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## Crimes

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# Crimes

## Crimes; assault and battery—parks

Penal Code §§ 241.2, 243.2 (amended).

SB 541 (Deddeh); 1989 STAT. Ch. 394

Sponsor: City of San Diego

Support: Alliance of Trades and Maintenance; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association

Opposition: California Attorneys for Criminal Justice; California Public Defenders' Association

Existing law doubles the penalty for an assault or a battery when the crime occurs on school<sup>1</sup> property.<sup>2</sup> Chapter 394 doubles the penalty for an assault or battery that occurs at a public park.<sup>3</sup> However, Chapter 394 makes an exception for parks used for professional sports or commercial events.<sup>4</sup>

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1. See CAL. PENAL CODE § 241.2(b) (West 1988) (amended by 1989 Cal. Stat. ch. 394, sec. 1, at \_\_\_\_ (definition of school)).

2. *Id.* §§ 241.2(a) (amended by 1989 Cal. Stat. ch. 394, sec. 1, at \_\_\_\_ (assault at a school or park incurs a penalty not exceeding \$2000, one year imprisonment, or both), 243.2(a) (amended by 1989 Cal. Stat. ch. 394, sec. 2, at \_\_\_\_ (battery at a school or park incurs a penalty not exceeding \$2000, one year imprisonment, or both)). See *id.* §§ 241 (West Supp. 1989) (assault incurs a penalty of not more than \$1000, six months imprisonment, or both), 243 (battery incurs a maximum penalty of \$1000 and six months imprisonment).

3. 1989 Cal. Stat. ch. 394, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 241.2). See *id.* sec. 2, at \_\_\_\_ (amending CAL. PENAL CODE § 243.2) (definition of park).

4. *Id.*

## Crimes; attempted murder—violent felony

Penal Code § 667.5 (amended).

AB 526 (Murray); 1989 STAT. Ch. 1012

Support: California State Department of Justice; Legislative Oversight Committee; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association  
Opposition: California Public Defenders' Association; California Attorneys for Criminal Justice

Under existing law, sentencing for a violent felony<sup>1</sup> is enhanced three years for each prior prison term served by a defendant when the previous felony was also a violent felony.<sup>2</sup> Chapter 1012 adds attempted murder to the list of violent felonies.<sup>3</sup>

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1. See CAL. PENAL CODE § 667.5(c)(1)-(12) (Deering Supp. 1989) (amended by 1989 Cal. Stat. ch. 1012, sec. 1, at \_\_\_\_ (listing violent felonies). Violent felonies include murder or voluntary manslaughter, mayhem, rape, certain types of sodomy, certain types of oral copulation, lewd acts on a child under fourteen years old, any felony punishable by death or life imprisonment, any felony in which the defendant inflicts great bodily injury or uses a firearm, robbery in an inhabited dwelling when the defendant used a deadly or dangerous weapon, arson, and certain types of penetration by a foreign object. *Id.*

2. *Id.* § 667.5(a) (Deering Supp. 1989). The enhancement is one year for nonviolent felony offenses. *Id.* § 667.5(b) (Deering Supp. 1989). See *id.* § 17(a) (Deering 1988) (definition of felony).

3. 1989 Cal. Stat. ch. 1012, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 667.5(c)). See CAL. PENAL CODE §§ 21(a) (listing elements of attempt), 187 (Deering 1985) (definition of murder).

## Crimes; blood-alcohol concentration

Vehicle Code §§ 1666, 13954, 23152, 23153, 23155 (amended).

SB 408 (Leonard); 1989 STAT. CH. 479

Support: California Medical Association; Peace Officers Research Association of California; Mothers Against Drunk Driving (MADD); American Medical Association; California Organization of Police and Sheriffs; Committee on Moral Concerns; California Council on Alcohol Problems; California Association of Drinking Driver Treatment Programs; Starting Point; Yolo County Municipal Court; Alcohol Services, City of Sonoma; California Highway Patrol; Seventh Day Adventists; California Association of Highway Patrolmen; Loma Linda University; Association for the Advancement of Automotive Medicine; San Bernardino County Sheriffs Department; California PTA; Office of Traffic Safety; California State Automobile Association; California Judges Association.

Opposition: California Attorneys for Criminal Justice.

Under existing law, a person is prohibited from driving a vehicle<sup>1</sup> if the person's blood-alcohol level is .10% or more.<sup>2</sup> Chapter 479 amends existing law by prohibiting a person from driving a vehicle with a blood-alcohol level of .08% or more.<sup>3</sup>

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1. See CAL. VEH. CODE § 670 (West 1987) (definition of vehicle).

2. *Id.* § 23152(b) (West 1985) (amended by 1989 Cal. Stat. ch. 479, sec. 3, at \_\_\_\_). The .10% figure is based on weight, by grams of alcohol per 100 milliliters of blood. *Id.* In 1988, 2510 alcohol-related deaths and 65,033 alcohol-related injuries occurred on California's highways. Sacramento Bee, July 28, 1989, at A32, col. 1.

3. 1989 Cal. Stat. ch. 479, sec. 3, at \_\_\_\_ (amending CAL. VEH. CODE § 23152). Compare *id.* with ME. REV. STAT. ANN. tit. 29, § 1311-A (West 1988), OR. REV. STAT. § 813.010 (1987), and UTAH CODE ANN. § 41-6-44 (1953) (driving with a blood-alcohol level of .08% or more is illegal).

## Crimes; burglary or robbery of a vessel

Penal Code §§ 212.5, 459, 460 (amended).

AB 460 (Elder); 1989 STAT. Ch. 361

AB 162 (Felando); 1989 STAT. Ch. 357

Chapter 357 makes burglary<sup>1</sup> of an inhabited<sup>2</sup> boat, ship, or other vessel<sup>3</sup> first degree burglary.<sup>4</sup> Chapter 361 makes a robbery<sup>5</sup> committed aboard a vessel first degree robbery.<sup>6</sup>

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1. See CAL. PENAL CODE § 459 (West 1988) (amended by 1989 Cal. Stat. ch. 357, sec. 1, at \_\_\_\_ (definition of burglary)).

2. See *id.* (definition of inhabited).

3. See CAL. HARB. & NAV. CODE § 21 (West 1978) (definition of vessel).

4. 1989 Cal. Stat. ch. 357, sec. 2, at \_\_\_\_ (amending CAL. PENAL CODE § 460). First degree burglary is punishable by imprisonment for two, four, or six years. CAL. PENAL CODE § 461 (West 1988). All burglaries not covered by California Penal Code section 460 are second degree burglaries. *Id.* § 460 (1988) (amended by 1989 Cal. Stat. chs. 361, sec. 3, at \_\_\_\_, 357, sec. 2, at \_\_\_\_).

5. See CAL. PENAL CODE § 211 (West 1988) (definition of robbery).

6. 1989 Cal. Stat. ch. 361, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 212.5). The penalty for first degree robbery is imprisonment for three, four, or six years. CAL. PENAL CODE § 213 (West 1988).

## Crimes; care facilities—unauthorized disclosure of impending inspection

Health and Safety Code §§ 1540.2, 1569.406, 1596.8915 (new).

SB 944 (Rosenthal); 1989 STAT. Ch. 694

Existing law requires state inspection of child day care facilities,<sup>1</sup> community care facilities,<sup>2</sup> and residential care facilities for the

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1. See CAL. HEALTH & SAFETY CODE § 1596.750 (Deering 1989) (definition of a child day care facility).

2. See *id.* § 1502(a) (West Supp. 1989) (definition of a community care facility).

elderly.<sup>3</sup> Because disclosure of an impending inspection allows non-complying facilities to evade detection,<sup>4</sup> Chapter 694 makes unauthorized disclosure by any person of an impending inspection a misdemeanor.<sup>5</sup>

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3. *Id.* §§ 1596.878 (Deering 1989) (the Department of Social Services must establish a licensing program for child day care facilities); 1509 (the Department of Social Services must inspect and license community care facilities); 1569.11 (the Department of Social Services must inspect and license residential care facilities for the elderly). *See id.* § 1569.2(j)-(k) (definition of a residential care facility for the elderly).

4. Telephone interview with June Clark, Legislative Advocate for the Los Angeles County District Attorney's Office, sponsor of SB 944 (August 30, 1989) (notes on file at *Pacific Law Journal*). The Los Angeles District Attorney's Office sponsored Senate Bill 944 in order to cure perceived abuses in the inspection system. *Id.*

5. 1989 Cal. Stat. ch. 694, secs. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 1540.2); 2, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 1569.406); 3, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 1596.8915). Conviction results in a fine of not more than \$1000, a jail term of not more than 180 days, or both. *Id.* §§ 1-3.

## Crimes; commercial drunk driving

Harbors and Navigation Code §§ 651, 655, 655.1, 655.5, 668 (amended, repealed, new); § 655.05 (new); Vehicle Code §§ 1804, 23152, 23153, 23155, 23156 (amended, repealed, new); § 34501.15, 34501.16 (repealed, new).

SB 1119 (Seymour); 1989 STAT. Ch. 1114\*

Support: Judge James Grey, Orange County Central Judicial District; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association; California Moving and Storage Association; Insurance Agents' and Brokers' Legislative Council; Santa Cruz Metropolitan Transit District; California Bus Association

Existing law prohibits driving a motor vehicle<sup>1</sup> or operating a vessel<sup>2</sup> with a blood alcohol concentration of .10% or more.<sup>3</sup> The

\* (Sections 2, 3, 5, 6, 8, 10, 12, 14, 15, 17, 30, 39 are effective January 1, 1992)

1. *See* CAL. VEH. CODE § 670 (West 1987) (definition of vehicle).

2. *See* CAL. HARB. & NAV. CODE § 651(g) (West Supp. 1989) (definition of vessel).

3. *Id.* § 655(c) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1114, sec. 4, at \_\_\_\_); CAL. VEH. CODE § 23152(b) (amended by 1989 Cal. Stat. ch. 1114, sec. 23, at \_\_\_\_). The blood alcohol concentration is based on grams of alcohol per 100 milliliters of blood.

Department of Motor Vehicles (DMV) must suspend or revoke a person's driver's license if the person is convicted of driving under the influence of alcohol or drugs, an excessive blood alcohol concentration, or driving while addicted.<sup>4</sup> Further, the DMV must suspend or revoke a person's privilege to drive if the person refuses to submit to, or complete, chemical testing of the blood, breath, or urine when the officer requesting the test had reasonable cause to believe the person was driving under the influence.<sup>5</sup>

Existing federal law requires states to adopt and enforce laws consistent with the federal standards by October 1, 1993, to avoid having federal-aid highway construction funds withheld.<sup>6</sup> To comply with this requirement,<sup>7</sup> Chapter 1114 prohibits a person from operating a commercial vessel or commercial motor vehicle<sup>8</sup> when that person's blood alcohol concentration is .04% or greater.<sup>9</sup> Addition-

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CAL. VEH. CODE § 23152(b) (amended by 1989 Cal. Stat. ch. 1114, sec. 23, at \_\_\_\_); 1989 Cal. Stat. ch. 1114, secs. 3, 4, at \_\_\_\_ (amending CAL. HARB. & NAV. § 651(b)). A rebuttable presumption exists that the person had .10% blood alcohol concentration if that concentration is present in a chemical test within three hours after operation of the vehicle or vessel. CAL. HARB. & NAV. § 655(g) (enacted by 1989 Cal. Stat. ch. 1114, sec. 5, at \_\_\_\_); CAL. VEH. CODE § 23152(b) (West 1985) (amended by 1989 Cal. Stat. ch. 1114, sec. 23, at \_\_\_\_). See *People v. Armitage*, 194 Cal. App. 3d 405, 417, 239 Cal. Rptr. 515, 522 (1987) (any prohibited act and any neglect of duty imposed by law relating to boating safety, which proximately causes death or serious bodily injury to another person, is sufficient to constitute the crime of felony boating). Effective January 1, 1990, Chapter 479 prohibits driving a vehicle with a blood alcohol concentration level of .08%. 1989 Cal. Stat. ch. 479, sec. 3, at \_\_\_\_ (enacting CAL. VEH. CODE § 23152(b)); *id.* sec. 4, at \_\_\_\_ (amending CAL. VEH. CODE § 23153(b)).

4. CAL. VEH. CODE § 13352 (West Supp. 1989).

5. *Id.* § 13353(a) (West Supp. 1989). The penalty may be: (1) Suspension for six months; (2) revocation for two years if the refusal occurred within seven years of a separate violation for reckless driving or driving under the influence; (3) revocation for three years if the refusal occurred within seven years of two or more separate violations for reckless driving or driving under the influence. *Id.* See *Schmerber v. California*, 384 U.S. 757, 761-765 (1966) (holding that the forcible removal of blood samples from a person suspected of drunken driving was not an unreasonable search and did not violate defendant's right of due process). See generally Note, *Shed Thou No Blood*, S. CAL. L. REV. 1115 (1987) (discussing the forcible removal of blood samples from drunk driving suspects).

