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Criminal Procedure

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Criminal Procedure

Criminal Procedure; assault weapon--furnishing of registration information

Penal Code § 12288.5 (new).

SB 1860 (Davis); 1992 STAT. Ch. 1331

Under existing law any person who owned an assault weapon¹ prior to the date that ownership of assault weapons was made illegal² is required to register the assault weapon with the Department of Justice.³ Chapter 1331 prohibits a peace officer⁴ from broadcasting over a police radio that an individual has registered or has obtained a permit to possess an assault weapon, unless the officer has a good faith belief that the individual has engaged in, or may be engaged in, criminal conduct,⁵ or if the officer has a good faith belief that the

1. See CAL. PENAL CODE § 12276(a) (West 1992) (listing weapons that meet the definition of assault weapon for the purpose of the statute, including, among others, AK Series weapons, UZI, Galil, Baretta AR-70, CETME Sporter, and Colt AR-15 Series weapons); see also *id.* § 12276.5 (West 1992) (allowing the Attorney General to seek future judicial declarations that firearms other than those specified in Penal Code § 12276(a) are also assault weapons).

2. See *id.* § 12280(b) (West 1992) (making possession of an assault weapon illegal); see also *Fresno Rifle and Pistol Club v. Van De Kamp*, 965 F.2d 723, 727, 729, 730 (9th Cir. 1992) (upholding California's assault weapons ban against charges that it is preempted by federal law, that it is an unconstitutional bill of attainder, and that it infringes on Second Amendment rights). See generally *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 442 (1990) (discussing passage of the Assault Weapon Control Act of 1989). New Jersey has enacted legislation similar to California's ban on assault weapons. See N.J. STAT. ANN. § 2C:58-12 (West Supp. 1992) (requiring registration of assault weapons owned prior to the date that ownership of the weapon became illegal); *id.* § 2C:39-9 (West Supp. 1992) (outlawing the manufacture, shipping, transportation, and sale of assault weapons without being licensed to do so).

3. CAL. PENAL CODE § 12285(a) (West 1992). But see David Freed, *Assault Rifles Are Not Heavily Used in Crimes*, L.A. TIMES, May 20, 1992, at A18 (citing statistics which indicate that only 70,000 of the estimated 300,000 to 600,000 assault weapons in California have been registered).

4. See CAL. PENAL CODE § 830 (West 1985) (defining peace officer).

5. *Id.* § 12288.5(a)(1) (enacted by Chapter 1331); see SENATE COMMITTEE ON JUDICIARY, ANALYSIS OF SB 1860, May 5, 1992 (stating that SB 1860 is designed to protect the privacy of gunowners and to prevent theft of assault weapons by persons who listen to police scanners); *County of San Diego v. Department of Health Serv.*, 1 Cal. App. 4th 656, 661, 2 Cal. Rptr. 2d 256, 259 (1991) (stating the general rule that a court may look to committee analyses to determine legislative intent); *Forsher v. Bugliosi*, 26 Cal. 3d 792, 808, 608 P.2d 716, 725, 163 Cal. Rptr. 628, 637 (1980) (outlining the three elements of a tort cause of action for the public disclosure of private facts); see also CAL. GOV'T CODE § 815.6 (West 1980) (making a government entity liable for failure to discharge a mandatory duty); *Bradford v. State*, 36 Cal. App. 3d 16, 20, 111 Cal. Rptr. 852, 854

police are responding to a call in which there is a danger that the person allegedly committing a criminal violation may gain access to the assault weapon.⁶ Broadcast of such information would also be allowed in situations where the peace officer has a good faith belief that the victim, witness, or reportee of the alleged crime may be using the assault weapon to hold the alleged criminal or may be using the assault weapon in defense of himself, herself or others.⁷

JSP

Criminal Procedure; bad checks--collection of fees

Penal Code § 1001.65 (amended).
AB 3268 (Farr); 1992 STAT. Ch. 251

Existing law makes it a crime to pass a bad check.¹ Under existing law, if the district attorney's office has collected and

(1973) (holding that a public entity may be held liable under Government Code § 815.6 even when the employee who failed to discharge the mandatory duty would be immune); ARVO VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE § 2.82 (3d ed. 1992) (noting cases in which public entities have been held liable under Government Code § 815.6); *Recommendation Relating to Sovereign Immunity, No. 1, Tort Liability of Public Entities and Public Employees*, 4 CAL. L. REVISION COMM'N 801, 816 (1963) (stating that public entities should be held liable for failure to comply with minimum standards of safety and performance established by statute or regulation); BAJI No. 11.52 (7th ed. 1986) (giving jury instruction for cases involving a public entity's failure to discharge a mandatory duty).

6. CAL. PENAL CODE § 12288.5(a)(2) (enacted by Chapter 1331).

7. *Id.* § 12288.5(a)(3) (enacted by Chapter 1331).

1. CAL. PENAL CODE § 476a (West 1988); *see id.* § 476 (West 1988) (creating an offense for making or passing fictitious instruments); *see also* *People v. Burden*, 205 Cal. App. 3d 1277, 1281, 253 Cal. Rptr. 130, 132 (1988) (holding that the court did not violate its discretionary function by imposing as a condition of probation for a person convicted of writing a check with insufficient funds, a prohibition from opening or maintaining a checking or charge account).

processed a bad check,² it may collect a fee of not more than \$25 per check.³ If the bad check writer is not referred to a diversion program,⁴ the court may impose a collection fee⁵ and require the defendant to participate in a check writing education class.⁶ Chapter 251 dictates that if the district attorney elects to collect any fees, the money collected shall be paid to the victim to compensate for any bank fees incurred as a result of the bad check.⁷

DHT

2. See CAL. PENAL CODE § 1001.60 (West Supp. 1992) (defining the act of writing a bad check).

3. *Id.* § 1001.65(a) (amended by Chapter 251); see CAL. CIV. CODE § 1719 (West Supp. 1992) (stating that the passer of a bad check may be liable for treble damages of not less than \$100 or more than \$500 if they fail to reimburse the payee within 30 days of the issuance of the check); *Mughrabi v. Suzuki*, 197 Cal. App. 3d 1212, 1215, 243 Cal. Rptr. 438, 440 (1988) (holding that an award of treble damages is not a discretionary punishment to be determined by the court).

4. See CAL. PENAL CODE § 1001.1 (West 1985) (defining pretrial diversion program as a procedure of postponing prosecution of a misdemeanor offense either temporarily or permanently at any stage of the judicial process); *People v. Hudson* 149 Cal. App. 3d 661, 664, 197 Cal. Rptr. 36, 39 (1983) (stating that the statutory diversion scheme is an alternative to further prosecution); *People v. Superior Court*, 11 Cal. 3d 59, 61, 520 P.2d 405, 407, 113 Cal. Rptr. 21, 23 (1974) (holding that narcotic diversion programs seek to identify experimental drug-users before they become deeply involved with drugs in order to provide education and counseling, and to alleviate over-crowding in courts by disposing of cases involving lesser offenses, thereby allowing courts to devote time and resources to more serious criminal prosecutions).

5. See CAL. PENAL CODE § 1001.65(b) (amended by Chapter 251) (limiting such fee to \$25 or \$1,000 aggregate).

6. *Id.*; cf. FLA. STAT. ANN. § 832.08 (West Supp. 1992) (establishing a bad check diversion program, and imposing fees for the collection of money). If the defendant is ordered to attend an education class, the court is required to examine the defendant's financial condition to determine if that person is able to pay the expense of the education class. CAL. PENAL CODE § 1001.65(b) (amended by Chapter 251).

7. CAL. PENAL CODE § 1001.65(c) (amended by Chapter 251); see *id.* (providing that such reimbursement for the bank charge is not to exceed \$10); CAL. GOV'T CODE §§ 13959-13969.2 (West 1992) (providing restitution of pecuniary losses for victims of certain criminal acts). See generally Daniel K. Weiss, *Insufficient Fund Check Charges: the Need for Legislative Action*, 45 OHIO ST. L.J. 1003, 1003-16 (Fall 1984) (outlining the arguments for regulation of bad check fees).

Criminal Procedure; booking and release

Penal Code § 853.6 (amended).

AB 3156 (Cannella); 1992 STAT. Ch. 1105

Existing law provides that a person arrested for a misdemeanor¹ offense must be taken before a magistrate² upon request or released with a written notice to appear in court.³ Under prior law a peace officer⁴ had the option of booking⁵ the defendant at any time before the proceedings were finally concluded.⁶ Chapter 1105 provides that the arrested person must be booked prior to release or, if released without being booked, must provide verification that he or she was booked and fingerprinted before court proceedings begin.⁷

LGC

1. See CAL. PENAL CODE § 17(a) (West Supp. 1992) (defining misdemeanor).

2. See *id.* § 807 (West 1985) (defining magistrate); see also *People v. Columbia Research Corp.*, 103 Cal. App. 3d Supp. 33, 38, 163 Cal. Rptr. 455, 457-58 (1980) (discussing the powers and duties of a magistrate).

3. CAL. PENAL CODE § 853.6(a) (amended by Chapter 1105); see *id.* § 849 (West 1985) (providing the procedure for release of a person pending a court appearance); *id.* § 853.7 (West Supp. 1992) (providing that the violation of a promise to appear is a misdemeanor regardless of the outcome of the original proceedings). See generally *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) (holding that the state must complete administrative steps within 24 hours of the arrest); *Mabry v. County of Kalamazoo*, 626 F. Supp. 912, 914 (Mich. 1986) (finding that warrantless detention beyond the time needed to take administrative action was a violation of the defendant's constitutional rights).

4. See CAL. PENAL CODE §§ 830-830.12 (West 1985 & Supp. 1992) (defining persons included and excluded in the definition of peace officer); CAL. GOV'T CODE § 1031 (West Supp. 1992) (establishing minimum standards for persons having the powers of a peace officer).

5. See BLACK'S LAW DICTIONARY 183 (6th ed. 1991) (defining booking).

6. 1991 Cal. Stat. ch. 453, sec. 1, at 782 (amending CAL. PENAL CODE § 853.6).

