

San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

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Remember 9/11/01—Support our Troops

Robert C. Phillips (W) (858) 974-2421
Deputy District Attorney (C) (858) 395-0302
Law Enforcement Liaison Deputy (E) Robert.Phillips@SDSheriff.org
(E) RCPhill808@AOL.com

THIS EDITION’S WORDS OF WISDOM:

“Life, in my estimation, is a biological misadventure that we terminate on the shoulders of six strange men whose only objective is to make a hole in one with you.” (Fred Allen; 1894-1956)

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ADMINISTRATIVE NOTES:

New and Amended Statutes; Disclaimer: The statutes listed here are not intended to cover the entire body of the Legislature's work for 2005. Only those statutes believed to be of interest to most law enforcement officers, with the concerns of prosecutors in mind, are included. Sentencing rules, typically covered better in other publications, have been avoided except when important to a new or amended offense. The new and amended statutes that are covered have been severely paraphrased, the degree of detail being dependent upon the newness, importance, and/or complexity of the statute. Although I made a sincere effort to avoid taking any part of a statute out of context, it is *strongly* recommended that the unedited statute be consulted before attempting to use it either in the field or the courtroom. If you're working off an old code book, I can e-mail you the current version of any particular statute. The bulk of the material included herein is taken from the California District Attorneys Association's 2005 Legislative Digest Manual, supplemented by my own research and verification.

Legal Updates: As I start my *eleventh year* of writing these *Legal Updates* (the bulk of which deals with *Fourth, Fifth and Sixth Amendment*, and *statutory interpretation*, case law), let me remind you that if you don't already receive them directly on your home and/or office computer, you need merely ask and I will add you to the e-mail list. Please, however, identify yourself and your interest in your request. These *Updates* are intended solely for the use of law enforcement officers, prosecutors, attorneys, instructors, students, and anyone else with a legitimate, constructive interest in the study, use, and/or practical application of the law. If you've previously asked to be included but have been omitted, the problem usually is because I wrote down your address wrong, your system has filters that won't allow for bulk-mailed attachments, I've received a response saying that you no longer exist, or your mailbox is full or otherwise disabled. In any case, ask again and I'll try to rectify the problem, if possible, from my end.

NEW AND AMENDED STATUTES:

Animals:

P.C. § 597u (Amended): *Animal Euthanasia:*

Amended section now prohibits the “intracardiac injection of a euthanasia agent on a conscious animal” unless the animal is heavily sedated, or anesthetized in a humane manner, or comatose, or in light of all relevant circumstances, the procedure is justified. **(sub. (a))**

Former **P.C. § 597w**, prohibiting the killing of a dog or cat using nitrogen gas or a high-altitude decompression chamber, is added as **subd. (b)**.

Misdemeanor; 6 months and/or \$1,000 fine (per **P.C. § 597y**).

P.C. § 597w (Deleted and Moved): *Euthanasia of Dog or Cat:*

Moved to **P.C. § 597u(b)**.

P.C. § 597z (New): *Sales of Puppies:*

It is a misdemeanor/infracton to sell one or more dogs under the age of eight weeks, unless approved in writing by a licensed veterinarian.

A sale is complete only when the seller physically transfers the dog(s) to the purchaser. Each dog sold constitutes a separate offense.

Nonprofit organizations, pet dealers, public animal control agencies, animal shelters, and rescue groups are exempted.

Misdemeanor/Infraction; 6 months and/or \$1,000, or (when prosecuted as an infraction only) \$250.

Check Cashing:

Rev. & Tax Code § 18631.7 (New): *Failing to Report \$10,000 in Cashed Check(s):*

A “check casher” who willfully fails to file a required informational return with the Franchise Tax Board when the check-casher cashes checks totaling more than \$10,000 in one transaction or in two or more transactions for the same person within a calendar year.

Felony; “not more than one year” in prison, and/or \$25,000 (for the cashier) or \$100,000 (for a corporation), plus the cost of prosecution.

Child Abuse:

Evid. Code § 1109 (Amended): *Character Evidence*:

Expands the exceptions to the general rule prohibiting the admission into evidence “*character*” or “*propensity evidence*” (i.e., evidence of prior bad acts of the defendant) by providing that evidence of past acts of physical child abuse are admissible in a prosecution for child abuse, per **P.C. § 273d**.

Limitations: Such evidence is *not* admissible where the evidence are of acts occurring more than 10 years before the charged offense *unless* the court determines (1) that admission of the evidence is in the interest of justice; *and* (2) the probative value of the evidence outweighs its prejudicial effect, per **E.C. § 352**.

P.C. § 272 (Amended): *Contributing to the Delinquency of a Minor*:

Subd. (b)(1), dealing with a “*stranger*” taking a minor from a place where his or her parents, guardian or custodian knew the minor to be, without consent, the age of the minor protected under the terms of this statute is raised from “12 years of age or younger” to “under 14 years.”

Misdemeanor/Infraction; 6 months and/or \$1,000; or, as an infraction, \$250.

P.C. § 502.01 (Amended), adds this offense (**P.C. § 272(b)**) to the list of crimes for which computer or telecommunications equipment used to commit the crime may be forfeited.

P.C. § 652 (New): *Body Piercings on a Minor*:

It is now illegal for a person to perform, or offer to perform, any body piercing on a person under the age of 18, except in the presence of the minor’s parent or guardian, or except as directed by a notarized writing by the parent or guardian.

Infraction; \$250 fine.

P.C. §§ 1000.12 (Amended) & 1000.13 (Deleted): *Child Abuse Diversion*:

The discretion of a prosecutor to refer a defendant for counseling or psychological treatment in lieu of prosecution in a *child sex abuse or molestation* case has been eliminated, leaving such discretion to *child physical abuse* cases only.

Also eliminated is the deferred entry of judgment programs in child sex abuse and molestation cases.

P.C. § 1347 (Amended): *Closed-Circuit TV Testimony in Child Abuse Cases:*

The provisions for using closed-circuit television technology for testimony of a minor 13 years of age or younger have been expanded to include cases of felony child endangerment (**P.C. § 273a**) and the felony corporal injury on a child (**P.C. § 273d**).

A Court may approve the closed-circuit television testimony of such a child upon the finding (in addition to those grounds already listed) that testimony by the minor in the presence of the defendant would result in the child suffering serious emotional distress so that the child would be unavailable as a witness.

P.C. § 11166 (Amended): *Mandated Child Abuse Reporting:*

Amended section allows the mandated follow-up report in suspected child abuse or neglect cases to be made by fax or other electronic means, with provisions for excusing and explaining why an immediate telephonic report was not made.

P.C. § 11166.01 (Amended): *Mandated Child Abuse Reporting:*

New **subd. (b)** makes it a misdemeanor for a mandated reporter (per **P.C. § 11166**) to willfully fail to report child abuse or neglect, or for any person to impede or inhibit such a report, where the abuse or neglect results in death or great bodily injury.

Misdemeanor; one year and/or \$5,000 fine.

Amended **subd. (a)** increases the penalty for a supervisor or administrator who impedes or inhibits a mandated report from an infraction to a misdemeanor.

Misdemeanor; 6 months and/or \$1,000 fine.

W&I § 6608.5 (Amended): *Conditionally Released Sexually Violent Predator Residing Near Schools:*

A conditionally released sexually violent predator is prohibited from residing within *one-quarter mile* of any public or private school, K through 12th grade, *if* the predator has previously been convicted of child molestation under **P.C. §§ 288(a)** (felony child molest, victim under 14 years), **288(b)** (felony child molest, by force, violence, duress, menace, or

fear), **288(c)(1)** (felony child molest, victim 14 or 15 years and 10 years or more younger than defendant), or **288.5** (continuous sexual abuse of a child), *or* the court finds that the predator has a history of improper sexual conduct with children.

