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Crimes

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Crimes

Crimes; attempted murder--peace officers

Penal Code § 1170.81 (new).
AB 3486 (Epple); 1990 STAT. Ch. 1031

Under existing law, the intentional killing of an on-duty peace officer¹ is punishable by death or life imprisonment without possibility of parole.² Existing law also provides that attempted first or second degree murder is punishable by a state prison term.³ Under Chapter 1031, when a defendant is convicted of attempted murder, the fact that the victim was a peace officer acting in the line of duty is an aggravating circumstance which the court must consider in sentencing the defendant.⁴

LSP

1. See CAL. PENAL CODE § 830 (West Supp. 1990) (definition of peace officer). See also *id.* §§ 830.1, 830.65 (following persons are in the definition of "peace officer:" Sheriffs, deputies, police officers, marshals, constables, California Highway Patrol officers, members of the California National Guard, state university and college police, Department of Corrections and Parole officers, Department of Fish and Game officers, designated persons within the Department of Forestry, Alcoholic Beverage Control enforcement officers, police reserve, auxiliary police, sheriffs or deputies).

2. *Id.* § 190(a) (West Supp. 1990). The defendant must have actual knowledge that the officer was on duty. *Id.* § 190(b) (West Supp. 1990). Second degree murder is punishable by a term of 15 years to life, or 25 years to life if the victim was a peace officer. *Id.* § 190(a)-(b).

3. *Id.* § 664 (West 1988) The term of imprisonment equal to one-half the term of the crime attempted; however, if the attempted crime is willful, deliberate, and premeditated murder, defendant may be required to serve a life sentence with possibility of parole. *Id.* See *People v. Croy*, 41 Cal. 3d 1, 20, 710 P.2d 392, 404, 221 Cal. Rptr. 592, 604 (1986) (holding that attempted murder requires specific intent to kill and cannot be based on implied malice). See also CAL. PENAL CODE § 664(1) (stating that if crime attempted is punishable by death or life imprisonment, the punishment is a term of five, seven, or nine years in state prison; additionally, a fine of up to \$10,000 may be imposed).

4. CAL. PENAL CODE § 1170.81 (enacted by Chapter 1031). The defendant must know or should reasonably have known that the victim was a peace officer engaged in the performance of duty. *Id.* See *id.* § 1170(b) (West Supp. 1990) (allowing the court with aggravating circumstances to impose the higher term of imprisonment as specified by statute).

Crimes; compulsory education law violation--penalties

Education Code § 48293 (amended).

AB 43 (Elder); 1988 STAT. Ch. 391

Under existing law, any parent, guardian, or other person having control or charge of any pupil, who is convicted of failing to comply with the compulsory education law¹ is punishable by a fine of up to \$100 for the first violation, and a fine of up to \$250 for the second violation.² Chapter 391 imposes a fine of up to \$500 upon a third or subsequent conviction, if the person has willfully refused to comply with the compulsory education law.³

SAJ

Crimes; criminal history--child care providers

Welfare and Institutions Code § 11320.33 (new); § 11320.3 (amended).

SB 2295 (Morgan); 1990 STAT. Ch. 1141

Under existing law, recipients of job training and education services under the Greater Avenues for Independence¹ (GAIN) program are eligible for child care services.² Care providers who supply services to GAIN participants are exempt from licensing if

1. CAL. EDUC. CODE § 48200 (West Supp. 1990) (each person between the age of six and eighteen is subject to compulsory full-time education). *See id.* §§ 48210, 48220 (West 1978) (pupils excused or exempted from the compulsory education law).

2. *Id.* § 48293(a)(1)-(2) (amended by Chapter 391).

3. *Id.* § 48293(a)(3) (amended by Chapter 391).

1. *See* CAL. WELF. & INST. CODE §§ 11320-11320.95 (West Supp. 1990) (declarations, procedures, and regulations of the Greater Avenues for Independence Act of 1985).

2. *Id.* § 11320.3(e)(1) (amended by Chapter 1141).

specific information,³ including a statement about the care provider's health education, experience or qualifications, and criminal record,⁴ is provided to the county welfare department.⁵ Chapter 1141 requires the care provider to make the above statement under penalty of perjury.⁶

Chapter 1141 also allows the county to deny payment for child care services if the care provider has been convicted of certain crimes.⁷ If the county determines that child care payments should be denied, the county must report the information to the county child protective services agency for immediate investigation.⁸ Additionally, if the GAIN participant does not change child care providers after an investigation has been initiated under this chapter, the county may temporarily interrupt the participant's participation in the GAIN program.⁹

MJF

3. See *id.* § 11320.3(j)(1)(A)-(F) (amended by Chapter 1141) (requiring child care providers to provide their name and address, address where care is to be provided, time when care will begin and end, cost of services, two references, proof of age, and identification of others in the care provider's home).

4. *Id.* § 11320.3(j)(1)(F) (amended by Chapter 1141).

5. *Id.* § 11320.3(j) (amended by Chapter 1141).

6. *Id.* § 11320.3(j)(1)(F) (amended by Chapter 1141).

7. *Id.* § 11320.3(j)(2)(A), (B) (amended by Chapter 1141) (county may deny payment if the care provider has been convicted of a violent felony as defined in California Penal Code section 667.5(c), or if the care provider has been convicted of child abuse).

8. *Id.* 11320.3(j)(3)(A) (amended by Chapter 1141). When an investigation by child protective services is initiated pursuant to Chapter 1141, the denial of child care payments to the care provider will continue until the final disposition of the case. *Id.* § 11320.3(j)(2)(B) (amended by Chapter 1141). See CAL. PENAL CODE § 11166(g) (West Supp. 1990) (county welfare department must report every known or suspected incident of child abuse).

9. *Id.* § 11320.3(j)(2)(C) (amended by Chapter 1141). Participation in GAIN can only be interrupted until the investigation has reached disposition. *Id.*

Crimes; damage to traffic control devices

Vehicle Code § 21464 (amended).
AB 2723 (Felando); 1990 STAT. Ch. 447

Under existing law, any person who willfully damages an official traffic control device¹ or willfully alters an official traffic control signal,² resulting in the injury or death of a person, will be imprisoned.³ Chapter 447 increases the punishment by imposing a fine in addition to imprisonment.⁴ Furthermore, Chapter 447 imposes a fine where a willful violation does not result in the injury or death of a person.⁵

VCM

Crimes; dangerous business practices

Penal Code §§ 387 (new).
AB 2249 (Friedman); 1990 STAT. Ch. 1616

Under existing law, employers are civilly liable for damages caused by a failure to maintain a safe place of employment.¹

1. See CAL. VEH. CODE § 21464(a) (amended by Chapter 447) (includes a traffic guidepost, traffic signpost, or an historical marker required by law).

2. See *id.* § 21464(b) (amended by Chapter 447) (authorized emergency vehicles allowed to interrupt traffic control signals).