7. CAL. PENAL CODE § 853.6(g) (amended by Chapter 1105); see SENATE COMMITTEE ON JUDICIARY, ANALYSIS OF AB 3156, at 2 (June 25, 1992) (stating that the author's expressed purpose for introducing Chapter 1105 is to curtail the large number of misdemeanor cases in California which fail to be recorded because fingerprints are never taken during the cite and release process). But see *People v. Arnold*, 58 Cal. App. 3d Supp. 1, 5, 132 Cal. Rptr. 922, 925 (1976) (holding that a policy of denying release because so many defendants were failing to show up, rather than because of factors concerning the particular defendant was error). See generally Wayne R. LaFave, *Article: Being Frank About the Fourth: On Allen's "Process of Factualization in the Search and Seizure Cases"*, 85 MICH. L. REV. 427 (1986) (suggesting that booking and fingerprinting alone are a significant invasion of personal liberty).

Criminal Procedure; capital punishment--administration of the death penalty

Penal Code §§ 3603, 3604 (amended).
AB 2405 (McClintock); 1992 STAT. Ch. 558

Under existing law, the death penalty is inflicted by the use of lethal gas.¹ Chapter 558 provides that the death penalty is to be inflicted either by lethal gas or lethal injection.² Prisoners sentenced

1. CAL. PENAL CODE § 3604 (amended by Chapter 558); *see id.* § 37(a) (West Supp. 1992) (authorizing the death penalty for those convicted of treason against the state); *id.* § 128 (West 1988) (providing that perjury resulting in the execution of an innocent person is punishable by death); *id.* § 190(a) (West Supp. 1992) (stating that the death penalty is appropriate for murder in the first degree); *id.* § 219 (West 1988) (stating that causing a train-wreck resulting in death is punishable with the death penalty); *id.* § 4500 (West Supp. 1992) (authorizing the death penalty for an assault resulting in death by a convict sentenced to life imprisonment); CAL. MIL. & VET. CODE § 1672(a) (West 1988) (stating that sabotage causing death is punishable by execution); *see also* U.S. CONST. amend. VIII (prohibiting the imposition of cruel and unusual punishment); CAL. CONST. art. I, § 17 (prohibiting cruel or unusual punishment); *id.* art. I, § 27 (providing that the death penalty is not to be deemed cruel or unusual punishment); *Godfrey v. Georgia*, 446 U.S. 420, 444 (1980) (providing that if a state wishes to authorize the use of the death penalty, it has the constitutional responsibility to construct and apply its provisions to avoid arbitrary and capricious application of the law); *Gregg v. Georgia*, 428 U.S. 153, 176-81 (1976) (holding that since the framers were aware of and accepted the existence of the death penalty, and in light of the fact that 35 states have enacted statutes authorizing the use of the death penalty in certain circumstances, capital punishment for the crime of murder was not per se cruel and unusual punishment) *reh'g denied* 429 U.S. 875, 875 (1986); *In re Anderson*, 69 Cal. 2d 613, 631-32, 447 P.2d 117, 130, 73 Cal. Rptr. 21, 34 (1968) (holding that the death penalty inflicted by lethal gas does not violate constitutional provision against cruel and unusual punishment) *cert. denied* 406 U.S. 971 (1972); *People v. Oppenheimer*, 156 Cal. 733, 737-38, 106 P. 74, 77 (1909) (stating that the California statute authorizing punishment by death does not violate the prohibition against cruel and unusual punishment); *accord Trop v. Dulles*, 356 U.S. 86, 101 (1958) (stating that the Eighth Amendment will be accorded a meaning in line with the evolving standards of a maturing society); *Gray v. Lucas*, 710 F.2d 1048, 1057-1061 (5th. Cir. 1989) (finding that the pain and suffering invoked by poisonous cyanide gas is not sufficient as a matter of law to invalidate state statute under the Eighth Amendment) *cert. denied*, 475 U.S. 1133 (1989). *But see Furman v. Georgia*, 408 U.S. 238, 430 (1972) (Powell, J., dissenting) (holding that no court could validate any means of implementing the death penalty found to be unnecessarily cruel in comparison to presently available alternatives); *People v. Anderson*, 6 Cal. 3d 628, 654, 493 P.2d 880, 898, 100 Cal. Rptr. 152, 170 (1972) (stating that California's death penalty statute imposes cruel and unusual punishment). Currently, only three states authorize death by lethal gas. ARIZ. CONST. art. 22, § 22; CAL. PENAL CODE § 3604 (West 1982); MD. ANN. CODE, art. 27, § 73 (1988). *See generally* Dan Moraine & Tom German, *Harris Dies After Judicial Duel*, L.A. TIMES, Apr. 22, 1992, at A, col. 5 (describing the execution of Robert Alton Harris).

2. CAL. PENAL CODE § 3604(a) (amended by Chapter 558); *see* DERRICK HUMPHRY, FINAL EXT., 134-35 (1990) (describing one form of lethal injection as involving a first injection of sodium thiopental to induce a coma, followed by a subsequent injection of pavulon and potassium chloride

to death prior to or after the operative date of Chapter 558 must choose the method of execution, and the prisoner's ultimate decision must be submitted to the warden within ten days after the service of the execution warrant upon the prisoner.³ If the prisoner fails to choose the method of execution within the ten day period, Chapter 558 mandates that the death penalty is to be effectuated by lethal gas.⁴

DHT

Criminal Procedure; child abuse--reporting

Penal Code § 11165.15 (new); §§ 11165.7, 11166, 11166.5, 11172 (amended).
SB 1695 (Royce); 1992 STAT. Ch. 459

to insure death); *see also* Campbell v. Blodgett, No. 89-35210, 1992 WL 61523 at *16 (9th Cir. Apr. 1, 1992) (rejecting defendant's argument that allowing a defendant to choose his method of execution, and therefore participating in his own death, is cruel and unusual punishment) *reh'g granted* 1992 WL 292285 at *1 (1992); *cf.* WASH. REV. CODE ANN. § 10.95.180 (West 1990) (defining the method of execution in Washington as either lethal injection or hanging). *See generally* Stephen Comman, *Lethal Injection: Attacking the Drugs to Invalidate the Punishment*, 7 CRIM. JUST. J. 363, 363-87 (1984) (describing the success of death penalty cases which have been challenged on the basis of the means of execution).

3. CAL. PENAL CODE § 3604(b) (amended by Chapter 558). If the prisoner's date of execution is rescheduled, Chapter 558 dictates that the prisoner again must make the decision as to the method of execution following the procedures described above. *Id.* § 3604(c) (amended by Chapter 558).

4. *Id.* § 3604(b) (amended by Chapter 558). Should either execution via lethal gas or lethal injection be held invalid, Chapter 558 provides that the death penalty is to be imposed by the remaining procedure. *Id.* § 3604(d) (amended by Chapter 558); *see* Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1384, 8 Cal. Rptr. 2d 486, 490 (1992) (stating that the test for the severability of a statute is whether the invalid parts can be severed from the valid parts without destroying the unity of the statute or disrupting the statutory scheme, and whether the statute would have been adopted had the Legislature foreseen the invalidity of the provision).

Existing law requires child care custodians,¹ health practitioners,² employees of a child protective agency³ and commercial film and photographic print processors⁴ to report⁵ to a child protective agency any known or suspected⁶ instances of child abuse⁷ they encounter within the scope of their employment.⁸ Existing law

1. See CAL. PENAL CODE §§ 11165.7, 11166.5(a) (amended by Chapter 459) (defining a child care custodian as various personnel having regular contact with youth including administrators (of schools, day camps, youth centers, and day care facilities), teachers, foster parents, social workers, probation officers and district attorneys).

2. See *id.* § 11165.8 (West Supp. 1992); *id.* § 11166.5(a) (amended by Chapter 459) (defining health practitioners as various health care personnel including medical doctors, psychologists, dentists, podiatrists, chiropractors, nurses, dental hygienists, and optometrists).

3. See *id.* § 11165.9 (West Supp. 1992) (defining child protective agency as a police or sheriff's department, a county probation department, or a county welfare department, but not school district police nor security departments).

4. See *id.* § 11165.10 (West Supp. 1992) (defining commercial film and photographic print processor); see also *id.* § 11166(c) (amended by Chapter 459) (describing the duty of a commercial film and photographic print processor).

5. See *id.* § 11167(a) (West Supp. 1992) (listing the information required in a telephoned report of suspected child abuse as the name of the reporter, the name and location of the child, the nature and extent of the child's injury, and any other information requested by the child protective agency).

6. See *id.* § 11166(a) (amended by 459) (defining reasonable suspicion as a situation where it would be objectively reasonable for a person, based on the facts of a situation, to suspect child abuse); see also *People v. Cavaiani*, 432 N.W.2d 409, 413 (Mich. Ct. App. 1988) (holding that when a psychologist was told by his nine-year old patient that her father had fondled her breasts, he was deemed to have had "reasonable cause to suspect" that she was a victim of child abuse and was required to report this information).

7. See CAL. PENAL CODE § 11165.6 (West Supp. 1992) (defining child abuse as a situation when it would be objectively reasonable for a person, based on the facts of a situation, to suspect child abuse); cf. *id.* § 11165.1(a)-(c) (West Supp. 1992) (defining sexual abuse as sexual assault (such as rape, incest, sodomy, and oral copulation) or sexual exploitation (such as prostitution and pornography)); *id.* § 11165.2 (West Supp. 1992) (defining neglect as the negligent treatment, by act or omission, of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare); *id.* § 11165.3 (West Supp. 1992) (defining "willful cruelty or unjustifiable punishment of a child" as a situation where any person willfully causes or permits any child to suffer unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be endangered); *id.* § 11165.4 (West Supp. 1992) (defining "unlawful corporal punishment or injury" as a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition).

