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Criminal Procedure

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Criminal Procedure

Criminal Procedure; alternative sentencing and fees

Penal Code § 1203.1e (repealed and new); §§ 1208.2, 1208.3 (new and repealed); §§ 1203.1f, 1208.5, 2900.5 (repealed, new and amended).

AB 688 (Baker); 1991 STAT. Ch. 437

Under existing law, the correctional administrator¹ may prescribe an administrative fee to be paid by each home detention² participant according to the person's ability to pay.³ Existing law authorizes the work furlough administrator to collect the prisoner's wages⁴ and to deduct the costs of administration of the program allocable to the prisoner, or if the prisoner is unable to pay the sum, then a reasonable lesser sum.⁵ Under Chapter 437, a board of supervisors, which implemented the work furlough or home detention program, may prescribe a program administrative fee and an application fee that together do not exceed the pro rata cost of the program.⁶ Chapter 437 specifies that the administrator of the specific program shall not consider a prisoners's ability to pay⁷ all

1. See CAL. PENAL CODE § 1203.016(h)(1) (West Supp. 1991) (definition of correctional administrator).

2. See *id.* § 1203.016(g) (West Supp. 1991) (governing home detention). Cf. *id.* § 1203.1i(e) (West Supp. 1991) (definition of house confinement).

3. *Id.* § 1203.016(g) (West Supp. 1991).

4. See *id.* § 1208(e) (West Supp. 1991) (specifying the procedure for collecting the prisoner's earnings).

5. *Id.*

6. *Id.* § 1208.2(b) (enacted by Chapter 437).

7. See *id.* § 1208.2(d)(1)-(4) (enacted by Chapter 437) (definition of ability to pay). In determining the offender's ability to pay administrative fees, the court is to consider the offender's financial position, his future financial position, the likelihood that the person shall be able to obtain employment within six months after the date of the hearing, and any other factors which may affect the offender's financial capability to reimburse the county for the costs. *Id.* See *People v. Bennett*, 196 Cal. App. 3d 1054, 1056, 242 Cal. Rptr. 380, 381-82 (1987) (holding that a defendant's probation was improperly conditioned upon payment of probation costs in an amount and manner to be determined by the probation department, and that the statute permitting a court to require reimbursement of probation costs required a determination that the defendant had the ability to pay, and the probation department was not equipped to serve in an adjudicating capacity).

or a portion of the program fee for the purposes of granting or denying participation in any of the programs, and shall not have access to the prisoner's financial data prior to rendering a decision.⁸ Chapter 437 authorizes the administrator to charge a prisoner the fee set by the board of supervisors, or any portion of the fee, based on the prisoner's ability to pay, and would also authorize the administrator to determine the method and frequency of payment.⁹ Under Chapter 437, if the administrator and the prisoner are unable to reach an agreement regarding the administrative fee or the prisoner's ability to pay, the administrator must advise the appropriate court of the disagreement and the court shall resolve the disagreement.¹⁰

Under prior law, a court may order a defendant sentenced to county jail or other local detention facility, who is eligible to be released on parole, to pay all or part of the reasonable cost of providing parole supervision.¹¹ Under Chapter 437, the board of supervisors which implemented the county parole program is authorized to prescribe a program administrative fee and application fee under the same conditions as set forth with respect to work furlough and home detention programs.¹²

Under existing law, the board of supervisors of two or more counties having work furlough programs may enter into agreements whereby a person sentenced or imprisoned in the jail of one county, but regularly residing or employed in another county, may be transferred to the jail of the county in which he resides or is employed.¹³ Under Chapter 437, home detention programs and parole programs are included within this provision.¹⁴

Under existing law, in all felony and misdemeanor convictions, when the defendant has been in custody in certain programs such as a work furlough facility or a halfway house, every day of

8. CAL. PENAL CODE § 1208.2(c) (enacted by Chapter 437).

9. *Id.* § 1208.2(e) (enacted by Chapter 437).

10. *Id.* § 1208.2(g) (enacted by Chapter 437).

11. *Id.* § 1203.1e (West Supp. 1991) (governing the determination of the offender's ability to pay administrative fees for providing parole supervision).

12. *Id.* § 1208.2(a)(1) (enacted by Chapter 437).