3. *Id.* § 21464(c) (amended by Chapter 447). Imprisonment in county jail may not exceed six months. *Id.*

4. *Id.* (amended by Chapter 447). The fine must be between \$5,000 and \$10,000. *Id.*

5. *Id.* § 21464(d) (amended by Chapter 447). The fine must not exceed \$3,000. *Id.* However, the court must allow a violator to volunteer for community service instead of paying all or part of the fine. *Id.* § 21464(e) (amended by Chapter 447).

1. See CAL. LABOR CODE §§ 6400-6430 (West 1988) (mandating safe workplaces and imposing penalties for violations).

Chapter 1616 imposes criminal liability² on corporations or managers³ who fail to notify employees and Cal-OSHA⁴ of any serious concealed dangers⁵ of a business practice or business product⁶ of which the employer has actual knowledge.⁷

SAJ

2. See CAL. PENAL CODE § 387(a) (enacted by Chapter 1616) (punishment includes imprisonment in the county jail for one year, a fine of up to \$10,000, or both; imprisonment in state prison for 16 months, two, or three years, a fine of up to \$25,000, or both). If the defendant is a corporation, a violation is punishable by a fine of up to \$1,000,000. *Id.*

3. See *id.* § 387(b)(1) (enacted by Chapter 1616) (definition of manager).

4. See *id.* § 387(a)(1)(A) (enacted by Chapter 1616) (requiring managers to notify Cal-OSHA of serious concealed danger). Upon being notified of the serious concealed danger, Cal-OSHA must notify the appropriate government agencies. *Id.* See also *id.* § 387(b)(8) (enacted by Chapter 1616) (definition of appropriate government agency).

5. See *id.* § 387(b)(4) (enacted by Chapter 1616) (definition of serious concealed danger).

6. See *id.* § 387(b)(2) (enacted by Chapter 1616) (definition of product).

7. *Id.* § 387(a) (enacted by Chapter 1616). Notification must be made within 15 days after the acquisition of actual knowledge. *Id.* § 387(a)(2) (enacted by Chapter 1616). Corporations or managers must immediately notify Cal-OSHA and the affected employees if there is imminent danger of great bodily harm or death, unless the manager has actual knowledge or believes in good faith that the affected employees and the regulatory agencies have been warned. *Id.* § 387(a)(2) (enacted by Chapter 1616). See *Baez v. Southern Pac. Co.*, 210 Cal. App. 2d 714, 717, 26 Cal. Rptr. 899, 901 (1962) (holding that employers must warn employees of the latent dangers associated with employment if they know of the danger, or if it may be discovered with proper care). See also CAL. PENAL CODE § 387(b)(5) (enacted by Chapter 1616) (definition of great bodily harm).

Crimes; dangerous weapons--control and registration

Penal Code §§ 12350, 12351, 12560 (repealed); § 12083 (new); §§ 11106, 12001, 12021, 12070, 12071, 12072, 12073, 12076, 12077, 12078, 12082 (amended); Welfare and Institutions Code §§ 8100, 8103 (amended).

AB 497 (Connelly); 1990 STAT. Ch. 9

Existing law requires the attorney general's office to keep records regarding concealable firearms¹ and specified personal property.² Chapter 9 requires the attorney general's office to keep dealers' sales records on all firearms.³ However, Chapter 9 provides that any sales records of nonconcealable firearms must be destroyed within thirty days of being cleared by the attorney general's office.⁴

Existing law prohibits any person who has been convicted of a felony⁵ or offense involving the violent use of a firearm⁶ or who is addicted to a narcotic⁷ from possessing or controlling certain firearms.⁸ Chapter 9 makes possession or control of any

1. Firearms dealers must send a copy of the sales record of any concealable firearm to the California Department of Justice and the local chief of police. CAL. PENAL CODE § 12076(b) (amended by Chapter 9). *See id.* § 12073(a) (amended by Chapter 9) (requiring firearm dealers to keep records of sales of concealable firearms). Existing law defines the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" as any weapon that expels a projectile by the use of an explosion or combustion and that has a barrel of less than 16 inches. *Id.* § 12001(a) (amended by Chapter 9). The term "concealable firearm" also includes a short-barreled shotgun or short-barreled rifle as defined in California Penal Code section 12020. *Id.* § 12001(f) (amended by Chapter 9). Chapter 9 defines the term "firearm" as any weapon that expels a projectile by the use of an explosion or combustion. *Id.* § 12001(b) (amended by Chapter 9).

2. *Id.* § 11106(a) (amended by Chapter 9). The attorney general's office must keep copies of fingerprints, applications for concealed weapons permits, dealers' records of sales of deadly weapons, and reports of lost, found, stolen, pledged, or pawned property. *Id.*

3. *Id.*

4. *Id.* § 11106(b) (amended by Chapter 9). The record must not be destroyed if the purchaser is not eligible to possess the firearm. *Id.*

5. *See id.* § 17 (West Supp. 1990) (definition of felony).

6. *See id.* § 12001.6 (includes assault with a deadly weapon, shooting at an occupied building, and brandishing a firearm).

7. *See* CAL. HEALTH & SAFETY CODE § 11019 (West Supp. 1990) (definition of narcotic drug).

8. CAL. PENAL CODE § 12021(a) (amended by Chapter 9). These persons are prohibited from possessing or controlling any pistol, revolver, or concealable firearm. *Id.*

firearm under these circumstances a felony.⁹ Chapter 9 also prohibits any person convicted of certain misdemeanors¹⁰ from purchasing, owning, or possessing a firearm within ten years of that conviction.¹¹ In addition, Chapter 9 provides that certain juvenile offenders¹² shall not purchase, own, or possess any firearm until they reach the age of thirty.¹³

Prior law provided that any person who used a firearm in the commission of a felony was guilty of a separate offense.¹⁴ Chapter 9 specifically repeals this section.¹⁵

9. *Id.* § 12021(a) (amended by Chapter 9).

10. *See id.* § 12021(c) (amended by Chapter 9) (specified violations include: possession of a deadly weapon with intent to intimidate a witness; threatening a witness; possession of a weapon in a court building or within the state capitol or any legislative office; assault; battery; assault with a stun gun, taser, or deadly weapon; discharging a firearm in a grossly negligent manner; brandishing a firearm or replica of a firearm; possession of a firearm on public school grounds; discharging a firearm from a vehicle; sale or transfer of a concealable firearm to a juvenile; possession of armor piercing ammunition; and carrying a firearm while picketing).

11. *Id.*

12. *See id.* § 12021(e) (amended by Chapter 9) (specifically, those persons who have committed an offense listed in California Welfare and Institutions Code section 707(b) are found to be fit for juvenile proceedings, and are adjudged a ward of the juvenile court because of the commission of a crime listed in section 707). *See also* CAL. WELF. & INST. CODE § 707(b) (West Supp. 1990) (these crimes include: murder; arson of an inhabited building; armed robbery; forcible rape; kidnapping for ransom or robbery; assault with intent to murder or with a deadly weapon; using a firearm or other weapon in the commission of a felony; intimidating or influencing a witness or victim; manufacturing, compounding, or selling one-half ounce or more of any controlled substance; or any violent felony).