See also **P.C. § 3003 (Amended)**, below (“*Probation and Parole*”) for restrictions on placing parolees with a prior child molest conviction, and who is determined by the Department of Corrections and Rehabilitation to pose a high risk to the public, from being placed within *one-half mile* of a public or private school, K through 12th grade.

Computer, Internet or Electronic Crimes:

B&P Code § 17529.5 (Amended): *False E-Mail Advertisements:*

Amended section makes it a crime to send an e-mail advertisement that contains false, misrepresented, or forged header information.

Misdemeanor; 6 months and/or \$1,000 fine.

B&P Code § 17538.41 (Amended): *Text Message Advertisements:*

Amendment to the section adds political candidates and political committees to the list of persons and businesses who are prohibited from transmitting text message advertisements to cell phones, pagers, or two-way messaging devices, unless there is an existing relationship with the subscriber and the subscriber is offered the option *not* to receive the messages.

Misdemeanor; 6 months and/or \$1,000 fine. (**B&P § 17534**)

B&P Code § 17538.43 (New): *Junk Fax Prohibitions:*

New section provides for civil and criminal penalties for persons or entities which send from California unsolicited advertisements (i.e., “*junk fax*”) via a telephone facsimile machine unless the consumer has agreed in advance.

Requirements for identification of the sender at the top or bottom of faxes sent or received in California are also specified, with listed exceptions.

Violation is subject to civil penalties and misdemeanor (6 months, \$1,000 fine) punishment (per **B&P § 17534**).

B&P Code §§ 22948, 22948.1, 22948.2, & 22948.3 (New): *The Anti-Phishing Act of 2005:*

New sections prohibit the act of “*phishing*,” providing civil remedies for soliciting, requesting, or taking any action to induce another person through the Internet, a Web page, or electronic mail message, to provide identifying information by representing himself or herself to be a business without the authority or approval of the business.

“*Phishing*” is the act of posing as a legitimate company in an e-mail, Web page, or other Internet communication in order to trick a recipient into revealing his or her personal information.

“*Identifying information*” includes, but is not limited to, social security number, driver’s license number, bank account number, credit or debit card numbers, PINs, account passwords, etc.

The civil remedies are available to the individual being victimized, the district attorney, attorney general, an Internet service provider, owner of a Web page, or the owner of a trademark, who is adversely affected by a violation.

Civil remedies include injunctive relief and/or money damages.

Civ. Code §§ 1746, 1746.1, 1746.2, 1746.3, 1746.4 & 1746.5 (New): *Violent Video Games:*

New sections create civil liability for selling a “*violent video game*” to a minor.

“*Violent video game*” is defined as a video game in which the range of options available to a player includes killing, maiming, dismembering, or sexually assaulting an image of a human being, in a game that either (1) appeals to a deviant or morbid interest of minors, and is patently offensive to prevailing standards in the community as to what is suitable for minors, and lacks serious literary, artistic, political, or scientific value for minors; *or* (2) enables players to virtually inflict serious injury upon images of human beings or characters with substantially human characteristics in a manner that is especially heinous, cruel, or depraved in that it involves torture or serious physical abuse to the victim.

Excludes from liability the minor’s parent, grandparent, aunt, uncle or legal guardian, as well as a salesclerk or similarly situated person who does not have an ownership interest in the business where the violation occurred and are not employed as a manager.

Violations may be prosecuted by a district attorney, city attorney or county counsel.

\$1,000 civil penalty.

Controlled Substances:

H&S Code § 11100(a), (g)(1) & (2) (Amended): *Required Report to DOJ; Sale to Person Under 18; Possession by Person Under 18:*

Iodine, tincture of iodine, and phosphorous acid, and its salts, are added to **subd. (a)**, requiring the sale of such substances to be reported to the Department of Justice (**subd. (a)**) and making it a misdemeanor to sell, transfer, or otherwise furnish such substances to a person under the age of 18. (**Subd. (g)(1)**) As amended, it is also a misdemeanor for a person under the age of 18 to possess these substances. (**subd. (g)(2)**)

Misdemeanor: 6 months, \$1,000. (**subd. (g)(4)(A)**), or 1 year, \$10,000, with a prior conviction (**subd. (g)(4)(B)**)

H&S § 11107.1 (Amended): Amended so as to allow the more stringent restrictions of § 11100 to apply.

H&S Code § 11104(b) & (c) (Amended): *Furnishing Laboratory Glassware or Apparatus:*

Amended section eliminates the requirement that the laboratory glassware or apparatus sold, transferred or furnished, with knowledge that the recipient will use the goods to unlawfully manufacture a controlled substance, be over \$100 in value.

Misdemeanor: 6 months, \$1,000.

H&S Code § 11104.5: *Possession of § 11107.1 Substances and Laboratory Glassware or Apparatus:*

Red Phosphorus and *iodine* is added to, and the \$100 minimum value of laboratory glassware or apparatus is deleted from this section, making it a misdemeanor to possess each with the intent to manufacture a controlled substance.

Misdemeanor: 6 months, \$1,000.

H&S Code §§ 121349 to 121349.3 (New): *The Clean Needle and Syringe Exchange Program:*

Provisions for the power of city and county legislators to authorize a clean needle and syringe project were moved to these new statutes, with the elimination of the requirement that the responsible governmental agency declare a local emergency due to the existence of a critical local public health crisis. (H&S § 11364.7)

Includes the requirement of an annual report to the County Board of Supervisors or City Council by the health officer in a public meeting, detailing the status of the program and relevant statistics on blood-borne infections associated with needle sharing, with an opportunity for public comment.

H&S Code §§ 25400.10 to 25400.46 (New): *The Methamphetamine Contaminated Property Cleanup Act of 2005:*

Provides procedures for the inspection and cleanup of methamphetamine contaminated properties, involving the Health Department in determining whether a property used for methamphetamine laboratory activity is contaminated, placing a lien on property, and issuing an order prohibiting the use or occupancy of property that is determined to be contaminated, with a \$5,000 civil penalty for violating such order and requiring the property owner to clean up the contamination within 90 days or reimbursing the city or county for such clean up.

Domestic Violence:

P.C. § 11106 (Amended): *Firearms Information for Domestic Violence Victims:*

Amended section authorizes peace officers, district attorneys, prosecuting city attorneys, probation officers, and parole officers (as listed in P.C. § 11105(b)(1) to (6)) to disseminate to a domestic violence victim information from DOJ records about the firearms a “*domestic violence perpetrator*” has purchased or obtained.

The type of information that may be provided includes the number of firearms registered to the perpetrator and the description of those firearms.

A “*domestic violence perpetrator*” is someone who is being prosecuted or is serving a sentence for a domestic violence offense, or is the subject of an emergency protective order or temporary restraining order.

The victim must also be provided with a “*Victims of Domestic Violence*” card (per **P.C. § 13701**).

The victim may disclose the firearms information as he or she deems necessary to protect himself or herself or another person from bodily harm by the domestic violence perpetrator.

Elder & Dependent Adult Abuse:

W&I Code § 15630 (Amended): *Failure to Report Elder or Dependent Adult Physical or Financial Abuse:*

The section is expanded to prohibit the “impeding or inhibiting” a mandated report of elder or dependent adult physical or financial abuse.

Misdemeanor; 6 months and/or \$1,000, or, if death or great bodily injury results, one year and/or \$5,000 fine.

W&I Code §§ 15630.1 (New), 15633 (Amended), 15634 (Amended), 15640 (Amended), 15655.5 (Amended): *Reporting Financial Abuse of Elder and Dependent Adults:*

Adds all officers and employees of financial institutions as mandated reporters of suspected financial abuse of elder or dependent adults. (per **P.C. § 368(d) & (e)**)

Known or suspected instances of financial abuse must be reported by telephone immediately, or as soon as practicable, and by written report sent within two days, to the local adult protective services agency or the local law enforcement agency.

