

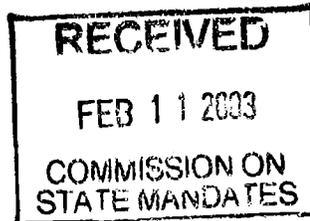
SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
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February 5, 2003



Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Santa Monica Community College District
Statutes of 2002/ Chapter 833
Crime Statistics Reports (K-14)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica Community College District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

The Commission regulations provide for an informal conference of the interested parties

Paula Higashi, Executive Director,
Commission on State Mandates

February 5, 2003

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing. Please advise.

Sincerely,

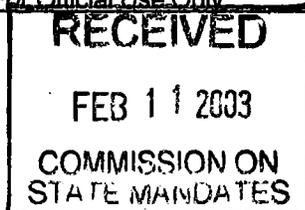


Keith B. Petersen

C: Dr. Carol Berg, Consultant, Education Mandated Cost Network
Cheryl Miller, Santa Monica Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only



TEST CLAIM FORM

Claim No. 02-TC-12

Local Agency or School District Submitting Claim

Santa Monica Community College District

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1080
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Crime Statistics Reports (K-14)

Senate Resolution 64 of 1982
Chaptered Bills per list attached
Penal Code and Family Code Sections per attached list
Manual of the California Department of Justice, Crime Statistics Reporting Requirements, March 2000

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Cheryl Miller, Associate Vice President Business Services
Santa Monica Community College District

(310) 434-4221

Signature of Authorized Representative

Date

X *Cheryl Miller*

12/12/02

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 - Crime Statistics Reports (K-14)
Attachment to Test Claim Form CSM-2

Chaptered Bills:

Chapter 833, Statutes of 2002
Chapter 483, Statutes of 2001
Chapter 468, Statutes of 2001
Chapter 1001, Statutes of 2000
Chapter 626, Statutes of 2000
Chapter 254, Statutes of 2000
Chapter 662, Statutes of 1999
Chapter 661, Statutes of 1999
Chapter 659, Statutes of 1999
Chapter 561, Statutes of 1999
Chapter 933, Statutes of 1998
Chapter 1142, Statutes of 1996
Chapter 872, Statutes of 1996
Chapter 965, Statutes of 1995
Chapter 803, Statutes of 1995
Chapter 1230, Statutes of 1993
Chapter 1338, Statutes of 1992
Chapter 1172, Statutes of 1989
Chapter 1609, Statutes of 1984
Chapter 142, Statutes of 1982
Chapter 1340, Statutes of 1980
Chapter 860, Statutes of 1979
Chapter 255, Statutes of 1979

Penal Code Sections:

Penal Code Section 646.91
Penal Code Section 12028
Penal Code Section 12028.5
Penal Code Section 13012
Penal Code Section 13014
Penal Code Section 13020
Penal Code Section 13021
Penal Code Section 13023
Penal Code Section 13700
Penal Code Section 13701
Penal Code Section 13702
Penal Code Section 13710
Penal Code Section 13730

Family Code Sections

Family Code Section 6240
Family Code Section 6250
Family Code Section 6250.5

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807 Balboa Avenue, Suite 807
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8
9

10
11 BEFORE THE
12
13 COMMISSION ON STATE MANDATES
14
15 STATE OF CALIFORNIA
16
17

18	Test Claim of:	)	No. CSM. <u>02-TC-12</u>
19)	
20)	
21		)	Chapter 833, Statutes of 2002
22	Santa Monica Community College	)	Chapter 483, Statutes of 2001
23	District	)	Chapter 468, Statutes of 2001
24		)	Chapter 1001, Statutes of 2000
25		)	Chapter 626, Statutes of 2000
26		)	Chapter 254, Statutes of 2000
27		)	Chapter 662, Statutes of 1999
28		)	Chapter 661, Statutes of 1999
29		)	Chapter 659, Statutes of 1999
30		)	Chapter 561, Statutes of 1999
31		)	Chapter 933, Statutes of 1998
32		)	Chapter 1142, Statutes of 1996
33		)	Chapter 872, Statutes of 1996
34		)	Chapter 965, Statutes of 1995
35	Test Claimant.	)	Chapter 803, Statutes of 1995
36		)	Chapter 1230, Statutes of 1993
37		)	Chapter 1338, Statutes of 1992
38		)	Chapter 1172, Statutes of 1989
39		)	Chapter 1609, Statutes of 1984
40		)	Chapter 147, Statutes of 1982
41		)	Chapter 1340, Statutes of 1980
42		)	(continued on next page)
43)	
44		)	<u>Crime Statistics Reports (K-14)</u>
45)	
46		)	TEST CLAIM FILING