13. *Id.* § 1208.5 (amended by Chapter 437).

14. *Id.*

custody served by the defendant shall be credited to the person's term of imprisonment or credited to any fine which may be imposed.¹⁵ Chapter 437 includes the custody of the defendant in a home detention program in this provision.¹⁶ Chapter 437 also provides that if a court or local correctional administrator orders a defendant to serve time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility or home detention program in lieu of imprisonment in county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.¹⁷

WY

Criminal Procedure; body vests--sentencing enhancement

Penal Code § 12022.2 (amended).
AB 1076 (Speier); 1991 STAT. ch. 584

Under existing law, a person who is armed with a firearm and possesses armor penetrating ammunition while participating in the commission or attempted commission of a felony shall receive a

15. *Id.* § 2900.5 (West 1982). See *People v. Tafoya*, 194 Cal. App. 3d Supp. 1, 4, 239 Cal. Rptr. 458, 460 (1987) (holding that the term "in custody" as used in the statute granting the defendant credit upon the term of imprisonment for time spent in rehabilitation cannot be construed to include defendant's self-imposed stay at a drug rehabilitation facility); *People v. Mobley*, 139 Cal. App. 3d 320, 322-23, 188 Cal. Rptr. 583, 585 (1983) (holding that the right to sentencing credit for time in custody is based not on the procedure by which the defendant is placed in the facility, but on requirements that the placement be "custodial" and that such custody be "attributable to proceedings related to the same conduct for which the defendant has been convicted").

16. CAL. PENAL CODE § 2900.5(a) (amended by Chapter 437).

17. *Id.* § 2900.5(f) (amended by Chapter 437).

sentence enhancement of three, four, or five years.¹ Existing law also provides that an offender will receive an additional punishment when he is armed with a firearm during the commission of a specified sex offense,² when a person furnishes a firearm to another during the commission of a felony for the purpose of aiding and abetting the crime,³ and when a person is armed with a firearm during the commission or attempted commission of a felony.⁴ Chapter 584 creates a sentence enhancement of three, four, or five years for wearing a body vest⁵ during the commission or attempted commission of a violent felony.⁶

WY

1. CAL. PENAL CODE § 12022.2(a) (amended by Chapter 584). *See* Ex parte Shull, 23 Cal. 2d 745, 748, 146 P.2d 417, 418 (1944) (holding that in imposing imprisonment under the Deadly Weapon Act, which requires additional punishment for felonies where defendant is armed with a pistol or other weapon, is considered to be additional, and must be made consecutive to the term imposed for the felony committed; hence, the court has no discretion as to whether the additional term shall run concurrently or consecutively).

2. CAL. PENAL CODE § 12022.3 (West Supp. 1991). The list of specified sex offenses includes: (1) Rape; (2) rape by foreign object; (3) sodomy; (4) lewd or lascivious acts with a child under age 14; (5) oral copulation; and (6) penetration of genital or anal openings by foreign object. *Id.* §§ 261, 264.1, 286, 288, 288a, 289 (West 1988 & Supp. 1991).

3. *Id.* § 12022.4 (West Supp. 1991). *See* People v. Byers, 90 Cal. App. 3d 140, 150, 153 Cal. Rptr. 249, 254, (1979) (holding that participation in a series of unlawful transactions is sufficient to show that the person aided and abetted illegal conduct).

4. CAL. PENAL CODE § 12022 (West Supp. 1991).

5. *See id.* § 12022.2(c) (amended by Chapter 584) (definition of body vest).

6. *Id.* § 12022.2(b) (amended by Chapter 584). A violent felony is defined as those listed under California Penal Code section 12021.1(b). *Id.* Violent felonies include, but are not limited to, murder or voluntary manslaughter, mayhem, and rape. *Id.* *See id.* § 12021.1(b) (West Supp. 1991) (containing a complete list of violent felonies).

**Criminal Procedure; controlled substances and firearms--
diversion for treat of offenders**

Health and Safety Code § 11370.1 (amended); Penal Code § 1000 (amended).