6. 49 U.S.C. §§ 2708(a)(3), 2710 (1989) (Commercial Motor Vehicle Safety Act of 1986 (Act)).

7. Chapter 1114 is designed to make California's commercial drunk driving standards comply with federal law. ASS. COMM. ON PUB. SAFETY REP., July 18, 1989, at 3. See 49 U.S.C. app. §§ 2701-2716 (1989) (Commercial Motor Vehicle Safety Act of 1986 (Act)). The Act prohibits operation of a commercial motor vehicle with a blood alcohol concentration level of .04% or more. *Id.* § 2707(f).

8. See CAL. VEH. CODE § 15210(b) (West Supp. 1989) (definition of a commercial vehicle).

9. 1989 Cal. Stat. ch. 1114, sec. 5, at \_\_\_\_ (enacting CAL. HARB. & NAV. CODE § 655(d)); *id.* sec. 24, at \_\_\_\_ (enacting CAL. VEH. CODE § 23152(d)). A rebuttable presumption exists that the person had a blood alcohol concentration of .04% or more if that concentration is present in a chemical test within three hours after operation of the vehicle or vessel. 1989 Cal. Stat. ch. 1114, sec. 5, at \_\_\_\_ (amending CAL. HARB. & NAV. CODE § 655(h)); *id.* sec. 24, at \_\_\_\_ (amending Cal. Veh. Code § 23152(d)).

ally, Chapter 1114 prohibits a commercial motor vehicle operator or vessel operator whose blood alcohol concentration is .01% or more from operating that vehicle or vessel for a twenty-four hour period.<sup>10</sup> The blood alcohol concentration may be based upon grams of alcohol per 210 liters of breath.<sup>11</sup>

Chapter 1460 requires suspension or revocation of a person's motor vehicle license if the driver refuses to submit to, or complete, the requested chemical tests.<sup>12</sup> Chapter 1114 provides that convictions within the past seven years for driving a motor vehicle under the influence may be the basis for imposing a sentence enhancement for a conviction of operating a vessel under the influence.<sup>13</sup> Under Chapter 1114, courts must report violations regarding vessels in the same manner that vehicle violations are reported to the DMV.<sup>14</sup>

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10. 1989 Cal. Stat. ch. 1114, sec. 6, at \_\_\_\_ (enacting CAL. HARB. & NAV. CODE § 655.05(a)); *id.* sec. 40, at \_\_\_\_ (enacting CAL. VEH. CODE § 34501.15(a)). *See* 49 U.S.C. app. § 2707(d)1 (requiring commercial motor vehicle operators to be suspended for 24 hours if any detectable amount of alcohol is found).

11. *Id.* sec. 2, at \_\_\_\_ (amending CAL. HARB. & NAV. CODE § 651(b)); *id.* sec. 23, at \_\_\_\_ (amending CAL. VEH. CODE § 23152(b)).

12. 1989 Cal. Stat. ch. 1460, sec. 3, at \_\_\_\_ (amending CAL. VEH. CODE § 13353(a)).

13. 1989 Cal. Stat. ch. 1114, sec. 11, at \_\_\_\_ (amending CAL. HARB. & NAV. CODE § 668(g)).

14. *Id.* sec. 13, at \_\_\_\_ (amending CAL. VEH. CODE § 1803(a)).

## Crimes; computer viruses

Penal Code §§ 502.01, 1203.047, 1203.048, 2702 (new); §§ 502, 12022.6 (amended).

AB 1859 (Farr); 1989 STAT. CH. 1357

Under existing law, a person that knowingly accesses,<sup>1</sup> uses,<sup>2</sup> restricts, or disrupts computer services without permission commits a

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1. *See* CAL. PENAL CODE § 502(b)(1) (West 1988) (definition of access). A person that knowingly and without permission causes a computer system or network to be accessed is also guilty of a public offense. *Id.* § 502(c)(7). *See also* 1989 Cal. Stat. ch. 1357, sec. 1.3, at \_\_\_\_ (amending CAL. PENAL CODE § 502(b)(2)) § 502(b)(2) (definition of computer network).

2. Impermissible use includes knowingly: (1) Altering data to commit a fraud or extortion, or to wrongfully obtain money, property, or data; (2) taking or copying data or supporting documentation; or (3) without permission expending computer time or functions. CAL. PENAL CODE § 502(c). *See id.* § 502(b)(6) (definition of data).



public offense.<sup>3</sup> Chapter 1357 clarifies the law by explicitly prohibiting the introduction of a computer contaminant<sup>4</sup> into a computer system.<sup>5</sup> Under Chapter 1357, persons convicted of most computer crimes may be granted probation for up to three years.<sup>6</sup> However the court may, as a condition of probation, prohibit the probationer from accepting employment where the probationer would have access to computers.<sup>7</sup> Further, Chapter 1357 requires state-accredited schools and colleges to include computer-related crimes as specific violations of student conduct policies and regulations, which may subject the students to disciplinary sanctions that include dismissal.<sup>8</sup>

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3. *Id.* § 502(c). Penalties range from a fine between \$250 and \$10,000, three years imprisonment in a state prison, or both, depending upon the nature and severity of the offense. *Id.* § 502(d). In addition, the injured party may bring a civil action for compensatory damages. *Id.* § 502(e)(1). The law exempts employees who, without authorization, access or use their employers' computer system or data, where the access or use causes no injury and the value of computer services and supplies does not exceed \$100. *Id.* § 502(h)(2). The definition of injury includes altering or damaging the computer, system, network, program, or software. *Id.* § 502(b)(8). Employees' access of computer services within the scope of their employment is exempt from prosecution under this statute. *Id.* § 502(h)(1). The definition of computer services includes computer time, data processing, and storage functions. *Id.* § 502(b)(4). *See id.* § 502(b)(5) (definition of computer system).

4. Computer contaminants are also known as computer viruses or worms. 1989 Cal. Stat. ch. 1357, sec. 1.3, at \_\_\_\_ (enacting CAL. PENAL CODE § 502(b)(10)). A computer contaminant is an electronic instruction designed to modify, transmit, or destroy programs and data within the computer system, or otherwise interfere with the computer's normal functioning. *Id.*

5. *Id.* (enacting CAL. PENAL CODE § 502(c)(8)). Violators may be punished by a fine of up to \$10,000, imprisonment for up to three years, or both, depending upon the severity of the injury. CAL. PENAL CODE § 502(d)(3) (West 1988) (amended by 1989 Cal. Stat. ch. 1357, sec. 1, at \_\_\_\_). Chapter 1357 may in part be in response to a computer virus that infected computer systems at hundreds of institutions connected by the Pentagon's Arpanet computer network, on November 3, 1988. *See* L.A. Times, Nov. 5, 1988, at 1, col. 3. The virus slowed down computer functions by self-replicating, but apparently did not destroy any data. *Id.*

6. 1989 Cal. Stat. ch. 1357, sec. 3, at \_\_\_\_ (enacting CAL. PENAL CODE § 1203.047 (probation may be granted for three years for a felony or prior conviction of this chapter, except in unusual cases where a period shorter than three years would better serve the interests of justice); *id.* sec. 4, at \_\_\_\_ (enacting CAL. PENAL CODE § 1203.048) (except in unusual cases, probation will not be granted to any person causing more than \$100,000 worth of damage while violating section 502 of the Penal Code). A person convicted of violating section 502 or 502.7 of the Penal Code may not have access to the Department of Corrections computer system. 1989 Cal. Stat. ch. 1357, sec. 5, at \_\_\_\_ (enacting CAL. PENAL CODE § 2702).

7. 1989 Cal. Stat. ch. 1357, sec. 3, at \_\_\_\_ (enacting CAL. PENAL CODE § 1203.047).

8. 1989 Cal. Stat. ch. 1357, sec. 1.3, at \_\_\_\_ (enacting CAL. PENAL CODE § 502(e)(3)) (the University of California is excluded unless the Board of Regents adopts this provision by a resolution).

## Crimes; concealed weapons on private property

Penal Code § 12026 (amended).

SB 1388 (Keene); 1989 STAT. Ch. 958

Under existing law, citizens may carry a firearm<sup>1</sup> within their private property, residence, or place of business.<sup>2</sup> In *People v. Melton*,<sup>3</sup> the California Fifth District Court of Appeal upheld a conviction for carrying a concealed weapon on private property without a license, interpreting existing law as allowing persons to carry only openly displayed weapons on their private property.<sup>4</sup> In response to *People v. Melton*, the legislature enacted Chapter 958,<sup>5</sup> which provides that a person may carry a concealed firearm within the person's private property, residence, or place of business without a license.<sup>6</sup>

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1. See CAL. PENAL CODE § 12001 (West Supp. 1989) (definition of firearm).

2. *Id.* § 12026(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 958, sec. 1, at \_\_\_\_). Under existing law, only citizens of the United States over the age of 18 years were allowed to carry a weapon on their private property without a license. 1988 Cal. Legis. Serv. ch. 577, sec. 2, at 1388-1389 (West) (amended by 1989 Cal. Stat. ch. 958, sec. 1, at \_\_\_\_). Chapter 958 extends Penal Code section 12026 to cover all persons over the age of 18. 1989 Cal. Stat. ch. 958, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 12026). Certain classes of persons may not possess or carry concealable weapons. CAL. PENAL CODE § 12026(a) (amended by 1989 Cal. Stat. ch. 958, sec. 1, at \_\_\_\_). See *id.* § 12021 (West Supp. 1989) (convicted felons and drug addicts are prohibited from owning or possessing concealable weapons).

3. 206 Cal. App. 3d 580, 253 Cal. Rptr. 661 (5th Dist. 1988).

4. *Id.* at 594, 253 Cal. Rptr. at 670. In *Melton* the defendant, a liquor store employee who was an off-duty police officer, was charged with carrying a concealed weapon without a license while working at the liquor store. *Id.* at 584-585, 253 Cal. Rptr. at 663-664. The defendant was convicted of violating a statute prohibiting a person from carrying a concealed weapon. *Id.* at 594, 253 Cal. Rptr. at 670. See CAL. PENAL CODE §§ 12025 (West Supp. 1989) (prohibition of carrying concealed weapons without a license), 12050-12053 (West 1982), 12054 (West. Supp. 1989) (procedure for the issuance of a license to carry a concealed weapon).

5. 1989 Cal. Stat. ch. 958, sec. 2, at \_\_\_\_ (stating that the purpose of Chapter 958 is to overrule the holding in *People v. Melton*).

6. *Id.* sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 12026). Weapons may be carried openly or concealed on private property. *Id.* In situations not covered by Penal Code section 12026, it is a misdemeanor to carry a concealed weapon without a license. CAL. PENAL CODE § 12025 (West Supp. 1989).

## Crimes; continuous sexual abuse of a minor under the age of fourteen

Evidence Code § 782 (amended); Penal Code §§ 288.5, 1192.8 (new); §§ 288, 667.51, 667.6, 868.5, 1203, 1203.066, 1346 (amended). AB 2212 (Speier); 1989 STAT. CH. 1402

Support: California PTA; Child Abuse Council of Orange County; Fresno County Juvenile Justice Commission; California Attorney General; County of Los Angeles; California District Attorneys Association; East Bay Area Club, National Association of Negro Business & Professional Women; Women For; Los Angeles County Sheriff; Ventura County Municipal Court Judge; Fulton-Collins Woodhouse & Associates; California NOW; Adult Survivors of Sexual Abuse; California Commission on the Status of Women; Marrison & Associates

Opposition: California Teachers Association; American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association

Through Chapter 1402, the legislature declares that additional statutory protection of young children from "resident child molesters" is required.<sup>1</sup> Under prior case law,<sup>2</sup> prosecutors were required to charge and prove specific acts of sexual abuse and the particular time when these acts occurred.<sup>3</sup> Chapter 1402 creates a new felony which makes it unlawful for a person to engage in three or more acts of substantial sexual conduct,<sup>4</sup> or lewd or lascivious conduct,<sup>5</sup> with a minor under the age of fourteen with whom the person has

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1. 1989 Cal. Stat. ch. 1402, sec. 1, at \_\_\_\_\_. Because of the child's age or the frequency of molestations, the victim is usually unable to distinguish between the time, place, or particulars of different occasions of sexual abuse. *Id.* This makes it particularly difficult for prosecutors to meet the due process standard required by *People v. Van Hoek*, 200 Cal. App. 3d 811, 246 Cal. Rptr. 352 (1988), and results in unpunished child molesters and the continued risk of sexual abuse to children. *Id.*

2. *People v. Van Hoek*, 200 Cal. App. 3d 811, 246 Cal. Rptr. 352 (1988).

3. *Id.* at 818, 246 Cal. Rptr. at 357 (the court held that the victim's unspecific, uncorroborated testimony deprived the defendant of the right to present an adequate defense, thus violating defendant's right to due process). *See generally* *Sacramento Bee*, Sept. 9, 1989, at A5, col. 1 (Chapter 1402 makes it easier to prosecute child abuse cases in which the victim was repeatedly abused but could not remember the exact date of each incident).

