$250,000, or both. A first violation involving less than 1000 copies of an audio recording or 100 copies of an audiovisual work is a misdemeanor, punishable by up to one year in county jail, or a fine not exceeding \$25,000, or both. Subsequent violations involving less than 1000 copies of an audio recording or 100 copies of an audiovisual work is an alternative felony-misdemeanor, punishable by up to one year in county jail, 16 months, 2 years, or 3 years in state prison, or a fine not exceeding \$100,000, or both.

This bill provides that it is a misdemeanor, punishable by a fine not exceeding \$2500, imprisonment in a county jail for a period not exceeding one year, or both, for a person to knowingly electronically disseminate all or substantially all of a commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work. It is an element of the crime that the defendant knew the work is commercial. However, a minor who violates these provisions had committed an alternate misdemeanor-infraction, punishable by a fine not exceeding \$250 for a first or second offense and by a fine not exceeding \$1000, imprisonment in a county jail, or by both that fine and imprisonment for a third or subsequent violation.

This bill defines a protected commercial work as "a recording or audiovisual work whose copyright owner (or agent or licensee) has made or intends to make available for sale, rental, or for performance or exhibition to the public under license . . ." An expectation of financial gain is not required. This bill defines electronic dissemination as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network, as specified. This bill does not apply to a person who disseminates a work to his or her immediate family or within his or her personal network, as defined, or to a situation in which the copyright owner has explicitly given permission for or licensed the recording or audiovisual work to be freely disseminated, electronically disseminated, or disseminated by means of a cable television service. An Internet service provider does not violate or aid and abet a violation of these provisions, as specified. A court shall order the deletion or destruction of any electronic file containing a commercial recording or audiovisual work, the dissemination of which was the basis of the violation.

This bill's provisions become inoperative on January 1, 2010, unless a later enacted statute deletes or extends that date.

SB 1796 (Committee on Public Safety): Chapter 405: Public Safety: omnibus bill. (Amends Section 912 of the Evidence Code, amends Sections 3304 and 68115 of the Government Code, amends Section 11100 of the Health and Safety Code, amends Sections 266h, 266i, 290.01, 337j, 629.61, 666.7, 836, 1170.11, 1337, 1341, 1372, 1405, 4501, 11171, 13010, 13014, 13022, 13510.7, 13823.9, and 13879.81 of the Penal Code, and amends Sections 285 and 15763 of the Welfare and Institutions Code.)

Legislative History:

Senate Public Safety (6-0)

Senate Appropriations, SR 28.8

Senate Floor (38-0)

Senate Concurrence (34-0)

Assembly Public Safety (6-0)

Assembly Appropriations (21-0)

Assembly Floor (77-0)

This bill makes a number of clarifying and technical amendments to the Penal Code and penal provisions in other codes.

AB 1153 (Bermúdez): Chapter 22: Unauthorized activities regarding official badges. Urgency.

(Amends Section 538e of, and adds Section 538g to, the Penal Code.)

Legislative History:

Assembly Public Safety (7-0)

Assembly Appropriations (24-0)

Assembly Floor (73-0)

Assembly Concurrence (67-0)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (35-0)

Existing law provides that any person, other than an officer or member of a fire department, who willfully wears, exhibits, or uses, among other things, the authorized badge, of an officer or member of a fire department or a deputy state fire marshal, with the intent of fraudulently personating an officer or member of a fire department or the Office of the State Fire Marshal, or of fraudulently inducing the belief that he or she is an officer or member of a fire department or the Office of the State Fire Marshal, is guilty of a misdemeanor.

This bill (1) rewrites and expands the application and penalties of existing Penal Code Section 538e pertaining to the unlawful use, wearing, and exhibiting of fire department badges and insignia to include manufacturing, or transfers and other changes, as specified, and, (2) adds a new section similar to the amended language in Section 538e which is applicable to badges and identification of a "state, county, city, special district, or city and county officer or employee."

This bill took effect immediately upon enactment as an urgency measure.

AB 1260 (Matthews): Chapter 163: Personal income and business and corporation taxes: administration: violations: refunds.

(Amends Sections 19720 and 19721 of the Revenue and Taxation Code.)

Legislative History:

Assembly Revenue & Taxation (7-0)

Assembly Appropriations (22-1)

Assembly Floor (75-0)

Senate Public Safety (4-1)

Senate Appropriations (8-0)

Senate Floor (34-0)

Existing law provides for the administration of income and corporation tax laws, and imposes various fines and penalties for violations of those laws. Under existing law an individual who procures or counsels another individual to procure a state-issued income tax refund warrant through the filing of a return knowing that the recipient is not entitled to the refund is, depending upon the circumstances, guilty of either a misdemeanor or a felony.

This bill extends these provisions to an individual who procures or counsels an individual to procure a state-issued income tax refund without regard to the form in which the refund is issued (thus including a "direct deposit refund" in those sanctions).