8. *Id.* § 11166(a), (c) (amended by Chapter 459); see 67 Cal. Op. Att'y Gen. 235 (June 1, 1984) (requiring medical and nonmedical personnel to report child abuse discovered while providing professional services); see also *Gladson v. State*, 376 S.E.2d 362, 364 (Ga. 1989) (holding that a statute that required "psychologists" to report instances of child abuse was not constitutionally vague, and that in light of common usage, the word encompassed only licensed psychologists); *Planned Parenthood Affiliates of California v. Van de Kamp*, 181 Cal. App. 3d 245, 255-56, 226 Cal. Rptr. 361, 363 (1986) (holding that the declaration of 67 Cal. Ops. Att'y Gen. 235 was too broad, and that

grants these individuals immunity from civil and criminal liability for any report made that is required or authorized by the Child Abuse and Neglect Reporting Act.⁹ Existing law also requires these individuals, except commercial film and photographic print processors, to sign a form stating that they understand and will comply with their duty to report instances of child abuse.¹⁰

Chapter 459 grants and places all of the above protections and requirements upon a child visitation monitor.¹¹ Chapter 459 also requires child visitation monitors to receive training in child abuse identification and reporting before monitoring their first visit.¹² In addition, Chapter 459 expands the definition of "child care custodian" to include district attorney investigators, inspectors and

there is no duty to report sexual activity of a minor under 14 if it is voluntary and performed with another of similar age). *See generally* Susan A. Collier, *Reporting Child Abuse: When Moral Obligations Fail*, 15 PAC. L.J. 189, 212-15 (1983) (describing the scope of the affirmative duty to report child abuse); Robert T. Mertens, *Child Sexual Abuse in California: Legislative and Judicial Responses*, 15 GOLDEN GATE U. L. REV. 437, 443-46 (1985) (describing the California Legislature's attempt to more effectively expose and prosecute child abusers); John E.B. Myers, *Survey of Child Abuse and Neglect Reporting Statutes*, 10 J. JUV. L. 1, 11-27, 72 (1986) (listing the child abuse reporting statutes for all fifty states and their various requirements); B. Kay Shafer, *Child Sexual Abuse and the Law: When a Child's Terrible Secret is Revealed, a Legal Nightmare Begins*, 12 L. A. LAW. 46, 49 (Sept. 1989) (describing how child abuse is usually reported).

9. CAL. PENAL CODE § 11172 (West Supp. 1992); *see id.* §§ 11164-11174.3 (West 1988 & Supp. 1992) (codifying the Child Abuse and Neglect Reporting Act); *Thomas v. Chadwick*, 224 Cal. App. 3d 813, 820, 274 Cal. Rptr. 128, 133 (1990) (holding that the immunity granted those persons required to report suspected instances of child abuse is absolute); *Harris v. City of Montgomery*, 435 So. 2d 1207, 1212 (Ala. 1983) (holding that a doctor who reported a suspected instance of child abuse to the police was absolutely immune, along with the clinic where he worked, from a civil suit by the child's abusive mother pursuant to Code 1975, § 26-14-9).

10. CAL. PENAL CODE § 11166.5(a) (amended by Chapter 459).

11. *Id.* § 11166(a), (b) (amended by Chapter 459); *see id.* § 11165.15 (enacted by Chapter 459) (defining child visitation monitor as any person who is financially compensated to monitor the visit between a child and any other person when the monitoring of that visit has been ordered by the court); *id.* § 11166.5(a) (amended by Chapter 459) (stating that child visitation monitors must sign a form acknowledging that they understand and will comply with § 11166 and that they must receive training in child abuse identification and reporting); *id.* § 11172(a), (b) (amended by Chapter 459) (granting immunity to child visitation monitors for reporting child abuse).

12. *Id.* § 11166.5(d) (amended by Chapter 459); *see* CAL. WELF. & INST. CODE §§ 18976(b), 18977 (West 1991) (describing goals of a parent and school staff primary prevention program and the duties of a prevention training center).

family support officers not working with court appointed counsel,¹³ as well as peace officers.¹⁴

ACR

Criminal Procedure; court proceedings--domestic violence

Penal Code § 977 (amended).
AB 2628 (Lee); 1992 STAT. Ch. 863

Under existing law, when only charged with a misdemeanor,¹ the accused may appear by counsel only.² Chapter 863 grants the court the power to order that the accused be personally present, when the accused is charged with a misdemeanor offense involving domestic violence³ or a misdemeanor violation of a court order relating to domestic violence⁴, upon a satisfactory showing of necessity.⁵ Chapter 863 provides that where the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time the court may not order the defendant to personally appear.⁶ Chapter 863 also authorizes a court to permit an initial

13. See CAL. WELF. & INST. CODE § 317 (West Supp. 1992) (describing circumstances under which counsel is appointed by the court and the duties of that attorney once he or she is appointed).

14. CAL. PENAL CODE §§ 11165.7(a), 11166.5(a) (amended by Chapter 459); see *id.* § 830 (West Supp. 1992) (defining peace officer).

1. See CAL. PENAL CODE § 17(b) (West Supp. 1992) (defining misdemeanor).

2. *Id.* § 977(a)(1) (amended by Chapter 863).

3. See CAL. CIV. PROC. CODE § 542(b) (West Supp. 1992) (defining domestic violence).

4. See CAL. PENAL CODE § 273.6 (West Supp. 1992) (providing a penalty for the violation of a court order relating to domestic violence).

5. *Id.* § 977(a)(2) (amended by Chapter 863); see *id.* § 136.2 (West Supp. 1992) (authorizing any court with proper jurisdiction to issue orders to protect a victim or witness from intimidation or dissuasion); cf. KAN. STAT. ANN. § 22-3205 (1988); LA. REV. STAT. ANN. § 833 (West Supp. 1992); OR. REV. STAT. § 135.030(2) (1990) (allowing a defendant, when accused of a misdemeanor, to appear by counsel, but with no provisions relating to domestic violence and court orders). See generally, Comment, *Restraining Order Legislation for Women: A Reassessment*, 16 U.S.F. L. REV. 703 (1982) (discussing domestic-related court orders, including procedures, sanctions, criminal remedies, problems, and suggestions).

6. CAL. PENAL CODE § 977(a)(2) (amended by Chapter 863).

arraignment on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audio-video communication between the defendant and the courtroom in lieu of defendant's physical presence in the courtroom.⁷

Chapter 863 provides that the defendant has the right to make his or her plea while physically present in the courtroom if the accused so requests.⁸ Under Chapter 863, if the defendant decides not to exercise this right, the defendant must execute a written waiver of that right.⁹

CPH

Criminal Procedure; criminal history

Penal Code §§ 11105.3, 11125, 11126 (amended).
AB 3773 (Conroy); 1992 STAT. Ch. 1227

Under existing law, a human resource agency¹ or an employer² may request from the Department of Justice³ records of all

7. *Id.* § 977(c) (amended by Chapter 863). If the defendant is represented by counsel, the attorney must be present with the defendant, and may enter a plea, during the arraignment. *Id.* See generally Jeffrey M. Silbert et al., *The Use of Closed Circuit Television for Conducting Misdemeanor Arraignments in Dade County, Florida*, 38 U. MIAMI L. REV. 657 (1984) (discussing the advantages and disadvantages of Dade County's video arraignment system).

8. CAL. PENAL CODE § 977(c) (amended by Chapter 863)

9. *Id.* Chapter 863 allows a judge to order a defendant's personal appearance in court for arraignment. *Id.* In a misdemeanor or felony case a judge may accept a plea of guilty or no contest from a defendant who is not physically present in the courtroom. *Id.*

1. See CAL. PENAL CODE § 11105.3(f) (amended by Chapter 1227) (defining human resource agency).

2. See *id.* § 11105.3(e) (amended by Chapter 1227) (defining employer as any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children).

3. See CAL. GOV'T CODE §§ 15000-15006 (West 1992) (setting forth the powers, duties, and organization of the Department of Justice).

convictions and arrests⁴ involving sex-related crimes, drug-related crimes, or violent crimes of a person applying for a license, employment, or volunteer position involving supervisory or disciplinary power, where the person will be caring for children, the elderly, the handicapped, or the mentally impaired.⁵ Chapter 1227 expands the crimes for which such information may be requested.⁶ Further, Chapter 1227 clarifies that such records may be requested for any arrest pending adjudication.⁷

Existing law prohibits any person or agency from requiring another person to obtain a copy of his or her criminal record.⁸ Chapter 1227 prohibits a person or agency from requesting another person to furnish his or her criminal record or notification that a

4. See CAL. PENAL CODE § 11105.3 (amended by Chapter 1227) (specifying arrests for which the person is released on bail).

5. *Id.* § 11105.3 (amended by Chapter 1227); see CAL. CODE REGS. tit. 11, §§700-708 (1992) (detailing the requirements for providing criminal records); *Review of Selected 1990 California Legislation*, 22 PAC. L.J. 699 (1991) (discussing amendments to § 11105.3 of the Penal Code); cf. *Central Valley of the 7th Step Found. Inc. v. Younger*, 95 Cal. App. 3d 212, 236, 157 Cal. Rptr. 117, 131 (1979) (holding that information regarding non-conviction data is not subject to dissemination to public employers). See generally George de Lama, *Murder Case Shows Why Schools Want More Background Checks*, CHI. TRIB., Oct. 16, 1992, at C5; *No-Nonsense Policy on Family Violence*, US NEWS & WORLD REP., Oct. 1, 1984, at 74 (discussing the use of background checks on people who work with children).

6. CAL. PENAL CODE § 11105.3 (amended by Chapter 1227). The additional crimes include the following: (1) Spousal rape; (2) enticement of a minor for purpose of prostitution; (3) enticement of a minor to commit lewd or lascivious acts; (4) spousal abuse resulting in corporal injury; (5) sexual assault on an animal; (6) providing harmful matter to a minor; (7) continuous sexual abuse of a child; (8) employment of a minor in the sale or distribution of obscene matter, pornography or advertisement of obscene matters depicting minors; and (9) possession or control of child pornography. *Id.* § 11105.3(g) (amended by Chapter 1227). See, e.g., ARIZ. REV. STAT. ANN. § 41-1750 (1992); HAW. REV. STAT. § 346-19.6 (1991); KY. REV. STAT. ANN. § 156.483 (Michie/Bobbs-Merrill 1991); MO. ANN. STAT. § 43.540 (Vernon Supp. 1992); WYO. STAT. § 7-19-201 (1991) (requiring the disclosure of criminal records when a potential employer or licensee will be in a position to deal with minors).

7. CAL. PENAL CODE § 11105.3(a) (amended by Chapter 1227).

8. *Id.* § 11125 (amended by Chapter 1227).

record exists or does not exist, and provides that any violation of this provision is a misdemeanor.⁹

SRM

Criminal Procedure; domestic violence--citizens' arrests

Penal Code § 836 (amended).