4. *See* CAL. PENAL CODE § 1203.066 (West 1982) (definition of substantial sexual conduct).

5. *See id.* § 288 (West Supp. 1989) (prohibiting lewd or lascivious acts with a child under the age of fourteen).

had continuous access<sup>6</sup> for three months.<sup>7</sup> Under Chapter 1402, continuous sexual abuse of a child is an offense for which probation is not available.<sup>8</sup> Chapter 1402 also adds continuous sexual abuse of a child to the list of sex crimes for which existing law provides additional requirements and procedures regarding sentencing and the protection of child victims from psychological harm.<sup>9</sup> Finally, Chapter 1407 requires an increased penalty for convicted sex offenders who willfully fail to register with the police, if they already have two prior convictions for failing to register.<sup>10</sup>

Existing law permits a prosecuting witness,<sup>11</sup> in a case involving specific violent crimes,<sup>12</sup> to have up to two support persons<sup>13</sup> present while the witness testifies at a preliminary hearing,<sup>14</sup> trial, or juvenile

6. Under Chapter 1402, continuous access also describes a defendant who has lived in the same home with the victim for three months. 1989 Cal. Stat. ch. 1402, sec. 4, at \_\_\_\_ (enacting CAL. PENAL CODE § 288.5(a)).

7. *Id.* The offense of continuous sexual abuse of a child is punishable by imprisonment for six, twelve, or sixteen years. *Id.* The defendant may not be charged with other felony sexual offenses involving the same child, except as an alternative charge or unless the other offense occurred outside the continuous sexual abuse time period. *Id.* (enacting CAL. PENAL CODE § 288.5(c)). Moreover, the defendant may be charged with only one count, unless multiple victims are involved. *Id.* The jury is only required to unanimously agree that the requisite number of acts occurred, not which alleged acts constitute the required number. *Id.* (enacting CAL. PENAL CODE § 288.5(b)). Continuous sexual abuse of a minor is considered a serious felony. *Id.* sec. 10, at \_\_\_\_ (enacting CAL. PENAL CODE § 1192.8). See CAL. PENAL CODE § 1192.7 (listing serious felonies).

8. 1989 Cal. Stat. ch. 1402, sec. 11.5, at \_\_\_\_ (amending CAL. PENAL CODE § 1203(e)).

9. *Id.* sec. 3, at \_\_\_\_ (amending CAL. PENAL CODE § 288(d)) (requiring the peace officer, the District Attorney, and the court to attempt to prevent psychological harm to the child victim); *id.* sec. 6, at \_\_\_\_ (amending CAL. PENAL CODE § 667.51(b)) (mandating five-year enhancements for prior convictions); *id.* sec. 7, at \_\_\_\_ (amending CAL. PENAL CODE § 667.6(a)) (providing for an aggregate prison term for persons who have served two or more prison terms for sexual offenses); *id.* sec. 8.5, at \_\_\_\_ (amending CAL. PENAL CODE § 868.5(a)) (allowing the child victim to have supporting persons in attendance during testimony); *id.* sec. 9, at \_\_\_\_ (amending CAL. PENAL CODE § 868.8) (requiring the court to take special precautions to provide for the support and comfort of the victim during proceedings); *id.* sec. 13, at \_\_\_\_ (amending CAL. PENAL CODE § 1346(a)) (allowing the victim's testimony to be recorded on video tape). See 1989 Cal. Stat. ch. 1407, sec. 4, at \_\_\_\_ (amending Cal. Penal Code § 290(a) (requiring convicted persons to register with local police)).

10. 1989 Cal. Stat. ch. 1407, sec. 4, at \_\_\_\_ (amending CAL. PENAL CODE § 290(g)(2)). The punishment is imprisonment up to one year in the county jail, or in state prison for 16 months, or two or three years. *Id.*

11. The term prosecuting witness includes the victim of the crime and any other witness for the prosecution. *Ortega v. Superior Court*, 135 Cal. App. 3d 244, 252, 185 Cal. Rptr. 297, 302 (1982).

12. See CAL. PENAL CODE § 868.5(a) (West Supp. 1989) (amended by Cal. Stat. ch. 1402, sec. 8.5, at \_\_\_\_ (list of specific violent crimes)).

13. A support person cannot be a news reporter described in California Evidence Code section 1070 unless the news reporter is related to the witness as a parent, guardian, or sibling and does not make notes during the hearing or proceeding. *Id.*

14. A magistrate can close a preliminary hearing to the public in order to protect the defendant's right to a fair and impartial trial. CAL. PENAL CODE § 868 (West 1988).

court proceeding.<sup>15</sup> Chapter 1402 adds twelve violent crimes<sup>16</sup> to the types of cases during which a prosecuting witness may have a support person present while the witness testifies.<sup>17</sup>

*TFT, PLJ and BAS*

15. *Id.* § 868.5(a) (amended by Cal. Stat. ch. 1402, sec. 8.5, at \_\_\_\_). See CAL. WELF. & INST. CODE § 676(a) (West Supp. 1989) (juvenile proceedings are closed to the public with certain exceptions). The judge shall inform the support person or persons to not prompt, sway, or influence the witness. CAL. PENAL CODE § 868.5(b) (amended by Cal. Stat. ch. 1402, sec. 8.5, at \_\_\_\_). The judge has discretion to remove a support person who is prompting, swaying, or influencing the witness. *Id.* The legislature was concerned not only with minimizing trauma to a young complaining witness, but also with offering procedural safeguards to the defendant and protecting against risks of tailored testimony. *People v. Kabonic*, 177 Cal. App. 3d 487, 496, 223 Cal. Rptr. 41, 45 (1986).

16. The twelve crimes are California Penal Code sections: 187 (murder); 203 (mayhem); 205 (aggravated mayhem); 207 (kidnapping); 211 (robbery); 220 (assault with intent to commit mayhem, rape, sodomy, oral copulation, or penetration of genitals or anus with a foreign object); 240 (assault); 242 (battery); 245 (assault with a deadly weapon or force likely to produce great bodily injury); 262 (rape of a spouse); and 273.5 (corporal injury to a spouse); 288.5 (continuous sexual abuse of a child under the age of 14). 1989 Cal. Stat. ch. 504, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 868.5(a)).

17. *Id.*

## Crimes; controlled substances—anabolic steroids

Health and Safety Code § 11056 (amended).

AB 1591 (Condit); 1989 STAT. CH. 567

Under existing law, unlawful possession, transportation, sale or distribution of Schedule III controlled substances,<sup>1</sup> including specified anabolic steroids,<sup>2</sup> is a crime.<sup>3</sup> Chapter 1567 revises Schedule III to add twenty-five additional anabolic steroids.<sup>4</sup>

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1. See CAL. HEALTH & SAFETY CODE § 11056 (Deering 1989) (amended by 1989 Cal. Stat. ch. 567, sec. 1, at \_\_\_\_ (list of Schedule III controlled substances, including anabolic steroids)).

2. An anabolic steroid is any of a group of synthetic derivatives of the male sex hormone testosterone which have pronounced anabolic properties and weak androgenic properties and is used clinically to promote growth and tissue repair. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1582 (27th ed. 1988).

3. CAL. HEALTH & SAFETY CODE § 11377 (Deering 1989). First time possession of anabolic steroids is a misdemeanor. *Id.* § 11377(b). Subsequent possession of anabolic steroids is either a misdemeanor or a felony, punishable by imprisonment for not more than one year in either the county jail or the state prison. *Id.* § 11377(a). Possession of Schedule III substances, including anabolic steroids, for sale, is a felony punishable by imprisonment in the state prison. *Id.* § 11378. Transportation, sale, or distribution of Schedule III substances, including anabolic steroids, is a felony punishable by imprisonment for two, three or four years. *Id.* § 11379.

4. 1989 Cal. Stat. ch. 567, sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11056(f)). The list of anabolic steroids is modified to include androisoxazole, androstenediol,

bolandiol, bolasterone, boldenone, chlormethandienone, clostebol, dihydromesterone, ethylestrenol, fluoxymesterone, formylidienolone, 4-hydroxy-19-nortestosterone, mesterolone, methandriol, methandrostenolone, methenolone, 17-methyltestosterone, methyltrienolone, nandrolone, norbolethone, norethandrolone, normethandrolone, oxandrolone, oxymestronone, oxmetholone, quinbolone, stanolone, stanozolol, stenbolone, testosterone, trenbolone, and chorionic gonadotropin. *Id.*

## Crimes; controlled substances

Health and Safety Code § 11648 (repealed); §§ 11107, 11107.1 (new); §§ 11100, 11100.1, 11106 (amended).  
AB 1310 (Killea); 1989 STAT. CH. 1133

Under existing law, a permit is required to sell, transfer, or furnish specified precursors<sup>1</sup> to illegal drugs or to receive these precursors from outside the state.<sup>2</sup> Chapter 1133 makes ineligible for a permit any person under the age of eighteen and forbids any business which has a permit from employing a person under the age of eighteen as a manager, agent, or representative.<sup>3</sup>

Chapter 1133 requires manufacturers, wholesalers, retailers, or other sellers to obtain identification<sup>4</sup> from a person who purchases, within the state, specified substances<sup>5</sup> or any laboratory glassware,<sup>6</sup> chemical reagent,<sup>7</sup> or chemical solvent<sup>8</sup> under specified conditions.<sup>9</sup> Chapter 1133 also requires manufacturers, wholesalers, retailers, or

1. See CAL. HEALTH & SAFETY CODE § 11100(a) (amended by 1989 Cal. Stat. ch. 1133, sec. 1, at \_\_\_\_ (list of specified precursors). These precursors are the main ingredients in illegal drugs. Telephone conversation with Carolyn McIntyre, special agent for the California Attorney General (Aug. 24, 1989) (notes on file at the *Pacific Law Journal*).

2. CAL. HEALTH & SAFETY CODE § 11106(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1133, sec. 3, at \_\_\_\_). Manufacturers, wholesalers, retailers, or other sellers of precursors must obtain the permit from the Department of Justice. *Id.*

3. 1989 Cal. Stat. ch. 1133, sec. 3, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11106(g)).

4. Proper identification means either a valid motor vehicle operator's license or any other official and valid state-issued identification. CAL. HEALTH & SAFETY CODE § 11100(c)(2) (amended by 1989 Cal. Stat. ch. 1133, sec. 1, at \_\_\_\_).

5. 1989 Cal. Stat. ch. 1133, sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107.1(a)) (list of the specified substances).

6. See *id.* sec. 4, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107(c)(1)) (definition of laboratory glassware).

7. See *id.* (enacting CAL. HEALTH & SAFETY CODE § 11107(c)(3)) (definition of chemical reagent).

8. See *id.* (enacting CAL. HEALTH & SAFETY CODE § 11107(c)(4)) (definition of chemical solvent).

9. *Id.* sec. 4, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107(a)(1)); *id.* sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107.1(a)(1)). Identification must be obtained if the value of the goods sold in the transaction exceeds \$100 and if the payment for the goods is made in cash or by cashier's check. *Id.* sec. 4, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107(a)).

other sellers to retain the bill of sale containing the purchaser's identification for three years.<sup>10</sup>

Existing law requires any manufacturer, wholesaler, retailer, or other person who receives a specified precursor<sup>11</sup> to an illegal drug from outside the state to submit a report to the Department of Justice.<sup>12</sup> Chapter 1133 requires the report to be submitted at least twenty-one days prior to receipt of the substance.<sup>13</sup> Chapter 1133 makes it a misdemeanor for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a specified substance to a person under the age of eighteen.<sup>14</sup>

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10. *Id.* secs. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107(a)(2)); *id.* sec. 5, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11107.1(a)(2)).

11. *See* CAL. HEALTH & SAFETY CODE § 11100.1(a) (amended by 1989 Cal. Stat. ch. 1133, sec. 2, at \_\_\_\_ ) (list of specified substances, as provided in Health and Safety Code section 11100).

12. *Id.* § 11100.1(a) (amended by Cal. Stat. ch. 1133, sec. 2, at \_\_\_\_).

13. 1989 Cal. Stat. ch. 1133, sec. 2, at \_\_\_\_ (amending CAL. PENAL CODE § 11100.1(a)). The Department of Justice may authorize the submission of reports within 72 hours after the receipt of a specified substance if the Department determines that the recipient has established a record of using the substance for lawful purposes. *Id.*

14. *Id.* sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11100(g)).

## Crimes; driving under the influence—minor passengers

Vehicle Code § 23194 (new).

AB 1808 (O'Connell); 1989 STAT. CH. 1023

Under existing law, any person convicted of driving under the influence of alcohol or a controlled substance will be sentenced according to the circumstances.<sup>1</sup> Under Chapter 1023, if the prosecution charges and proves that there was a minor under the age of fourteen riding as a passenger in the defendant's car, the penalty for driving under the influence must be enhanced.<sup>2</sup>

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1. CAL. VEH. CODE §§ 23152 (Deering 1989) (definition of driving under the influence); 23159 (penalty enhancement for refusing to submit to a blood alcohol test); 23160 (punishment required for a first offense); 23161 (conditions of probation for first offense); 23165 (punishment required for a second offense, or when bodily injury occurs); 23175 (punishment required when three or more offenses have been committed).