AB 1433 (Spitzer): Chapter 512: Criminal threats.

(Amends Section 76 of the Penal Code.)

Legislative History:

Assembly Public Safety (7-0)

Assembly Appropriations (24-0)

Assembly Floor (78-0)

Senate Public Safety (4-0)

Senate Appropriations (13-0)

Senate Floor (36-0)

Existing law provides that any person who, with apparent ability and intention to carry out the threat, threatens to kill or cause serious bodily injury to any elected official, county public defender, county clerk, exempt Governor's appointee, judge, deputy commissioner of the Board of Prison Terms, or the staff or a family member of such officials, is guilty of a wobbler. Existing law does not include threats against the immediate family of the staff of the above-enumerated persons within the definition of the crime of threatening a public official.

This bill includes immediate family of the staff in this statute.

AB 1802 (Bogh): Chapter 137: Illegal dumping: penalties.
(Amends Section 374.3 of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (5-0)

Assembly Floor (76-0)

Senate Floor (38-0)

Assembly Concurrence (75-0)

Existing law makes illegal specified acts relating to dumping waste matter, rocks, or dirt in certain locations without obtaining consent and requires that a person convicted of dumping waste matter in commercial quantities in violation of these provisions be punished by the imposition of a fine in an amount that varies based upon the person's previous convictions for this offense, as specified.

This bill adds asphalt and concrete to the material that may not be dumped in certain locations and increases the amounts of the fines imposed for dumping waste matter in commercial quantities, as specified.

AB 1814 (Oropeza): Chapter 515: Theft of cargo as a separately defined form of grand theft.

(Adds and repeals Section 487h of the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (6-0)

Assembly Appropriations (19-0)

Senate Appropriations, SR 28.8

Assembly Floor (76-0)

Senate Floor (38-0)

Assembly Concurrence (79-0)

Existing law provides that every person who steals, takes, or carries away money, labor, or real or personal property of a specified amount – typically in excess of \$400 in value – is guilty of grand theft. Theft of specified agricultural products exceeding \$100 in value also constitutes grand theft.

This bill provides, until January 1, 2010, that every person who steals, takes, or carries away "cargo" of a value exceeding \$400 is guilty of a separately defined form of grand theft. This bill also defines the term "cargo" as "goods, wares, products, or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit."

NOTE: Rather than truly creating a new form of theft, the bill is intended to allow tracking of cargo theft through the data collection by the Attorney General and the Uniform Crime Reports assembled by the Federal Bureau of Identification. According to the author and sponsor (Los Angeles County Sheriff) tracking of cargo theft will allow California to obtain federal money for port security.

AB 1956 (Wolk): Chapter 290: Diversion for developmentally disabled defendants.
(Amends the heading of Chapter 2.8 (commencing with Section 1001.20) of Title 6 of Part 2 of, and amends Sections 1001.20, 1001.21, 1001.22 and 1001.23 of, the Penal Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (5-0)

Assembly Appropriations (20-0)

Senate Appropriations, SR 28.8

Assembly Floor (72-0)

Senate Floor (35-0)

Existing law provides a mechanism for allowing a court to order mentally ill misdemeanor defendants to diversion.

This bill expands these provisions to apply more broadly and include persons with cognitive developmental disabilities, as specified.

AB 2037 (La Suer): Chapter 291: Alcoholic beverages and controlled substances: minors.

(Amends Section 25658 of the Business and Professions Code.)

Legislative History:

Assembly Public Safety (6-0)

Senate Public Safety (4-0)

Assembly Appropriations (21-0)

Senate Appropriations, SR 28.8

Assembly Floor (74-0)

Senate Floor (33-1)

Existing law under the Alcoholic Beverage Control Act makes it a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or consume any alcoholic beverage in any on-sale premises. The Act also makes it a misdemeanor for any person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverages to any person under the age of 21. Existing law provides that any person who violates that provision by purchasing an alcoholic beverage for a person under the age of 21, and the person under the age of 21 thereafter consumes the alcohol and proximately causes great bodily injury or death, as specified, is guilty of a misdemeanor, and shall be punished by imprisonment, a fine not exceeding one thousand dollars (\$1,000), or both.

This bill expands that provision to include any person who furnishes, gives, or gives away any alcoholic beverage to a person under the age of 21 years, as specified. This bill also provides that the penalties imposed under this provision do not preclude prosecution under any other provision of law.

AB 2216 (Nakanishi): Chapter 586: Contractors.

(Amends Section 7073 of, and adds Section 7069.1 to, the Business and Professions Code and amends, repeals, and adds Section 802 to the Penal Code.)