AB 2336 (Conroy); 1992 STAT. Ch. 555

Under existing law, a peace officer¹ may not make an arrest for a misdemeanor² offense without a warrant unless the officer has reasonable cause³ to believe that the person to be arrested committed

9. *Id.* The author's stated purpose in enacting Chapter 1227 is to expand the reporting of serious crimes to human resource agencies and specified employers. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 3773, at 2-3 (June 24, 1992). *See generally* ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY, 1 FINAL REPORT at 405-13 (1986); ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE, FINAL REPORT at 102-07 (1984); William L. Chaze, *Now, Nationwide Drive to Curb Child Abuse*, US NEWS & WORLD REP., Oct. 1, 1984, at 73 (discussing legal and other actions to protect children from child abuse).

1. *See* CAL. PENAL CODE § 830 (West Supp. 1992) (defining peace officer).

2. *See id.* § 17(a) (West Supp. 1992) (defining misdemeanor). There are several offenses classified as misdemeanors which could be committed in the presence of a citizen but rarely in the presence of a peace officer, making a warrantless arrest impractical. *See, e.g., id.* § 241(a) (West Supp. 1992) (making assault a misdemeanor); *id.* § 243(a) (West Supp. 1992) (criminalizing battery); *id.* § 243.4(d) (West Supp. 1992) (defining the offense of misdemeanor sexual battery); *id.* § 273(g) (West 1988) (criminalizing indulgence in immoral, lewd or degrading practices in front of a child); *id.* § 273.6(a) (West Supp. 1992) (making the violation of a protective or restraining order issued by a court a misdemeanor); *id.* § 417(a) (West Supp. 1992) (making it a misdemeanor for any person to draw or exhibit a deadly weapon or firearm in a rude, angry or threatening manner); *id.* § 415(2) (West 1988) (making it a misdemeanor for any person to maliciously and willfully disturb another by loud and unreasonable noise); *id.* § 646.9(a) (West Supp. 1992) (making the offense of stalking a misdemeanor).

3. *See People v. Fein*, 4 Cal. 3d 747, 752, 484 P.2d 583, 586, 94 Cal. Rptr. 607, 610 (1971) (defining reasonable cause as that state of facts as would lead an ordinary and prudent person to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime).

the offense in the officer's presence.⁴ Existing law also requires all state and local law enforcement agencies to adopt written policies and standards for responses to domestic violence⁵ calls, including specific standards regarding the use of citizens' arrests.⁶ Chapter 555 makes it mandatory that a peace officer responding to a domestic call make a good faith effort to inform the victim of his or her right to

4. CAL. PENAL CODE § 836(a) (amended by Chapter 555); *see In re Thierry S.*, 19 Cal. 3d 727, 734, 566 P.2d 610, 613, 139 Cal. Rptr. 708, 711 (1977) (reading § 836 as allowing warrantless misdemeanor arrests only when the peace officer has reasonable cause to believe that a misdemeanor offense has been committed in the officer's presence); *Music v. Department of Motor Vehicles*, 221 Cal. App. 3d 841, 847, 270 Cal. Rptr. 692, 696 (1990) (reversing a license suspension for misdemeanor drunk driving because the arresting officer did not see the accused actually driving); *see also People v. Welsch*, 151 Cal. App. 3d 1038, 1042, 199 Cal. Rptr. 87, 90 (1984) (defining the phrase "in the presence of" as observable to the peace officer at the time of arrest). The exception to the warrant requirement allowing an arrest without a warrant when an officer has reason to believe that a misdemeanor has been committed in the officer's presence dates back to the early English Common Law. *United States v. Watson*, 423 U.S. 411, 418 (1976). There is nothing in the United States Constitution that prohibits a warrantless arrest for a misdemeanor being made when the officer has reason to believe that a misdemeanor has been committed out of the presence of the officer. *Welsh v. Wisconsin*, 466 U.S. 740, 756 (1984) (White, J., dissenting); *see Fields v. City of South Houston*, 922 F.2d 1183, 1189 (5th Cir. 1991); *Street v. Surdyka*, 492 F.2d 368, 371 (4th Cir. 1974) (holding that the United States Constitution does not require a warrant for a misdemeanor arrest made out of the presence of the arresting officer).

5. *See* CAL. PENAL CODE § 13700(b) (West Supp. 1992) (defining domestic violence); *see also* Sonya Ross, *Tighter Home-violence Laws Urged*, ARIZONA REPUBLIC, Oct. 3, 1992, at A-1 (reporting surveys indicating that approximately one million women were attacked by husbands or lovers in the course of a year, that an additional three million violent domestic crimes went unreported, and that a 1988 report of the Surgeon General listed violence as the number one health risk facing women); Lisa Lerman, *Expansion of Arrest Power: A Key to Effective Intervention*, 7 VT. L. REV. 59, 64 (1982) (suggesting that relaxation of the warrant requirement for arrests is necessary for an effective police response to domestic violence, and listing examples of the statutes of several states allowing warrantless arrests for misdemeanor offenses committed against family members).

6. CAL. PENAL CODE § 13701(c) (West Supp. 1992); *see id.* § 837 (West 1985) (empowering private persons to make arrests under specified circumstances).

make a citizen's arrest.⁷ The information must include advice on how to safely make the arrest.⁸

JSP

Criminal Procedure; drive-by shooting--sentence enhancements

Penal Code § 12022.9 (amended).
SB 1649 (Leonard); 1992 Stat. Ch. 510
(*Effective August 16, 1992*)

7. *Id.* § 836(b) (amended by Chapter 555); *see* CAL. GOV'T CODE § 815.6 (West 1980) (making a government entity liable for failure to discharge a mandatory duty); *Bradford v. State*, 36 Cal. App. 3d 16, 20, 111 Cal. Rptr. 852, 854 (1973) (holding that a public entity may be held liable under § 815.6 even when the employee who failed to discharge the mandatory duty would be immune); ARVO VAN ALSTYNE, *CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE*, § 2.82 (3d ed. 1992) (noting cases in which public entities have been held liable under § 815.6); BAJI § 11.52 (1986) (giving jury instruction for cases involving a public entity's failure to discharge a mandatory duty). *But see* CAL. GOV'T CODE § 845 (West 1980) (providing that neither a public entity nor employee is liable for failure to provide police protection); *id.* § 846 (West 1980) (negating liability of public entities and employees for failure to make an arrest or for the failure to retain an arrested person in custody). *See generally* Gary Bishop, *Section 1983 and Domestic Violence: A Solution to the Problem of Police Officer's Inaction*, 30 B.C. L. REV. 1357, 1361 (1989) (surveying cases in which municipalities have been held liable for failure to provide adequate protection for victims of domestic violence); Lisa McCabe, *Police Officer's Duty to Rescue or Aid: Are They Only Good Samaritans?*, 72 CAL. L. REV. 661, 662 (1984) (suggesting that peace officers should owe an affirmative duty to rescue); *Recommendation Relating to Sovereign Immunity, No. 1, Tort Liability of Public Entities and Public Employees*, 4 CAL. L. REVISION COMM'N 801, 816 (1963) (stating that public entities should be held liable for failure to comply with minimum standards of safety and performance established by statute or regulation).

8. CAL. PENAL CODE § 836(b) (amended by Chapter 555). A citizen may summon aid to make a citizen's arrest. *Id.* § 839 (West 1985); *see* *People v. Richards*, 72 Cal. App. 3d 510, 514, 140 Cal. Rptr. 158, 159 (1977); *People v. Campbell*, 27 Cal. App. 3d 849, 853, 104 Cal. Rptr. 118, 121 (1972) (holding that a private person may request that a peace officer perform the physical act of detaining the suspect when a citizen's arrest is made). It is a felony for a peace officer to willfully refuse to arrest a person when an arrest is authorized. CAL. PENAL CODE § 142(a) (West 1988). A peace officer may not be held liable for false arrest or imprisonment when the arrest was lawfully made. *Id.* § 847 (West 1985). *But see* *Kinney v. County of Contra Costa*, 8 Cal. App. 3d 761, 767, 769, 87 Cal. Rptr. 638, 642, 643 (1970) (holding that a person falsely arrested by a citizen has no cause of action against the peace officer who took the plaintiff into custody, yet noting that the plaintiff has a remedy against the offending citizen); *Ramsden v. Western Union*, 71 Cal. App. 3d 873, 879, 138 Cal. Rptr. 426, 430 (1977) (setting forth the elements of a cause of action for false imprisonment).

Under existing law, any person¹ who maliciously² and willfully³ discharges a firearm⁴ at an inhabited⁵ dwelling,⁶ or who discharges a firearm from a motor vehicle⁷ at another person is guilty of a felony.⁸ Under Chapter 510, persons who violate this provision and cause victims to suffer paralysis⁹ or paraparesis¹⁰ of a major body part, will receive a four year enhancement¹¹ to their prison terms.¹²

BAB

1. See CAL. PENAL CODE § 7 (West 1988) (defining person).

2. See *id.* § 7(4) (West 1988) (defining malicious).

3. See *id.* § 7(1) (West 1988) (defining willfully).

4. See *id.* § 12001 (West Supp. 1992) (defining firearm).

5. See *id.* § 246 (West Supp. 1992) (defining inhabited).

6. See *id.* (including dwelling houses, occupied buildings, occupied motor vehicles, occupied aircraft, inhabited housecars and campers among those units that qualify as a dwelling for purposes of this section); see also CAL. REV. & TAX. CODE § 218(d) (West 1987) (defining dwelling).

7. See CAL. VEH. CODE § 415 (West Supp. 1992) (defining motor vehicle).

8. CAL. PENAL CODE §§ 246, 12034(c) (West Supp. 1992); see *People v. The Superior Court of Los Angeles*, 213 Cal. App. 3d 54, 56, 261 Cal. Rptr. 303 (1989) (describing a situation where a youth discharged a shotgun, from a moving vehicle, in the direction of a small girl and her aunt as a violation of California Penal Code § 12034(c) and referring to it as a "drive-by shooting"); see also ASSEMBLY COMM. ON PUBLIC SAFETY, REPORT ON SB 1649, at 2 (1992) (referring to California Penal Code § 12034 as the "main drive-by shooting statute"); cf. FLA. STAT. ch. 790.15 (1991); MICH. COMP. LAWS § 750.234a (1991); NEV. REV. STAT. ANN. § 202.287 (Michie 1991); R.I. GEN. LAWS § 11-47-51.1(a) (1991) (making it a felony to discharge a firearm from a vehicle).