AB 154 (Bentley); 1991 STAT. Ch. 469

Under existing law, any person convicted of unlawfully possessing specified amounts of certain controlled substances¹ while in the immediate, personal possession of a loaded, operable firearm is guilty of a felony punishable by imprisonment in state prison for two, three or four years.² Chapter 469 alters the definition of this crime by substituting the phrase “armed with”³ for the phrase “while in the immediate personal possession” of a loaded, operable firearm, and deleting the quantity limitations.⁴

Existing law provides that an offender convicted under this section is ineligible for diversion⁵ for drug rehabilitation or treatment under the general diversion provisions of Penal Code section 1000.⁶ Chapter 469 authorizes diversion of alleged drug

1. See CAL. HEALTH & SAFETY CODE § 11007 (West Supp. 1991) (definition of controlled substances). See also CAL. PENAL CODE § 1000(a) (amended by Chapter 469) (specifying quantities of one-eighth gram or less of any substance containing cocaine, cocaine base, heroine, methamphetamine, or phencyclidine as a controlled substance).

2. CAL. HEALTH & SAFETY CODE § 11370.1(a) (amended by Chapter 469). See CAL. PENAL CODE § 12022(c) (West Supp. 1991) (providing a sentence enhancement for conviction of possession of controlled substances for sale while armed with a firearm).

3. See CAL. HEALTH & SAFETY CODE § 11370.1(a) (amended by Chapter 469) (defining “armed with” as having a firearm available for offensive or defensive use). See *People v. Miley*, 158 Cal. App. 3d 25, 32, 204 Cal. Rptr. 247, 354 (1984) (defining “armed” as meaning that the firearm is carried as an instrument of offense or defense at the time of the commission of a felony).

4. CAL. HEALTH & SAFETY CODE § 11370.1(a) (amended by Chapter 469).

5. See CAL. PENAL CODE § 1001.1 (West 1985) (explaining that pretrial diversion refers to temporarily or permanently postponing prosecution of an offense).

6. CAL. HEALTH & SAFETY CODE § 11370.1(a) (amended by Chapter 469). See generally CAL. PENAL CODE § 1000(a) (West Supp. 1991) (defining general diversion provisions). See also *People v. Duncan*, 216 Cal. App. 3d 1621, 1624, 265 Cal. Rptr. 612, 613 (1990) (stating that Penal Code section 1000 was intended to identify and correct the tentative or experimental user before deeper involvement, and to reduce clogging of the justice system).

offenders for treatment under section 1000(a) only in specific circumstances.⁷

PLB

Criminal Procedure; child abuse--reporting

Penal Code §§ 11165.7, 11166.5 (amended).
AB 1133 (O'Connell); 1991 STAT. Ch. 132.

Under existing law, the Child Abuse and Neglect Reporting Act¹ defines a "child care custodian."² Under Chapter 132, "child care custodian" includes an administrator or employee of a public or private youth center, youth recreation program or youth organization, an administrator or employee of a public or private organization which has direct control and supervision of children, a parole officer, or an employee of a school district police or security department.³

Under existing law, persons entering into employment in certain positions⁴ must sign a statement expressing an understanding of the duty to report cases of suspected child abuse.⁵ Under Chapter

7. CAL. HEALTH & SAFETY CODE § 11370.1(b) (amended by Chapter 469). *See* CAL. PENAL CODE § 1000(a) (amended by Chapter 469) (explaining that diversion of alleged drug offenders under Health & Safety Code section 11370.1 is authorized only when a case is before the court on accusatory pleading for possession of small amounts of cocaine base, cocaine, heroin, methamphetamine, crystalline or liquid substances containing phencyclidine, or hand-rolled cigarettes treated with phencyclidine).

1. *See* CAL. PENAL CODE § 11164 (West Supp. 1991) (introducing the Child Abuse and Neglect Reporting Act).

2. *Id.* § 11165.7(a) (amended by Chapter 132).

3. *Id.*

4. *Id.* § 11166.5(a) (amended by Chapter 132) (positions include child care custodian, health practitioner, or an employee of a child protective agency).

5. *Id.* § 11166.5(a) (amended by Chapter 132). Any person in the specified positions who, in their professional capacity, has knowledge of or observes a child who is reasonably suspected of being a victim of child abuse, must report the suspected child abuse to a child protective agency by telephone as soon as possible and must send a written report within 36 hours to that agency. *Id.* § 11166 (West Supp. 1991); *People v. Stritzinger*, 34 Cal. 3d 505, 512, 668 P.2d 738, 743, 194 Cal.