Provides that an uncorroborated allegation from the elder or dependent adult, where the mandated reporter, in his or her professional judgment, does not believe that financial abuse has occurred, does not have to be reported.

Failure to report subjects the officer or employee’s financial institution to a civil penalty of up to \$1,000; or \$5,000 if the failure was willful, in an action brought by a district attorney, county counsel, or Attorney General. (The misdemeanor penalties of **W&I § 15630(h)** do not apply.)

Note also; Gov’t. Code § 7480 adds a county adult protective services office to the list of agencies entitled to receive account information from a financial institution when investigating the financial abuse of an elder or dependent adult.

Evidence:

P.C. § 872 (Amended): *Hearsay Preliminary Hearings:*

The section is amended to add “*honorably retired law enforcement officers*” to those who may testify at a preliminary examination, per **Proposition 115**, to the hearsay statements of a victim or witness, provided the statement was made while the officer was an active law enforcement officer, and provided the other legal foundational requirements to the officer’s testimony are satisfied.

P.C. § 1335 (Amended): *Conditional Examinations:*

The right to conduct a pre-trial “*conditional examination*” of a witness where the life of the witness is in jeopardy, previously granted only to the prosecution, is extended to a criminal defendant. This provision is limited to cases where the defendant is charged with a serious felony (per **P.C. § 1192.7(c)**) or a violation of **H&S §§ 11351, 11352, 11378, or 11379** (sale, possession for sale, or transportation of controlled substances).

See **P.C. §§ 1336, 1337 & 1341 (Amended)** for the procedures used for applying to the Court for an order for a conditional examination. Also, the age for allowing a conditional examination on the basis of age alone has been lowered from 70 to 65 years.

Firearms:

P.C. § 171.5 (Amended): *Possession of a Firearm in a Sterile Area of an Airport or Passenger Vessel Terminal:*

Amendment to **subd. (b)** expands the firearm and other listed weapons (see **subd. (c)**) possession prohibition in the sterile area of an airport to include the sterile area of a passenger vessel terminal at a harbor or port facility.

Misdemeanor; six months and/or \$1,000.

P.C. § 12021.3 (Amended): *Return of Firearms Seized by Law Enforcement:*

Requires the Court to award reasonable attorney’s fees to the prevailing party in a proceeding for the return of a firearm seized by a law enforcement agency where the law enforcement agency is the defendant or cross-defendant in such proceeding.

P.C. § 12028.5 (Amended): *Return of Firearms:*

Amendment clarifies that a firearm seized by law enforcement at the scene of a domestic violence incident and not retained for use as evidence must be made available to the owner or person in lawful possession within five business days, but *only* after the owner or possessor first demonstrates compliance with **P.C. § 12021.3**, proving that the Department of Justice has approved the person’s right to legally possess the firearm.

P.C. § 12071 (Amended): *Firearms Dealers:*

Amendment requires a licensed firearms dealer to keep all firearms in his or her inventory within the licensed location, except when properly selling or transferring firearms at a gun show or auction.

P.C. § 12084 (Deleted): *Transfer of Firearms:*

The alternative procedure for selling, transferring, or loaning a firearm through a sheriff’s department in smaller counties (less than 200,000 people), using a “Law Enforcement Firearms Transfer Form,” instead of through a licensed dealer, has been eliminated.

P.C. § 12280 (Amended): *Illegal Sales,, Etc., of Assault Weapons and/or .50 BMG Rifles:*

Amendment provides that except in the case of a first violation involving not more than two assault weapons and/or .50 BMG rifles, each weapon involved (i.e., one that is manufactured, distributed, transported, offered for sale, or given, etc.) is a separate and distinct offense.

P.C. § 12316 (Amended): *Selling Ammunition to Minors:*

Amended section eliminates the requirement that a person, corporation or dealer actually “*know*” that a person to whom *any ammunition* is sold is under the age of 18 (per **subd. (a)(1)(A)**), or to whom *ammunition for a concealable pistol* is sold is under the age of 21 (per **subd. (a)(1)(B)**).

Also, as amended, the affirmative defense to this crime as specified in **subd. (a)(2)** (i.e., that the seller “acted in reliance upon bona fide evidence of majority and identity”) must now be a “*reasonable*” reliance.

Misdemeanor; 6 months and/or \$1,000.

Fish & Game:

F&G Code § 2117 (Amended): *Enforcement Authority:*

Amendment to the section adds “*local law enforcement agents*” and “*county sheriffs*” to those who are authorized to enforce the sections (i.e., **F&S §§ 2116 to 2203**) related to the “Importation, Transportation, and Sheltering of Restricted Live Wild Animals.”

F&G Code § 3003 (New): *Internet Hunting:*

Creates the new crime of “*Internet Hunting*,” or “*online shooting or spearing*,” defined as “the use of a computer or any other device, equipment, software, or technology, to remotely control the aiming and discharge of any weapon, including, but not limited to, any firearm, bow and arrow, spear, slingshot, harpoon, or any other projectile device.”
(Subd. (g))

The section penalizes the person in California doing the Internet Hunting **(subd. (a))**, the business entity that provides the service **(subd. (b))**, the person who possesses or confines any bird or mammal in furtherance of an Internet Hunting enterprise **(subd. (c))**, or any person in this state who imports into, or exports from this state, any bird or mammal, or any part thereof, that is killed by any device accessed via an Internet connection.
(subd. (d))

Any bird or mammal, or any part thereof, that is possessed in violation of this section shall be subject to seizure by the Department of Fish and Game. **(subd. (e))**

Misdemeanor; 6 months, \$1,000. **(F&G §§ 12000, 12002)**

Gambling:

P.C. § 337j (Amended): *Unlicensed Controlled Gaming:*

Subd. (d) was amended to add a felony (wobbler) punishment for a second conviction of this “*controlled gaming*” statute dealing with the unlicensed operation of such games.

Misdemeanor; one year and/or \$10,000; Felony (wobbler) for a second conviction; 16 months, 2 or 3 years, \$10,000 fine, or one year and/or \$10,000.

Gangs:

P.C. § 186.2 (Amended): *Criminal Profiteering Activity:*

Amended **subd. (a)** adds “*human trafficking*” (P.C. § 236.1) and “*identity theft*” (P.C. § 530.5) to the list of offenses under the definition of “*Criminal Profiteering Activity.*” (**subds. (a)(28) & (29)**, respectively.)

“*Identity theft*” (P.C. § 530.5) is also added to the definition of “*organized crime.*” (**subd. (d)**)

P.C. § 186.22 (Amended): *Participation in Criminal Street Gang Activity:*

New offenses that establish a “*pattern of criminal gang activity,*” if committed in conjunction with one of the offenses already listed, are added in **subds. (e)(26) to (30)**, respectively:

- Felony theft of an access card or account information. (P.C. § 484e)
- Counterfeiting, designing, using, or attempting to use an access card. (P.C. § 484f)
- Felony fraudulent use of an access card or account information. (P.C. § 484g)
- Identify theft. (P.C. § 530.5)
- Wrongfully obtaining DMV documentation. (P.C. § 529.7)

Grand Juries:

P.C. § 904.6 (Amended): *Impaneling and Supervision of Grand Juries:*

Amended section provides the presiding Superior Court judge with the power to appoint a judge to supervise the Grand Jury. Also, upon the request of a district attorney or the Attorney General, or upon the presiding judge’s own motion, or the motion of the judge appointed to supervise the Grand Jury, an additional criminal Grand Jury may be appointed.

Human Trafficking:

P.C. § 136.1 (New): *Human Trafficking:*

It is a felony to engage in “*human trafficking,*” defined as depriving or violating the personal liberty of another person with the intent to effect or maintain a felony violation of P.C. § 266 (procurement for prostitution), P.C. § 266h (pimping), P.C. § 266i (pandering), P.C. § 267 (abduction for

prostitution), **P.C. § 311.4** (using a minor to create obscene matter), or **P.C. § 518** (extortion), or to obtain forced labor or services.