13. CAL. PENAL CODE § 12021(e) (amended by Chapter 9).

14. 1983 Cal. Stat. ch. 1092, sec. 332, at 4064 (amending CAL. PENAL CODE § 12560) (repealed by Chapter 9).

15. 1990 Cal. Stat. ch. 9, sec. 14, at ___ (repealing CAL. PENAL CODE § 12560). *But cf.* CAL. PENAL CODE §§ 12022 (West Supp. 1990) (use of a firearm in the commission of a felony adds one year to sentence); 12022.3 (use of a firearm in the commission of certain sex offenses adds a three, four or five year sentence enhancement). *See* CAL. R. CT. 421(a)(2) (West 1981) (when a defendant is armed or uses a weapon in the commission of a crime, this fact may be considered an aggravating circumstance at the time of sentencing). *See also* *People v. Whitehouse*, 112 Cal. App. 3d 479, 484-85, 169 Cal. Rptr. 199, 203 (1980) (where the defendant pled guilty to assault with a deadly weapon on a police officer and admitted that he personally used a firearm in the assault, the trial court could properly consider the use of a firearm as an aggravating circumstance to impose the upper term for sentencing). *But see* *People v. Garfield*, 92 Cal. App. 3d 475, 479-80, 154 Cal. Rptr. 869, 872 (1979) (possession of a firearm during the commission of a crime is not necessarily an aggravation of the offense).

Existing law prohibits any person from engaging in the business¹⁶ of selling concealable firearms without a license.¹⁷ Chapter 9 prohibits any person from engaging in the business of selling any firearm, whether concealable or not, without a license.¹⁸ Existing law also requires the sale of concealable firearms to conform to specified procedures.¹⁹ Under Chapter 9, sales of all firearms must conform to these specified procedures.²⁰

Prior law allowed unlicensed private parties to transfer a concealable firearm under certain circumstances.²¹ Chapter 9 requires that the transfer of any firearm be completed through a licensed gun dealer.²²

Existing law prohibits the sale of a concealable firearm to anyone who the seller has cause to believe is within a certain class of persons.²³ Chapter 9 expands this provision to the sale of any

16. See CAL. PENAL CODE § 12070(a) (amended by Chapter 9) (engaging in business includes selling, leasing, transferring, advertising, offering, exposing for sale, lease, or transfer). See also *id.* §§ 12070(b) (amended by Chapter 9) (engaging in business does not include the sale of a firearm pursuant to the Enforcement of Judgments Law or to satisfy a court judgment, a firearm confiscated by law enforcement and ordered sold at public auction by a court order, a firearm obtained by intestate succession or bequest if sold with 60 days of receipt, or infrequent sale of firearms); 12070(c) (amended by Chapter 9) (with respect to concealable firearms, "infrequent" means less than six transactions of a concealable firearm per calendar year and, to nonconcealable firearms, transactions made occasionally and without regularity).

17. *Id.* § 12070(a) (amended by Chapter 9). See *id.* § 12071 (amended by Chapter 9) (specifying licensing requirements).

18. *Id.* § 12070(a) (amended by Chapter 9). Additionally, Chapter 9 allows the Department of Justice to issue a statewide gun show license. *Id.* § 12071(a)(1)(B) (amended by Chapter 9).

19. *Id.* §§ 12076(a) (amended by Chapter 9) (purchasers must present evidence of identity and age, and dealers must send copies of dealers' record of sale to the California Department of Justice and the local chief of police); 12071(a)(3)(A) (amended by Chapter 9) (a dealer must wait 15 days after application is made for the purchase of a concealable firearm to deliver the firearm to the purchaser).

20. *Id.* § 12071(3) (amended by Chapter 9).

21. 1988 Cal. Legis. Serv. ch. 1180, sec. 5, at 2854 (West) (amending CAL. PENAL CODE § 12072(e)) (amended by Chapter 9). The unlicensed seller could make the transfer if the purchaser was personally known to the seller, the seller allowed 15 days from the date of the sales agreement before delivery, and the gun was delivered unloaded in a container. *Id.*

22. *Id.* § 12072(d) (amended by Chapter 9). Chapter 9 changes the waiting period for the delivery of firearms following a transfer or sale from 15 days to 10 days, effective January 1, 1996. *Id.* § 12072(c)(1) (amended by Chapter 9). See *id.* § 12082 (amended by Chapter 9) (procedure for sale through a licensed dealer).

23. *Id.* § 12072(a)(2) (amended by Chapter 9). The prohibited class includes any person convicted of a felony, an offense involving a dangerous weapon or other specified crimes, any person addicted to narcotics, a patient of a mental hospital or institution, any person adjudicated by any court

firearm.²⁴ Chapter 9 also expands the class of persons to whom sales are prohibited to include persons submitted to a county psychiatric hospital for involuntary evaluation.²⁵ Persons who have been involuntarily evaluated are also prohibited from possessing a firearm for a period of five years after release.²⁶

MJF

to be a danger to others, or a mentally disordered sex offender. *Id.* See also § 12021.1 (West Supp. 1990) (any person convicted of a listed crime and who is in possession of a firearm is guilty of a felony); CAL. WELF. & INST. CODE §§ 8100 (amended by Chapter 9) (prohibiting mental patients from possessing a firearm); 8103 (amended by Chapter 9) (prohibiting persons adjudged dangerous to others from possessing a firearm).

24. CAL. PENAL CODE § 12072(a)(2) (amended by Chapter 9).

25. CAL. WELF. & INST. CODE § 8103(f)(1) (amended by Chapter 9) (any person submitted for involuntary psychiatric evaluation is prohibited from purchasing a firearm). See *id.* §§ 5150 (West 1984) (allowing law enforcement officers to submit individuals to a county psychiatric hospital for a 72 hour involuntary evaluation when the officer believes the person is suffering from a mental disorder and is a danger to himself or others, or is gravely disabled); 5200 (allowing a superior court to order an involuntary evaluation).

26. *Id.* § 8103(f)(1) (amended by Chapter 9). These individuals, however, may possess a firearm if the evaluating institution declares them to be a person who will use firearms safely and legally. *Id.* See also *id.* §§ 8103(g)(1) (amended by Chapter 9) (persons certified for intensive treatment under California Welfare and Institutions Code sections 5250, 5260, 5270.15, or 5350 are also prohibited from possessing firearms for five years from date of release); 5250 (West Supp. 1990) (any person detained for a 72 hour evaluation under section 5150, 5200, or 5225 may be certified for 14 days of intensive treatment).

Crimes; driving offenses

Vehicle Code § 23208 (new).