132, the specified positions are expanded to include probation officers, parole officers, employees of a school district police or security department, or any administrators or employees of public or private organizations whose duties require direct contact and supervision of children.⁶

LF

Criminal Procedure; domestic violence

Code of Civil Procedure §§ 128, 546, 1219 (amended);
Penal Code § 1203.11 (new), § 12028.5 (amended); Welfare
and Institutions Code § 8102 (amended).
AB 363 (Nolan); 1991 STAT. Ch. 866

Under existing law, execution of sentence under an order of contempt¹ in sexual assault cases² where the victim refuses to testify shall be stayed pending the filing of a petition³ for extraordinary relief to test the lawfulness of the court order.⁴

Rptr. 431, 436 (1983). See *Ferraro v. Chadwick*, 221 Cal. App. 3d 86, 90, 270 Cal. Rptr. 379, 381 (1990) (stating that persons in positions likely to detect child abuse are required to report promptly all suspected instances of child abuse).

6. CAL. PENAL CODE § 11166.5(a) (amended by Chapter 132). People involved with public or private organizations must be trained in the duties imposed in order to fall under this act. *Id.* Chapter 132 may operate as a disincentive for the voluntary seeking of help from a professional because of the duty to report suspected child abuse, and may also cause an increase in false reporting. Letter from Melissa K. Nappan, Legislative Advocate, California Attorneys for Criminal Justice, to Assembly Member O'Connell (June 10, 1991) (discussing opposition to Assembly Bill 1133) (copy on file at *Pacific Law Journal*).

1. See CAL. CIV. PROC. CODE § 1209 (West Supp. 1991) (listing acts or omissions constituting contempt).

2. See CAL. PENAL CODE § 1219(b) (West Supp. 1991) (defining sexual assault to be any act punishable under Penal Code sections 261, 262, 264.1, 285, 286, 288, 288a and 289).

3. See CAL. CIV. PROC. CODE § 128(d) (amended by Chapter 866) (providing that petition must be filed within three judicial days).

4. *Id.*

Chapter 866 adds victims of domestic violence⁵ to the class of victims who may have an order of contempt stayed pending review.⁶

Existing law requires the presiding judge of the superior court of each county to designate a judge, commissioner or referee to be reasonably available to orally issue ex parte emergency orders when the superior court is not in session.⁷ Under Chapter 866, the designated judge, commissioner or referee must be available whether or not the superior court is in session.⁸

Existing law provides that a summons may be served by anyone who is not a party to the action and is at least eighteen years of age.⁹ Under Chapter 866, probation or parole officers¹⁰ and parole agents of the Department of Corrections are authorized to serve any process concerning temporary restraining orders¹¹ or other protective orders¹² issued against a person committed to the care of the officer or agent when the person appears for an appointment with the officer.¹³

5. See CAL. CIV. PROC. CODE § 12028.5(a)(2) (amended by Chapter 866) (providing that "domestic violence" is abuse perpetrated against any of the following: (1) A spouse or former spouse; (2) a cohabitant or former cohabitant; (3) any other adult person related by consanguinity or affinity within the second degree; (4) a person with whom the respondent has had a dating or engagement relationship; or (5) a person who is the parent of a child).

6. *Id.* § 128(e) (amended by Chapter 866). See generally Mills, *California's Response to Domestic Violence*, 21 SANTA CLARA L. REV. 1, 3-19 (1988) (giving overview of California's judicial and legislative attempts to deal with domestic violence).

7. CAL. CIV. PROC. CODE § 546 (amended by Chapter 866).

8. *Id.* § 546 (amended by Chapter 866).

9. *Id.* § 414.10 (West 1984). See CAL. PENAL CODE § 13710 (West Supp. 1991) (describing requirement of service of restraining order to party to be restrained); § 13711 (West Supp. 1991) (providing that pamphlet must be issued with restraining order to person to be protected).

10. See CAL. PENAL CODE §§ 1203.10, 1203.12 (West Supp. 1991) (describing requirements and duties of probation officers); § 830.5 (West Supp. 1991) (describing duties of parole officers).