The “*unlawful deprivation or violation of the personal liberty of another*” includes the substantial and sustained restriction of another’s liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believed that it was likely that the person making the threat would carry it out.

“*Duress*” includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

The section also provides that “*human trafficking*” is the equivalent to the federal definition of a severe form of trafficking found in **22 U.S.C. § 7102(8)**.

Felony; 3, 4 or 5 years in prison, or 4, 6 or 8 years if the victim is a minor.

P.C. § 236.2 (New): *Law Enforcement Agency Endorsement:*

Spells out procedures and requirements for trafficking victims to obtain a “*Law Enforcement Agency Endorsement,*” or “*LEA,*” from a law enforcement agency, which helps a trafficking victim to qualify for non-immigrant status under federal law.

P.C. § 273.7 (Amended): *Disclosing Trafficking Shelters:*

The section that makes it a misdemeanor to maliciously disclose the location of a domestic violence shelter is amended to include a “*trafficking shelter,*” with “*trafficking shelter*” defined as a confidential location that provides emergency housing on a 24-hour basis for victims of human trafficking.

Misdemeanor; 6 months, \$1,000

P.C. § 1202.4 (Amended): *Restitution:*

New **subd. (q)** provides for the defendant making restitution to the victim of Human Trafficking for economic losses.

P.C. § 13519.14 (New): *Training*:

Requires P.O.S.T. to implement by 01/01/07 a course to train law enforcement officers in the handling of human trafficking complaints and develop guidelines for law enforcement's response to human trafficking.

P.C. § 13990 (New): *California Alliance to Combat Trafficking and Slavery Task Force ("California ACTS")*:

Establishes the "*California Alliance to Combat Trafficking and Slavery Task Force*" (i.e., "*California ACTS*") to collect and organize data on the nature and extent of human trafficking, measure and evaluate the progress of preventing human trafficking, protecting and providing assistance to trafficking victims, prosecuting traffickers, and to increase public awareness of human trafficking.

"*Trafficking*" is defined here as "all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons, within the national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor, or other debt bondage."

P.C. § 14023 (Amended): *Witness Protection Program*:

Adds human trafficking cases to the list of cases to which the Attorney General's Witness Protection Program is required to give priority.

Civ. C. § 52.5 (New): *Civil Liability for Traffickers*:

Creates a civil cause of action allowing victims of human trafficking to sue traffickers for actual, compensatory and punitive damages, and to seek injunctive relief.

Evid. Code § 1038, 1038.1, and 1038.2 (New): *Human Trafficking Victim-Caseworker Privilege*:

A "*Human Trafficking Victim*" has a privilege to refuse to disclose, and prevent another from disclosing, a "*confidential communication*" between the victim and his or her caseworker, subject to several exceptions: (1) A court's determination that the probative value of the communication outweighs the effect of disclosure upon the victim, the counseling relationship and/or the counseling services; (2) where the victim has died; or (3) when the victim is not the complaining witness in a criminal action against the perpetrator.

Gov't. Code § 13956 (Amended): *State Restitution Fund:*

Provides that victims of human trafficking are eligible to receive assistance from the state Restitution Fund whether or not a police report was made, and mandates that the California Victim Compensation and Government Claims board adopt guidelines for considering and approving applications for assistance.

Identity Theft:

P.C. § 483.5 (Amended): *Deceptive Identification Documents:*

New **subd. (b)** provides misdemeanor punishment for possessing a document-making device with the intent that the device be used to manufacture, alter, or authenticate a deceptive identification document.

“*Document-Making Device*” is defined as including, but not limited to, an implement, tool, equipment, impression, laminate, card, template, computer file, computer disk, electronic device, hologram, laminate machine, or computer hardware or software. (**subd. (d)**)

“*Deceptive Identification Document*” is expanded from documents *not* issued by a federal, state or local governmental agency to also include a document *not* issued by a foreign government or an international government (**subd. (c)**), unless the document indicates “*conspicuously*” that it is “NOT A GOVERNMENT DOCUMENT.” (**subd. (a)**)

The section is also amended to add city attorneys to the prosecutors (i.e., district attorney and Attorney General) who may bring an action for an injunction under this section. (**subd. (e)**)

Misdemeanor; one year and/or \$1,000 fine. (**subd. (f)**)

Subd (a) remains a felony (wobbler) to manufacture, sell, offer for sale, furnish, transport, import, etc., deceptive identification documents.

P.C. § 530.5 (Amended): *Personal Identifying Information of Military Personnel:*

New **subd (e)** makes it a misdemeanor to acquire, transfer, or retain possession of the personal identifying information, with the intent to defraud, of a person who has been deployed to a location outside of California to serve temporary military duty during a period when a presidential executive order specifies that the United States is engaged in combat or homeland defense.

Misdemeanor; One year in jail and/or \$1,500 fine.

P.C. § 532b (Amended): *Impersonating a Veteran or Member of the Armed Forces:*

Subd. (b) provides that it is a misdemeanor to falsely claim or present one's self to be a veteran or member of the Armed Forces of the United States, with the intent to defraud.

Misdemeanor; 6 months and/or \$1,000 fine.

The section specifically *excludes* face-to-face solicitations involving less than \$10.00.

Juveniles:

W&I § 222 (Amended): *Shackling Pregnant Wards:*

Shackling of a pregnant juvenile ward during labor, transportation to a hospital, delivery, and recovery is prohibited unless deemed necessary for the safety and security of the ward, the hospital staff, and the public. Such a person must be transported to the hospital for the purpose of childbirth in the least restrictive way possible, consistent with the security needs of the ward.

See also **W&I § 1774 (Amended)**, to the same effect, and adding that the minor is also entitled to the right to prenatal care, prenatal vitamins and childbirth education.

W&I §§ 710 to 714 (New): *Mental Health Evaluations:*

New statutes attempt to create a unified statutory scheme for the evaluation of minors in the juvenile system who have severe emotional disturbances or development disabilities with provisions including:

- A Court referral for a mental health evaluation when it appears that the minor has a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability.
- A requirement that the evaluation be done by a licensed mental health professional within three court days of the referral if the minor is in custody.
- A requirement that a written report be made to the Court not later than five days after examination.
- Provisions for the disposition of a minor found to have a serious mental disorder, is seriously disturbed, or has a developmental disability.

- Incorporation of the treatment plan into the minor’s disposition order, taking into account the protection of the public.

Notary Publics:

Gov’t. Code § 8225 (Amended): *Improper Influence of a Notary Public:*

The provisions making it a misdemeanor to solicit, coerce or influence a notary public to perform an improper act is expanded to include any act required of a notary public under **Gov’t. Code § 8206**.

Gov’t. Code § 8206 requires notaries to keep a sequential journal of all official acts performed as a notary public in a locked and secured area under the exclusive control of the notary. It also sets out the detailed information required to be noted in the journal for every notarized document.

Misdemeanor: 6 months and/or \$1,000.

Gov’t. Code § 8228.1 (New): *Duties of a Notary Public:*

Makes it a misdemeanor for a notary public to willfully fail to perform any duty required of a notary under **Gov’t. Code § 8206**, or willfully fail to keep the seal of the notary under the direct and exclusive control of the notary, or to surrender the notary seal to any unauthorized person.

Misdemeanor: 6 months and/or \$1,000.

P.C. § 470 (Amended): *Forgery:*

Amendment expands the list of acts that constitute forgery by adding two acts that are related to notaries public: (1) Falsifying the acknowledgment of a notary public; and (2) a notary public issuing an acknowledgement knowing it to be false.