1 as defined in Government Code section 17519.¹

2 PART II. LEGISLATIVE HISTORY OF THE CLAIM

3 This test claim alleges mandated costs reimbursable by the state for school
4 districts and community college districts to report crime statistics to the Department of
5 Justice. This test claim also alleges mandated costs to develop, adopt and implement
6 written response policies on domestic violence, to maintain complete records of
7 protective orders and to develop and report incidents of domestic violence. This test
8 claim also alleges mandated costs to obtain and serve emergency protective orders.

9 This test claim also alleges mandated costs to confiscate firearms or other deadly
10 weapons at the scene of domestic violence incidents, to bring and attend court actions
11 when necessary before disposing of those weapons, and to thereafter restore, sell or
12 destroy those weapons.

13 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

14 Prior to 1975, Penal Code Section 13010², required the Department of Justice to

¹Government Code Section 17519, as added by Chapter 1459/84:

“School district” means any school district, community college district, or county superintendent of schools.

² Penal Code Section 13010, as last amended by Chapter 1377, Statutes of 1972, Section 119.2:

“It shall be the duty of the department:

(a) To collect data necessary for the work of the department from all persons and agencies mentioned in Section 13020 and from any other appropriate source;

(b) To prepare and distribute to all such persons and agencies, cards or other forms used in reporting data to the department. Such cards or forms may, in addition to

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 collect crime statistics data from all persons and agencies mentioned in Section 13020
2 (infra), to prepare and distribute to all such persons and agencies forms used in
3 reporting data to the department, and to present an annual report to the Governor.

4 Penal Code Section 13012³ required the department's annual report to contain

other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics;

(c) To recommend the form and content of records which must be kept by such persons and agencies in order to insure the correct reporting of data to the department;

(d) To instruct such persons and agencies in the installation, maintenance, and use of such records and in the reporting of data therefrom to the department;

(e) To process, tabulate, analyze and interpret the data collected from such persons and agencies;

(f) To supply, at their request, to federal bureaus or departments engaged in the collection of national criminal statistics data they need from this state;

(g) To present to the Governor, on or before July 1st, a printed annual report containing the criminal statistics of the preceding calendar year and to present at such other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed or otherwise prepared to enable the Attorney General to send a copy to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment; and

(h) To periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation."

³ Penal Code Section 13012, as amended by Chapter 1377, Statutes of 1972, Section 119.4:

"The annual report of the department provided for in Section 13010 shall contain statistics showing:

(a) The amount and the types of offenses known to the public authorities;

(b) The personal and social characteristics of criminals and delinquents; and

(c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies

Test Claim of Santa Monica Community College District
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1 statistics showing the amount and type of offenses, the personal and social
2 characteristics of criminals and delinquents, and administrative actions taken by law
3 enforcement and other agencies in dealing with criminals or delinquents.

4 Penal Code Section 13020⁴ listed the persons and departments who were
5 required, when requested, to install and maintain records needed for the correct
6 reporting of statistical data, to report statistical data to the Department of Justice, and to
7 give the Attorney General access to statistical data.

of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned. "

⁴ Penal Code Section 13020, added by Chapter 1128, Statutes of 1955, Section 1, as amended by Chapter 1212, Statutes of 1973, Section 65:

"It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Adult Authority, Department of Youth Authority, California Women's Board of Terms and Parole, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him;

(b) To report statistical data to the department at such times and in such manner as the Attorney General prescribes; and

(c) To give to the Attorney General, or his accredited agent, access to statistical data for the purpose of carrying out the provisions of this title."

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 Penal Code Section 13021⁵ required local law enforcement agencies to report to
2 the Department of Justice information relative to misdemeanor violations of laws
3 against obscene matter as the Attorney General might require.

4 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

5 Chapter 255, Statutes of 1979, Section 62, and Chapter 860, Statutes of 1979,
6 Section 6, added additional persons to Penal Code Section 13020 who are required to
7 make reports, when requested, and made other technical changes.