2. 1989 Cal. Stat. ch. 1023, sec. 1, at \_\_\_\_ (enacting CAL. VEH. CODE § 23194). Upon the first conviction, the punishment will be enhanced by 48 hours in the county jail. *Id.* Upon the second conviction, the punishment will be enhanced by 30 days. *Id.* If convicted three or more times, an extra 90 days must be served. *Id.* There will be no sentence enhancement if the driver is also guilty of willful cruelty or unjustifiable punishment of a child pursuant to section 273a of the Penal Code. *Id.*

## Crimes; endless chain schemes

Civil Code § 1689.2 (new); Penal Code § 327 (amended).  
SB 82 (Robbins); 1989 STAT. Ch. 436  
Support: Office of the Attorney General,  
National Direct Selling Association  
The State Bar Legal Services Section

Under existing law, any person who prepares or operates an endless chain scheme<sup>1</sup> has committed a misdemeanor.<sup>2</sup> Under Chapter 436, a person who prepares or operates an endless chain scheme is guilty of a public offense.<sup>3</sup> Chapter 436 allows a party who has contracted into an endless chain scheme to rescind the contract and recover all consideration paid, less any monies that party received pursuant to the contract.<sup>4</sup> The court may also award attorney's fees to the party seeking rescission.<sup>5</sup>

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1. See CAL. PENAL CODE § 327 (West 1985) (amended by 1989 Cal. Stat. ch. 436, sec. 2, at \_\_\_\_ (defining endless chain scheme as a scheme to distribute property in which a party pays consideration for the opportunity to receive compensation for introducing new participants into the scheme, or for the chance of having that individual's solicited participant introduce a new participant to the scheme).

2. *Id.*

3. 1989 Cal. Stat. ch. 436, sec. 2, at \_\_\_\_ (amending CAL. CIV. CODE § 327).

4. 1989 Cal. Stat. ch. 436, sec. 1, at \_\_\_\_ (enacting CAL. CIV. CODE § 1689.2).

5. *Id.* (enacting CAL. CIV. CODE § 1689.2). The court will only award attorney's fees upon motion. *Id.*

## Crimes; enhancement—committing a street gang crime with a firearm

Penal Code § 12035 (new).  
AB 1751 (Friedman); 1989 STAT. Ch. 841  
Support: City of Los Angeles, League of California Cities, Los Angeles District Attorney, Los Angeles County Sheriff, Attorney General, California Peace Officers Association, National Rifle Association, California Rifle and Pistol Association.  
Opposition: None.

Existing law prohibits certain gang-related activities.<sup>1</sup> Chapter 841

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1. See, e.g., CAL. PENAL CODE § 186.22 (West Supp. 1989). It is illegal for a person to participate in a gang if the person knows that the gang promotes criminal activity. *Id.*



provides a sentence enhancement<sup>2</sup> when a firearm<sup>3</sup> is present<sup>4</sup> during the commission or attempted commission of a street gang crime<sup>5</sup> which is a felony.<sup>6</sup>

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2. The enhancement is one to three years in state prison. 1989 Cal. Stat. ch. 841, sec. 1, at \_\_\_\_ (enacting CAL. PENAL CODE § 12035). The court must impose a penalty of two years unless the court finds and specifies at the time of sentencing any aggravating or mitigating circumstances. *Id.*

3. The gun may be loaded or unloaded. *Id.*

4. The firearm may be carried by the defendant or in a vehicle. *Id.*

5. See CAL. PENAL CODE § 186.22 (definition of prohibited street gang crime).

6. 1989 Cal. Stat. ch. 841, sec. 1, at \_\_\_\_ (enacting CAL. PENAL CODE § 12035). Chapter 841 was enacted in response to a request by the Los Angeles Police Department and the Los Angeles District Attorney's office. Telephone interview with Karin Caves, Chief of Staff of Assembly-person Friedman's office, in Sacramento. (Aug. 28, 1989) (notes on file at *Pacific Law Journal*). There were over 5370 gang-related crimes in Los Angeles from December 1987 to December 1988. LOS ANGELES POLICE DEP'T, CITY-WIDE GANG CRIME SUMMARY (Dec. 1988) (on file at *Pacific Law Journal*).

## Crimes; false and misleading advertising

Business and Professions Code § 17508 (amended).

AB 1543 (Lempert); 1989 STAT. Ch. 947

Existing law criminalizes the making of a false advertising claim which purports to be based upon factual, clinical, or objective evidence, or which compares one product to another.<sup>1</sup> Under Chapter 947, making a claim which is merely misleading, rather than actually false, is also criminal.<sup>2</sup>

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1. CAL. BUS. & PROF. CODE § 17508(a) (amended by 1989 Cal. Stat. ch. 947, sec. 1, at \_\_\_\_). See *id.* § 17534 (violation is a misdemeanor).

2. 1989 Cal. Stat. ch. 947, sec. 1, at \_\_\_\_ (amending CAL. BUS. & PROF. CODE § 17508(a)). See CAL. BUS. & PROF. CODE § 17534 (violation is a misdemeanor). See also CAL. PENAL CODE § 19 (Deering 1989) (punishment for a misdemeanor when the punishment is not otherwise specified).

## Crimes; firearms—prior conviction

Penal Code §§ 12021, 12021.1 (amended).

AB 669 (Speier); 1989 STAT. Ch. 254\*

Support: Attorney General; Lieutenant Governor; Los Angeles City Council; California District Attorneys' Association; Legislative Oversight Committee; California Union of Safety Employees

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\* Amended by AB 566 (Ch. 1044) McClintock.

Existing law prohibits a person from owning or possessing a concealable firearm if that person has been convicted of a felony,<sup>1</sup> a violent offense,<sup>2</sup> a misdemeanor involving the violent use of a firearm,<sup>3</sup> or if the person is addicted to a narcotic drug.<sup>4</sup> Chapter 254 expands existing law by prohibiting such a person from owning or possessing any type of firearm.<sup>5</sup>

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1. Persons convicted of a felony under federal law are not subject to this crime unless conviction of a similar offense in California is a felony, or the defendant was sentenced to prison for more than thirty days, fined \$1000 or more, or both. CAL. PENAL CODE § 12021(c) (amended by 1989 Cal. Stat. ch. 254, sec. 1, at \_\_\_\_).

2. See *id.* § 12021.1(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 254, sec. 2, at \_\_\_\_) (listing violent offenses).

3. See *id.* § 12001.6 (West 1982) (listing misdemeanors involving the violent use of a firearm).

4. *Id.* §§ 12021(a), 12021.1(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 254, secs. 1, 2, at \_\_\_\_). The firearm also may not be in the person's custody or control. *Id.* A person guilty of this offense may be punished by imprisonment, a fine up to \$1000, or both. *Id.* § 12021(a) (amended by 1989 Cal. Stat. ch. 1044, sec. 3, at \_\_\_\_). However, if the person has a previous conviction for a violent offense, the only available punishment is imprisonment. *Id.* § 12021.1(a) (amended by 1989 Cal. Stat. ch. 254, sec. 2, at \_\_\_\_).

5. 1989 Cal. Stat. ch. 254, secs. 1, 2, at \_\_\_\_ (amending CAL. PENAL CODE §§ 12021(a), 12021.1(a)). The firearm also may not be in the person's custody or control. *Id.* Compare *id.* with 18 U.S.C.A. app. § 1202 (1985) (federal law prohibits convicted felons from possessing any firearms).

## Crimes; hazardous waste

Health and Safety Code § 25189.6 (amended).

AB 1045 (Waters); 1989 STAT. Ch. 1046

Under existing law, it is illegal for anyone to knowingly or recklessly transport, handle, treat, or store hazardous waste in a way that causes an unreasonable risk of harm to others.<sup>1</sup> Chapter 1046 expands existing law by making it illegal to dispose of hazardous waste in a manner which creates an unreasonable risk of harm.<sup>2</sup> Further, under Chapter 1046, anyone who knowingly<sup>3</sup> treats, handles,

1. CAL. HEALTH & SAFETY CODE § 25189.6 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1046, sec. 1, at \_\_\_\_).

2. 1989 Cal. Stat. ch. 1046, sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 25189.6(a)). The harm that Chapter 1046 refers to is fire, explosion, serious injury or death. *Id.* Chapter 1046 increases the maximum fine from \$100,000 to \$250,000. *Id.* See also 42 U.S.C.A. § 6928 (West Supp. 1989) (federal penalties for similar hazardous waste violations). States may not impose requirements that are less stringent than those required by the federal government. *Id.* § 6929 (West 1983).

3. The person must have knowledge of the risk at the time the prohibited actions were taken. 1989 Cal. Stat. ch. 1046, sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 25189.6(b)).

transports, or disposes of hazardous material in a way which places another in imminent danger of death or serious injury, is guilty of a felony.<sup>4</sup>

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4. *Id.* Placing another in imminent danger is punishable by a 3, 6 or 9 year prison term and a fine of up to \$250,000. *Id.* See generally B. Concannon, *Criminal Sanctions for Environmental Crimes and the Knowledge Requirement*: U.S. v. Hayes International, 786 F.2d 1499 (11th Cir. 1986), 25 AM. CRIM. L. R. 535, 537-37 (Federal laws reflect the commonly held view that weak penalties do not deter bad pollution practice, because polluters generally ignore the regulations and pay the fines, frequently passing the cost along to the consumer). Lenient punishments tend to foster the perception that environmental pollution is not necessarily wrong. *Id.*; Lester, *The Process of Hazardous Waste Regulation: Severity, Complexity, and Uncertainty*, in *THE POLITICS OF HAZARDOUS WASTE MANAGEMENT* 9 (1983) (the hazardous waste problem may be a result of failure to impose the cost of proper waste disposal on the original manufacturer).

### Crimes; illegal possession of firearms— penalty enhancement

Penal Code § 1170.1, 1192.7, 12021, 12021.1, 12022.5 (amended); AB 566 (McClintock); 1989 STAT. CH. 1044

Support: Attorney General, California District Attorney's Association, Office of Criminal Justice Planning, California Peace Officers' Association, California Police Chiefs' Association, California State Sheriffs' Association, California Correctional Peace Officers' Association, National Rifle Association, California Pistol and Rifle Association.

Opposition: ACLU, California Attorneys for Criminal Justice.

Existing law provides that if two or more penalty enhancements can be imposed, the court may only apply the greatest enhancement for any single offense.<sup>1</sup> Chapter 1044 adds to the list of specified offenses<sup>2</sup> exempted from this limitation any forcible lewd acts on a child who is less than fourteen years old, and kidnapping; for these offenses the court may apply both a penalty enhancement for using a weapon and for committing great bodily injury.<sup>3</sup> In addition, if a person personally uses a firearm in the commission of a crime,

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1. CAL. PENAL CODE § 1170.1(e) (amended by 1989 Cal. Stat. ch. 1044, sec. 1, at \_\_\_\_).

2. *Id.* The specified offenses include rape, burglary, robbery, sodomy, oral copulation, or the penetration of the genital or anal opening by a foreign object, or the attempt of any of the aforementioned crimes. *Id.*

3. 1989 Cal. Stat. ch. 1044, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 1170.1(c)). See CAL. PENAL CODE § 288 (West Supp. 1989) (definition of lewd acts on a child). See *id.* § 207 (West 1988) (definition of kidnapping).

Chapter 1044 prohibits plea bargaining<sup>4</sup> and prevents the court from striking an additional penalty enhancement.<sup>5</sup> Plea bargaining is also prohibited for grand theft committed while using a firearm.<sup>6</sup>

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4. There may be plea bargaining if the people do not have enough evidence to prove the people's case, or certain material witnesses can not be obtained to testify, or where plea bargaining would not substantially change the sentence. 1989 Cal. Stat. ch. 1044, sec. 2, at \_\_\_\_ (amending CAL. PENAL CODE § 1192.7 (a)).

5. 1989 Cal. Stat. ch. 1044, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 1170.1(i)).

6. *Id.* (amending CAL. PENAL CODE § 1192.7(c)(26)).

## Crimes; interference with a lifeguard

Penal Code § 402 (amended).

AB 508 (Mojonnier); 1989 STAT. Ch. 214

Under existing law, it is a crime to interfere with emergency workers acting in their official capacity.<sup>1</sup> Chapter 214 makes it a misdemeanor<sup>2</sup> to knowingly<sup>3</sup> interfere with a lifeguard's<sup>4</sup> discharge of official duties during emergency situations.<sup>5</sup>

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1. CAL. PENAL CODE § 402 (West 1988) (amended by 1989 Cal. Stat. ch. 214, sec. 1, at \_\_\_\_).

2. *See id.* §§ 17(b) (definition of misdemeanor), 19 (misdemeanors are punishable by imprisonment up to six months, by a fine up to \$1000, or both).

3. *See id.* § 7(5) (definition of knowingly).