Felony (wobbler); 16 months, two or three years, \$10,000 fine, or one year in county jail. (**P.C. § 473**)

Peace Officers’ and Prosecutors’ Rights and Powers:

Gov’t. Code § 6254.21 (Amended): *Publication of Address or Phone Number:*

New **subd. (c)** prohibits the public posting or public displaying on the Internet of the home address or telephone number of an elected or appointed official by “*any person, business or association,*” if that elected or appointed official has made a written demand to that person, business

or association not to do so. A written demand is good for four years, even if the person is no longer in office.

“*Publicly post*” and “*publicly display*” is defined as intentionally communicating or otherwise making available to the general public.

An “*elected or appointed official*” includes, but is not limited to, those listed in **Gov’t. Code § 6254.24**, which includes active and retired peace officers (per **P.C. §§ 830 & 830.1**) (**subd. (a)**), and attorneys employed by the State Department of Justice, state and county public defender’s offices, and county district attorney’s offices (**subd. (d)**) and city attorneys (**subd. (e)**), plus judges, commissioners, members of the Legislature, and many others as listed in the section. (see **Gov’t. Code § 6254.21(f)**)

The elected or appointed official has civil recourse by bringing an action for injunctive or declarative relief.

New **subd. (d)** prohibits any person, business, or association from soliciting, selling, or trading on the Internet the home address or telephone number of an elected or appointed official (see above) with the intent to cause imminent great bodily harm to the official or to any person residing at the official’s home address.

The elected or appointed official has civil recourse by bringing an action for damages of from \$4,000 to three times the amount of actual damages.

Note: **Gov’t. Code § 6254.21(a) & (b)** continue to prohibit the posting by a “*state or local agency*” the home address or telephone number of an elected or appointed official (see above) without first obtaining the written permission of the official, and provides for misdemeanor punishment if done so with the intent to cause imminent great bodily harm. If bodily harm does result, the offense is a felony (wobbler). “*State or local agency*” is not defined.

Gov’t. Code § 26602 (Amended): *Sheriff’s Power to Execute Orders of a Local Health Officer:*

Authorizes *sheriffs* to execute all orders of a *local* health officer for the purpose of preventing the spread of a contagious or communicable disease.

Gov't. Code § 41601 (Amended): *Police Chief's Power to Execute Orders of a Local Health Officer:*

Authorizes *police chiefs* to execute all orders of a *local* health officer for the purpose of preventing the spread of a contagious or communicable disease.

H&S § 100106 (New): *Sheriff's and Peace Officer's Power to Enforce Orders of a the State Department of Health:*

Authorizes *sheriffs and all peace officers* to *enforce* all orders of the *State Department of Health* for the purpose of preventing the spread of a contagious or communicable disease.

H&S § 101029 (New): *Sheriff's and Peace Officer's Power to Enforce Orders of a Local Health Officer:*

Authorizes *sheriffs and all peace officers* to *enforce* all orders of a *local* health officer for the purpose of preventing the spread of a contagious or communicable disease.

P.C. § 664 (Amended): *Attempted Murder of a Peace Officer:*

Amendment to **subd. (e)** adds custodial officers (per **P.C. §§ 831(a)** or **831.5(a)**) to the list of peace officer and firefighter victims for which the punishment for attempted murder is life with the possibility of parole.

Subd. (f) is also amended to clarify that an allegation that the attempted murder was willful, deliberate and premeditated must be charged as well as admitted or found true in order to impose a sentence of 15 years to life.

P.C. § 830.11 (Amended): *Department of Food and Agriculture Investigators:*

Amendment specifies that although not classified as a peace officer, investigators, investigator supervisors and investigator managers for the State Department of Food and Agriculture may exercise the powers of arrest of a peace officer, and may serve search warrants, while acting within the course and scope of their employment, provided they first complete a course in the exercise of these powers pursuant to **P.C. § 832**.

Prisoner's Rights and Restrictions:

P.C. § 851.5 (Amended): *Right to Telephone Calls:*

An arrestee who is identified during the booking process as a custodial parent of a minor child is entitled to make *two* additional (for a total of five) local telephone calls for the purpose of arranging child care.

P.C. §§ 2635 to 2643 (New): *The Sexual Abuse in Detention Elimination Act:*

Series of new statutes designed to deal with the problem of nonconsensual sexual contact among inmates and wards, and custodial sexual misconduct include the following provisions:

- Requiring that inmate classification and housing assignment procedures take into account risk factors that can lead to inmates and wards becoming the target of sexual victimization or being sexually aggressive to others.
- Requiring intervention when an inmate or ward appears to be the target of sexual harassment or intimidation.
- Establishing procedures for using forensic rape kits, gathering relevant evidence, and preservation of physical and testimonial evidence.
- Discouraging the attitude that inmates cannot provide reliable information.
- Requiring the termination of an employee who sexually abuses an inmate or ward.
- The keeping of statistics.
- Creating the Office of the Sexual Abuse in Detention Elimination Ombudsperson.

P.C. § 3419 (Amended): *Community Treatment Programs and Pregnant State Prisoners:*

Community treatment programs for pregnant state prison inmates must include prenatal care, access to prenatal vitamins, childbirth education, and infant care.

P.C. § 3423 (Amended): *Shackling of Pregnant State Prison Inmates:*

Shackling of pregnant state prison inmates during labor, transportation to a hospital, delivery, and recovery is prohibited unless deemed necessary for the safety and security of the inmate, the hospital staff, and the public.

See also **P.C. § 5007.7 (New)**, to the same effect, requiring also that a pregnant prison inmate be transported to a hospital for purposes of child

birth in the least restrictive way possible, consistent with the security needs of the inmate, and that she not be shackled while in labor by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, and the public.

P.C. § 3424 (New): *Prenatal Health Care for Pregnant Inmates:*

Requires that state prison inmates who are pregnant but *not* eligible for a community treatment program have access to complete prenatal health care based upon minimum standards established by the Department of Corrections and Rehabilitation.

See also **P.C. § 6030 (Amended)** for further requirements for the benefit of pregnant state prison inmates.

P.C. § 4011.10 (New): *Medical Care for Jail Inmates:*

Among other provisions in this new section related to the procedures for providing health care services to county jail inmates, **subd. (c)** mandates that a county sheriff or police chief shall *not* request the release of an inmate from custody for the purpose of allowing the inmate to seek medical care at a hospital, and then immediately rearrest the same individual upon discharge from the hospital, unless the hospital determines this action would enable it to bill and collect from a third-party payment source.

P.C. § 4017.1 (Amended): *County Jail Prisoner Access to Personal Identification Information:*

Expanded statute prohibits *all* jail inmates, work furlough participants, and defendants performing community service in lieu of a fine or custody (and not just certain inmates as the section was previously written) from doing work that provides access to the personal information of private individuals, such as addresses, telephone numbers, checking account numbers, PINs, social security numbers, etc.

P.C. § 5071 (Amended): *State Prisoner Access to Personal Identification Information:*

Expanded statute prohibits *all* prison inmates (and not just certain inmates as the section was previously written) from doing work that provides access to the personal information of private individuals, such as addresses, telephone numbers, checking account numbers, PINs, social security numbers, etc.

Probation and Parole:

P.C. §§ 1210.7 to 1210.16 (New): *Continuous Electronic Monitoring of Probations:*

Series of new statutes provide for the authority (and the procedures to be used) of a county probation department to use continuous electronic monitoring, including global positioning system technology, to monitor the whereabouts of probationers on a 24-hour basis. A probationer is subject to arrest by a probation officer where the probation officer has “*reasonable cause*” (i.e., “*probable cause*”) to believe that a probationer is not complying with the rules or conditions of continuous electronic monitoring.

The primary objective of continuous electronic monitoring is the “enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation.”