8 Chapter 1340, Statutes of 1980, Section 26, amended Penal Code Section
9 13012⁶, to add subdivision (d) which, for the first time, requires the annual crime

⁵ Penal Code Section 13021, added by Chapter 1157, Statutes of 1967, Section 1, as amended by Chapter 1377, Statutes of 1972, Section 119.6"

"Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violation of Chapter 7.5 (commencing with Section 311) of Title 9 of Part I of this code."

⁶ Penal Code Section 13012, added by Chapter 1128, Statutes of 1955, Section 1, as amended by Chapter 1340, Statutes of 1980, Section 26, effective September 30, 1980:

"The annual report of the department provided for in Section 13010 shall contain statistics showing:

- (a) The amount and the types of offenses known to the public authorities;
- (b) The personal and social characteristics of criminals and delinquents; and
- (c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.
- (d) The number of citizens complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 statistics report to also include the number of citizens' complaints received by law
2 enforcement agencies under Section 832.5. Section 832.5⁷ refers to "law enforcement

statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned. "

⁷ Penal Code Section 832.5, added by Chapter 29, Statutes of 1974, Section 1, amended by Chapter 391, Statutes of 2002, Section 5:

"(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title

1 agencies" as each "department or agency in this state which employs peace officers".
2 Members of a California community college police department and members of a
3 school district police department are peace officers.⁸

1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy."

⁸ Penal Code Section 830.32, added by Chapter 1165, Statutes of 1989, Section 25, as amended by Chapter 135, Statutes of 2000, Section 135:

"The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 Resolution Chapter 147, Statutes of 1982, sets forth Senate Concurrent
2 Resolution 64⁹ which requires, for the first time, that local law enforcement officials
3 modify their data gathering procedures and computer storage systems to provide
4 information as to the number of victims of violent crimes who are 60 years of age or
5 older.

officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 38000 of the Education Code.

(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer.”

⁹ Senate Concurrent Resolution 64, Chapter 147, Statutes of 1982:

“WHEREAS, At the present time, there is no systematic collection of the ages of crime victims; and

WHEREAS, In order to better understand the problem of crime as it affects senior citizens, systematic collection of this information on a statewide basis is essential; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further

Resolved, That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages of victims of crime and to incorporate that information in its crime statistic reporting system; and be it further

Resolved, That the Secretary of the Senate send copies of this resolution to the Attorney General.”

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 Chapter 1609, Statutes of 1984, Section 3 added Penal Code Section 13730¹⁰
2 which requires, in subdivision (a), that each law enforcement agency develop a system
3 for recording all domestic violence-related calls for assistance and to compile and
4 submit monthly the number of such cases and the number of such cases involving
5 weapons. Subdivision (c) requires that each law enforcement agency develop an
6 incident report form that includes a domestic violence identification code and, in all
7 incidents of domestic violence, to write a report of, and be identified as, a domestic
8 violence incident.

9 Chapter 1172, Statutes of 1989, Section 1, added Penal Code Section 13023¹¹

¹⁰ Penal Code Section 13730, as added by Chapter 1609, Statutes of 1984,
Section 3:

“(a) Each law enforcement agency shall develop a system, by January 1, 1986,
for recording all domestic violence-related calls for assistance made to the department
including whether weapons are involved. Monthly, the total number of domestic
violence calls received and the numbers of such cases involving weapons shall be
compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature,
and the public the total number of domestic violence-related calls received by California
law enforcement agencies, the number of cases involving weapons, and a breakdown
of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that
includes a domestic violence identification code by January 1, 1986. In all incidents of
domestic violence, a report shall be written and shall be thus identified on the face of
the report as a domestic violence incident.”

¹¹ Penal Code Section 13023, as added by Chapter 1172, Statues of 1989,
Section 1:

“Commencing July 1, 1990, subject to the availability of adequate funding, the
Attorney General shall direct local law enforcement agencies to report to the
Department of Justice, in a manner to be prescribed by the Attorney General, such

1 to require the Attorney General, for the first time, to direct local law enforcement
2 agencies, as defined in Section 13020, to report to the Department of Justice such
3 information as may be required relative to any criminal acts, or attempted criminal acts,
4 where there is a reasonable cause to believe that the crime was motivated by the
5 victim's race, ethnicity, religion, sexual orientation, or physical or mental disability (i.e.,
6 "hate crimes").