AB 3289 (Friedman); 1990 STAT. Ch. 568

Support: Mothers Against Drunk Driving

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

Existing law prescribes punishments for reckless driving and driving under the influence of drugs or alcohol, and establishes various speed limits.¹ Chapter 568 imposes an additional sixty days in the county jail on a person convicted of reckless driving or driving under the influence if the offense occurs while the person was driving thirty or more miles per hour over the speed limit on a freeway or twenty or more miles per hour over the speed limit on a street or highway.² Chapter 568 also requires first offenders to successfully complete an alcohol or drug education and counseling program.³

SAJ

1. See CAL. VEH. CODE §§ 23103 (West Supp. 1990) (reckless driving); 23152 (driving under the influence); 23153 (inflicting bodily injury to another while driving under the influence); 22351 (prima facie speed limits); 22354, 22356 (speed limits on highways); 22355 (variable posted speed limits).

2. *Id.* § 23208(a) (enacted by Chapter 568). The court must order an additional 60 days in the county jail as a condition of probation or suspension of sentence. *Id.* § 23208(b) (enacted by Chapter 568). The facts of reckless driving and driving in excess of speed limits must be stated in the pleadings and found to be true by the factfinder. *Id.* § 23208(d) (enacted by Chapter 568). If the court does not order the additional sentence, the court must specify its reasons in the court record. *Id.* § 23208(c) (enacted by Chapter 568). See *id.* §§ 332 (West 1987) (definition of freeway); 360 (definition of highway).

3. *Id.* § 23208(c) (enacted by Chapter 568).

Crimes; driving offenses--alcohol or drugs

Vehicle Code § 23160 (amended).

AB 3009 (McClintock); 1990 STAT. Ch. 286

Opposition: California Probation, Parole and Correctional Association

Under existing law, a first conviction of driving under the influence of alcohol or drugs is punishable by imprisonment in the county jail for not less than ninety-six hours, but not more than six months.¹ Chapter 286 requires the offender to serve at least forty-eight hours of the imprisonment continuously.² If the court determines that continuous imprisonment interferes with the offender's work schedule, the court must allow the person to serve time during hours that the person is not scheduled to work.³

SAJ

1. CAL. VEH. CODE § 23160(a) (amended by Chapter 286). The offender is also subject to a fine of not less than \$390 nor more than \$1,000, and the suspension of their drivers' licenses for six months. *Id.* § 23160(a)-(b) (amended by Chapter 286).

2. *Id.* § 23160(a) (amended by Chapter 286).

3. *Id.* § 23160(b) (amended by Chapter 286). The court can make this determination based on the defendant's testimony, affidavits, or a statement by the defendant's attorney. *Id.*

Crimes; firearms--machineguns

Penal Code § 12501 (repealed); § 12501, 12583 (new);
§§ 12020, 12020.5, 12220, 12230, 12520 (amended).
AB 2046 (Murray); 1990 STAT. Ch. 81
AB 376 (Klehs); 1990 STAT. Ch. 1690

Existing law prohibits manufacturing, importing, selling, offering for sale, giving, lending, or possessing certain listed weapons, ammunition, and devices.¹ Chapter 1690 includes a multiburst trigger activator² in the list of prohibited devices.³

Existing law also prohibits advertising for sale any weapon or device that is enumerated in California Penal Code sections 12020⁴ and 12280.⁵ Chapter 81 adds machineguns⁶ to the list of devices that cannot be advertised for sale.⁷

Existing law prohibits the possession of a machinegun.⁸ Chapter 81 expands existing law to prohibit the manufacture of a machinegun and the conversion of a firearm into a machinegun.⁹

Existing law prohibits the possession, manufacture, sale or offer for sale of blowguns.¹⁰ Chapter 81 provides that certain people are

1. CAL. PENAL CODE § 12020(a) (amended by Chapter 81601690). *See id.* (list of prohibited items).

2. *See id.* § 12020(c)(23) (amended by Chapter 1690) (definition of multiburst trigger activator as a device that allows two or more shots from the firearm when activated).

3. *Id.* However, possession of a multiburst trigger activator will not become illegal until January 1, 1992. *Id.* § 12020(b)(15) (amended by Chapter 1690).

4. *See id.* § 12020 (amended by Chapter 1690) (list of prohibited weapons includes cane guns, wallet guns, plastic firearms, ballistic knives, short-barreled rifles or shotguns, metal knuckles, zip guns, blackjacks, billies, and nunchakus).

5. *Id.* § 12020.5 (amended by Chapter 81). *See id.* § 12280 (West Supp. 1990) (prohibiting assault weapons). *See also id.* § 12276 (list of prohibited assault weapons).

6. *See id.* § 12200 (definition of machinegun).

7. *Id.* § 12020.5 (amended by Chapter 81) (prohibiting advertising of weapons whose possession is prohibited by California Penal Code sections 12020, 12220, or 12280). *See id.* § 12220(b) (amended by Chapter 81) (prohibiting possession of a machinegun).

8. *Id.* § 12220(b) (amended by Chapter 81).

9. *Id.* § 12220(b). *Compare id. with* WASH. REV. CODE ANN. § 9.41.190 (1988) (unlawful to manufacture a machinegun or any part capable of use in assembling or repairing a machinegun) and 26 U.S.C. § 5822 (1989) (prohibiting manufacture of any firearm without prior government approval).

10. CAL. PENAL CODE § 12582 (West 1982). *See id.* § 12580 (definition of a blowgun).

exempt from the prohibition on possession or use of a blowgun within the scope of their duties.¹¹

MJF

Crimes; fraudulent charitable solicitations

Penal Code § 532d (amended).

AB 2702 (Eaves); 1990 STAT. Ch. 253

Support: Attorney General of California; United Way of California

Under existing law, it is a misdemeanor to intentionally or negligently make false statements¹ during the solicitation of contributions for charitable or religious purposes.² Under prior law, however, no person could be convicted of this crime unless the false statement was proven by a writing or by the testimony of two witnesses.³ Chapter 253 deletes the writing requirement and mandates that the false statement be proven by the testimony of one witness and corroborating circumstances.⁴

DAG

11. *Id. See id.* § 12583 (enacted by Chapter 81) (zookeepers, animal control officers, Department of Fish and Game personnel, humane officers, and veterinarians are exempt).

1. *See* CAL. PENAL CODE § 532d (amended by Chapter 253) (specifically, false and unqualified statements of fact concerning the purpose or organization for which the contribution is solicited, or how the contribution is to be used are prohibited).

2. *Id.*

3. 1963 Cal. Stat. ch. 2083, sec. 1, at 4348 (enacting CAL. PENAL CODE § 532(b) (amended by Chapter 253)).

4. CAL. PENAL CODE § 532d (amended by Chapter 253).

Crimes; fraudulent identification

Penal Code § 529.5 (amended).

AB 2718 (Felando); 1990 STAT. Ch. 960

Support: California Restaurant Association

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

Under existing law, any person who knowingly manufactures, sells, or transfers a falsified driver's license or government-issued identification card¹ is guilty of a misdemeanor.² Chapter 960 increases the penalty for violation of these provisions.³ In addition, Chapter 960 creates a new crime by making the knowing possession of a document falsely purporting to be a government-issued driver's license or identification card a misdemeanor.⁴

JLR

1. See CAL. VEH. CODE § 13005 (West Supp. 1990) (setting forth the content and form requirements of identification cards).