P.C. § 3003 (Amended): *Child Molest Parole; Geographical Placement:*

Addition of **subd. (g)(2)** forbids the placement of a parolee who was convicted of **P.C. §§ 288** (child molest) or **288.5** (continuous sexual abuse of a child), and who is determined by the Department of Corrections and Rehabilitation to pose a high risk to the public, from being placed or residing for the duration of his or her parole period, within *one-half a mile* of any public or private school; K through 12th grade.

Note: **Subd. (g)(1)** already forbids the placement of such a parolee, but without a finding of dangerousness by the Dept. of Corrections, from being placed within *one-quarter a mile* from a public or private school; K through 8th grade.

P.C. §§ 1310 to 1310.9 (New): *Continuous Electronic Monitoring of Parolees:*

Series of new statutes provide for the authority (and the procedures to be used) of the state Department of Corrections and Rehabilitation to use continuous electronic monitoring, including global positioning system technology, to monitor the whereabouts of probationers on a 24-hour basis. A parolee is subject to a warrantless arrest by a parole officer where the parole officer has “*reasonable cause*” (i.e., “*probable cause*”) to believe that a parolee is not complying with the rules or conditions of continuous electronic monitoring.

The primary objective of continuous electronic monitoring is the “enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole.”

Railroad Trains:

P.C. § 218.1 (New): *Obstructions on Railroad Tracks:*

Unlawfully and with gross negligence, placing an obstruction on or near any railroad tracks, proximately resulting in either the damaging or the derailling of any passenger, freight, or other train, or injuring a rail passenger or employee.

Felony (wobbler); 2, 3 or 4 years; or one year and/or \$2,500 fine.

Restraining and Protective Orders:

Code of Civ. Proc. § 527.8 (Amended): *Workplace Protective Orders:*

The section is amended to add an alternative method of serving a workplace violence protective order:

- Requires an officer called to the scene of an incident of unlawful violence or a credible threat of violence to serve an existing protective order at the request of the plaintiff (i.e., the petitioning employer), whether or not the defendant is taken into custody.
- Requires the plaintiff to provide the officer with an endorsed copy of the order and a “*proof of service*” that the officer must complete and forward to the court.
- Requires the officer to attempt to verify the existence of the order if the protected person or the plaintiff cannot produce an endorsed copy of the order.
- Requires the officer to immediately notify the defendant of the terms of the order and to obtain his or her current address, if the order has not been previously served.
- Requires the officer to enforce the order provided, *and only if*, the defendant has had prior verbal notice of the terms and conditions of the order.

The officer’s verbal notice of the terms of the order shall constitute sufficient notice for purposes of this section and for **P.C. § 273.6** (restraining order violation) and **P.C. § 12021(g)** (possessing, purchasing, or receiving a firearm knowing of a restraining order prohibition.)

The section further requires the plaintiff to mail an endorsed copy of the order to the address defendant provided to the officer within one business day of the incident of unlawful violence or credible threat of violence.

Code of Civ. Proc. § 527.10 (New): *Protected Party's Address:*

Requires a court to prohibit a party enjoined pursuant to CCP §§ 527.6 (harassment protective orders) or 527.8 (workplace protective orders) from attempting to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Code of Civ. Proc. § 1218 (Amended): *Contempt Orders:*

Authorizes a district attorney or city attorney to initiate and pursue a court action for contempt against a party who fails to comply with a domestic violence order issued pursuant to the Domestic Violence Protection Act (Fam. Code §§ 6200-6409).

Fam. Code § 6252.5 (New): *Protected Party's Address:*

Requires a court to prohibit a party enjoined pursuant to an “*emergency protective order*” from attempting to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Fam. Code § 6322.7 (New): *Protected Party's Address in a Domestic Violence Case:*

Requires a court to prohibit a party enjoined pursuant to a “*protective order*” or a “*domestic violence prevention order*” from attempting to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Welf. & Inst. Code § 213.7 (New): *Protected Party's Address in a Juvenile Delinquency Case:*

Requires a court to prohibit a party enjoined pursuant to a specified protective order in a juvenile delinquency case from attempting to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Welf. & Inst. Code § 15657.03 (Amended): *Service of an Elder or Dependent Adult Protective Order:*

Requires a law enforcement officer who is serving an elder or dependent adult protective order to tell the defendant where a written copy of the order can be obtained. The section further clarifies that a law enforcement officer's verbal notice of the terms of the order constitutes service of the order.

Welf. & Inst. Code § 15657.04 (New): *Protected Party's Address in an Adult Abuse Case:*

Requires a court to prohibit a party enjoined pursuant to an "*elder or dependent adult protective order*" from attempting to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Fam. Code § 6345 (Amended): *Duration of Domestic Violence Protective Orders:*

Amendment increases the maximum duration of "*domestic violence protective orders*" (e.g., residence exclusion orders, stay-away orders, personal conduct orders), and the renewal period of these orders, from three (3) to five (5) years.

Fam. Code § 6383 (Amended): *Notice and Enforcement of Domestic Violence Restraining Orders:*

Requires a law enforcement officer who is serving a "*domestic violence protective order*" to tell the defendant where a written copy of the order can be obtained. The amended section also requires the officer to enforce the order, when lawful to do so, and clarifies that verbal notice of the terms of the order by a law enforcement officer constitutes service of the order.

P.C. § 136.2 (Amended): *Defendant's Contacts with a Victim of a Violent Crime:*

Amended section gives a court the authority to issue a protective order protecting a victim of violent crime from *all* contact with a defendant, eliminating the prior requirement that such contact be done with the intent to annoy, harass, threaten, or commit acts of violence.

Where the court does *not* order a “*no-contact*” or “*no-contact with specified intent*” order in a domestic violence case, the court *must*, on its own motion, “*consider*” issuing a protective order prohibiting the defendant from owning, possessing, purchasing, receiving, or attempting same, a firearm, and to relinquish any firearms he or she possesses, and to admonish defendant of the provisions of **P.C. § 12021(g)** (purchasing, etc., a firearm in violation of a court order).

An emergency protective order issued pursuant to **Fam. Code §§ 6250 to 6257** (domestic violence) or **P.C. § 646.91** (stalking) have precedence in enforcement over any other restraining or protective order, *if* all three of the following requirements are met:

- The emergency protective order protects one or more persons who are already protected under another restraining or protective order;
- The emergency protective order restrains the same person who is restrained under the other order; and
- The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other order.

P.C. § 136.3 (New): *Protected Party’s Address in a “No Communication and/or No Contact Order” Case:*

Requires a court to prohibit a party enjoined pursuant to a “*no communication and/or no contact order*” from attempting to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

P.C. § 646.91A (New): *Protected Party’s Address in a “Stalking” Case:*

Requires a court to prohibit a party enjoined pursuant to a “*Stalking*” injunction from attempting to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian, unless there is good cause not to make the order.

The Judicial Council is to create forms necessary to effectuate this section.

Search Warrants:

P.C. § 1529 (Amended): *Form of a Search Warrant:*

The section is amended by substituting “*peace officer*” for “*sheriff, marshal, or police officer,*” as the person to whom the service of a search warrant is directed, thus clarifying that district attorney investigators (who are peace officers) have the authority to serve search warrants.

Sex Offenses:

P.C. § 285 (Amended): *Incest:*

The incest statute is amended to limit the commission of fornication or adultery to a victim who is 14 years of age or older, thus eliminating incest as a lesser included offense to a child molest of a victim under the age of 14.

P.C. § 290 (Amended): *Registered Sex Offenders:*

A number of minor, but substantive, changes were made to the sex offender registration statute:

- A registered sex offender with more than one residence must register at each regardless of the number of “*days*” or nights he or she regularly resides there (as opposed to just “*nights*”).
- A transient who moves out of state must report the move in person (as opposed to by mail).
- A transient who moves but does not yet know the new address must register the proposed move anyway, in person, with the eventual new location, when known, then being mailed to the agency where the registrant was previously registered by *certified or registered mail* within five working days of the move.
- A “*residence*” has been redefined, eliminating the need to prove that the registrant stayed there for over five days.