7 Chapter 1338, Statutes of 1992, Section 3, added Penal Code Section 13014¹² to

information as may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section."

¹² Penal Code Section 13014, as added by Chapter 1338, Statutes of 1992, Section 3:

"(a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms which will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 require, for the first time, in subdivision (b), that every state or local governmental entity
2 responsible for the investigation or prosecution of a homicide case provide the
3 Department of Justice with demographic information about the victim and the person or
4 persons charged with the crime, including age, gender, race and ethnic background.

5 Chapter 1230, Statutes of 1993, Section 2, amended Penal Code Section
6 13730¹³ to require, for the first time, in subdivision (a), that all domestic violence-related
7 calls for assistance be supported with a written incident report identifying the domestic
8 violence incident. Other technical changes were also made.

9 Chapter 803, Statutes of 1995, Section 3, amended Penal Code Section 13012¹⁴

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.”

¹³ Penal Code Section 13730, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 1230, Statutes of 1993, Section 2:

“(a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of such those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.”

¹⁴ Penal Code Section 13012, added by Chapter 1128, Statutes of 1955, Section 1, as amended by Chapter 803, Statutes of 1995, Section 3:

“The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

...; ~~and~~.

(c) The administrative actions taken by law enforcement, judicial, penal, and

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 to require, for the first time, in subdivision (c), that the annual crime statistics report
2 which includes administrative actions taken by law enforcement agencies also include
3 those in the juvenile justice system. Other technical changes were also made.

4 Chapter 965, Statutes of 1995, Section 2, amended Penal Code Section
5 13730¹⁵, subdivision (c), to add subsections (1) and (2). Subsection (1) requires the
6 domestic violence incident report to contain a notation of whether the responding
7 officer(s) observed any signs that the alleged abuser was under the influence of alcohol
8 or a controlled substance. Subsection (2) requires a notation on the report as to
9 whether the law enforcement agency had previously responded to a domestic violence
10 call at the same address involving the same alleged abuser or victim.

11 Chapter 872, Statutes of 1996, Section 126, amended Penal Code Section

correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.”

¹⁵ Penal Code Section 13730, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 965, Statutes of 1995, Section 2:

“(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be ~~thus~~ identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.”

1 13020 to make technical changes.

2 Chapter 933, Statutes of 1998, Section 5, amended Penal Code Section
3 13023¹⁶, for the first time, to add "gender" to the classification of victims subject to the
4 hate crime reporting requirements and to make technical changes.

5 Chapter 659, Statutes of 1999, Section 1, amended Family Code Section 6240¹⁷

¹⁶ Penal Code Section 13023, added by Chapter 1172, Statutes of 1989, Section 1, as amended by Chapter 933, Statutes of 1998, Section 5:

"Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, ~~such any~~ information as that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section."

¹⁷ Family Code Section 6240, added by Chapter 219, Statutes of 1993, Section 154, as amended by Chapter 659, Statutes of 1999, Section 1:

"As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A housing authority patrol officer, as defined in subdivision (d) of

1 to include, for the first time, peace officers of a California community college police
2 department and peace officers employed by a police department of a school district
3 within the definition of a "law enforcement officer" as used in Part 3 - "Emergency
4 Protective Orders", commencing with Section 6240. Section 6250¹⁸ allows a judicial
5 officer to issue an ex parte emergency protective order when a law enforcement officer

Section 830.31 of the Penal Code.

(8) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(9) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(10) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(11) A peace officer employed by a police department of a school district, as defined in subdivision (b) of Section 830.32.

(c) "Abduct" means take, entice away, keep, withhold, or conceal."

¹⁸ Family Code Section 6250, added by Chapter 219, Statutes of 1993, Section 154, as amended by Chapter 561, Statutes of 1999, Section 1:

"A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse, . [sic --- punctuation.]

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1 asserts reasonable grounds to believe any of the following: (a) that a person is in
2 immediate and present danger of domestic violence, (b) that a child is in immediate and
3 present danger of abuse by a family or household member, (c) that a child is in
4 immediate and present danger of being abducted by a parent or relative, or (d) that an
5 elder or dependent adult is in immediate and present danger of abuse. Therefore, for
6 the first time, officers of California community colleges and school districts, when the
7 described persons are in immediate and present danger in certain situations, may
8 obtain emergency protective orders.