4. *See id.* § 241(c)(5) (definition of lifeguard for purposes of assault).

5. 1989 Cal. Stat. ch. 214, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 402(b)). Chapter 214 applies only when the person knows or should know that the lifeguard is performing an official duty. *Id.* *See* CAL. PENAL CODE § 402 (West 1988) (amended by 1989 Cal. Stat. ch. 214, sec. 1, at \_\_\_\_) (definition of emergency). *See also id.* §§ 409.5 (lifeguards have the authority to close areas to minimize public safety hazards), 241 (West Supp. 1989) (prohibition of assault on lifeguards), 243(b) (prohibition of battery on lifeguards).

## Crimes; in-custody informants

Penal Code §§ 1127a, 1191.25, 4001.1 (new).

AB 278 (Floyd); 1989 STAT. Ch. 901

Under existing law, it is a felony<sup>1</sup> to bribe<sup>2</sup> witnesses, or persons

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1. *See* CAL. PENAL CODE § 17 (West, 1988) (definition of felony).

2. *See id.* § 7 (West 1988) (definition of bribe).

giving information, in order to influence their testimony.<sup>3</sup> Chapter 901<sup>4</sup> prohibits a law enforcement agency or an in-custody informant<sup>5</sup> working as an agent from doing anything to elicit incriminating statements from a defendant.<sup>6</sup> Further, Chapter 901 prohibits law enforcement officials from paying in-custody informants more than fifty dollars for their testimony in a criminal proceeding.<sup>7</sup> Additionally, Chapter 901 provides that when an in-custody informant is to testify in a criminal proceeding, the jury must be given a specified instruction.<sup>8</sup> Moreover, the prosecution intending to call an in-custody informant to testify must notify any victim of a crime committed by the informant.<sup>9</sup>

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3. *Id.* § 137(a) (West 1988).

4. The legislature intends for this statute to codify existing case law, and for United States Supreme Court decisions to control where there is a conflict. 1989 Cal. Stat. ch. 901, sec. 4, at \_\_\_\_\_. See *United States v. Henry*, 447 U.S. 264 (1980); *Kuhlmann v. Wilson*, 477 U.S. 436 (1985) (cases regarding statements made to in-custody informants; a prisoner's sixth amendment right to counsel is violated if a court finds that paid jailhouse informants deliberately elicit incriminating remarks from them).

5. An in-custody informant is a person who testifies to information provided by the defendant in statements to the informant while both were in a correctional institution. 1989 Cal. Stat. ch. 901, sec. 1, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 1127a(a)).

6. *Id.* sec. 3, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 4001.1(b)). See *United States v. Henry*, 447 U.S. 264, 274 (1980) (statements made by accused to a government informant while in jail were deemed inadmissible because they were obtained in violation of defendant's sixth amendment right to counsel, since the statements were elicited in a situation where the defendant was likely to make incriminating statements. *But cf.* *Kuhlmann v. Wilson*, 477 U.S. 436, 460-461 (1985) (defendant suspected of armed robbery was unable to suppress an informant's testimony of the defendant's spontaneous and unsolicited statements made in jail).

7. 1989 Cal. Stat. ch. 901, sec. 3, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 4001.1(a)). Costs incidental to the informant's testimony such as lodging, travel, or witness fees are not prohibited, but must be documented. *Id.*

8. *Id.* sec. 1, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 1127a(b)). The testimony of an in-custody informant should be viewed with caution and close scrutiny. In evaluating such testimony, you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. This does not mean that you may arbitrarily disregard such testimony, but you should give it the weight to which you find it to be entitled in the light of all the evidence in the case. *Id.* Under Chapter 901, when an in-custody informant is to be called as a witness, the prosecution must provide the court with a written statement of the consideration to be given the informant. *Id.* (enacting CAL. PENAL CODE § 1127a(c)). The statement shall not affect the defendant's legal right to discover other information. *Id.* Consideration provided to the informant is defined as a plea bargain, sentence modification, bail consideration, or other benefit, leniency, immunity, reward, or improvement of conditions in exchange for the witness' testimony. *Id.* (enacting CAL. PENAL CODE § 1127a(d)).

9. *Id.* sec. 2, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 1191.25). The victim shall be informed of any sentence modification, dismissal of case, or early parole being offered the informant in exchange for testifying. *Id.* This shall not affect the right of the people and the defendant to an expeditious trial. *Id.* The victim may attend the trial at which the in-custody informant will testify, but is not permitted to interfere with the proceedings. *Id.* See *People v. Brunner*, 32 Cal. App. 3d 908, 916-17, 108 Cal. Rptr. 501, 507 (1973) (example of inherent problems with exchange of favors between prosecution and witness). In *Brunner*, the prosecution offered grant of immunity in exchange for witness' testimony at murder trial, and subsequent murder indictment against the witness was dismissed. *Id.*

## Crimes; kidnappers—reward

Penal Code § 1547 (amended).  
 SB 117 (Lockyer); 1989 STAT. Ch. 20  
 (Effective May 25, 1989)

Under existing law, the Governor may offer a reward of \$10,000 for information leading to the arrest and conviction of any person convicted of a specified offense.<sup>1</sup> Chapter 20 raises the amount of the reward to \$50,000.<sup>2</sup> In addition, Chapter 20 adds kidnapping<sup>3</sup> to the list of offenses for which a reward may be offered.<sup>4</sup>

DA

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1. CAL. PENAL CODE § 1547 (West Supp. 1989) The included offenses are: (1) Escape from prison; (2) capital offenses; (3) robbery or hijacking on a public conveyance; (4) assault with a deadly weapon or infliction of serious bodily harm on a peace officer; (5) burning or bombing public property or a hospital; or (6) use of a destructive device or arson for terrorism at a health facility, place of worship, or place that provides counsel or information on abortion. *Id.*

2. 1989 Cal. Stat. ch. 20, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 1547).

3. See CAL. PENAL CODE § 207 (definition of kidnapping).

4. 1989 Cal. Stat. ch. 20, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 1547). See generally Note, *S.321: The Missing Children Act-Legislation by Hysteria*, 11 U. DAYTON L. REV. 671, 672 (1986) (discusses the legislation passed by numerous states in response to the media attention focused on missing children, and the enactment of the federal Missing Children Act of 1982); *How Many Children Are Really Missing?*, 14 BARRISTER 12 (1987) (discussion of national statistics on missing children).

## Crimes; killing household pets for food

Penal Code § 598b (new); § 597f (amended).  
 AB 1842 (Speier); 1989 STAT. Ch. 490  
 Support: Fund for Animals, Born Free (Elisa wild animal appeal),  
 California Greyhound Association, California Veterinary Medicine  
 Association, International Fund for Animal Welfare, Cambodian  
 Association of America.  
 Opposition: None.

Existing law provides that the killing of any dog or cat for its pelt is a misdemeanor.<sup>1</sup> Chapter 490 is intended to prevent the needless

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1. CAL. PENAL CODE § 598a (West 1988).

and inhumane killings of dogs and cats<sup>2</sup> and makes it a misdemeanor for any person to possess, import, buy, sell, or give away any animal commonly retained as a pet with the intent of killing the animal for food.<sup>3</sup>

Prior law required a veterinarian who received an abandoned animal to destroy the animal if the animal control agency refused to take possession of the animal.<sup>4</sup> Chapter 490 allows a veterinarian to put an abandoned animal up for adoption.<sup>5</sup>

JMF

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2. See Staff of Senate Comm. on the Judiciary, 1989-90 Sess., REPORT ON ANIMAL RIGHTS: DOGS AND CATS at 3 (June 6, 1989) (prohibiting the eating of dogs and cats will help lessen unnecessary killings).

3. 1989 Cal. Stat. ch. 490, sec. 2, at \_\_\_\_\_ (enacting CAL. PENAL CODE § 598b(a)). It is unlawful for a person to transfer, possess, or import the carcass of an animal commonly retained as a pet for the sole purpose of using the carcass for food. *Id.* (enacting CAL. PENAL CODE § 598b(b)). This bill does not prohibit the lawful killing of wildlife or the production of livestock. *Id.* (enacting CAL. PENAL CODE § 598b(c)). Charges against two Cambodian refugees for eating a German Shepherd puppy were dropped by a Long Beach Municipal Judge when the evidence did not show that the puppy was killed inhumanely. Haldane, *Judge Clears Cambodians who Killed Dog for Food*, L.A. Times, Mar. 15, 1989, (Metro), at 1, col. 1. *But see SPCA Campaigns Against Immigrants Using Pets for Food*, United Press Int'l, Mar. 28, 1989, Domestic News (many Asians, including Cambodians and Filipinos, contend that eating dogs is not part of their culture).

4. CAL. PENAL CODE § 597f(b) (West 1988) (amending Cal. Stat. ch. 490, sec. 1, at \_\_\_\_\_).

5. 1989 Cal. Stat. ch. 490, sec. 1, at \_\_\_\_\_ (amending CAL. PENAL CODE § 597f(b)). The veterinarian must first contact the animal control agency. *Id.*

## Crimes; minors—distribution of material intended to arouse

Penal Code § 288.2 (new); §§ 290, 987.2 (amended).  
AB 1008 (Condit); 1989 STAT. CH. 1316

Existing law provides that it is a misdemeanor<sup>1</sup> to distribute harmful matter<sup>2</sup> to a minor.<sup>3</sup> Under Chapter 1316, it is a punishable offense

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1. See CAL. PENAL CODE §§ 17 (definition of misdemeanor), 19 (punishment for misdemeanor) (West 1988).

2. See *id.* § 313 (West 1988) (definition of harmful matter). The language used follows the obscenity definition as outlined by the United States Supreme Court in *Miller v. California* (413 U.S. 15, 24 (1973)). See generally *Review of Selected 1988 California Legislation*, 20 PAC. L.J. 559, 581 (1989) (analysis of change in definition of obscene matter).

3. CAL. PENAL CODE § 313.1(a). The person must have knowledge that the recipient is a minor, or fail to use reasonable care in discerning their age. *Id.* Distribution may be by any means, including telephone messages. *Id.*

for persons to knowingly provide or distribute harmful matter to a minor with the intent of arousing or appealing to their own sexual desires, or those of the minor.<sup>4</sup> Chapter 1316 specifies that the crime is a felony for second and subsequent convictions.<sup>5</sup> Additionally, anyone convicted of violating Chapter 1316 is required to register with the Department of Justice.<sup>6</sup>

DA

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4. 1989 Cal. Stat. ch. 1316, sec. 1, at \_\_\_\_ (enacting CAL. PENAL CODE § 288.2(a)). The offense is punishable by imprisonment. *Id.* Chapter 1316 provides a defense to a parent or guardian who provides harmful matter to a minor for the purpose of sex education. *Id.* (enacting CAL. PENAL CODE § 288.2(b)). Further, it is a defense that the act was done in furtherance of valid educational or scientific purposes. *Id.* (enacting CAL. PENAL CODE § 288.2(c)). A telephone corporation may carry telephone messages in accordance with its activities of providing telephone services. *Id.* (enacting CAL. PENAL CODE § 288.2(d)).

5. *Id.* § 288.2(a). See CAL. PENAL CODE §§ 17 (definition of felony), 18 (punishment for felony).

6. CAL. PENAL CODE § 290(b) (amended by 1989 Cal. Stat. ch. 1316, sec. 2, at \_\_\_\_). The registration consists of a written signed statement, fingerprints and a photograph. *Id.* § 290(5)(e). Non-compliance with the registration requirement is punishable as a misdemeanor. *Id.* § 290(5)(g). See generally Saunders, *Judicial Attitudes toward Child Sexual Abuse: a Preliminary Examination*, 70 JUDICATURE 95 (1986) (discusses judge's attitudes towards child abuse victims and punishment of child abuse); *Child Abuse, the Problem of the Abused and Neglected Child*, CAL. DEP'T OF JUST. INFORMATION PAMPHLET No. 8, OFFICE OF THE ATT'Y GEN. CRIME PREVENTION UNIT (1978) (report on the topic of child abuse, including an overview of legislation, statistics, and guidelines for reporting abuse); *In re Amber B.*, 191 Cal. App. 3d 682, 692, 236 Cal. Rptr. 623, 630 (1987) (court acknowledged the trauma of requiring abused children to testify, and the need for reliable expert testimony).

## Crimes; motor vehicle theft

Penal Code §§ 487h, 666.7 (new); §§ 186.2, 186.22, 487, 499b.1, 666.5 (amended); Vehicle Code § 10851 (amended).  
AB 332 (Nolan); 1989 STAT. CH. 930

Chapter 930 adds the crime of felonious theft or taking of a motor vehicle,<sup>1</sup> trailer,<sup>2</sup> or vessel<sup>3</sup> to the list of enumerated crimes which constitute criminal profiteering activity and criminal gang activity.<sup>4</sup>

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1. See CAL. VEH. CODE § 415 (West 1987) (definition of motor vehicle).