P.C. § 290.02 (New [Effective 10/04/05]): *Restrictions on Publicly Funded Erectile Dysfunction Drugs or Therapies:*

New section authorizes state governmental entities that are responsible for authorizing or providing publicly funded prescription erectile dysfunction drugs or therapies to use the sex offender Internet database (see **P.C. § 290.46**, below) to prevent the use of those drugs or therapies by convicted sex offenders. The section also establishes a requirement for DOJ to

identify the names of persons required to register as a sex offender upon request from such state governmental entity.

See also **W&I § 14133.225 (New)**, prohibiting the state Department of Health Services from providing or paying for any prescription erectile dysfunction drug or therapy for any person required to register as a sex offender (per **P.C. § 290**), except as required by federal law.

P.C. § 290.1 (Deleted and Moved [Effective 10/07/05]): *Effects of a P.C. § 1203.4 dismissal Upon Sex Offender Registration Requirements:*

The provision for dismissing a criminal complaint after conviction, pursuant to **P.C. § 1203.4**, noting that such dismissal *does not* relieve a person of his or her **P.C. § 290** sex offender registration requirements (except as provided in **P.C. § 290.5**) is moved to **P.C. § 290(a)(2)(F)**.

P.C. § 290.4 (Amended [Effective 10/07/05]): *Registered Sex Offender Information to the Public:*

Eliminates the “900” telephone number and the CD-ROM for the public to get access to registered sex offender information. Instead, DOJ is mandated to operate a service through which members of the public may provide a list of at least six persons on a form approved by DOJ, inquiring whether any of them is a sex registrant.

Note: A DOJ-operated Web site is also authorized pursuant to **P.C. § 209.45**, below. See www.meganslaw.ca.gov.

P.C. § 290.45 (Amended [Effective 10/07/05]): *Registered Sex Offender Information that May be Provided to the Public:*

The section has expanded the circumstances under which law enforcement may release registered sex offender information to the public, eliminating the requirement that only persons or organizations the offender was likely to encounter could be warned. Now, law enforcement is empowered to provide information to the public by whatever means the agency deems appropriate and whenever necessary to ensure public safety based upon information available to the agency concerning a specific sex offender.

P.C. § 290.46 (Amended [Effective 10/07/05]): *Release of Registered Sex Offender Information:*

A number of substantive changes were made to this section:

- Sex related kidnappings, per **P.C. §§ 207(b) & 209(b)**, triggering the public disclosure of sex offender information, were expanded

to include those committed (under either section) with the intent to violate **P.C. §§ 261** (rape), **286** (sodomy), **288** (child molest), **288a** (oral copulation), or **289** (rape by foreign object).

- The county of residence in which a person is registered as a transient is added to the information made available to the public.
- Narrows the class of sex offenders eligible for exclusion from a law enforcement Web site, sets forth the documentation the offender must provide in order to be excluded, and changes other exclusion criteria.
- New **subd. (g)** authorizes a designated law enforcement entity (i.e., district attorney, Department of Justice, Department of Corrections, Department of the Youth Authority, and every state or local agency authorized to investigate or prosecute law violators) to operate its own Internet Web site to make information about sex registrants available to the public if the entity determines that public disclosure is necessary to ensure public safety. The offender's address is not subject to disclosure unless it is also on DOJ's Web site.
- New **subd. (m)** provides that the public notification provisions are applicable to every person described in **P.C. § 290.46** regardless of when the registerable crimes were committed.

Note: Pursuant to **subd. (c)(1)**, DOJ was to make available registered sex offender information over the Internet as of 7/1/05. That task has been accomplished: See www.meganslaw.ca.gov.

P.C. § 801.1 (Amended): *Statute of Limitations in Sex Cases:*

Authorizes the prosecution of specified sex offenses (see below) committed against a victim under the age of 18, to commence any time before the victim's 28th birthday (while retaining the 10-year statute of limitations for all other felony offenses described in **P.C. § 290(a)(2)(A)**).

Note: This amendment has the effect of eliminating the “*substantial sexual conduct*” and “*corroboration*” requirements of former **P.C. § 803(g)** (now **subd. (f)**; see below) in some circumstances.

The “*specified sex offenses*” listed in the section are **P.C. §§ 261** (rape), **286** (sodomy), **288** (child molest), **288.5** (continuous sexual abuse of a child), **288a** (oral copulation), **289** (rape by foreign object), or former **289.5** (former rape by foreign object).

P.C. 803 (Amended): *Statute of Limitations in Sex Cases:*

A number of substantive changes were made to this section:

- “*Money laundering*,” per **P.C. § 186.10**, is added (Effective 03/01/05) to the list of crimes for which the statute of limitations commences upon discovery of the offense.
- **Subd. (f)** (providing for the filing of a criminal complaint within one year of the date of a report by a child under age 18 that the child was the victim of a specified sex crime, if the defendant committed at least one specified sex crime against the same victim within the limitation period specified in **P.C. §§ 800, 801, or 801**) *is deleted*.

Note: See **P.C. § 801.1**, above, which fills the gap left by the deletion of this subdivision.

- **Subd. (g)** (providing for the filing of a criminal complaint within one year of the date of a report to a law enforcement agency by a person of any age alleging that he or she, while under age 18, was the victim of a specified sex crime) *is moved* to new **subd. (f)**.
- **Subd. (h)** (providing for the filing of a criminal complaint within one year of the date which the identity of the suspect is conclusively established by DNA testing) *is moved* to new **subd. (g)**.

P.C. § 11160.1 (Amended): *Forensic Medical Sexual Assault Examination of a Suspect:*

A health practitioner who performs a forensic medical examination on a person in the custody of law enforcement from whom evidence is sought for a sexual assault investigation, must prepare a written report and release the report upon an oral or written request to a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, or coroner.

Release of this report to defense counsel or another third party is permitted *only* through the discovery of documents in the possession of a prosecuting agency or by a lawful court order authorizing such release.

Note: The stated legislative purpose of this section was to resolve the issue of the health practitioner’s potential civil liability under the federal Health Insurance Portability and Accountability Act (“HIPAA”).

Subpoenas:

Code of Civ. Proc. § 415.21 (Amended): *Service of Subpoenas:*

Adds the “*service of a subpoena*” as a reason (in addition to the “*lawful service of process*”) for which a law enforcement officer or registered

process server must be granted access to a gated community when staffed by a guard or other security personnel.

Code of Civ. Proc. §§ 1992 (Amended), 1993 (Repealed and Added), 1993.1 (New), 1993.2 (New), and 1994 (Amended): *Warrants for Failure to Appear:*

Court procedures for handling “*failure to appear*” situations, requiring, as an alternative to issuing a contempt of court warrant, that the court first issue a “*failure to appear notice*” before issuing a “*failure to appear warrant*.” An exception, allowing for an immediate warrant of arrest, is where the missing witness is “*material*” to the case and urgency dictates the person’s immediate appearance.

Upon issuance of a “*failure to appear warrant*,” if permitted by the warrant, the sheriff may release the person upon his or her promise to appear, as provided for in **CCP § 1993.1 (New)**.

CCP § 1993.2 (New) permits the court to impose a \$1,000 civil assessment if a person fails to appear after being released on a promise to appear.

Trespass:

P.C. § 602(u) (Amended): *Unauthorized Entry into Passenger Operations Area of Airport or Passenger Vessel Terminal:*

Adds the operations area of a passenger vessel terminal to that of an airport where it is illegal to enter without authorization.

Misdemeanor; 6 months and/or \$1,000.