9. See CAL. PENAL CODE § 12022.9(b)(3)(A) (amended by Chapter 510) (defining paralysis).

10. See *id.* § 12022.9(b)(3)(B) (amended by Chapter 510) (defining paraparesis).

11. See CAL. R. CT. 405(c) (defining enhancement).

12. CAL. PENAL CODE § 12022.9 (amended by Chapter 510); see ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE REPORT ON SB 1649, at 3 (1992) (explaining that a major issue in imposing sentence enhancements for causing great bodily injury is proving that the defendant intended to cause the harm); see also CAL. PENAL CODE § 12022.7 (West 1992) (providing for a sentence enhancement for a defendant who causes great bodily injury to a victim during the commission or attempted commission of a felony); *In re Sergio R.*, 228 Cal. App. 3d 588, 601, 279 Cal. Rptr. 149, 156 (1991) (holding that the intent component of California Penal Code § 12022.7 requires a finding that the defendant had the specific intent to inflict the great bodily injury). *But see* *People v. Bass*, 147 Cal. App. 3d 448, 454, 195 Cal. Rptr. 153, 157 (1983) (holding that "intent to inflict great bodily injury" is mere intent to commit the act, and the intent requirement is met when the injury is caused by the deliberate act of the defendant).

Criminal Procedure; jurors

Business and Professions Code § 7561.1 (amended); Code of Civil Procedure § 237 (new); § 206 (amended); Penal Code §§ 95.2, 95.3 (new); § 95.1 (amended).
SB 1299 (Davis); 1992 STAT. Ch. 971

Under existing law, a private detective's license¹ may be denied, suspended, or revoked if the Director of the Department of Consumer Affairs (Director)² determines that the licensee³ has committed specified acts.⁴ Chapter 971 provides additionally that the license may be denied, suspended, or revoked if the Director determines that the licensee has been convicted of providing a defendant to a criminal proceeding with information designed to facilitate communication with or location of a juror in that proceeding.⁵

Existing law authorizes the defendant in a criminal case, his or her attorney, or the prosecutor to discuss the jury deliberation or

1. See CAL. BUS. & PROF. CODE §§ 7520-7539.5 (West Supp. 1992) (stating the requirements for obtaining a private detective's license, and describing the form and content of the license); cf. MICH. COMP. LAWS ANN. § 338.826 (West 1992); N.J. STAT. ANN. § 45:19-12 (West 1978) (providing comparable requirements for obtaining a private detective's license).

2. See CAL. BUS. & PROF. CODE § 100, 101 (West 1990 & Supp. 1992) (defining the Department of Consumer Affairs).

3. See *id.* § 7512.6 (West Supp. 1992) (defining licensee).

4. *Id.* § 7561.1 (amended by Chapter 971) (providing that the acts include: (1) Having made a false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license; (2) having committed any act or crime constituting grounds for denial of licensure under § 480 of the Business and Professions Code, including illegally using, carrying, or possessing a deadly weapon; (3) having impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof; (4) having committed assault, battery, or kidnapping, or used force or violence on any person, without proper justification); cf. ILL. ANN. STAT. ch. 111, para. 2679 (Smith-Hurd 1992); MICH. COMP. LAWS ANN. § 338.830 (West 1992); MINN. STAT. ANN. § 326.3387 (West Supp. 1992) (providing similar grounds for the revocation of a private detective's license).

5. CAL. BUS. & PROF. CODE § 7561.1(o) (amended by Chapter 971); see CAL. PENAL CODE § 95.3 (enacted by Chapter 971) (providing that any person who knowingly provides a defendant or former defendant to any criminal proceeding information to communicate with or locate a juror to that proceeding is guilty of a misdemeanor).

verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.⁶ Chapter 971 authorizes a defendant or the defendant's counsel to request that the court provide personal juror information⁷ within the court's records necessary for the defendant to communicate with jurors for the purpose of developing issues on appeal or any other lawful purpose.⁸ Chapter 971 requires the court to provide the information requested to the defendant's counsel or any agent of the defendant's counsel, but also allows the court to limit access to sealed records.⁹

Chapter 971 mandates that the names of qualified jurors drawn from the qualified juror list be made available to the public upon request unless the court determines that a compelling government interest requires that this information be kept confidential or its use limited in whole or part.¹⁰ Chapter 971 further provides that any court employee who has legal access to juror information that is sealed and knowingly discloses that information in violation of a court order is guilty of a misdemeanor.¹¹

Under prior law, any person who threatened a juror with respect to a criminal proceeding in which a verdict had been rendered and who had the requisite intent and apparent ability to carry out the threat, so as to cause the target of the threat to reasonably fear for his

6. CAL. CIV. PROC. CODE § 206(b) (amended by Chapter 971).

7. See *id.* § 206(f) (amended by Chapter 971) (stating that this information may include jurors' names, addresses, and telephone numbers).

8. *Id.*

9. *Id.*; see *id.* § 237(c) (enacted by Chapter 971) (authorizing the court to limit access to records sealed to the defendant, defendant's counsel, or the defendant's investigator for the purpose of developing issues on appeal or for any other lawful purpose).

10. *Id.* § 237(a) (enacted by Chapter 971). The court may, upon a juror's request, motion of counsel, or on its own motion, order that all or part of the court's record of personal juror information be sealed upon finding that a compelling governmental interest, such as protecting jurors from physical harm or the threat of physical harm, warrants this action. *Id.* § 237(b) (enacted by Chapter 971). The court may limit access to sealed juror records to the defendant for the purpose of developing issues of appeal or for any other lawful purpose. *Id.* § 237(c) (enacted by Chapter 971). Chapter 971 authorizes the court to require agreement that the defendant, defendant's counsel, or defendant's investigator not divulge jurors' identities or identifying information to others. *Id.*

11. *Id.* § 237(d) (enacted by Chapter 971). Chapter 971 also provides that any person who intentionally solicits another to unlawfully access or disclose juror information contained in records known to be sealed, or who knowing that the information was unlawfully secured, intentionally discloses it to another person is guilty of a misdemeanor. *Id.* § 237(e) (enacted by Chapter 971).

or her safety or the safety of his or her immediate family, was guilty of a misdemeanor.¹² Chapter 971 provides that anyone who threatens a juror in this manner is guilty of a public offense.¹³ Chapter 971 also provides that any person who intentionally provides¹⁴ a defendant or former defendant to any criminal proceeding information from records, known to be sealed, for the purpose of locating or communicating with a juror to that proceeding is guilty of a misdemeanor.¹⁵ If a private detective provides the information, that licensee is also guilty of a misdemeanor.¹⁶

CPH

**Criminal Procedure; pending nonfelony driving offenses--
prosecution for reckless driving and driving under the influence**

Vehicle Code § 41500 (amended).
AB 3569 (Becerra); 1992 STAT. Ch. 950

Existing law exempts persons confined to a state correctional facility¹ or the California Youth Authority (CYA)² from prosecution

12. 1987 Cal. Stat. ch. 762, sec. 1, at 2418 (enacting CAL. PENAL CODE § 95.1). *See* CAL. PENAL CODE § 17(b) (West Supp. 1992) (defining misdemeanor).

13. CAL. PENAL CODE § 95.1 (amended by Chapter 971). Chapter 971 states that the punishment for this offense is imprisonment in a county jail for not more than one year, or by imprisonment in the state prison, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. *Id.*; *see id.* § 15 (West 1988) (defining public offense); *see also* *Burks v. United States*, 287 F.2d 117, 122 (9th Cir. 1961) (holding that, in California, a public offense is synonymous with a crime, and a crime consists of both felonies and misdemeanors); *cf.* ILL. ANN. STAT. ch. 38, para. 32-4a (1992); N.C. GEN. STAT. § 14-225.2 (1986); S.D. CODIFIED LAWS ANN. § 22-11-15.3 (1992) (providing that anyone who threatens a person who has served as a juror, or that person's family, because of that person's service as a juror, is guilty of a felony).

14. *See* CAL. PENAL CODE § 95.2 (enacted by Chapter 971) (specifying that the person providing information regarding a juror must have knowledge of the relationship of the parties and must provide the information without court authorization and juror consent).

15. *Id.*

16. *Id.* § 95.3 (enacted by Chapter 971).

1. *See* CAL. PENAL CODE § 5003 (West Supp. 1992) (specifying institutions over which the Department of Corrections has jurisdiction).

for nonfelony³ driving offenses that are pending against such persons at the time they are committed to the facility.⁴ This exemption does not, however, apply to nonfelony driving offenses that would require the Department of Motor Vehicles (DMV)⁵ to immediately suspend⁶ or revoke⁷ the driver's license upon conviction of the pending nonfelony offense.⁸ Chapter 950 specifies that reckless driving⁹ and

2. See CAL. WELF. & INST. CODE § 1710 (West 1990) (creating the Department of the Youth Authority). The California Youth Authority Act is intended to rehabilitate young offenders through training and treatment as a substitute for retributive punishment. *Id.* § 1700 (West 1990); *In re Aaron N.*, 70 Cal. App. 3d 931, 938-39, 139 Cal. Rptr. 258, 262 (1977).

3. See CAL. PENAL CODE § 17(a) (West Supp. 1992) (stating that every crime or public offense not classified as a felony is a misdemeanor or infraction); *id.* (defining a felony as a crime punishable by death or imprisonment in state prison); see also CAL. VEH. CODE § 40000.1 (West 1991) (defining infraction); *id.* §§ 40000.5-40000.77 (West 1991 & Supp. 1992) (enumerating misdemeanor vehicle code offenses).

4. CAL. VEH. CODE § 41500(a) (amended by Chapter 950).

5. See *id.* §§ 1500-1501 (West 1990) (creating and granting power to the Department of Motor Vehicles).

6. See *id.* § 13102 (West 1990) (defining license suspension).

7. See *id.* § 13101 (West 1990) (defining license revocation).

8. *Id.* § 41500(d) (amended by Chapter 950); see *id.* §§ 13350, 13352 (West Supp. 1992) (specifying the nonfelony offenses for which the DMV must revoke or suspend a driver's license including hit and run injury accidents, reckless driving that results in bodily injury, and driving under the influence); *People v. Minor*, 204 Cal. App. 3d Supp. 5, 9, 251 Cal. Rptr. 636, 637-38 (1988) (holding that a repeat DUI offender confined to a state prison at the time a new DUI offense was pending, was not exempt from prosecution under Vehicle Code § 41500(a) because the DMV was required to revoke the driver's license upon conviction of the new offense). Upon a first DUI conviction, the court may grant probation and permit the defendant to retain a restricted driver's license. CAL. VEH. CODE §§ 23160(c), 23161(a)(2) (West Supp. 1992); see *People v. Freeman*, 225 Cal. App. 3d Supp. 1, 8, 275 Cal. Rptr. 373, 378 (1987) (holding that five separate defendants were entitled to dismissal of first time DUI offenses that were pending at the time each person was committed to either a state correctional facility or the CYA because the court could grant probation to the defendants and not suspend their licenses).