2. See *id.* § 630 (definition of trailer).

3. See CAL. HARB. & NAV. CODE § 21 (West 1978) (definition of vessel).

4. 1989 Cal. Stat. ch. 930, secs. 3-4, at \_\_\_\_ (amending CAL. PENAL CODE §§ 186.2(a)); *id.* sec. 5, at \_\_\_\_ (amending CAL. PENAL CODE § 186.22(c)). See CAL. PENAL CODE § 186.2(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 930, secs. 3, 4, at \_\_\_\_) (definition



Under existing law, it is unlawful to take an automobile without the owner's consent and with the intent to permanently or temporarily deprive the owner of the automobile.<sup>5</sup> Chapter 930 imposes a new penalty for this crime.<sup>6</sup> Chapter 930 also forbids a court from granting probation, except in unusual cases where the interests of justice would be served, for a person who has: three felony convictions for the theft of a motor vehicle, trailer, special construction equipment, or vessel; or two felony convictions and two misdemeanor convictions for the theft of a motor vehicle, trailer, special construction equipment, or vessel.<sup>7</sup>

Under existing law, a person convicted a third time for receiving any kind of stolen property can be punished by imprisonment in a state institution for sixteen months, or two or three years for a felony conviction, or by incarceration in a county jail for not more than one year for a misdemeanor conviction.<sup>8</sup> Chapter 930 imposes a penalty of imprisonment in a state institution for two, three, or

criminal profiteering activity). See *id.* § 186.22 (West 1988) (amended by 1989 Cal. Stat. ch. 930, sec. 5, at \_\_\_\_ (definition of criminal gang activity). Any person convicted of an offense which constitutes a pattern of criminal gang activity shall receive a penalty enhancement of one, two, or three years, at the court's discretion. 1989 Cal. Stat. ch. 930, sec. 5, at \_\_\_\_ (amending CAL. PENAL CODE § 186.22(b)(2)). See *id.* sec. 7, at \_\_\_\_ (enacting CAL. PENAL CODE § 487h(a)) (describing the felonious stealing or taking of a motor vehicle, trailer, special construction equipment, or vessel); CAL. VEH. CODE § 10851(a) (amended by 1989 Cal. Stat. ch. 930, sec. 11, at \_\_\_\_ (describing the taking or driving of another's vehicle with intent either to permanently or temporarily deprive the owner of the title or possession). Motor vehicle theft registered the largest annual increase of California Crime Index offenses in 1988, rising 13.1% over the previous year. OFFICE OF ATT'Y GEN., CRIME AND DELINQUENCY IN CALIFORNIA, 1988 (1989). Motor Vehicle theft increased for four consecutive years from 1983 to 1988—from 158,899 to 265,975—increasing a total of 48.8% during that period. *Id.*

5. CAL. VEH. CODE § 10851(a) (West 1987) (amended by 1989 Cal. Stat. ch. 930, sec. 11, at \_\_\_\_).

6. 1989 Cal. Stat. ch. 930, sec. 11, at \_\_\_\_ (amending CAL. VEH. CODE § 10851(a)). The new penalty can be either: two, three, or four years in a state prison, a fine up to \$10,000, or both for a felony conviction; or not more than one year in the county jail, a fine up to \$1000, or both for a misdemeanor. *Id.* A trial court, in determining whether to impose a felony or misdemeanor sentence, considers not only the defendant's potential for rehabilitation, but also such factors as the community's need for protection. *In re Anderson*, 69 Cal. 2d 613, 627, 447 P.2d 117, 126-27, 73 Cal. Rptr. 21, 30-31 (1968). Chapter 930 also makes it illegal to feloniously steal or take any motor vehicle, trailer, special construction equipment, or vessel, subject to a penalty of incarceration in a state prison for two, three, or four years or a fine of not more than \$10,000, or both for a felony conviction, or of imprisonment in a county jail not to exceed one year or a fine of not more than \$1,000, or both for a misdemeanor conviction. 1989 Cal. Stat. ch. 930, sec. 7, at \_\_\_\_ (enacting CAL. PENAL CODE § 487h(a)). Chapter 930 imposes a penalty of three, four, or five years in a state prison and a fine up to \$10,000 for a person who previously was convicted of felony vehicle theft and subsequently is convicted of feloniously stealing or taking a motor vehicle, trailer, special construction equipment, or vessel. *Id.* sec. 9, at \_\_\_\_ (amending CAL. PENAL CODE § 666.5(a)).

7. *Id.* sec. 11, at \_\_\_\_ (amended by CAL. VEH. CODE § 10851(d)(1)).

8. CAL. PENAL CODE § 496(1) (West 1988).

four years and a fine up to \$10,000 for a third conviction of receiving stolen property which specifically involves a motor vehicle, trailer, or vessel.<sup>9</sup>

Under existing law, three or more violations for joyriding<sup>10</sup> can be treated as a misdemeanor or a felony.<sup>11</sup> Chapter 930 treats the fourth conviction for joyriding as a felony, imposing a penalty of sixteen months, or two or three years in a state prison.<sup>12</sup>

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9. 1989 Cal. Stat. ch. 930, sec. 10, at \_\_\_\_ (enacting CAL. PENAL CODE § 666.7(a)).

10. See CAL. PENAL CODE § 499b (West 1988) (definition of joyriding).

11. *Id.* § 499b.1(b) (amended by 1989 Cal. Stat. ch. 930, sec. 8, at \_\_\_\_). A person previously convicted twice for joyriding and who is subsequently convicted a third time for the same offense can receive either up to one year in a county jail for a misdemeanor conviction, or 16 months or two or three years in a state prison for a felony conviction. *Id.* § 499b.1(a) (amended by 1989 Cal. Stat. ch. 930, sec. 8, at \_\_\_\_).

12. 1989 Cal. Stat. ch. 930, sec. 8, at \_\_\_\_ (amending CAL. PENAL CODE § 499b.1(c)).

## Crimes; notification of child abuse charge

Health and Safety Code § 1522.2 (new); Penal Code § 11174.1 (amended).

SB 1532 (C. Green); 1989 STAT. Ch. 1053

(Effective September 29, 1989)

Sponsor: California Association of Services for Children

Support: PTA

Opposition: None

Chapter 1053 requires local law enforcement agencies, probation officers, or social services agencies to notify owners and operators

of child care facilities<sup>1</sup> when an employee is charged with child abuse.<sup>2</sup> Before notifying the child care facilities owners or operators, the enforcement agency, probation officer or social service agency must determine both that the potential for abuse is present and that the employee is free to return to the facility.<sup>3</sup> Chapter 1053 also requires that child care facility employees be educated<sup>4</sup> on child abuse investigation<sup>5</sup> and reporting.<sup>6</sup>

JMF

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1. A care facility includes a community treatment facility, a day treatment facility, a group home, or a foster family agency. CAL. PENAL CODE § 11165.6 (West Supp. 1989).

2. 1989 Cal. Stat. ch. 1053, sec. 1, at \_\_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 1522.2). Child abuse includes: (1) Intentional infliction of physical injury; (2) sexual abuse; or (3) neglect. CAL. PENAL CODE § 11165.6 (West Supp. 1989). Child is any person under eighteen years of age. *Id.* § 11165 (West Supp. 1989).

3. 1989 Cal. Stat. ch. 1053, sec. 1, at \_\_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 1522.2).

4. The Department of Social Services must provide proper orientation and training to enable the Social Services employees to detect and report child abuse. *Id.*, sec. 2, at \_\_\_\_\_ (amending CAL. PENAL CODE § 11174.1(b)(2)).

5. Regulations for the investigation of child abuse are established by the Department of Justice and the State Department of Social Services. CAL. PENAL CODE § 11174.1 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1053, sec. 2, at \_\_\_\_\_).

6. *Id.* ch. 1053, sec. 2, at \_\_\_\_\_).

## Crimes; plastic firearms redefined

Penal Code § 12020 (amended).

AB 310 (Roos); 1989 STAT. Ch. 358

Existing law prohibits the unauthorized possession of certain specified weapons, including plastic firearms.<sup>1</sup> Chapter 358 redefines plastic firearm as a weapon that is not detectable by airport x-ray machines.<sup>2</sup>

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1. CAL. PENAL CODE § 12020(a) (West Supp. 1989) (general list and description of proscribed firearms).

2. 1989 Cal. Stat. ch. 358, sec. 1, at \_\_\_\_\_ (amending CAL. PENAL CODE § 12020(c)(22)). See also 18 U.S.C. § 922 (1987) (federal definition of plastic firearm).

## Crimes; possession of child pornography

Penal Code § 311.11 (new).

AB 2233 (Polanco); 1989 STAT. Ch. 1180

Under existing law, it is a crime to distribute<sup>1</sup> obscene<sup>2</sup> matter<sup>3</sup> which depicts a minor engaging in sexual conduct.<sup>4</sup> Chapter 1180 makes it a public offense to knowingly<sup>5</sup> possess or control matter<sup>6</sup> which the offender knows depicts a child under the age of fourteen years engaging in or simulating sexual conduct.<sup>7</sup>

### COMMENT

Although the United States Supreme Court has held that obscene<sup>8</sup> material is not constitutionally protected speech<sup>9</sup> and that states may prohibit the distribution of obscene material,<sup>10</sup> the Court has also held in *Stanley v. Georgia*,<sup>11</sup> that laws prohibiting the mere possession of obscene material are unconstitutional.<sup>12</sup> The court applied a bal-

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1. See CAL. PENAL CODE § 311(d) (West Supp. 1989) (definition of distribute).

2. See *id.* § 311(a) (definition of obscene matter).

3. See *id.* § 311(b) (definition of matter).

4. *Id.* § 311.2. If the person distributes or intends to distribute the material for commercial consideration, the offense is a felony. *Id.* § 311.2(b). If commercial consideration is not proven, the offense is a misdemeanor. *Id.* § 311.2(c). See *id.* § 311.4 (West 1988) (definition of sexual conduct).

5. See *id.* § 311(e) (definition of knowingly).

6. Chapter 1180 applies to matter defined in Penal Code section 311, as well as undeveloped film, negatives, photocopies, slides, filmstrips, and video tapes. 1989 Cal. Stat. ch. 1180, sec. 2, at \_\_\_\_ (enacting CAL. PENAL CODE § 311.11). Chapter 1180 does not apply to drawings, sculptures, or films rated by the Motion Picture Association of America. *Id.*

7. *Id.* To convict a person under Chapter 1180, it is not necessary to prove that the matter is obscene. *Id.* The offense is punishable by imprisonment for one year, a fine up to \$2500, or both. *Id.* For subsequent violations, the offense is a felony punishable by imprisonment for two, four, or six years. *Id.*

8. See *Miller v. California*, 413 U.S. 15, 24-25 (1973) (material is obscene if it offends contemporary community standards, depicts sexual conduct, and lacks serious literary, artistic, political, or scientific value).

9. *Roth v. United States*, 354 U.S. 476, 485 (1957).

10. *Miller*, 413 U.S. at 24-25 (1973) (laws prohibiting the distribution of obscene material are constitutional).

11. 394 U.S. 557 (1969).

12. *Stanley*, 394 U.S. at 568. The court held that laws prohibiting the mere possession of pornography violate the first amendment, as applied to the states through the fourteenth amendment. *Id.* See U.S. CONST. amends. I & XIV. See generally Note, *Stanley v. Georgia: A First Amendment Approach to Obscenity Control*, 31 OHIO ST. L.J. 364 (1970).

test that weighed the state interest against the individual privacy interest.<sup>13</sup>

Despite the holding in *Stanley*, other states have enacted statutes similar to Chapter 1180,<sup>14</sup> and the high courts in some states have upheld the constitutionality of these statutes.<sup>15</sup> Proponents of these laws argue that individual privacy interests are outweighed by strong state interests, such as the discouragement of pedophilia<sup>16</sup> and the protection of minors.<sup>17</sup> Proponents also point out that although the *Stanley* holding appears to bar laws prohibiting mere possession of pornography, in *New York v. Ferber*,<sup>18</sup> a case reviewing the constitutionality of a statute prohibiting the distribution of child pornography, the Court held that child pornography may be treated differently<sup>19</sup> from other pornography due to a strong state interest in protecting the physical and emotional well-being of children.<sup>20</sup> Therefore, it seems likely that Chapter 1180 will withstand constitutional challenge.<sup>21</sup>

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13. *Stanley*, 394 U.S. at 564-66.

14. See, e.g., ALA. CODE § 13A-12-192 (1988 Supp.); ARIZ. REV. STAT. ANN. § 13-3553 (1988 Supp.); FLA. STAT. ANN. § 827.071 (West Supp. 1989); ILL. ANN. STAT. ch. 38, para. 11-20.1 (Smith-Hurd Supp. 1988); KAN. STAT. ANN. § 21-3516 (1987 Supp.); MINN. STAT. ANN. § 617.247 (West 1987); OHIO REV. CODE ANN. § 2907.322 (Anderson Supp. 1988); UTAH CODE ANN. § 76-5a-3 (Supp. 1989); WASH. REV. CODE ANN. § 9.68A.070 (1988).