9 Chapter 659, Statutes of 1999, Section 1.5 added Family Code Section 6250.5,¹⁹
10 which allows a judicial officer to issue an ex parte emergency protective order to a
11 peace officer of a community college or school district when that peace officer asserts
12 reasonable grounds to believe that there is a demonstrated threat to campus safety,
13 when the issuance of that order is consistent with a memorandum of understanding
14 between the college or school police department and the local sheriff or police chief.
15 Therefore, for the first time, community college and district peace officers may obtain

¹⁹ Family Code Section 6250.5, added by Chapter 659, Statutes of 1999, Section 1.5:

“A judicial officer may issue an ex parte emergency protective order to a peace officer defined in subdivisions (a) and (b) of Section 830.32 if the issuance of that order is consistent with an existing memorandum of understanding between the college or school police department where the peace officer is employed and the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located and the peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety.”

1 emergency protective orders when there is reasonable grounds to believe that there is
2 a demonstrated threat to campus safety when the issuance of the order is consistent
3 with a memorandum of understanding with the local sheriff or police chief.

4 Penal Code Section 646.9 defines the crime of stalking. Chapter 659, Statutes
5 of 1999, Section 2, amended subdivision (a) of Penal Code Section 646.91²⁰ to add

²⁰ Penal Code Section 646.91, added by Chapter 169, Statutes of 1997, Section 2, as amended by Chapter 659, Statutes of 1999, Section 2:

"(a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable ground grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and

Spanish:

(A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in

responding to the application."

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(l) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(m) "Judicial officer," as used in this section, means a judge, commissioner, or

1 peace officers of a community college or school district to the list of peace officers who
2 may obtain an ex parte emergency protective order based upon the victim's allegation
3 that he or she has been willfully, maliciously and repeatedly followed or harassed by
4 another person who has made a credible threat and the victim is in reasonable fear for
5 his or her safety, or the safety of his or her immediate family. Subdivision (b) requires
6 the requesting peace officer to sign the emergency order. Subdivision (h) requires the
7 requesting peace officer to (1) serve the order on the restrained person, if he or she can
8 be reasonably located, (2) to give a copy of the order to the protected person, or a
9 minor protected person's parent or guardian, and (3) file a copy of the order with the
10 court as soon as practicable after issuance. Subdivision (i) requires the peace offer to
11 use every reasonable means to enforce an emergency protective order. Subdivision (k)
12 requires the requesting peace officer to carry copies of the order while on duty.
13 Subdivision (l) requires a community college or school district peace officer to also
14 notify the sheriff or police chief of the city in whose jurisdiction the college or school is

referee.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing.

(o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven."

1 located. Therefore, for the first time, community college and school district peace
2 officers are required to sign emergency orders prohibiting "stalking", to serve the order
3 on the restrained person if he or she can be reasonably located, to give a copy of the
4 order to the protected person, to file a copy of the order with the court, to carry copies
5 of the order while on duty, and to notify the local sheriff or police chief when an
6 emergency protective order has been issued.

7 Penal Code Section 12028.5 defines domestic violence incidents, provides for
8 the temporary taking of custody of firearms and provides procedures to be taken
9 subsequent to the taking of temporary custody of those firearms. Chapter 659, Statutes
10 of 1999, Section 3, amended Section 12028.5²¹, subdivision (b), to add community

²¹ Penal Code Section 12028.5, added by Chapter 901, Statutes of 1984, Section 1, as amended by Chapter 659, Statutes of 1999, Section 3:

"(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the

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Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as

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defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may

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1 college and school district peace officers to those officers required to comply with
2 Section 12028.5. Therefore, subdivision (b) of Section 12028.5, for the first time, allows
3 community college and school district peace officers, who are at the scene of a family
4 violence incident involving a threat to human life or a physical assault, to take
5 temporary custody of any firearm or other deadly weapon in plain sight or discovered
6 pursuant to a consensual search as necessary for the protection of the peace officer or
7 other persons present. Subdivision (b) of Section 12028.5 also requires the district
8 peace officer to give a receipt to the owner or person who possessed the firearm or
9 other deadly weapon which describes the firearm or other deadly weapon and lists any
10 identification or serial number on the firearm. The receipt shall also indicate where the
11 firearm or other deadly weapon can be recovered and the date after which the owner or
12 possessor can recover the firearm or other deadly weapon.