9. See CAL. VEH. CODE § 23103 (West Supp. 1992) (defining reckless driving as driving a vehicle with wilful or wanton disregard for the safety of persons or property).

driving under the influence¹⁰ (DUI) are not exempt from prosecution as pending non-felony driving offenses.¹¹

TKT

Criminal Procedure; prisoners--medical treatment

Penal Code § 2653 (new).
AB 2422 (Lee); 1992 STAT. Ch. 602

Under existing law, a judge may order a prisoner¹ needing medical attention to be moved to a designated hospital for treatment.² Existing law provides that if a prisoner's medical needs

10. See *id.* § 23152 (West Supp. 1992) (defining driving under the influence as driving a vehicle with a 0.08 percent or greater blood alcohol content or while under the influence of any drug); see also *id.* §§ 23160-23190 (West Supp. 1992) (specifying the punishment for DUI offenses).

11. *Id.* § 41500(f) (amended by Chapter 950). Courts have interpreted Vehicle Code § 41500 to permit dismissal of DUI offenses when the DMV is not automatically required to revoke or suspend a driver's license following conviction of a nonfelony offense. See *People v. Freeman*, 225 Cal. App. 3d Supp. 1, 9, 275 Cal. Rptr. 373, 379 (1987). The *Freeman* court held that until the Legislature expressly changes the wording of § 41500, the statute should be interpreted to permit dismissal of first time DUI offenses. *Id.* The court acknowledged that the real concern for seeking a conviction in first time DUI offenses is so that prior convictions can be charged in the event of some future violation. *Id.* at 9, 275 Cal. Rptr. at 378. Chapter 950 is intended to clarify Vehicle Code § 41500, and to eliminate the ambiguities that permit dismissal of pending nonfelony reckless driving and DUI offenses. SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 3569, at 2 (June 30, 1992).

1. See CAL. GOV'T CODE § 844 (West 1980) (defining prisoner); *Zeilman v. Kern County*, 168 Cal. App. 3d 1174, 1183, 214 Cal. Rptr. 746, 752 (1985) (stating that a person who had not completed the booking procedure by the time of the injury was not a prisoner with respect to the public entity liability statute); *Meyer v. City of Oakland*, 107 Cal. App. 3d 770, 778, 166 Cal. Rptr. 79, 84 (1980) (holding that a person being confined in the city jail for public intoxication was not a prisoner within the meaning of statute imposing civil liability on a public entity); *Sahley v. San Diego County*, 69 Cal. App. 3d 347, 349, 138 Cal. Rptr. 34, 35 (1977) (stating that a person was a prisoner for purposes of a statute imposing liability on a public entity inasmuch as he had been booked and arraigned).

2. CAL. PENAL CODE § 4011(a) (West 1982); see *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (stating that the government has an obligation to furnish medical care for the prisoners whom it incarcerates); see also CAL. PENAL CODE § 4011.1(a) (West Supp. 1992) (authorizing the county or city to make a claim for reimbursement of medical charges); *id.* § 4023 (West 1982) (requiring all county jails averaging more than 100 prisoners per day to make available a licensed and practicing physician for the care of the prisoners).

are immediately life threatening, a sheriff³ or jailer may authorize the guarded transportation of that prisoner to a hospital.⁴ It is a misdemeanor under existing law to withhold care where to do so would injure or impair the health of a prisoner.⁵

Chapter 602 provides that if a physician employed by the Department of Corrections or Department of Youth Authority makes a written determination that medical treatment is necessary to prevent certain violations of the prisoner's rights⁶ or to prevent serious harm to the prisoner's health, such an order for medical treatment may not

3. See CAL. GOV'T CODE § 26600 (West 1990) (defining sheriff).

4. CAL. PENAL CODE § 4011.5 (West 1982); see *id.* § 4011.7 (West 1982) (providing for the removal of guards from a hospital if the prisoner is charged with or convicted of a misdemeanor); *id.* § 4011.9 (West 1982) (authorizing the removal of guards from a hospital if the prisoner is charged or convicted of a felony, yet poses no risk of harm or escape).

5. *Id.* § 2652 (West 1982); see CAL. GOV'T CODE § 844.6(a) (West 1980) (immunizing a public entity from liability against injuries caused by or to any prisoner); *id.* § 844.6(d) (West 1980) (stating that such immunity does not extend to a public employee who proximately causes injury to a prisoner by a negligent or wrongful act or omission); *id.* § 845.6 (West 1980) (providing that a public entity or public employee will not be liable for injuries caused by the failure to obtain medical care for a prisoner unless an employee knows or has reason to know that a prisoner is in need of immediate medical care and that employee fails to summon aid); *Peterson v. Los Angeles County*, 185 Cal. App. 3d 708, 709, 230 Cal. Rptr. 80, 82 (1986) (stating that a prisoner who suffered a broken leg after being kicked by a county employee could not maintain a suit against the county, since the county was immune from liability under § 844.6(a)); *Hart v. County of Orange*, 254 Cal. App. 2d 302, 303-08, 62 Cal. Rptr. 73, 75-78 (explaining the differences between §§ 844.6 and 845.6); *Marshall v. City of Los Angeles*, 131 Cal. App. 2d 812, 816, 281 P. 2d 544, 546 (1955) (providing that, in the absence of a state statute, a county will not be liable for failing to furnish medical care to prisoners). See generally Michael Cameron Friedman, *Cruel and Unusual Punishment in the Provision of Prison Medical Treatment: Challenging the Deliberate Indifference Standard*, VAND. L. REV. 921, 921-44 (1992) (discussing the application of the Eighth Amendment to prison health care, and describing aspects of imprisonment that affect the health of prisoners).

6. See CAL. PENAL CODE § 147 (West 1988) (creating an offense for the willful mistreatment of a prisoner while under the custody of an officer); *id.* § 673 (West 1988) (prohibiting the cruel and unusual punishment of prisoners); *id.* § 2650 (West 1982) (providing that prisoners are subject to all the protections of the law, and all injuries to prisoners are punishable in the same manner as nonprisoners); *id.* § 2652 (West 1982) (prohibiting cruel and unusual punishments for prisoners).

be modified or canceled without first obtaining written approval of the chief medical officer in charge of the institution.⁷

DHT

Criminal Procedure; prisoner sentencing credits

Penal Code § 2933.6 (new).

SB 1509 (Leonard); 1992 STAT. Ch. 1175

Existing law provides that a person convicted of a crime and sentenced to state prison may be entitled to a reduction in the time served for performance in work, training, or educational programs.¹ Existing law also states that any prisoner who had been denied the opportunity to earn worktime credits cannot be awarded worktime credits to reduce their sentence.² Chapter 1175 further provides that

7. *Id.* § 2653(a) (enacted by Chapter 602). A physician's order can be altered or canceled if the prisoner has a violent history that requires additional measures to protect the security of the institution and if specified in writing by the warden, or if immediate security needs require alternate or modified procedures. *Id.* Any person who violates this section will be subject to appropriate disciplinary action by the Department of Corrections. *Id.* § 2653(b) (enacted by Chapter 602).

1. CAL. PENAL CODE § 2933(a) (West Supp. 1992). *Cf.* 18 U.S.C. § 3624(b) (Supp. 1992) (providing credit towards sentence for satisfactory behavior); CONN. GEN. STAT. ANN. § 18-7a (West 1988); KY. REV. STAT. § 197.045(1) (Baldwin 1991); LA. REV. STAT. ANN. § 15:571.3 (West 1992); MASS. GEN. LAWS ANN. ch. 127, § 129 (West 1991); MICH. COMP. LAWS ANN. § 800.33.(2) (West Supp. 1992); MINN. STAT. ANN. § 244.04.(1) (West 1992); N.Y. CORRECT. LAW § 803.1 (McKinney Supp. 1992); OKLA. STAT. ANN. tit. 57, § 138.1 (West 1991) (providing for good conduct credit for prisoners). *See generally* James B. Jacobs, *Sentencing By Prison Personnel: Good Time*, 30 UCLA L. REV. 217 (1982) (discussing the implications of prison officials' sentence reduction authority).

2. CAL. PENAL CODE § 2933(a) (West Supp. 1992); *see id.* § 2933(b) (stating worktime credit is a privilege that may be forfeited, not a right); *id.* § 2932(a) (West Supp. 1992) (listing grounds for denying worktime credits previously earned); CAL. CODE REGS. tit. 15, § 3341.5(c)(4) (1992) (stating serious misconduct while in a Security Housing Unit may result in loss of clean conduct credits); *People v. Davis*, 154 Cal. App. 3d 253, 254, 201 Cal. Rptr. 422, 423 (1984) (holding that the purpose of worktime credits is to provide incentives for prisoners to develop job skills and work ethics); *see also In re Monigold*, 205 Cal. App. 3d 1224, 1227, 253 Cal. Rptr. 120, 121 (1988) (holding that the unavailability of the worktime credit program to persons serving indeterminate terms does not deprive prisoners serving life sentences of equal protection under the law); *cf.* ALASKA STAT. § 33.20.050 (1986); CONN. GEN. STAT. ANN. § 18-7a (West 1988); IOWA CODE ANN. § 903A.3 (West Supp. 1992); KY. REV. STAT. § 197.045(1) (Baldwin 1991); LA. REV. STAT. ANN. § 15:571.4 (West 1992); MASS. GEN. LAWS ANN. ch. 127, § 129 (West 1991); MICH.

every prisoner confined in a Security Housing Unit³ or Administrative Segregation Unit,⁴ as punishment for specific misconduct,⁵ shall be ineligible to receive worktime credits or good behavior credits during that period of confinement.⁶

JWC

Criminal Procedure; public records--victims of crime

Penal Code §§ 293, 293.5, 841.5 (new).
AB 1681 (Mountjoy); 1992 STAT. Ch. 3
(*Effective February 10, 1992*)
SB 296 (Torres); 1992 STAT. Ch. 502

Existing law prohibits an attorney from disclosing to a defendant the address or telephone number of a victim¹ or witness² a pro-

COMP. LAWS ANN. § 800.33.(5) (West Supp. 1992); MINN. STAT. ANN. § 244.04.(2) (West 1992); N.Y. CORRECT. LAW § 803.1 (McKinney Supp. 1992); OKLA. STAT. ANN. tit. 57, § 138.1 (West 1991); VA. CODE ANN. § 53.1-189 (Michie 1991) (providing for the loss or forfeiture of good conduct time).