2. CAL. PENAL CODE § 529.5(a) (amended by Chapter 960).

3. *Id.* § 529.2(a) (amended by Chapter 960). The penalty for a first offense is a maximum of one year in the county jail, a fine not to exceed \$1000, or both. *Id.* A second offense is punishable by imprisonment in the county jail for up to one year, a fine not to exceed \$5,000, or both. *Id.* Compare *id.* with CAL. VEH. CODE § 42002 (West 1985) (providing that general misdemeanors are punishable by a maximum of six months in the county jail, a fine not to exceed \$1000, or both).

4. *Id.* § 529.5(c) (amended by Chapter 960). The misdemeanor is punishable by a fine of not less than \$1,000 nor more than \$2,500. *Id.* The court must impose the fine unless the interests of justice would otherwise be better served. *Id.* The court may allow the offender to work off the fine through community service. *Id.* However, if community service work is not available, the maximum fine permitted is \$1,000, based on the offender's ability to pay. *Id.* See *id.* § 529.5(d) (amended by Chapter 960) (allowing the court the option of suspending the person's driving privilege for one year if the offender is between the ages of 13 and 20). See also *id.* § 13202.5 (West Supp. 1990) (providing for the suspension, delay, or restriction of driving privileges).

Crimes; kidnapping

Penal Code §§ 207, 208, 209 (amended).

SB 1564 (Kopp); 1990 STAT. Ch. 55

Source: Kevin Collins Foundation for Missing Children

Opposition: California Attorneys for Criminal Justice; California Probation, Parole and Correctional Association

SB 2079 (Roberti); 1990 STAT. Ch. 1560

Existing law defines kidnapping as the forcible stealing,¹ detaining or arresting² and carrying away³ of any person.⁴ Chapter 55 expands the definition of kidnapping to include situations where the defendant steals, detains, or carries away another person by means of instilling fear in the victim.⁵ Additionally, Chapter 55 provides that the kidnapping provisions⁶ do not apply to any peace officer⁷ or private citizen who is making a lawful arrest,⁸ nor to any person who takes or detains any child under the age of fourteen years, if done to protect the child from the danger of imminent harm.⁹

Chapter 55 also requires that if a person has been granted probation¹⁰ upon conviction of specified kidnapping crimes,¹¹

1. See *People v. McCullough*, 100 Cal. App. 3d 169, 176, 160 Cal. Rptr. 831, 835 (1979) (definition of "stealing" for purposes of the crime of kidnapping is abduction, not theft).

2. See CAL. PENAL CODE § 834 (West 1985) (definition of arrest).

3. See *People v. Rich*, 177 Cal. App. 2d 617, 621, 2 Cal. Rptr. 600, 602 (1960) (holding that the distance, route taken, or area covered by "carrying away" is irrelevant).

4. CAL. PENAL CODE § 207(a) (amended by Chapter 55).

5. *Id.*

6. See *id.* § 207(a)-(d) (amended by Chapter 55) (specifies the acts that must be committed in order to be found guilty of kidnapping).

7. See *id.* § 830 (West Supp. 1990) (definition of peace officer).

8. See *id.* §§ 834, 837 (West 1985) (describing circumstances in which a private citizen may make a lawful arrest).

9. *Id.* § 207(e) (amended by Chapter 55). A person who steals, entices away, conceals or harbors a child under fourteen years of age in order to protect that child from danger is also exempt from the provision. *Id.* § 207(e)(1) (amended by Chapter 55).

10. See *id.* § 1203 (West Supp. 1990) (definition of probation).

11. Existing law imposes imprisonment in state prison for three, five, or eight years for kidnapping if the victim is fourteen years or older, and five, eight, or eleven years if the victim is under fourteen years of age. *Id.* § 208(a)-(b) (amended by Chapter 55). This provision does not apply if the minor is under fourteen years of age and is taken or held by a biological parent, natural father,

that person must be confined in the county jail for twelve months as a mandatory condition of probation.¹² This provision does not apply if the court determines that justice would be better served by a lesser penalty.¹³ If the defendant kidnapped with the intent to commit specified sex crimes, Chapter 1560 penalizes the offender by imprisonment in the state prison for five, eight, or eleven years.¹⁴

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adoptive parent, or a person who has been granted access to the minor by a court order. *Id.* § 208(b) (amended by Chapter 55). *See* CAL. CIV. CODE § 7004 (West Supp. 1990) (definition and conditions of being a natural father). Existing law also provides that kidnapping for ransom, or to commit extortion, is a felony punishable by life imprisonment. CAL. PENAL CODE § 209(a) (amended by Chapter 55). If the victim suffers death or bodily harm, the defendant must serve the life sentence without the possibility of parole; if the victim was intentionally exposed to a substantial likelihood of death, or was kidnapped to be robbed, parole may be granted to the defendant. *Id.* *See also* *People v. Jackson*, 44 Cal.2d 511, 515-17, 282 P.2d 898, 900-901 (1955) (holding that the element of bodily harm requires a substantial or serious injury by application of physical force beyond that necessarily involved in forcible kidnapping).

12. CAL. PENAL CODE §§ 208(c), 209(c) (amended by Chapter 55).

13. *Id.* If the court grants probation without confining the defendant, it must specify the reasons for doing so. *Id.*

14. *Id.* § 208(d) (amended by Chapter 1560). The provision applies to kidnapping with the intent to commit rape, oral copulation, sodomy, or rape by instrument. *Id.*

Crimes; looting

Penal Code § 463 (new).

AB 3894 (Filante); 1990 STAT. Ch. 1126

Support: California District Attorneys' Association; California Peace Officers' Association; California Association of Independent Business.

Opposition: California Attorneys for Criminal Justice.

Existing law specifies the maximum punishment that may be imposed upon conviction of second degree burglary,¹ grand theft,² and petty theft.³ Chapter 1126 creates the crime of looting, which consists of committing second degree burglary, grand theft, or petty theft within three days after a state of emergency or local emergency⁴ is declared because of an earthquake or flood.⁵ Chapter 1126 further mandates a minimum jail sentence of 180 days for persons convicted of looting or grand theft, and a minimum jail sentence of 90 days for anyone convicted of petty theft, where these crimes were committed during and within an area in a state of emergency.⁶

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1. See CAL. PENAL CODE §§ 459, 460 (West Supp. 1990) (defining second degree burglary as the taking and carrying away of personal property of another from an uninhabited structure with the intent to permanently deprive the owner of that property).

2. See *id.* §§ 484, 487 (defining grand theft as the felonious stealing, taking, carrying, leading or driving away the property of another, where the value of the property exceeds \$400).

3. *Id.* §§ 460, 461, 489, 490 (specifying punishments for different degrees of burglary). See *id.* §§ 488, 487(a)-(g) (West 1988) (defining petty theft as theft where the value of the property does not exceed \$400).

4. See *id.* § 463(d)(1)-(2) (enacted by Chapter 1126) (defining state of emergency and local emergency as conditions which, by reason of their magnitude, are beyond the control of the services of a city, county, or city and county require the combined forces of mutual aid regions to combat).