13 Chapter 659, Statutes of 1999, Section 3, also added Subdivision (c) to Penal
14 Code Section 12028.5 which, for the first time, requires community college and school
15 district peace officers who take custody of a firearm or other deadly weapon to deliver
16 the firearm to the city police department or county sheriff's office in the local jurisdiction
17 within 24 hours of taking custody of the firearm or other deadly weapon.

petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section."

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1 Chapter 659, Statutes of 1999, Section 3, renumbered former subdivisions (c)
2 through (j) of Section 12028.5 as subdivisions (d) through (k) respectively. Subdivision
3 (f) requires, in those cases where a law enforcement agency has reasonable cause to
4 believe that the return of the firearm or other deadly weapon would be likely to result in
5 endangering the victim or the person reporting the assault or threat, to advise the owner
6 of the firearm or other deadly weapon and, within 10 days of the seizure, initiate a
7 petition in superior court to determine if the firearm or other deadly weapon should be
8 returned. Therefore, when a community college district or school district peace officer
9 seizes a firearm or other deadly weapon at the scene of a domestic violence incident,
10 and the officer has reasonable cause to believe that the return of the firearm or other
11 deadly weapon would likely result in endangering the victim or the person reporting the
12 assault or threat, the district, for the first time, is required to refer the seizure to legal
13 counsel for the filing of a petition to determine if the firearm or other deadly weapon
14 should be returned.

15 Subdivision (g) of Section 12028.5 requires a community college district or
16 school district to inform the owner or person who had lawful possession of the firearm
17 or other deadly weapon, at the person's last known address by registered mail, return
18 receipt requested, that he or she has 30 days from the date of the receipt of the notice
19 to respond to the court clerk to confirm his or her desire for a hearing, and that the
20 failure to request a hearing shall result in a default order forfeiting the confiscated
21 firearm or other deadly weapon and, in the event the person does not reside at the last

1 address provided to the district, the district is required to make a diligent, good faith
2 effort to learn the whereabouts of the person and to comply with these notification
3 requirements.

4 Subdivision (h) of Section 12028.5, in the event the person notified requests a
5 hearing, a district, for the first time, must refer the matter to legal counsel and appear at
6 the hearing to present clear and convincing evidence that the return of the firearm or
7 other deadly weapon would result in endangering the victim or the person reporting the
8 assault or threat. In the event the person prevails at the hearing, the district is also
9 required to pay the reasonable attorney's fees of the prevailing party.

10 Subdivision (i) of Section 12028.5 provides that if the person does not request a
11 hearing, or does not otherwise respond within 30 days, the district is required to refer
12 the matter to legal counsel to file a petition for an order of default and dispose of the
13 firearm or other deadly weapon as provided in Penal Code Section 12028. (Infra)

14 Subdivision (j) of Section 12028.5 allows the owner or person who had lawful
15 possession to petition the court for a second hearing within 12 months from the date of
16 the initial hearing when, at the first hearing, the court does not order the return of the
17 firearm or other deadly weapon and requires the district to again refer the matter to
18 legal counsel and appear at the second hearing and present evidence. If the owner or
19 person who had lawful possession does not petition for a second hearing or is
20 unsuccessful at the second hearing, the district is required to dispose of the firearm or
21 other deadly weapon as provided in Section 12028.

1 Penal Code Section 12028²², at subdivision (c), requires that district peace

²² Penal Code Section 12028, as amended by Chapter 1142, Statutes of 1996, Section 5, effective September 30, 1996:

“(a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) A firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the

1 officers annually offer any seized weapons which have value with respect to sporting,
2 recreational or collection purposes, for sale at public auction to persons licensed
3 pursuant to Section 12071 to engage in businesses involving any weapon purchased.

4 Subdivision (c) of Penal Code Section 12028, also requires district peace officers
5 to restore weapons, which were used illegally without the prior knowledge of their lawful
6 owners, upon identification of the weapon and proof of ownership, to their lawful owners
7 and not offer them for sale.

8 Subdivision (d) of Penal Code Section 12028, in the event a weapon is not of the
9 type that can be sold to the public or is not sold when offered for sale, requires a district
10 peace officer to destroy the weapon so that it can no longer be used as a weapon.

11 Subdivision (f) of Penal Code Section 12028 requires district peace officers to
12 first give reasonable notice to lawful owners, if their identity and address can be
13 reasonably ascertained, prior to sale or destruction of a stolen weapon.