15. See, e.g., *Ex parte Felton*, 526 So. 2d 638, 641 (Ala. 1988); *People v. Geever*, 122 Ill. 2d 313, 328-29, 522 N.E.2d 1200, 1207 (1988); *State v. Meadows*, 28 Ohio St. 2d 43, 52, 503 N.E.2d 697, 704 (1986), *cert. denied*, 480 U.S. 936 (1987).

16. Potuto, *Stanley + Faber = The Constitutional Crime of At-Home Child Pornography Possession*, 76 Ky. L.J. 15, 26 (1987-88) (prohibition of child pornography may discourage pedophilia); Comment, *Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution*, 5 PEPPERDINE L. REV. 809, 817 (1978) (most sexual abusers of children have a collection of child pornography).

17. Potuto, *supra* note 16, at 32-40. Some commentators argue that creating a permanent record, such as a photo or videotape, of a child's sexual conduct can be more emotionally damaging to the child than the sexual act itself. *Id.*; Shouvlín, *Preventing the Sexual Exploitation of Children: A Model Act*, 17 WAKE FOREST L. REV. 535, 545 (1981); *New York v. Ferber*, 458 U.S. 747, 759 (1982).

18. 458 U.S. 747 (1982).

19. *New York v. Ferber*, 458 U.S. at 774. In *Ferber*, the court determined that it was not necessary to determine that material depicting children was obscene in order to criminalize its distribution. *Id.* at 760-761. Compare *id.* with *Miller v. California*, 413 U.S. at 24-25 (criminalization of the distribution of sexually explicit material is constitutional only when the material is obscene).

20. *Ferber*, 756 U.S. at 756-758. Although the Court has not considered the question, proponents of laws prohibiting the possession of child pornography contend that *Ferber* carves out an exception to *Stanley*. Potuto, *supra* note 16, at 21-32. The Court refused to grant certiorari to review a state case upholding the constitutionality of a statute similar to Chapter 1180. *State v. Meadows*, 28 Ohio St. 2d 43, 503 N.E.2d 697 (1986), *cert. denied*, 480 U.S. 936 (1987).

21. Potuto, *supra* note 16, at 21-32.

## Crimes; protection of witnesses' and victims' families

Penal Code § 1170.13 (new); § 136.2 (amended).  
SB 794 (Deddeh); 1989 STAT. Ch. 1378

Existing law allows a court to order a law enforcement agency to provide protection for a witness or victim of a crime, upon the court's good cause belief that intimidation or dissuasion of the victim or witness may occur.<sup>1</sup> Under Chapter 1378, a court may extend protection to the immediate family members of the victim or witness.<sup>2</sup>

JZ

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1. CAL. PENAL CODE § 136.2 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1378, sec. 1, at \_\_\_\_). The order must not be made without the law enforcement agency's consent, unless the court finds that there is a clear and immediate danger of harm to the victim or witness, and then only for limited and specified periods of time. *Id.* § 136.2(e). If the court finds that a clear and immediate danger exists, it may issue the order without the law enforcement agency's consent. *Id.*

2. 1989 Cal. Stat. ch. 1378, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 136.2(e)). Immediate family members include the spouse, children, or parents of the victim or witness. *Id.* Chapter 1378 only applies to those family members who reside in the witness' or victim's household, or within a reasonable proximity to the household. *Id.*

## Crimes; registration requirement for drug offenders

Health and Safety Code § 11590 (amended).  
SB 294 (Nielsen); 1989 STAT. Ch. 779  
(Effective July 1, 1990)

In order to facilitate police surveillance of drug offenders,<sup>1</sup> existing law requires persons convicted of specified narcotic or marijuana offenses<sup>2</sup> to register with the local chief of police or sheriff within

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1. *People v. Kun*, 195 Cal. App. 3d 370, 374, 240 Cal. Rptr. 564, 566 (1987) (discussion of the legislative intent of Health and Safety Code section 11590).

2. CAL. HEALTH & SAFETY CODE § 11590 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 779, sec. 1, at \_\_\_\_). Under existing law, the registration requirement applies to those convicted in California of possession, possession for sale, sale, giving away, transportation, or employment of minors for distribution of marijuana or narcotics; cultivation of marijuana or peyote; and forgery or alteration of prescriptions. *Id.* The restrictions apply whether the person was convicted in California or another state. *Id.* See *id.* §§ 11350 (possession of narcotics), 11357 (possession of marijuana), 11351 (possession for sale of narcotics), 11359 (possession for sale of marijuana), 11352 (transportation, sale, and giving away of narcotics),

thirty days of moving to a new city or county.<sup>3</sup> Chapter 779 extends the registration requirement to those convicted of manufacturing drugs<sup>4</sup> or being under the influence of drugs.<sup>5</sup> Additionally, Chapter 779 extends the requirement to those convicted of specified offenses concerning phencyclidine or non-narcotic controlled substances.<sup>6</sup>

JZ

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11360 (transportation, sale, and giving away of marijuana), 11354 (employment of minors for distribution of narcotics), 11361 (employment of minors for distribution of marijuana), 11358 (cultivation of marijuana), 11363 (cultivation of peyote), 11368 (forgery or alteration of prescriptions) (West Supp. 1989). *See also id.* § 11350(a) (specification of which substances are controlled substances). The registration requirement does not apply to misdemeanor convictions of possession, transportation, sale, or giving away of marijuana. *Id.* § 11590 (amended by 1989 Cal. Stat. ch. 779, sec. 1, at \_\_\_\_).

3. *Id.* § 11590 (amended by 1989 Cal. Stat. ch. 779, sec. 1, at \_\_\_\_). A violation of the registration requirement is a misdemeanor. *Id.* The constitutionality of Health and Safety Code section 11590 has been upheld in court. *People v. Kun*, 195 Cal. App. 3d 370, 377, 240 Cal. Rptr. 564, 568 (1987).

4. *See* CAL. HEALTH & SAFETY CODE § 11379.6 (West Supp. 1989) (prohibiting manufacture or production of illegal drugs).

5. 1989 Cal. Stat. ch. 779, sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11590). *See* CAL. HEALTH & SAFETY CODE § 11550 (West Supp. 1989) (prohibiting being under the influence of illegal drugs).

6. 1989 Cal. Stat. ch. 779, sec. 1, at \_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11590). The offenses include possession for sale, use of a minor for distribution, felony transportation, felony sale, and felony furnishing of phencyclidine or non-narcotic controlled substances. *See* CAL. HEALTH & SAFETY CODE §§ 11378 (prohibiting possession for sale of specified non-narcotic drugs), 11378.5 (prohibiting possession for sale of phencyclidine), 11380 (prohibiting use of a minor as an agent to distribute or distribution to a minor of specified non-narcotic drugs), 11380.5 (prohibiting use of a minor as an agent or distribution to a minor of phencyclidine), 11379 (prohibiting transportation, sale, and furnishing of specified non-narcotic drugs), 11379.5 (prohibiting transportation, sale, or furnishing of phencyclidine) (West Supp. 1989).

## Crimes; school employee victims—enhanced punishment

Education Code § 49079 (new); § 48900 (amended); Penal Code §§ 241.6, 243.6 (new); § 243.2 (amended).

SB 142 (Robbins); 1989 STAT. Ch. 1306

Chapter 1306 increases the punishment for any person who commits an assault<sup>1</sup> or battery<sup>2</sup> against a school employee.<sup>3</sup> In addition, under

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1. *See* CAL. PENAL CODE § 241 (West 1988) (definition of assault).

2. *See id.* § 243 (West 1988) (definition of battery).

3. 1989 Cal. Stat. ch. 1306, secs. 3, 4, 5, at \_\_\_\_ (enacting CAL. PENAL CODE §§ 241.6, 243.6) (amending CAL. PENAL CODE § 243.2) (the defendant must know, or have reason to

Chapter 1306, a teacher must be informed by the school district of any student who has caused, or attempted to cause, serious bodily injury or injury to another.<sup>4</sup>

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know that the victim is a school employee). The assault or battery must be in retaliation for conduct of the school employee in the course of their duties. *Id.* sec. 1, at \_\_\_\_ (enacting CAL. PENAL CODE § 241.6). Assault against a school employee, or battery against a person on school grounds (except as provided for in Penal Code section 243.6) is punishable by imprisonment for not more than one year, a fine not exceeding \$2000, or both. *Id.* sec. 3, at \_\_\_\_ (enacting CAL. PENAL CODE § 241.6); *id.* sec. 4, at \_\_\_\_ (amending CAL. PENAL CODE § 243.2(a)). Battery against a school employee is punishable by imprisonment for no more than one year in a county jail or by a fine not more than \$2000, or both. *Id.* sec. 5, at \_\_\_\_ (enacting CAL. PENAL CODE § 243.6). If the battery causes an injury, the offender may be punished by imprisonment in county jail for no more than one year, a \$2,000 fine, or imprisonment for 16 months, two or three years in the state prison both. *Cf.* CAL. PENAL CODE §§ 241, 243 (increased penalties are provided for those who commit assault and battery against persons in other specific categories, including police officers, firefighters and emergency medical technicians).

4. 1989 Cal. Stat. ch. 1306, sec. 2, at \_\_\_\_ (enacting CAL. EDUC. CODE § 49079(a)). If the school district has made a good faith effort to notify the teacher, the school district may not be held liable for failing to comply with this section. *Id.* (enacting CAL. EDUC. CODE § 49079(b)). The school district must base any information provided to the school teacher on information received by the school district from a law enforcement agency, or on any records that the district maintains. *Id.* (enacting CAL. EDUC. CODE § 49079(a)). The information given to the school teacher must be kept in confidence, and used only for the purpose for which it was provided *Id.* (enacting CAL. EDUC. CODE § 49079(d)). *See* CAL. PENAL CODE § 243(e) (definition of serious bodily injury and injury).

## Crimes; sexual exploitation—psychotherapist

Business and Professions Code § 729 (new).

SB 1004 (Boatwright); 1989 STAT. Ch. 795

Support: Los Angeles District Attorney, Attorney General, California Peace Officers' Association, California Police Chiefs' Association, California State Sheriffs' Association, California Association for Counselor Education and Supervision, California Psychiatric Association

Opposition: California District Attorneys' Association, American Civil Liberties Union, California Attorneys for Criminal Justice

Under existing law, any medical professional who engages in the sexual abuse of a patient may be subject to disciplinary action.<sup>1</sup>

1. CAL. BUS. & PROF. CODE § 726 (Deering 1986).



Chapter 795 makes it a crime<sup>2</sup> for a psychotherapist to engage in intercourse, sodomy, oral copulation, or sexual contact<sup>3</sup> with a patient.<sup>4</sup> In addition, Chapter 795 excludes consent of the patient as a defense.<sup>5</sup>

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2. See 1989 Cal. Stat. Ch. 795, sec. 1, at \_\_\_\_ (enacting CAL. BUS. & PROF. CODE § 729(b)). The first offense is a misdemeanor, the second offense incurs a fine not exceeding \$1000, imprisonment for up to a year, or both. *Id.*

3. See *id.* sec. 1, at \_\_\_\_ (enacting CAL. BUS. & PROF. CODE § 729(c)). Sexual contact is touching an intimate part of another. *Id.* See also CAL. PENAL CODE § 243.4 (West Supp. 1989) (definition of intimate part and touching).

4. 1989 Cal. Stat. ch. 795, sec. 1, at \_\_\_\_ (enacting CAL. BUS. & PROF. CODE § 729(b)). Prior patients are included if the relationship was terminated for the purpose of engaging in sexual contact. *Id.* Psychotherapists are required to provide brochures about patient's rights to patients that have had sexual contact with a previous psychotherapist. CAL. BUS. & PROF. CODE § 728 (Deering Supp. 1989). Sexually abused patients may bring civil actions against their psychotherapists. CAL. CIV. CODE § 43.93 (Deering Supp. 1989).

5. 1989 Cal. Stat. ch. 795, sec. 1, at \_\_\_\_ (enacting CAL. BUS. & PROF. CODE § 729(b)(2)).

## Crimes; sexual battery—touching

Penal Code § 243.4 (amended).

AB 674 (Filante); 1989 STAT. Ch. 1034

Under existing law, a person who intentionally, physically touches<sup>1</sup> an intimate part<sup>2</sup> of another, against that person's will and while that person is unlawfully restrained, for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery.<sup>3</sup> Prior law required that the victim be physically touched on the skin.<sup>4</sup> Chapter 1034

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1. See CAL. PENAL CODE § 243.4(d) (West 1989) (amended by 1989 Cal. Stat. ch. 1034, sec. 1, at \_\_\_\_ (definition of touching)).

2. See *id.* § 243(f)(1) (definition of intimate part).

3. *Id.* § 243.4(a).