11. See CAL. CIV. PROC. CODE § 548 (West Supp. 1991) (indicating duration of temporary restraining order). See generally *Review of Selected 1977 California Legislation*, 9 PAC. L.J. 492 (1977) (emphasizing the need for expansion of temporary restraining orders in domestic violence cases).

12. See CAL. CIV. PROC. CODE § 542(d) (West Supp. 1991) (definition of protective order); § 545 (West Supp. 1991) (describing the granting of protective orders); § 527(b) (West Supp. 1991) (describing the reissuance of protective orders).

13. CAL. PENAL CODE § 1203.11 (enacted by Chapter 866).

Existing law provides that certain weapons¹⁴ must be surrendered to specified law enforcement officers¹⁵ at the scene of an incident of domestic violence which involves a threat to human life or a physical assault.¹⁶ Under Chapter 866, if a law enforcement officer has reasonable cause to believe that the person reporting the assault or threat would be endangered if the firearm or other deadly weapon were returned, the officer shall notify the owner and, within ten days of the seizure, petition the superior court for a determination as to whether the weapon should be returned.¹⁷ Chapter 866 permits the owner of the weapon or the person who had lawful possession thereof to request a hearing.¹⁸ However, if no hearing is requested within thirty days, the law enforcement agency is authorized to petition the court for an order of default.¹⁹

Under existing law, if a person has been detained or apprehended for a mental examination or is a specified person,²⁰ and it is discovered that the person owns or is in possession of a firearm or other deadly weapon,²¹ any law enforcement officer may confiscate and retain custody of the weapon.²² If the person is released without judicial commitment, prior law provided that the law enforcement agency which confiscated the weapon had fifteen days to petition for a determination as to whether the return of the weapon would endanger the person or others.²³ Further, under

14. See *id.* § 12028.5(a)(4) (amended by Chapter 866) (noting that, as used in this section, "deadly weapon" means any weapon prohibited by Penal Code section 12020).

15. See *id.* § 12028.5(b) (West Supp. 1991) (providing that specified officers include a sheriff, undersheriff, deputy sheriff, marshall, deputy marshall, police officer or any other law enforcement officer as defined in Penal Code section 830.1 or 830.2).

16. *Id.* § 12028.5 (b) (amended by Chapter 866).

17. *Id.* § 12028.5(e)-(f) (amended by Chapter 866).

18. *Id.* § 12028.5(g)-(i) (amended by Chapter 866).

19. *Id.* If a default is entered, or if the owner or person who had lawful possession is not able to succeed in getting the firearm or other deadly weapon returned, then the law enforcement agency is permitted to dispose of the firearm or other deadly weapon. *Id.*

20. See CAL. WELF. & INST. CODE §§ 8100, 8103(a)(1) (West Supp. 1991) (providing that the term "specified persons" includes persons who are mental patients in hospitals or institutions or who are on leave from hospitals or institutions).

21. See *id.* § 8100 (West Supp. 1991) (definition of deadly weapon).

22. *Id.* § 8102(a) (amended by Chapter 866).

23. 1989 Cal. Legis. Serv. Ch. 921, sec. 1 at 2846 (West 1991) (amending CAL. WELF. & INST. CODE section 8102) (amended by Chapter 866).

prior law, the person then had fifteen days to respond to the court clerk and request a hearing, and the law enforcement agency had to initiate proceedings within fifteen days of the time of seizure or make the weapon available for return.²⁴ Under Chapter 866, the law enforcement agency must initiate a petition within ten days after the person's release, the weapon must be released within ten days if the law enforcement agency does not initiate proceedings, and the person has thirty days to respond to the court clerk if a hearing is requested.²⁵

JTC

Criminal Procedure; enhancements

Penal Code § 667.5 (amended).
AB 1393 (Alpert); 1991 STAT. Ch. 451

Under existing law, armed robbery¹ aboard an inhabited vessel,² kidnapping a child under fourteen with intent to molest,³ and continuous sexual abuse of a child are felonies.⁴ Additionally,

24. *Id.* See *Bryte v. City of La Mesa*, 207 Cal. App. 3d 687, 689, 255 Cal. Rptr. 64, 66 (1989) (declaring Welfare and Institutions Code section 8102 violative of due process prior to the 1990 urgency amendment).