5. *Id.* § 463(a) (enacted by Chapter 1126).

6. *Id.* § 463(a)-(c) (enacted by Chapter 1126). The court may reduce or eliminate this minimum if it determines that justice will otherwise be better served. *Id.*

Crimes; pest importation and shipment

Food and Agricultural Code § 6306 (new).
SB 1754 (Ayala); 1990 STAT. Ch. 167
(Effective 6/22/90)

Existing law makes it a misdemeanor for any person to willfully import into or transport within the state any live insect or pest.¹ In an effort to deter intentional spreading of infestations of the Mediterranean fruit fly,² Chapter 167 elevates the willful and knowing transport of this insect to a felony.³

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Crimes; possession of weapons--justification

Penal Code § 12025.5 (new); § 12031 (amended).
SB 2065 (Davis); 1990 STAT. Ch. 1249
Opposition: California Peace Officers' Association, Peace Officers' Research Association of California.

Under existing law it is unlawful to carry a loaded firearm¹ in a public place,² and to possess a concealed weapon³ without a

1. CAL. FOOD & AGRIC. CODE § 6305 (West 1986). *See id.* § 6321 (similar provision relating to plants, fruits or vegetables which may become host to the Tephritidae fruit fly).

2. Telephone conversation with Sandra Miller, Administrative Assistant to Senator Ayala, Committee on Agricultural and Water Resources, California State Senate (June 26, 1990) (notes on file at the *Pacific Law Journal*). In response to threats of intentional breeding and seeding of the Mediterranean Fruit Fly, Chapter 167 was apparently intended to deter that activity by increasing the penalty. *Id.*

3. CAL. FOOD & AGRIC. CODE § 6306 (enacted by Chapter 167).

1. *See* CAL. PENAL CODE § 12031(g) (amended by Chapter 1249) (definition of a loaded firearm).

2. *See id.* § 12031(a) (amended by Chapter 1249) (the areas prohibited include any public street in an incorporated city and any prohibited area of an unincorporated area). *See also id.* § 12031(b)-(d) (amended by Chapter 1249) (persons exempted from this provision include peace officers, military forces, target shooters while at a range, properly licensed security guards, and

license.⁴ Chapter 1249 creates a justification for these violations where the defendant reasonably believes that he or she is in danger of being harmed by a person who is currently under a restraining order and has been found to be a threat to the defendant's safety.⁵

MJF

Crimes; recording piracy

Penal Code § 653w (amended).
SB 2073 (Royce); 1990 STAT. Ch. 942

Under existing law, failure to clearly and conspicuously display the true names of the manufacturer and the artist on audio recordings¹ for sale is punishable as either a felony or

properly licensed private citizens).

3. *See id.* §§ 12001(a)-(e) (West Supp. 1990) (definition of a concealed weapon); 12025(c) (a firearm carried openly in a belt holster is not concealed). *See also* *People v. Hale*, 43 Cal. App. 3d 353, 356, 117 Cal. Rptr. 697, 698 (1974) (holding that a partially concealed firearm is a concealed weapon).

4. CAL. PENAL CODE §§ 12025(a),(b) (West Supp. 1990); 12031(a) (amended by Chapter 1249). *See People v. King*, 22 Cal. 3d 12, 24, 582 P.2d 1000, 1006, 148 Cal. Rptr. 409, 415 (1978) (holding that the use of a concealable firearm in self-defense is not a crime).

5. CAL. PENAL CODE §§ 12025.5 (enacted by Chapter 1249); 12031(j)(2) (amended by Chapter 1249). The trier of fact must determine that the defendant was acting reasonably under the circumstances. *Id.*

1. *See* CAL. PENAL CODE § 653w(a) (amended by Chapter 942) (definition of recording).

misdeemeanor.² Chapter 942 extends this provision to audiovisual works.³

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Crimes; sale of controlled substances to minors

Health and Safety Code § 11380.5 (repealed); § 11380.1 (new); §§ 11353, 11353.1, 11353.5, 11353.7, 11364, 11380 (amended).
Welfare and Institutions Code § 729.8 (amended).
SB 2112 (Boatwright); 1990 STAT. Ch. 1665
AB 2645 (Epple); 1990 STAT. Ch. 1664
Support: Peace Officers Research Association of California
Opposition: California Attorneys for Criminal Justice; American Civil Liberties Union; California Public Defenders' Association

2. *Id.* § 653w (amended by Chapter 942). *See id.* § 653w(b) (amended by Chapter 942). The first violation involving less than 1,000 audio or 100 video recordings is punishable by imprisonment in county jail for a term not exceeding one year, or by a fine not exceeding \$25,000, or both; the second violation is punishable by imprisonment in county jail for a term not exceeding one year, or a fine not exceeding \$100,000, or both. *Id.* § 653w (amended by Chapter 942). Violations involving at least 1,000 audio or 100 video recordings are punishable by imprisonment in county jail for a term not exceeding one year, or by imprisonment in state prison for two, three, or five years, or by a fine not to exceed \$250,000, or both. *Id.* § 653w(b) (amended by Chapter 942). *Cf. ILL. ANN. STAT.* ch. 38, para. 16-7 (Smith-Hurd 1990) (unlawful use of recorded sounds). *See also* Dowling v. United States, 473 U.S. 207, 214-18 (1985) (holding that manufacturing and distributing phonorecords without the consent of the copyright owner is not equivalent to stealing, converting, or taking by fraud, because the infringer of the copyright does not assume physical control of the copyright nor deprive the owner of its use). *See generally* Comment, *Tuning Up the Copyright Act: Substantial Similarity and Sound Recording Protections*, 73 MINN. L. REV. 1175 (1989) (concluding that copyright protection laws offer greater protection to written scores than to sound recordings); Comment, *Digital Sound Sampling, Copyright and Publicity: Protecting Against the Electronic Appropriation of Sounds*, 87 COLUM. L. REV. 1723 (1987) (discussing the extension of Copyright Act of 1976, state common law, and statutory rights of publicity to protect musicians and copyright owners from the use of sound synthesizers to clone samples of the original artists' works).

3. CAL. PENAL CODE § 653w(a) (amended by Chapter 942). *See id.* § 653w(a) (amended by Chapter 942) (definition of audiovisual works). *See generally* Comment, *Stemming the Tide of Video Game Piracy: Copyright Protection for the Audiovisual Displays*, 49 BROOKLYN L. REV. 839 (1983) (discussing the need for more protection of audiovisual works in addition to that offered by the Copyright Act of 1976 and the computer program copyright protections).