14 Chapter 1 of Title 5 of the Penal Code, commencing with Section 13700, is

public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of
July, next succeeding, or sooner, if necessary to conserve local resources including
space and utilization of personnel who maintain files and security of those weapons,
shall be destroyed so that it can no longer be used as such a weapon except upon the
certificate of a judge of a court of record, or of the district attorney of the county, that
the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the
Department of Fish and Game or which was used in the violation of any provision of the
Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited
pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d)
unless reasonable notice is given to its lawful owner, if his or her identity and address
can be reasonably ascertained."

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1 entitled "Law Enforcement Response to Domestic Violence". Chapter 659, Statutes of
2 1999, Section 5, amended Subdivision (c) of Education Code Section 13700²³, for the
3 first time, to include community college and school district peace officers within the
4 definition of peace officers subject to the Title on Responses to Domestic Violence.
5 Section 13701²⁴, at Subdivision (a), requires every law enforcement agency in the state

²³ Penal Code Section 13700, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 659, Statutes of 1999, Section 5:

"As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence."

²⁴ Penal Code Section 13701, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 659, Statutes of 1999, Section 5:

"As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause

1 to develop, adopt and implement written policies and standards for officers' responses
2 to domestic violence calls to reflect the fact that domestic violence is alleged criminal
3 conduct and that a request for assistance in a situation involving domestic violence is
4 the same as any other request for assistance where violence has occurred.

5 Subdivision (b) requires the written policies to encourage the arrest of domestic
6 violence offenders if there is probable cause to believe that an offense has been
7 committed and requires the arrest of the offender if there is probable cause to believe
8 that a protective order has been violated. Subdivision (c) requires that existing local
9 policies and those developed to be in writing, that they include specific standards and
10 be made available to the public. Therefore, for the first time, community colleges and

bodily injury, or placing another person in reasonable apprehension of imminent serious
bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence."

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1 school districts with peace officers are required to develop, adopt and implement written
2 policies pertaining to responses to domestic violence calls, to arrest offenders and to
3 make local policies available to the public in writing.

4 Penal Code Section 13702²⁵ requires every law enforcement agency to develop,
5 adopt and implement written policies and standards for dispatchers' responses to
6 domestic violence calls which reflect that calls reporting threatened, imminent, or
7 ongoing domestic violence and the violation of any protective order shall be ranked
8 among the highest priority calls. Therefore, for the first time, community college
9 districts and school districts are required to develop, adopt and implement written
10 policies and standards for dispatchers (or their equivalents) pertaining to domestic
11 violence calls.

12 Penal Code Section 13710 requires law enforcement agencies to maintain a
13 complete and systematic record of all protection orders with respect to domestic
14 violence incidents, including orders which have not yet been served, restraining orders,
15 and proofs of service in effect. Chapter 659, Statutes of 1999, Section 6, added

4: ²⁵ Penal Code Section 13702, added by Chapter 1692, Statutes of 1990, Section

“Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for dispatchers' response to domestic violence calls by July 1, 1991. These policies shall reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Section 136.2, and restraining orders, shall be ranked among the highest priority calls. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance.”

1 subparagraph (2) to Subdivision (a) of Section 13710²⁶ to require the police department
2 of a community college district or school district to notify the local sheriff or police chief
3 of any protection order served by the department. Subdivision (c) requires law
4 enforcement agencies, upon request, to serve the party to be restrained at the scene of
5 a domestic violence incident or at any time the party is in custody. Therefore, for the
6 first time, district police departments are required to maintain complete and systematic
7 records of all protection orders, to notify the local sheriff or police chief of any protection
8 order served by the department, and upon request serve the party to be restrained with
9 a protective order.

10 By including community college and school district peace officers within the
11 definition of peace officers in Penal Code Section 13700, they are also subject to all of

²⁶ Penal Code Section 13710, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 659, Statutes of 1999, Section 6:

"(a) (1) Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders which have not yet been served, issued pursuant to Section 136.2, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

(2) The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall notify the sheriff or police chief of the city in whose jurisdiction the department is located of any protection order served by the department pursuant to this section.

(b) The terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

(c) Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody."