25. CAL. WELF. & INST. CODE § 8102(c)-(e) (amended by Chapter 866). The hearing must be set no later than thirty days from the receipt of the request. *Id.*

1. See CAL. PENAL CODE § 211 (West 1988) (definition of robbery). See also *id.* § 12022 (West 1982) (specifying acts which constitute "armed" felonies).

2. See *id.* § 212.5 (West Supp. 1991) (providing that armed robbery aboard a vessel is robbery in the first degree). See also CAL. HARB. & NAV. CODE § 21 (West 1978) (definition of vessel).

3. See CAL. PENAL CODE § 207(b) (West 1988) (defining the crime as kidnapping a child under fourteen with intent to commit any act prohibited by Penal Code section 288).

4. See *id.* § 288.5(a) (West Supp. 1991) (providing that any person who has continuous access to a child and engages in three or more acts defined in Penal Code section 288 over a period greater than three months is guilty of continuous sexual abuse). See also *People v. Jones*, 51 Cal. 3d 294, 310, 792 P.2d 643, 651, 270 Cal. Rptr. 611, 619 (1990) (holding that the state need not prove that the specific acts occurred, as with prosecutions under section 288, but rather that the jury only agree that at least three acts did occur at some time within the three month period).

felonies that are considered to be “violent”⁵ are subject to sentencing enhancements.⁶ Chapter 451 adds the above specified crimes to the list of violent felonies.⁷

BMW

Criminal Procedure; spousal rape

Penal Code § 12022.3 (amended).
SB 538 (Johnston); 1991 STAT. Ch. 512

Under existing law, any person who commits specified sexual offenses¹ armed with a firearm² or other deadly weapon³ shall receive a sentence enhancement of three, four, or five years.⁴

5. See CAL. PENAL CODE § 667.5(c) (amended by Chapter 451) (listing felonies which are considered “violent”).

6. *Id.* § 667.5(a)-(b) (amended by Chapter 451). Three years will be added to the sentence of any person convicted of a felony listed in section 667.5 for each prior term served for those same felonies within the previous ten years. *Id.* A one year enhancement will be added to a violent felon’s sentence if the individual has served a prison term within the previous five years for any felony. *Id.*

7. *Id.* § 667.5(c) (amended by Chapter 451). See *id.* § 667.51(a) (West Supp. 1991) (providing a five year enhancement for a second conviction within a ten-year period on charges of lewd acts with a child under fourteen).

1. For specified sexual offenses, see CAL. PENAL CODE § 261 (rape) (West Supp. 1991); §§ 264.1, 289 (rape or penetration of genital or anal openings by foreign object) (West 1988 & Supp. 1991); § 286 (sodomy) (West Supp. 1991); § 288 (lewd or lascivious acts with child under age 14) (West Supp. 1991); § 288a (oral copulation) (West Supp. 1991).

2. See *id.* § 12001.1 (West Supp. 1991) (definition of firearm).

3. See *id.* §§ 12000-12095 (West 1982 & Supp. 1991) (specifying various deadly weapons).

4. *Id.* § 12022.3 (amended by Chapter 512).

Chapter 512 adds spousal rape⁵ to the list of specified sexual offenses subject to a sentence enhancement.⁶

RDN

Criminal Procedure; support for prosecuting witnesses

Penal Code § 868.5 (amended).
SB 542 (Calderon); 1991 STAT. Ch. 336

Under existing law, a prosecuting witness¹ is entitled to have the attendance of up to two individuals² for support purposes³ present during the person's testimony at the preliminary hearing and trial of specified offenses.⁴ Under Chapter 336, a prosecuting witness is additionally entitled to support during testimony at a trial

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5. *See id.* § 262 (West Supp. 1991) (definition of spousal rape).
 6. *Id.* § 12022.3 (amended by Chapter 512).

1. *See People v. Kabonic*, 177 Cal. App. 3d 487, 495, 223 Cal. Rptr. 41, 45 (1986) (holding that a prosecuting witness includes all witnesses for the prosecution, and not just witnesses who are victims or complainants).