Existing law prohibits any person eighteen years of age or older from inducing a minor to use specified controlled substances.¹ It is also unlawful to involve a minor in the sale of specified controlled substances² or to provide such substances to a minor.³ Chapter 1664 increases the sentence for these crimes.⁴ Chapter 1665 imposes an additional one year sentence if the offense occurs on the grounds of a church, synagogue, youth center, or public swimming pool, and an additional two year sentence if the offense occurs within 1,000 feet of public or private school grounds⁵ when the facility is open for business, classes, school activities, or at any time minors are using the facility.⁶

Under existing law, defendants charged under these provisions who are at least five years older than the minor involved in the crime may be punished by imprisonment of five, seven, or nine years if the offense occurs on school grounds during hours in which classes or other school-related programs are being conducted.⁷ Chapter 1665 makes this sentencing provision applicable to violations that occur on church or synagogue grounds, and extends the time frame to include any other time when minors are using the facility.⁸

1. CAL. HEALTH & SAFETY CODE § 11353 (amended by Chapter 1664). *See id.* § 11550 (West Supp. 1990) (prohibits use of controlled substances). *See also id.* §§ 11054(b), (c), (e), (f)(1); 11054(d)(14), (15), (20); 11055(b), (c), (g); 11056; 11057; 11058 (listing controlled substances covered by Chapter 1664).

2. *Id.* § 11353 (amended by Chapter 1664).

3. *Id.* §§ 11353 (amended by Chapter 1664); 11380 (amended by Chapter 1665).

4. *See id.* § 11353 (amended by Chapter 1664) (sentence is increased from three, five, or seven years in state prison to three, six, or nine years).

5. *See id.* § 11353.1(e)(5) (amended by Chapter 1665) (definition of "within 1,000 feet of the grounds of school").

6. *Id.* 11380.1 (enacted by Chapter 1665) (provision only applies to offenses involving phencyclidine (PCP), methamphetamine, or any analog of these substances). *See id.* § 11353.1(e) (amended by Chapter 1665) ("playground" defined as any park designed to be used by children; "youth center" defined as a facility primarily used to host recreational or social activities for minors).

7. *Id.* § 11353.5 (amended by Chapter 1665). This provision also applies to offenses involving the preparation for sale or gift to minors any controlled substances not covered by California Health and Safety Code sections 11353 or 11380. *Id.*

8. *Id.*

Possession of drug paraphernalia used for injecting or smoking specified controlled substances is illegal under existing law.⁹ Chapter 1664 prohibits possession of specified drug paraphernalia used for injecting or smoking methamphetamines.¹⁰

Under existing law, a minor convicted of possession of any controlled substance on school grounds during school hours is granted probation, with mandatory community service of at least forty hours.¹¹ Chapter 1664 provides for probation with at least 100 hours of community service for those minors who possess, use, or sell controlled substances on school or church grounds, or in other designated areas.¹²

SAJ

Crimes; stalking

Penal Code § 646.9 (new); § 1270 (amended).

SB 2184 (Royce); 1990 STAT. Ch. 1527

Support: California Peace Officer's Association, California Police Chiefs' Association, California State Sheriff's Association, Screen Actors Guild.

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

Existing law provides that a person who is a victim of domestic violence or harassment may obtain a restraining order¹ to prevent

9. *Id.* § 11364 (amended by Chapter 1664).

10. *Id.* See *id.* § 11055(d)(2) (West Supp. 1990) (prohibits use of methamphetamine).

11. CAL. WELF. & INST. CODE § 729.8 (amended by Chapter 1664).

12. *Id.* Other designated areas include synagogues, playgrounds, youth centers, and public swimming pools. *Id.*

1. See CAL. CIV. PROC. CODE § 527 (West Supp. 1990) (authorization for restraining orders and injunctions). See also CAL. CIV. CODE §§ 4359(a), 4458, 7020(a)-(b), 7021 (West Supp. 1990) (circumstances for which restraining orders are authorized). See generally Comment, *Restraining Order Legislation for Battered Women: A Reassessment*, 16 U.S.F.L. REV. 703 (1982); *Selected Review of 1981 California Legislation*, 13 PAC. L.J. 513, 675 (1982) (temporary restraining orders).

contact by the specified offender, and that any violation of that order constitutes a misdemeanor.² Chapter 1527 creates the crime of stalking by prohibiting the act of willful, malicious, and repeated following or harassment³ of another person, while making a credible threat⁴ and intending to create a reasonable apprehension of death or great bodily harm.⁵

JCM

Crimes; street gangs

Penal Code § 186.22a (amended).

AB 3485 (Epple); 1990 STAT. Ch. 223

Support: Cities of Duarte, Hawaiian Gardens, Huntington Park, LaMirada, Los Angeles, and Norwalk; California Peace Officers' Association

Prior law provided that every residential building, except those consisting of three or fewer dwelling units,¹ used by criminal street gang² members for the purpose of conducting criminal activities³

2. CAL. PENAL CODE § 273.6 (West Supp. 1990).

3. *See id.* § 646.9(d) (enacted by Chapter 1527) (defining harassment as a knowing and willful course of conduct directed at a specific person that seriously alarms or annoys the person, serving no legitimate purpose, and causing actual substantial emotional distress to that person).

4. *See id.* § 646.9(e) (enacted by Chapter 1527) (defining a credible threat as a threat made with the intent and apparent ability to carry the threat out, causing the target of the threat to reasonably fear for his or her safety and the threat must be one of great bodily harm or life). *Cf. id.* § 12022.7 (West 1982) (definition of a great bodily harm).

5. *Id.* § 646.9(a) (enacted by Chapter 1527). Stalking is punishable by imprisonment in the county jail for up to one year, a fine of up to \$1,000, or both. *Id.* When deciding whether to grant a defendant release on bail or on the defendant's own recognizance for an offense involving a firearm, the court must consider any violation of Chapter 1527. *Id.* § 1270(a) (amended by Chapter 1527).

1. *See* 1988 Cal. Stat. ch. 1256, sec. 1, at ____ (West) (amending Cal. Penal Code § 186.22a) (amended by Chapter 223) (exempting building of three or fewer units from the operation of this Penal Code section 186.22a).

2. *See* CAL. PENAL CODE § 186.22(f) (West Supp. 1990) (definition of criminal street gang).

is a nuisance⁴ subject to injunction or abatement.⁵ Chapter 223 deletes the provision that exempted buildings consisting of three or fewer dwelling units, thereby including all buildings, such as single family homes and duplexes, in the nuisance abatement provision.⁶

SAJ

Crimes; travel promoters

Business and Professions Code § 17540.13 (amended).

AB 2997 (Areias); 1990 STAT. Ch. 551

Support: Consumer Action

Opposition: California Coalition of Travel Organizations

Under existing law, violation of the Travel Promoter Law¹ is a misdemeanor.² Under Chapter 551, if a travel promoter³ collects \$1,000 or more⁴ in any twelve month period or more than \$400 from any one passenger⁵ in violation of the Travel Promoter Law,

3. See *id.* §§ 186.22(c) (West Supp. 1990) (criminal activity includes public offenses committed for the benefit of or in association with any criminal street gang); 186.22a(a) (amended by Chapter 223) (criminal conduct also refers to any offense involving dangerous or deadly weapons, burglary, or rape).