Legislative History:

Assembly Business & Professions (13-0)

Assembly Appropriations (20-0)

Assembly Floor (76-0)

Assembly Concurrence (79-0)

Senate Business & Professions (5-0)

Senate Public Safety (4-0)

Senate Appropriations, SR 28.8

Senate Floor (36-2)

Existing law (Contractors' State License Law) provides for the licensure and regulation of contractors by the Contractors' State License Board. Under existing law, the registrar of the Contractors' State License Board may deny an application for a license for specified reasons.

This bill, among other things, extends the statute of limitations for a number of offenses by contractors.

AB 2705 (Goldberg): VETOED: Threshold value of stolen property to constitute grand theft: effect of inflation.

(Amends Section 487 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-2)

Assembly Appropriations (15-5)

Assembly Floor (41-32)

Senate Public Safety (4-1)

Senate Appropriations, SR 28.8

Senate Floor (21-14)

Existing law generally defines grand theft as the taking of property, money or labor exceeding \$400 in value. The law also includes special forms of grand theft, such as the taking of agricultural products with a value exceeding \$100 for example.

This bill would have increased the \$400 threshold to \$800 and the \$100 threshold to \$200.

AB 2905 (Spitzer): Chapter 248: Public safety officials: credible threats: moving and relocation expenses.

(Amends Section 832.9 of the Penal Code.)

Legislative History:

Assembly Public Safety (4-1)

Assembly Appropriations (17-0)

Assembly Floor (74-0)

Senate Public Safety (4-0)

Senate Appropriations (8-0)

Senate Floor (39-0)

Existing law provides that the governmental entity employing a peace officer shall reimburse moving and relocation expenses if it is necessary for him or her to move because he or she has received a credible threat that a life threatening action may be taken against him or her or his or her immediate family as a result of his or her employment.

This bill additionally makes these provisions applicable to judges, court commissioners, and attorneys employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender.

AB 3092 (Jerome Horton): Chapter 822: Tobacco: enforcement. Urgency.

(Amends Sections 22978.4 and 22980.1 of, and adds Section 22971.4 to, the Business and Professions Code, and amends Section 308 of the Penal Code.)

Legislative History:

Assembly Governmental Organization (17-1)

Assembly Appropriations (16-0)

Assembly Floor (72-5)

Assembly Concurrence (63-12)

Senate Public Safety (5-0)

Senate Appropriations, SR 28.8

Senate Floor (27-10)

Existing law (the California Cigarette and Tobacco Products Licensing Act of 2003) provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with these licensure requirements.

This bill exempts from licensure requirements any person or entity that is exempt from regulation under the Cigarette and Tobacco Products Licensing Act of 2003 by the United States Constitution, federal law, or the California Constitution and requires a distributor or wholesaler that is subject to that act to specify in each invoice for the sale of tobacco products that all taxes on cigarette and tobacco products are included in the total amount of the invoice.

Existing law (the Cigarette and Tobacco Products Tax Law) requires that an appropriate stamp be affixed to, or that an appropriate meter impression be made upon, each package of cigarettes prior to distribution; requires the State Board of Equalization, effective January 1, 2005, to replace the existing stamps and meter impressions with a stamp or meter impression that can be read by a scanning or similar device, and encrypted with specified information; and authorizes the State Board of Equalization to prescribe, by regulation, the method and manner by which the stamps and meter impressions are to be affixed to each package of cigarettes.

This bill states the intent of the Legislature that the State Board of Equalization has the authority to implement these changes by regulation in a manner that does not affect commerce within this state.

Existing law provides that every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase a required notice, and any person failing to do so shall, upon conviction, be punished by a fine of \$10 for the first offense and \$50 for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

This bill increases the amounts of those fines to \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth and each subsequent offense.

This bill took effect immediately upon enactment as an urgency measure.

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(1) SECTIONS AFFECTED

This summary does not contain a Table of Sections Affected (TOSA). However, the TOSA prepared by the Legislative Counsel is available by computer at the Legislative Counsel's "Official California Legislative Information" site at: www.leginfo.ca.gov/.

Go to that website, click on "Legislative Publications" and then on "Table of Sections Affected" and search by code section. That same site also offers a "Bill Information" option which allows a word search and can be searched by statutory section number and is an alternative to TOSA for finding bills by a statute number. However, the TOSA for past sessions does not remain available on that website indefinitely.

(2) BUDGET RELATED ITEMS

This summary does not contain overall details about the 2004-05 State Budget, although some budget-related trailer bills (and budget provisions involving corrections) are included under the appropriate index heading. Detailed information about revisions to the 2003-04 budget and the final 2004-05 budget package, including the budget bill – AB 1113 (Chapter 208, Statutes of 2003) – and budget trailer bills, may be obtained from the "FAR (Final Action Report) 2004" on the 2004-05 State Budget which is accessible at the following website by selecting committees, standing committees, Budget and Fiscal Review, Budget Committee Reports, and then Publications: <http://www.sen.ca.gov>.