2. *See CAL. PENAL CODE* § 868.5(a) (amended by Chapter 336) (prohibiting the individuals chosen from being publishers, editors, or reporters employed by a newspaper or magazine, or radio or television news reporters, as delineated in California Evidence Code section 1070, unless the individuals are related to the prosecuting witness).

3. *See id.* (permitting only one individual to accompany a prosecuting witness to the witness stand). *See also Kabonic*, 177 Cal. App. 3d at 496, 223 Cal. Rptr. at 45 (1986) (finding that one of the principal concerns leading to the enactment of this statute is to minimize the trauma suffered by child witnesses in sexual offense trials).

4. *CAL. PENAL CODE* § 868.5(a) (amended by Chapter 336). Crimes for which the prosecuting witness is entitled to support include murder, mayhem, aggravated mayhem, kidnapping, robbery, assault with intent to commit mayhem, rape, rape of spouse, sodomy, assault, battery, sexual battery, assault with a deadly weapon, abusing or endangering health of a child, felony corporal punishment of a child, corporal injury of spouse, incest, lewd acts with a child, oral copulation, continuing sexual abuse of a child, genital or anal penetration with foreign object, child molestation, and indecent exposure. *Id.* *See generally Review of Selected 1983 California Legislation*, 15 PAC. L.J. 589-91 (1984) (reviewing the history of California Penal Code section 868.5).

for a willful violation of a court order to prevent domestic violence,⁵ and child abduction.⁶

ACS

Criminal Procedure; violation of protective orders

Penal Code § 853.6 (amended).
AB 93 (Moore); 1991 STAT. Ch. 453

Under existing law, a person arrested for a misdemeanor,¹ who does not demand to be taken before a magistrate, may be cited and released, provided specifications for non-release are not met.² Further, existing law permits the person to be held in custody until brought before the magistrate, without undue haste.³ Under Chapter 453, any person arrested for a misdemeanor violation of a protective order⁴ involving domestic violence⁵ shall be taken before a magistrate if the arresting officer determines there is a reasonable likelihood that the offense will resume or continue, or

5. See CAL. PENAL CODE § 273.6(a)-(e) (West Supp. 1991) (discussing the violation of a court order to prevent domestic violence and the penalty for such action).

6. *Id.* § 868.5(a) (amended by Chapter 336). See *id.* § 277 (West Supp. 1991) (definition of child abduction).

1. See CAL. PENAL CODE § 17(a)-(b) (West Supp. 1991) (definition of misdemeanor). Under existing law, a person convicted of a misdemeanor may be required to pay a fine of up to \$1,000 unless otherwise specifically provided. *Id.* § 19 (West 1988).

2. *Id.* § 849(b)(1)-(3) (West 1985). See *id.* § 853.6(i)(1)-(9) (amended by Chapter 453) (listing conditions for non-release).

3. *Id.* § 849(a) (West 1985). Police officers are permitted to release from custody any person arrested without a warrant if the officer believes that there are insufficient grounds for making a criminal complaint. *Id.* § 849(b)(1). See *People v. Superior Court*, 30 Cal. App. 3d 257, 264, 106 Cal. Rptr. 211, 215 (1973) (holding that the releasing or booking of a person arrested for a non-vehicle code misdemeanor, is a matter within the discretion of the arresting officer or booking officer).

4. See CAL. CIV. CODE § 4359 (West Supp. 1991) (definition of protective orders).

5. See CAL. PENAL CODE § 13700(b) (West Supp. 1991) (definition of domestic violence).

that release will cause imminent danger to the safety of persons or property.⁶

ALG

6. *Id.* § 853.6(a) (amended by Chapter 453). The person arrested for the violation of a protective order must be taken before the magistrate even if the requirements of Penal Code section 849(b)(1) are met. *Id.* See Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 FAMILY L.Q. 43 (1989) (stating that the District of Columbia and every state except Arkansas and New Mexico have enacted statutes which permit protective orders to be issued in case of domestic abuse). See also Alliance Against Domestic Violence, *Domestic Violence is a Crime* at I-2 (copy on file at *Pacific Law Journal*) (stating that in 85% of the cases where the victim of domestic violence was murdered, the victim had called the police and in 50% of the cases the victim had called five or more times).