3. See CAL. CODE REGS. tit. 15, § 3341.5(c) (1992) (requiring prisoner assignment to certain designated housing units when the inmate has been found guilty of an offense, or is deemed to be a threat to the safety of others, or to the security of the institution).

4. See CAL. CODE REGS. tit. 15, § 3335(a) (1992) (authorizing inmate removal to an administrative segregation unit when the inmate's presence poses an immediate threat to the safety of the inmate or others, endangers institution security, or jeopardizes the integrity of an investigation of alleged serious misconduct or criminal activity).

5. See CAL. PENAL CODE § 2933.6(b) (enacted by Chapter 1175) (listing the offenses, if committed, that would prevent the prisoner from receiving worktime credits or good behavior credits).

6. *Id.* § 2933.6(a) (enacted by Chapter 1175).

1. See CAL. PENAL CODE § 679.01(b) (West 1988) (defining victim as a person against whom a crime is committed).

2. See CAL. CIV. PROC. CODE § 1878 (West 1983) (defining witness as a person under oath whose declaration is received as evidence for any purpose); CAL. PENAL CODE § 679.01(c) (West 1988) (defining witness as a person who is or is expected or likely to testify for the prosecution).

secutor intends to call as a witness at trial unless specifically permitted to do so by the court.³

Except as otherwise specified, Chapter 3 prohibits an employee of a law enforcement agency from disclosing to any potential defendant in a criminal action, the address or telephone number of any victim or witness to the alleged offense.⁴ Chapter 3 provides that the prohibition shall not obstruct the right of a defendant to obtain information necessary for the preparation of his or her defense through the discovery process, or the right of an attorney to obtain the address or telephone number of any victim of, or witness to, a crime for which that attorney's client has been arrested or charged.⁵

3. CAL. PENAL CODE § 1054.2 (West Supp. 1992); see *People v. Miller*, 106 A.D.2d 787, 788 (N.Y. 1984) (holding that the defendant was not entitled to know the address of the prosecution's witness since he failed to show special circumstances dictating its need); *Deutscher v. State*, 601 P.2d 407, 418 (Nev. 1979) (holding that the defendant's right to disclosure of a witness's address was denied since the defendant failed to show how disclosure would make the cross-examination more meaningful). See generally Deborah Glynn, *Proposition 115: The Crime Victims Justice Reform Act*, 22 PAC. L.J. 1010, 1022-23 (1991) (explaining the extent to which Proposition 115 limits a defendant's discovery rights, particularly those regarding access to arrest and crime reports); Steve Holden, Note, *Izazaga v. Superior Court: Affirming the Public's Cry to Unshackle the Criminal Prosecution System*, 23 PAC. L.J. 1721 (1992) (examining the constitutionality of the discovery provisions enacted by Proposition 115).

4. CAL. PENAL CODE § 841.5(a) (enacted by Chapter 3); cf. CONN. GEN. STAT. § 1-19(b)(3)(E) (West Supp. 1992) (prohibiting the release of investigative records if the release would result in disclosure of the name and the address of the victim of a sexual assault); FLA. STAT. ANN. § 119.07(3)(h) (West Supp. 1991) (prohibiting disclosure of investigative information including the photograph, name, address, or other fact or information which reveals the identity of a sex crime victim); OR. REV. STAT. § 192.501(3) (1991) (prohibiting disclosure of investigatory information, except for crime reports and records of arrest, including the identity of the complaining party and victim). Currently only three states completely prohibit public disclosure of the names of rape or sex offense victims. See, e.g., N.Y. CIV. RIGHTS LAW § 50-b(1) (McKinney 1992) (allowing for release of victims' names only in rare cases where good cause is shown to the court); ALASKA STAT. § 12.61.140 (Supp. 1992); LA. REV. STAT. ANN. § 44:3(A)(4)(d) (West Supp. 1992).

5. CAL. PENAL CODE § 841.5(b)-(c) (enacted by Chapter 3); see CAL. CONST. art. I, § 15 (stating that a defendant in a criminal proceeding has the right to be confronted with the witnesses against him); CAL. PENAL CODE § 869(a) (West Supp. 1992) (stating that the testimony of witnesses that is recorded in homicide cases must include the name, place of residence, and profession of the witness in order to authenticate their testimony); *People v. Watson*, 146 Cal. App. 3d 12, 20-21, 193 Cal. Rptr. 849, 854 (1983) (holding that although the trial court erred in not forcing the witness/informant to disclose his address, the defendant was not deprived of a substantial right since there was plenty of evidence available to accurately evaluate the witness's credibility); *People v. Gallo*, 127 Cal. App. 3d 828, 836, 179 Cal. Rptr. 662, 665-66 (1981) (holding that defendant was not denied his Sixth Amendment right to assess the credibility of the witness/informant's testimony when denied the witness's address since it was already brought to light that the witness was granted immunity, used and sold drugs, was a convicted felon, and possessed an illegal weapon); *Miller v. Superior Court*, 99 Cal. App. 3d 381, 386-87, 159 Cal. Rptr. 456, 459 (1979) (holding that denial of

Chapter 3 also provides that nothing in this section shall prevent a law enforcement agency from releasing the entire contents of an accident report.⁶

Chapter 502 requires a law enforcement agency⁷ employee⁸ to inform a person⁹ who allegedly has been the victim of a specified sex offense¹⁰ that the person may request that his or her name may be withheld from public record.¹¹

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a key informant's address for no reason denied the defense its due right to test the credibility of the witness which was questionable since the informant had a bad reputation for veracity and narcotics dealings); *People v. Cundle*, 98 Cal. App. 3d Supp. 34, 37, 159 Cal. Rptr. 806, 808 (1979) (holding that the trial court did not abuse its discretion when it denied the defendant, convicted of indecent exposure, the names of the witnesses against him since he never filed a motion for production of those names).

6. CAL. PENAL CODE § 841.5(d) (enacted by Chapter 3).

7. *See id.* § 1545(b) (West 1982) (defining law enforcement agency as the California Attorney General, every district attorney, and every California State Agency expressly authorized by statute to investigate or prosecute law violators).

8. *See* CAL. LAB. CODE §§ 3351-3352 (West 1989 & Supp. 1992) (defining employee).

9. *See* CAL. GOV'T CODE § 6252(c) (West Supp. 1992) (defining person).

10. *See* CAL. PENAL CODE § 293(e) (enacted by Chapter 502) (specifying sex offenses to which this section applies). The specified sex offenses in § 293(e) are identical to those sex crimes which are provided for in Government Code § 6254(f)(2). CAL. GOV'T CODE § 6254(f)(2) (West Supp. 1992); *see supra* note 4 (enumerating the crimes which are listed in Government Code § 6254(f)(2)).

11. CAL. PENAL CODE § 293(a) (enacted by Chapter 502). Any written report of the alleged sex offense must note that the victim has been informed that his or her name may be withheld from his or her response. *Id.* § 293(b) (enacted by Chapter 502). Chapter 502 additionally states that the law enforcement agency may not reveal the name and the address of the victim to any person but the prosecutor. *Id.* § 293(c)-(d) (enacted by Chapter 502); *see Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989) (implying in dictum that the government may withhold information by restricting public access to records). *But see* 5 U.S.C. § 552(b)(7) (1988) (Federal Freedom of Information Act) (FOIA) (exempting from public disclosure records or information compiled for law enforcement purposes when disclosure could reasonably be expected to constitute an unwarranted invasion of privacy or lead to the disclosure of a confidential source's identity). *See generally*, Sarah Anderson Hutt, *In Praise of Public Access: Why the Government Should Disclose the Identities of Alleged Crime Victim*, 41 DUKE L.J. 368, 368, 384 (Nov. 1991) (addressing the conflict between the right to privacy and First Amendment rights, and stating that although FOIA does not specifically mention victims, a person who has the desire to remain confidential, might be considered a "confidential source"). If the court finds it reasonably necessary to protect the privacy of alleged victim, it may, under certain circumstances, order that the name of the alleged victim in all records and during all proceedings be Jane or John Doe. CAL. PENAL CODE § 293.5(a) (enacted by Chapter 502); *see id.* (specifying the circumstances under which the court may order the name of the alleged victim to be changed).

Criminal Procedure; registration of juvenile arson offenders

Penal Code § 457.1 (amended).

SB 2008 (Calderon); 1992 STAT. Ch. 691

Under existing law, persons¹ who are convicted, discharged or paroled² from a California penal institution, or convicted in any other state or federal court, for arson³, or attempted arson may, under certain circumstances,⁴ be required to register with the local law enforcement agency of any city or county in which he or she intends to reside.⁵ Chapter 691 includes persons who have been discharged or paroled from the California Youth Authority,⁶ where they have

1. See CAL. PENAL CODE § 7 (West 1988) (defining persons as corporations as well as natural persons).

2. See *id.* §§ 3000-3065 (West Supp. 1992) (outlining the parole system). See generally 3 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW § 1725, at 2040 (2d ed. 1989) (defining parole as the release of a prisoner prior to expiration of his term of imprisonment conditioned upon his continuing good behavior during the remainder of his term).

3. See CAL. PENAL CODE § 451 (West Supp. 1992) (defining arson as willfully and maliciously setting fire to, burning, causing to burn, aiding, counseling, or procuring the burning of any structure, forest land, or property).

4. The court may require registration if it finds: (1) That the person committing the offense has previously been convicted of arson; (2) the person has committed multiple counts of arson, relating to different events or occurrences; or (3) the person showed compulsive behavior. *Id.* § 457.1(b)(1)-(3) (amended by Chapter 691); see *People v. Adams*, 224 Cal. App. 3d 705, 710, 274 Cal. Rptr. 94, 97-8 (1990) (defining compulsive behavior, and holding that the enlistment of psychiatric experts is not always necessary in the determination of whether a particular defendant exhibits compulsive behavior); cf. *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 441 (1990) (discussing registration of convicted arsonists).