4. *Id.* § 243.4(d) (amended by 1989 Cal. Stat. ch. 1034, sec. 1, at \_\_\_\_). See *People v. Yonko*, 196 Cal. App. 3d 1005, 1010, 196 Cal. Rptr. 269, 272 (1987) (touching the victim's thigh through stockings was insufficient to establish a touching for sexual battery); *People v. Duke*, 174 Cal. App. 3d 296, 299, 219 Cal. Rptr. 873, 875 (1985) (there must be direct contact with the skin for sexual battery); *In re Keith T.*, 156 Cal. App. 3d 983, 987, 203 Cal. Rptr. 112, 114 (1984) (touching for sexual battery requires direct contact with the skin).

expands the definition of touching to include contact that occurs directly through the clothing of the victim.<sup>5</sup>

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5. 1989 Cal. Stat. ch. 1034, sec. 1, at \_\_\_\_ (amending CAL. PENAL. CODE § 234.4(d)). Chapter 1034 also creates a separate crime of misdemeanor sexual battery, excluding the requirement of unlawful restraint, for any person who touches an intimate part of another person against their will for the purpose of sexual arousal, gratification or abuse. 1989 Cal. Stat. ch. 1034, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 243.4(d)). The punishment is imprisonment in the county jail for less than six months, a \$2000 fine, or both. *Id.* The punishment is the same for a simple battery. CAL. PENAL CODE § 243(a).

## Crimes; simultaneous possession of drugs and a firearm

Health & Safety Code § 11370.1 (new); § 11550 (amended).

SB 407 (Stirling); 1989 STAT. CH. 1041

Support: Sheriff's Offices of Alameda, Kern, Los Angeles, Mono, Monterey, Nevada, Placer, Sacramento, San Diego, Sonoma, Tehama and Ventura; Californians Against Handgun Violence; Peace Officers Research Association of California; Police Departments of Escondido and Fullerton; California Rifle and Pistol Association; Los Angeles City Council; National Rifle Association of America; League of California Cities; Office of the Attorney General; District Attorneys of Kern, Colusa, Nevada, Sacramento, and Ventura Counties

Opposition: California Public Defenders Association; American Civil Liberties Union; California Attorneys for Criminal Justice

Chapter 1041 creates a new felony for unlawfully possessing certain quantities of controlled substances<sup>1</sup> while in the immediate personal possession<sup>2</sup> of a loaded, operable firearm.<sup>3</sup> Chapter 1041 also provides

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1. The person may not possess quantities of substances, ranging from one-eighth gram or less to one gram or less, containing cocaine, cocaine base, heroin, methamphetamine, or phencyclidine. 1989 Cal. Stat. ch. 1041, sec. 1, at \_\_\_\_ (enacting CAL. HEALTH & SAFETY CODE § 11370.1(a)).

2. The firearm is considered to be in the immediate personal possession of a defendant if the firearm is in the interior passenger compartment of a motor vehicle. *Id.*

3. *Id.* The punishment for the simultaneous possession of certain controlled substances and a loaded, operable firearm is imprisonment in the state prison for two, three, or four years. *Id.* A person convicted of this crime is ineligible for diversion under Chapter 2.5 of the California Penal Code. *Id.* (enacting CAL. HEALTH & SAFETY CODE § 11370.1(b)).

penalties for persons under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine, who are in the immediate personal possession of a loaded, operable firearm.<sup>4</sup>

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4. *Id.* sec. 2, at \_\_\_\_\_ (amending CAL. HEALTH & SAFETY CODE § 11550(c)). The penalty is imprisonment in the county jail for up to one year, or in state prison. *Id.* Subsequent offenders may also be imprisoned for up to two, three, or four years. *Id.* (amending CAL. HEALTH & SAFETY CODE § 11550(d)). Persons convicted of this offense are also ineligible for diversion under Chapter 2.5 of the California Penal Code. *Id.* (amending CAL. HEALTH & SAFETY CODE § 11550(e)).

## Crimes; taking a firearm from an officer

Penal Code § 148 (amended).

AB 200 (Cortese); 1989 STAT. Ch. 1005

Support: California Organization of Police and Sheriffs; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association; Department of California Highway Patrol; Peace Officers Research Association of California; California Narcotic Officers Association; California Union of Safety Employees; Attorney General John Van DeKamp; California District Attorneys Association; Department of Youth Authority; California Coalition of Law Enforcement Association.

Opposition: California Public Defenders Association; California Attorneys for Criminal Justice; California District Attorneys Association

Under existing law, any person who willfully resists, delays, or obstructs an officer<sup>1</sup> performing official duties commits a misdemeanor.<sup>2</sup> Under Chapter 1005 any person who resists, delays, or

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1. See CAL. PENAL CODE § 148 (amended by 1989 Cal. Stat. ch. 1005, sec. 1, at \_\_\_\_\_) (officer includes any public officer, peace officer, or an emergency medical technician). See also CAL. HEALTH & SAFETY CODE §§ 1797.80-.84 (West Supp. 1989) (definition of emergency medical technician); *In re Frederick B.*, 192 Cal. App. 3d 79, 89, 237 Cal. Rptr. 338, 345 (1987) (school security guard was a public officer for a violation of California Penal Code section 148).

2. CAL. PENAL CODE § 148. See *People v. Angel P.*, 211 Cal. App. 3d 1030, 1036, 259 Cal. Rptr. 838, 842 (1989) (in order for California Penal Code section 148 to be constitutional on its face, the section must be a specific intent crime). But see *People v. Roberts*, 131 Cal. App. 3d 1, 9, 182 Cal. Rptr. 757, 761 (1982) (obstructing an officer in discharge of official duties is a general intent crime).

obstructs an officer and removes or attempts to remove the officer's firearm<sup>3</sup> or any other weapon commits either a felony<sup>4</sup> or a misdemeanor.<sup>5</sup> Specific intent to remove the firearm must be proven to establish a violation of Chapter 1005.<sup>6</sup>

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3. The weapon must be taken from the officer or from the immediate presence of the officer. 1989 Cal. Stat. ch. 1005, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 148(c)).

4. A person who removes an officer's firearm commits a felony. *Id.*

5. *Id.* (amending CAL. PENAL CODE § 148(d)). An attempt to remove or take a firearm is punishable as a felony or a misdemeanor. *Id.* See CAL. PENAL CODE § 17 (West 1988) (definition of felony and misdemeanor).

6. 1989 Cal. Stat. ch. 1005, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 148(d)). The following acts demonstrate specific intent: (1) the defendant unfastened the officer's holster strap; (2) the defendant partially removed the firearm from the holster; (3) the defendant released the firearm safety; (4) an independent witness corroborates the fact that the defendant actually touched the firearm and the defendant stated the intent to remove the firearm; (5) an independent witness corroborates that the defendant actually attempted to take the firearm away from the officer; (6) the defendant's fingerprints were found on the firearm; or (7) other scientifically verifiable evidence established that the defendant touched the firearm. *Id.*

## Crimes; unauthorized interference with cable television transmissions

Penal Code § 593d (amended).

AB 544 (Moore); 1989 STAT. Ch. 964

Existing law prohibits deliberate, unauthorized connection to any television cable with the intent to receive the communications which are being transmitted by the cable.<sup>1</sup> Chapter 964 further prohibits deliberate, unauthorized connections to a cable television system with the intent of interfering with authorized transmissions to others or the intent of broadcasting unauthorized communications.<sup>2</sup>

Violators of Chapter 964 are subject to conviction of a misdemeanor punishable by a fine of up to \$10,000, confinement in the county jail, or both.<sup>3</sup> Each broadcast is treated as a separate offense.<sup>4</sup>

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1. CAL. PENAL CODE § 593d(a) (Deering 1983).

2. 1989 Cal. Stat. ch. 964, sec. 1, at \_\_\_\_ (amending CAL. PENAL CODE § 593d(b)).

3. *Id.*

4. *Id.*

Violators of Chapter 964 are subject to civil liability to the cable company for specified civil damages and injunctive relief.<sup>5</sup>

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5. CAL. PENAL CODE § 593d(d) (amended by 1989 Cal. Stat. ch. 964, sec. 1, at \_\_\_\_ (civil damages are specified as \$5000, or treble actual damages plus attorney's fees, whichever is greater). Cable television systems can also seek injunctive relief. *Id.* § 593d(e) (amended by 1989 Cal. Stat. ch. 964, sec. 1, at \_\_\_\_). See Note, *North Carolina's Theft of Cable Television Service Statute: Prospects of a Brighter Future for the Cable Television Industry*, 63 N.C.L. REV. 1296, 1302-1303 (1985) (the availability of civil remedies is important as a deterrent against violations of telecommunications laws since law enforcement authorities must give low priority to investigation of such crimes).

## Crimes; victims—compensation for nonprofit agencies

Government Code § 13965 (amended).

SB 556 (Davis); 1989 STAT. CH. 1374

Sponsor: Barbara Sinatra Treatment Center.

Support: Family Service Council, California Medical Association, California District Attorney's Association.

Existing law provides victims<sup>1</sup> of crime with monetary assistance<sup>2</sup> for pecuniary losses.<sup>3</sup> Under Chapter 1374 when a public agency<sup>4</sup>

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1. A victim includes: (1) Any person injured during a crime; (2) any person legally dependent on a person injured by a crime; (3) any person who is present at the commission of the crime and closely related to the person injured; and (4) in the case of death caused by the commission of a crime, any person who assumes the deceased's responsibilities. CAL. GOV'T CODE § 13960 (West Supp. 1989).

2. The victim may receive a maximum of \$23,000. *Id.* § 13965(a)(5) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1374, sec. 1, at \_\_\_\_). The victim may receive payment for attorney's fees up to a maximum of 10% of the award or \$500, whichever is less. *Id.* § 13965(d) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1374, sec. 1, at \_\_\_\_).

3. *Id.* § 13965(a)(2) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1374, sec. 1, at \_\_\_\_). The victim may recover for the following losses: (1) Psychiatric treatment or counseling; (2) lost wages; (3) job retraining; and (4) the cost of a second opinion from a psychiatrist or psychologist. *Id.* § 13965 (a)(1)-(4) (amended by 1989 Cal. Stat. ch. 1374, sec. 1, at \_\_\_\_). The defendant may be required to pay a fine to the State as well as to pay restitution directly to the victim. *Id.* § 13967 (West Supp. 1989). See CAL. CONST. art. I, § 28 (provides the victim with a right to restitution). See also *People v. Vega-Hernandez*, 179 Cal. App. 3d 1084, 1096, 225 Cal. Rptr. 209, 216 (1986) (the legislature may determine whether the victim may be reimbursed for non-pecuniary losses such as pain and suffering). See *People v. Serna*, 203 Cal. App. 3d 728, 732, 249 Cal. Rptr. 861, 862-63 (1988) (the court may order the defendant to pay both a fine and direct restitution). See generally Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts*, 30 UCLA L. REV. 52, 60-64 (1982) (victim may receive direct restitution payment from defendant).

4. See 1989 Cal. Stat. ch. 1374, sec. 1, at \_\_\_\_ (amending CAL. GOV'T CODE § 13965(a)(1)) (public agency includes state agencies, governmental agencies, child protective services, police, or the district attorney).

refers a victim to a nonprofit agency for treatment, that nonprofit agency may be reimbursed at its normal rate.<sup>5</sup> Further, Chapter 1374 provides regulations<sup>6</sup> for reimbursement of medical expenses.<sup>7</sup>

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5. *Id.* A normal and customary fee is not to exceed the maximum set by the State Board of Control (Board). *Id.* The customary fee is that which is charged to a person with sufficient means of payment. *Id.*

6. For treatment which is to exceed \$5000, the Board may require additional information or documentation. *Id.* (amending CAL. GOV'T CODE § 13965(i)).

7. *Id.* The maximum rates and service limitations will be set by the Board except for mental health and counseling expenses, which will be limited to the statewide average. *Id.*

## Crimes; Youth Authority—assault and battery

Welfare and Institutions Code § 1768.8 (amended).  
SB 1215 (Lockyer); 1989 STAT. CH. 995

Under existing law, when a person confined in a California Youth Authority institution commits an assault or battery which inflicts serious bodily injury upon a person not confined in the institution, the punishment is imprisonment county jail for not more than one year, a fine of not more than \$5000, or both.<sup>1</sup> Chapter 995 increases the punishment for persons confined in a Youth Authority institution who commit an assault and battery which inflicts serious bodily harm to imprisonment in the state prison for two, three, or four years or in the county jail for not more than one year.<sup>2</sup>

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1. CAL. WELF. & INST. CODE § 1768.8(b) (amended by 1989 Cal. Stat. ch. 995, sec. 1, at \_\_\_\_). In contrast, under existing law when any person commits a battery inflicting serious bodily harm against another person, the punishment is imprisonment in the county jail for not more than one year or in the state prison for two, three or four years. CAL. PENAL CODE § 243(d) (West Supp. 1989). See *id.* § 243(e)(5) (definition of serious bodily injury).

2. 1989 Cal. Stat. ch. 995, sec. 1, at \_\_\_\_ (amending CAL. WELF. & INST. CODE § 1768.8). See generally Besta, *Young Offenders in Adult Court: Are We Moving in The Right Direction?*, 30 CRIM. LAW Q. 476 (1988).