P.C. § 602(v) (Amended): *Bypassing Screening to Sterile Area of an Airport or Passenger Vessel Terminal:*

Adds the sterile area of a passenger vessel terminal to that of an airport where it is illegal to enter while intentionally avoiding submission to the screening and inspection of one’s person and property.

Misdemeanor; 6 months and/or \$1,000.

P.C. § 602(y) (New): *Bypassing Screening in City, County or State Buildings:*

Makes it a misdemeanor to intentionally avoid submitting to the screening of one’s person and property when entering a city, county, or state building, including a courthouse, if entrances to the building or courthouse has been posted with a notice that prosecution may result.

Misdemeanor; 6 months and/or \$1,000 fine.

Vehicle Code Provisions:

V.C. § 473 (New): *Pocket Bikes:*

Defines a “*pocket bike*” as a two-wheeled motorized device that has a seat or saddle for the rider, and that is not designed or manufactured for highway use.

V.C. § 9955 (New) requires a manufacturer of a pocket bike to place a sticker on the bike with a disclosure stating that the bike is prohibited from being operated on a sidewalk, roadway, highway, bikeway, bicycle path, equestrian trail, hiking trail, or on public lands open to off-highway motor vehicle use.

V.C. § 21720 (New) prohibits a pocket bike from being operated on a sidewalk, roadway, highway, bikeway, bicycle path, equestrian trail, hiking trail, or on public lands open to off-highway motor vehicle use.

Infraction; \$250 fine.

V.C. § 21721 (New) provides for a peace officer’s authority, upon citing for a violation of **V.C. § 21720**, to remove and seize the pocket bike for a minimum of 48 hours, and makes the violator responsible for the costs of such removal and seizure.

V.C. § 4467 (Amended): *Replacement License Plates for Specified Victims:*

Adds victims of rape (per **P.C. §§ 261, 262**) and sexual battery (per **P.C. § 243.4** and **Civ. Code § 1708.5**) to those victims (domestic violence and stalking) who may obtain a new set of license plates from the Department of Motor Vehicles upon presenting a police report or documentation that the victim has sought assistance from a rape crisis center, or an active protective order.

V.C. § 12804.9 (Amended): *Operator’s License for Motorized Scooters:*

Amendment adds the holder of a Class M1 or M2 motorcycle license to those who may operate a motorized scooter on a highway.

V.C. § 12814.6 (Amended): *Provisional Driver’s Licenses:*

The holder of a “*provisional license*” (i.e., 16 and 17-year old minors) is prohibited from driving between the hours of 11:00 p.m. (extended from

12:00 midnight) to 5:00 a.m., without supervision by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor.

The length of time this restriction is in effect is the first 12 months (extended from the first 6 months) after issuance of the provisional license.

The holder of a provisional license is prohibited from transporting passengers who are under the age of 20 without supervision (as above) for the first year (extended from the first 6 months) after issuance of the license.

V.C. § 14602.1 (Amended): *Vehicle Pursuits*:

Amended section adds to the information that must be provided by a law enforcement agency to the California Highway Patrol (for the CHP's annual report to the Legislature) within 30 days of a motor vehicle pursuit. Now, with the additions, the following information must be provided:

- Whether any person involved in the pursuit or subsequent arrest was injured.
- The nature of the injury, if any.
- The violations that caused the pursuit to be initiated.
- The identity of the officers involved in the pursuit.
- The means or methods used to stop the suspect being pursued.
- The charges filed by the district attorney.
- The conditions of the pursuit, including duration, mileage, number of peace officers involved, maximum number of law enforcement vehicles involved, time of day, weather conditions, and maximum speeds. **(New)**
- Whether a pursuit resulted in a collision and an injury or fatality to an uninvolved third party. **(New)**
- Whether the pursuit involved multiple law enforcement agencies. **(New)**
- How the pursuit was terminated. **(New)**

See also **V.C. § 17004.7 (Amended)**, which, in order for a law enforcement agency to qualify for immunity from civil liability for an injury or death of a person or damage to property resulting from the collision of a vehicle driven by a suspected law violator being pursued in a motor vehicle by a peace officer, the agency must:

- (1) Have adopted and promulgated a written policy on vehicle pursuits (already a requirement); *and*

- (2) Provide regular and periodic (i.e., annual) vehicle pursuit training (New, effective 07/01/06).

A vehicle pursuit policy, pursuant to **section 17004.7**, must include the following:

- The circumstances under which a pursuit should be initiated, balancing the suspected offense and need for capture against the risks to peace officers, innocent motorists, and others.
- The total number of law enforcement vehicles authorized to participate in a pursuit, and a description of the role of each peace officer and supervisor.
- The communication procedures to be followed during a pursuit.
- The role of the supervisor in managing and controlling a pursuit.
- Driving tactics and the circumstances under which the tactics may be appropriate.
- Authorized pursuit intervention tactics, such as blocking, ramming, boxing, and roadblock procedures.
- The factors to be considered by a peace officer and supervisor in determining speeds throughout the pursuit.
- The role of air support.
- When to terminate or discontinue a pursuit.
- The procedures for apprehending an offender following a pursuit.
- The effective coordination, management, and control of interjurisdictional pursuits.
- Reporting to CHP and post-pursuit analysis as required by **V.C. § 14602.1**.

V.C. § 14602.6 (Amended): *Vehicle Impounds; Driving in Violation of an Ignition Interlock Device Requirement:*

The driving of a motor vehicle in violation of a restriction requiring the use of an ignition interlock device is added to those situations (i.e., driving on a suspended or revoked license, or driving without ever having been issued a license) when a peace officer has authority to impound a motor vehicle.

V.C. § 14602.8 (New): *Vehicle Impounds; Driving While Under the Influence with Priors:*

The driving of a motor vehicle while under the influence of alcohol, with a blood alcohol level of .10% or more, or when the driver refuses to take a chemical test, provides authority for a peace officer to do an immediate impound of the vehicle *if* the driver has been convicted within the previous ten years of **V.C. §§ 23140** (driving while under the age of 21 with a blood alcohol level of .05% or more), **23152** (driving while under the

influence) or **23153** (driving while under the influence and causing injury).

Impoundment is for five days if the person has had one prior conviction, and 15 days with two or more prior convictions.

A post-impound storage hearing and other procedural requirements are also specified.

V.C. § 23109 (Amended): *Speed Contests:*

New **subd. (f)(3)** provides for felony (wobbler) punishment for a speed contest violation within five years of a prior violation for which the defendant was convicted, where serious bodily injury (as defined in **P.C. § 243(f)(4)**) occurs to a person other than the driver.

Felony (wobbler); 16 months, 2 or 3 years; or 30 days to one year in jail and a fine of between \$500 and \$1,000.

V.C. § 24602 (Amended): *Height of Rear Red Fog Tail Lamps:*

The minimum height for red fog lamps on the rear of a vehicle is lowered from 15 inches to 12 inches.

Infraction; \$250 fine.

V.C. § 27000 (Amended): *Audible Backup Alarms or Braking Systems on Garbage Trucks:*

All refuse or garbage trucks must be equipped with an automatic backup audible alarm that sounds immediately upon backing, or an automatic backup device that immediately applies the brakes upon contact with an obstruction to the rear (eliminating the less stringent requirements that were previously required).

Refuse or garbage trucks purchased after 01/01/2010 must be equipped with backup cameras.

Infraction; \$150 for first offense, \$200 for second offense within a year, and \$250 for third or subsequent offense within a year. (**V.C. § 42001.20 (New)**)

V.C. § 38301.3 (New): *Motor Vehicles in Designated Wilderness Areas:*

New offense for violating any state or federal regulation prohibiting the entry of a motor vehicle into an area designated as a state or federal wilderness area.

First offense: Infraction; \$150 fine.

Second offense within seven years: Infraction; \$225 fine.

Third offense within seven years: Misdemeanor; 90 days, \$300 fine.

Vehicle subject to a 30 day impound upon court order.