4. See CAL. CIV. CODE §§ 3480 (West 1970) (definition of public nuisance); 3481 (definition of private nuisance).

5. CAL. PENAL CODE § 186.22a(a) (amended by Chapter 223). See *id.* § 186.22a(b) (amended by Chapter 223) (procedure for filing an action for injunction or abatement).

6. *Id.* § 186.22a (amended by Chapter 223).

1. See CAL. BUS. & PROF. CODE §§ 17540-17540.13 (West 1987 & Supp. 1990) (provisions of the Travel Promoter Law).

2. *Id.* § 17540.13 (amended by Chapter 551). Violators of this law are subject to civil penalties and imprisonment in the county jail for up to one year. *Id.*

3. See *id.* § 17540.1 (West 1987) (definition of travel promoter).

4. See *id.* § 17540.13 (amended by Chapter 551) (the \$1,000 may be in money or real or personal property).

5. See *id.* § 17540.3 (West 1987) (definition of passenger).

the violation is punishable either as a misdemeanor or a felony.⁶

SAJ

Crimes; trespass--following a threat

Penal Code § 601 (new).

SB 1862 (McCorquodale); 1990 STAT. Ch. 1448

Under existing law, it is a misdemeanor to enter and occupy real property without the consent of the owner or the owner's agent.¹ It is also a misdemeanor to refuse to leave private property belonging to someone else that is not open to the public when told to do so by the owner, the owner's agent, or a peace officer.² Chapter 1448 creates a new trespass crime.³ Under Chapter 1448, any person who makes a credible threat to inflict serious bodily injury to another and unlawfully enters into that person's home, contiguous real property, or workplace within fourteen days of making the threat with the intent to carry out that threat is guilty of trespassing.⁴

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6. *Id.* § 17540.13 (amended by Chapter 551). Felony punishment consists of imprisonment in the state prison for 16 months, two years, or three years. *Id.* See generally Ball & Friedman, *The Use of Criminal Sanctions in the Enforcement of Economic Legislation: A Sociological View*, 17 STAN. L. REV. 197 (1965) (discussing the advantages and problems of using criminal sanctions to enforce economic legislation).

1. CAL. PENAL CODE § 602(k)(1)-(l) (West Supp. 1990) (definition of trespass by entry and occupation of private property).

2. *Id.* § 602(n) (definition of trespass for refusal to leave). See *id.* § 830 (definition of peace officer).

3. *Id.* § 601 (enacted by Chapter 1448) (punishable as either a felony or a misdemeanor).

4. *Id.* § 601(a)-(b) (enacted by Chapter 1448). No crime has been committed, however, if it is the home or workplace of the person making the threat. *Id.* § 601(b) (enacted by Chapter 1448). Chapter 1448 does not apply to people engaged in labor union activities permitted on the property under California Labor Code Sections 1140 through 1167. *Id.* § 601(c) (enacted by Chapter 1448).

Crimes; victim protection

Penal Code §§ 13702, 13711 (new); §§ 3003, 11155, 13701, 13710 (amended).

AB 4237 (Nolan); 1990 STAT. Ch. 1692

Support: Business and Professional Women

Opposition: California Department of Corrections

Existing law mandates that an inmate released on parole be returned to the county where the crime occurred.¹ Under Chapter 1692, if the paroling agency finds the need to protect a victim² or witness, a parolee convicted of a violent felony³ may not be returned within thirty-five miles of the residence of the victim or witness.⁴

Existing law requires the Department of Corrections (Department) to send written notice of the inmate's reentry or work furlough program to the victim.⁵ Chapter 1692 requires the Department to send notification as soon as the placement is planned, or within sixty days prior to the placement, whichever is longer.⁶

1. CAL. PENAL CODE § 3003(a) (amended by Chapter 1692). If the Board of Prison Terms finds a need to protect the safety of a victim, it may release the inmate in another county, and must state its reasons for doing so in writing. *Id.* § 3003(b) (amended by Chapter 1692). *See id.* § 3003(b)(1)-(6) (amended by Chapter 1692) (factors to be considered in determining whether to release the inmate in another county). An inmate may be released to another state pursuant to any other provision of law. *Id.* § 3003(d) (amended by Chapter 1692). *See Prison Law Office v. Koenig*, 186 Cal. App. 3d 560, 566, 233 Cal. Rptr. 590, 594 (1986) (holding that the goal of distributing parolees is legitimate and constitutional).

2. *See* CAL. PENAL CODE § 13700(d) (West Supp. 1990) (definition of victim).

3. *See id.* § 667.5(c)(1)-(7) (West Supp. 1990) (definition of violent felony).

4. *Id.* § 3003(c) (amended by Chapter 1692). The agency makes its finding that protection is needed upon the victims' or witness' request. *Id.*

5. *Id.* § 11155(a) (amended by Chapter 1692). The Department must also notify the local chief of police and sheriff. *Id.* § 11155(a)(1)-(3) (amended by Chapter 1692). The Department must immediately notify the same person in the event of the inmate's escape. *Id.* § 11155(b) (amended by Chapter 1692). The Department must send written notice of the recapture of the inmate to the designated persons within 30 days. *Id.*

6. *Id.* § 11155(a) (amended by Chapter 1692). The Department must send the notice by return-receipt mail, and must make a good faith effort to determine the whereabouts of the victim. *Id.* § 11155(d) (amended by Chapter 1692). *See id.* § 679.02 (West Supp. 1990) (describing the statutory rights of victims of crimes, and requiring notification of the inmate's escape or placement in a re-entry or work furlough program).

Under existing law, law enforcement agencies must keep a record of all protective orders⁷ issued in relation to domestic violence.⁸ Chapter 1692 specifies that the agencies must keep records of protective orders that have not yet been served.⁹ Chapter 1692 also requires the court clerk to distribute an informational pamphlet to the person being protected.¹⁰

Under existing law, every law enforcement agency must adopt and implement written policies for officers'¹¹ response to reported incidents of domestic violence.¹² Chapter 1692 requires law enforcement agencies to implement similar written policies for dispatchers.¹³

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7. *See id.* § 136.2 (West Supp. 1990) (definition of protective order).

8. *Id.* § 13710(a) (amended by Chapter 1692).

9. *Id.* The terms and conditions of the protective order cannot be changed without a court order. *Id.* § 13710(b) (amended by Chapter 1692). The law enforcement agency may serve the protective order at the scene of domestic violence or at any time the party is in custody. *Id.* § 13710(c) (amended by Chapter 1692)

10. *Id.* § 13711 (enacted by Chapter 1692). *See id.* § 13711(a)-(c) (enacted by Chapter 1692) (list of information to be included in the pamphlet).

11. *See id.* § 13700(c) (West Supp. 1990) (definition of officer).

12. *Id.* § 13701 (amended by Chapter 1692). *See id.* § 13700(b) (West Supp. 1990) (definition of domestic violence). *See also id.* § 13701(a)-(j) (amended by Chapter 1692) (list of procedures for which the written standards must be adopted).

13. *Id.* § 13702 (enacted by Chapter 1692). Dispatchers are not required to verify the validity of a protective order before responding. *Id.*