5. CAL. PENAL CODE § 457.1(b) (amended by Chapter 691); see *id.* § 457.1(j) (amended by Chapter 691) (making the violation of this provision a misdemeanor); *id.* § 457.1(g) (amended by Chapter 691) (outlining the registration process for convicted arsonists); see also *id.* § 457.1(b) (amended by Chapter 691) (requiring registration with the chief of police or the sheriff within 30 days of coming into a town). The registration requirement is based on the premise that certain types of criminals are more likely to be repeat offenders, and that law enforcement's ability to prevent those crimes and to apprehend those types of criminals will be improved if these repeat offenders' whereabouts are known. *People v. Adams*, 224 Cal. App. 3d 705, 710, 274 Cal. Rptr. 94, 97 (1990). Other states have imposed registration requirements for various crimes. See, e.g., FLA. STAT. ANN. § 775.13 (West 1992) (requiring registration for all convicted felons); ILL. ANN. STAT. ch. 38, para. 223 (Smith-Hurd 1990) (requiring registration for habitual child sex offenders); TEX. REV. CIV. STAT. ANN. art. 6252-13c.1 (West Supp. 1992) (requiring the registration of specified sexual offenders).

6. See CAL. WELF. & INST. CODE § 1766(f) (West 1984); *id.* § 1767 (West 1984) (authorizing and providing the general conditions under which the Youthful Offender Parole Board may discharge or parole a ward of the Youth Authority).

been confined for arson or attempted arson, among those who may be required to register.⁷

Chapter 691 further provides that the duty to register, for offenses adjudicated by a juvenile court, ends when the person reaches the age of twenty-five.⁸ Additionally, Chapter 691, requires that all records relating to the registration, for offenses adjudicated by a juvenile court, which are in the custody of the Department of Justice, law enforcement agencies and other agencies or public officials, are to be destroyed when the person reaches the age of twenty-five, or has his or her records sealed, whichever ever comes first.⁹

BAB

Criminal Procedure; sentence enhancements for crimes against the disabled

Penal Code §§ 422.72, 667.9, 667.10 (amended).
SB 1288 (Lockyer); 1992 STAT. Ch. 265
AB 3366 (Umberg); 1992 STAT. Ch. 266

Existing law provides, except as specified, that persons who commit or attempt to commit a felony¹ because of the victim's race,

7. CAL. PENAL CODE § 457.1(b) (amended by Chapter 691).

8. *Id.* § 457.1(d) (amended by Chapter 691).

9. *Id.* § 457.1(e) (amended by Chapter 691); *see* CAL. WELF. & INST. CODE § 781 (West Supp. 1992) (outlining the procedures for sealing the records of juveniles); *see also* *T.N.G. v. Superior Court*, 4 Cal. 3d 767, 777, 484 P.2d 981, 987, 94 Cal. Rptr. 813, 819 (1971) (describing the application of California Welfare and Institutions Code § 781). While the term "sealing" is an ambiguous term, under § 781, sealed records are those that are retained by the juvenile court and closed to inspection. *T.N.G.*, 4 Cal. 3d at 777 n.12, 484 P.2d at 987 n.12, 94 Cal. Rptr. at 819 n.12. All other agencies that have possession of the records in question must return them to juvenile court for either safe keeping or destruction. *Id.*

1. *See* CAL. PENAL CODE § 17(a) (West Supp. 1992) (defining felony).

color, religion, nationality, country of origin, ancestry, or sexual orientation shall receive a sentence enhancement.² Under Chapter 266, an additional term is applied to felonies committed or attempted³ because of the victim's disability.⁴ Additionally, Chapter 266 makes the defendant's personal use of a firearm⁵ during one of these crimes an aggravating factor subject to one of the above enhancements.⁶

Existing law provides that every person who has a prior conviction of specified offenses,⁷ and who commits one or more of those offenses against a person sixty-five years or older, blind, disabled, or under the age of fourteen years, will receive a two year sentence enhancement.⁸ Chapter 265 further provides that every

2. *Id.* § 422.75 (amended by Chapter 266). *See generally* *People v. Lashley*, 1 Cal. App. 4th 938, 948, 2 Cal. Rptr. 629, 635 (1991) (stating that specific intent to violate the constitutional rights of another does not require actual awareness of this violation on the part of the defendant); *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2547 (1992) (striking down as unconstitutional an ordinance which makes it a crime for a person to place a symbol or object which the person knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, religion or gender on public or private property). The Court in *R.A.V.* held the statute facially unconstitutional under the First Amendment because the ordinance went beyond mere content discrimination to actual viewpoint discrimination. *Id.* *See generally* Virginia Nia Lee & Joseph M. Fernandez, *Legislative Responses to Hate-Motivated Violence: The Massachusetts Experience and Beyond*, 25 HARV. C.R.-C.L. L. REV. 287 (1990) (discussing recommendations for state legislatures in enacting statutes to combat hate-motivated violence); Tanya Kateri Hernandez, *Bias Crimes: Unconscious Racism in the Prosecution of "Racially Motivated Violence"*, 99 YALE L.J. 845 (1990) (discussing the use of criminal statutes to redress physical injury which results from bias crimes); *cf.* 1992 IOWA LEGIS. SERV. 2065 (West) (establishing hate crimes as a criminal offense).

3. *See* CAL. PENAL CODE § 21a (West 1988) (defining attempt as consisting of a specific intent to commit an act and an ineffectual act done toward its commission).

4. *Id.* § 422.75 (amended by Chapter 266); *see* CAL. CIV. CODE § 1761(g) (West Supp. 1992) (defining disabled person); *cf.* 42 U.S.C. § 12102(2) (1988) (defining disability); ALASKA STAT. § 11.76.130 (1970) (defining interference of rights of a disabled person); N.J. STAT. ANN. § 2C:24-8 (West Supp. 1992) (criminalizing the endangerment of the welfare of a disabled person).

5. *See* CAL. PENAL CODE § 12001(a)-(e) (West 1992) (defining firearm).

6. *Id.* § 422.75(c) (amended by Chapter 266). By making the use of a firearm an aggravating factor, the sentencing judge has the ability to order the maximum sentence. *Id.* § 1170(b) (West Supp. 1992); *cf.* IDAHO CODE § 19-2520 (1991); MONT. CODE ANN. 46-18-221 (1992); N.M. STAT. ANN. 31-18-16 (1991); N.C. GEN. STAT. 14-87 (1991); TENN. CODE ANN. § 39-17-1307 (1991) (establishing sentence enhancements for use of a firearm during the commission of a crime).

7. *See* CAL. PENAL CODE § 667.9(b)(1)-(7) (amended by Chapter 265) (listing the offenses of robbery, rape, kidnapping, kidnapping for ransom, extortion, sodomy or oral copulation, mayhem, and first degree burglary).

8. *Id.* § 667.9 (amended by Chapter 265); *see id.* § 667.9(a) (amended by Chapter 265) (requiring that the victim's disability or condition be known or that it reasonably should have been known to the defendant).

person who has a prior conviction for designated offenses against a person who is deaf or developmentally disabled⁹ will receive a sentence enhancement.¹⁰

HAT

Criminal Procedure; sex offender registration

Penal Code § 290 (amended).

AB 2297 (Umberg); 1992 STAT. Ch. 197

Existing law requires persons convicted of certain sex offenses to register with law enforcement officials in the city or county of their residence.¹ Chapter 197 expressly subjects a person convicted of

9. See *id.* § 667.9(d)(1)-(3) (amended by Chapter 265) (defining developmentally disabled as a severe, chronic disability which is all of the following: (1) Attributable to a mental or physical impairment; (2) likely to continue indefinitely; (3) results in substantial functional limitation in self-care, language, mobility, self-direction, capacity for independent living, and economic self-sufficiency); cf. 42 U.S.C. § 6001(2) (1988) (defining developmentally disabled).

10. CAL. PENAL CODE § 667.9(a) (amended by Chapter 265).

1. CAL. PENAL CODE § 290(a) (amended by Chapter 197). Place of residence includes city, county, or university of domicile. *Id.* This section applies to: (1) Assault with intent to commit rape or sodomy; (2) penetration with foreign object; (3) sex with an unmarried female under 18; (4) abduction; (5) lewd and lascivious conduct; (6) incest; (7) sodomy; (8) sex acts with a child under 14; (9) oral copulation; and (10) rape or sodomy. *Id.*; see also *People v. Monroe*, 168 Cal. App. 3d 1205, 1209, 215 Cal. Rptr. 51, 53 (1985) (holding that § 290 uses the mandatory word "shall" and leaves no discretion in the trial judge not to require registration); *In re Roland DeBeque*, 212 Cal. App. 3d 241, 245, 260 Cal. Rptr. 441, 443 (1989) (holding that requiring the registration of a defendant convicted of masturbating in front of young boys was not cruel and unusual punishment); cf. CAL. HEALTH & SAFETY CODE § 11590 (West 1991) (requiring registration for controlled substance offenders). See generally Kenneth Reich, *Many Simply Ignore the Law; Sex Offender Registration Not Working*, L.A. TIMES, Aug. 8, 1986, at A1. For examples of other states' laws requiring registration, see, e.g., ALA. CODE § 13a-11-200 (1991); ARIZ. REV. STAT. ANN. § 13-3821 (1991); COLO. REV. STAT. § 18-3-412.5 (1992); ILL. REV. STAT. ch. 38, para. 223 (1991); 1992 LA. ACTS 388; MINN. STAT. § 243.166 (1991); NEV. REV. STAT. § 207.152 (1991); OHIO REV. CODE ANN. § 2950.06 (Baldwin 1992); OKLA. STAT. tit. 57, § 582 (1991); OR. REV. STAT. § 181.519 (1991); UTAH CODE ANN. § 77-27-21.5 (1992); WASH. REV. CODE § 9A.44.130 (1991).

assault with intent to commit oral copulation to the registration requirement.²

HAT

2. CAL. PENAL CODE § 290 (amended by Chapter 197). *But see* *People v. Saunders*, 232 Cal. App. 3d 1592, 1594, 284 Cal. Rptr. 212, 214 (1991) (holding that a defendant convicted of assault with intent to commit oral copulation was not required to register as a sex offender because the registration requirement under the statute did not expressly require it for the convicted crime). Chapter 197 was enacted with the intent of abrogating the *Sanders* decision. 1992 Cal. Stat. ch. 197, sec. 2, at 781.