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1 the provisions of Part 4, Title 5, of the Penal Code, including Section 13730 (supra).
2 Therefore, for the first time, school district police departments are required to develop a
3 system for recording all domestic violence-related calls, to compile and submit monthly
4 the number of such cases, to include in each report the number involving weapons, and
5 to develop an incident report form for domestic violence incidents.

6 Chapter 661, Statutes of 1999, Section 11, amended Penal Code Section 13701
7 to make technical changes.

8 Chapter 662, Statutes of 1999, Section 18.5, amended Penal Code Section
9 12028.5²⁷ by amending the definitions of subdivision (a), in subdivision (b) restated the

²⁷ Penal Code Section 12028.5, added by Chapter 901, Statutes of 1984, Section 1, as amended by Chapter 662, Statutes of 1999, Section 18.5:

"(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means ~~intentionally or recklessly~~ any of the following:

(A) ~~Intentionally or recklessly causing or attempting to cause~~
bodily injury or attempt to cause bodily injury

(B) Sexual Assault

(C) To place a person in reasonable apprehension of
imminent serious bodily injury to himself, herself, or that person or
to another.

~~(2) "Family violence" has the same meaning as domestic violence as~~
~~defined in subdivision (b) of Section 13700, and also includes any abuse~~
~~perpetrated against a family or household member.~~

~~(3) "Family or household member" means a spouse, former spouse,~~
~~parent, child, any person related by consanguinity or affinity within the second~~
~~degree, or any person who regularly resides or who regularly resided in the~~
~~household.~~

(D) To molest, attack, strike, stalk, destroy personal property, or
violate the terms of a domestic violence protective order issued
pursuant to Part 4 (commencing with Section 6300) of Division 10
of the Family Code.

1

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

- (A) A spouse or former spouse.
- (B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (C) A person with whom the respondent is having or had a dating or engagement relationship.
- (D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of any the child of the female pursuant to parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
- (E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (F) Any other person related by consanguinity of affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a family domestic violence incident involving a threat to human life or a physical assault, may shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly

1 inclusion of district peace officers, made the custodial taking of a firearm or other
2 deadly weapon mandatory, changed the reference from family violence incidents to
3 domestic violence incidents, and restated the subdivision (c) requirement that district
4 peace officers deliver those firearms or other deadly weapons to the city police
5 department or county sheriff's office having jurisdiction.

6 The California Department of Justice has issued and promulgated a booklet
7 dated March 2000 entitled "Criminal Statistics Reporting Requirements", a copy of
8 which is attached hereto as Exhibit 3 and incorporated herein by reference. This
9 booklet and the requirements set forth therein are "Executive Orders" as defined in
10 Government Code Section 17516.²⁸

weapon is not retained for use as evidence related to criminal charges brought as a result of the family domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located."

²⁸ Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.

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1 Section A of the attached "Criminal Statistics Reporting Requirements"²⁹ requires
2 Sheriff Departments, Police Departments, and other state and local agencies with
3 peace officer powers³⁰ to report information on arrests including the names,
4 race/ethnicity, dates of birth, sex, dates of arrest, offense level, offense type, status of
5 the offenses, and law enforcement dispositions. These reports are due monthly, by the
6 10th working day of the month, and may be submitted manually on form JUS 750, or
7 electronically.

8 Section B-1 of the "Criminal Statistics Reporting Requirements"³¹ requires Sheriff
9 Departments, Police Departments, and other state and local agencies with peace
10 officer powers to provide statistical data on the offenses of criminal homicide, forcible

(c) Any agency, department, board, or commission of state government.
"Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. "Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

²⁹ Appearing in the attachment at page 5 of 20

³⁰ Members of a California Community College police department and members of a school district police department are peace officers. If they complete training as prescribed by subdivision (f) of Section 832.3, they are also designated as school police officers. See: Footnote 8, supra.

³¹ Appearing in the Attachment at Page 6 of 20

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1 rape, robbery, assault, burglary, larceny-theft and motor vehicle theft. Supplemental
2 data is also required on the nature of the crime and the value or property stolen and
3 recovered. These reports are due monthly, by the 10th working day of the month, and
4 may be submitted manually on form FBI 4-927 (Return A) and JUS 729, or
5 electronically.

6 Section B-2 of the "Criminal Statistics Reporting Requirements"³² requires Sheriff
7 Departments, Police Departments, and other state and local agencies with peace
8 officer powers to provide arson data, including the type of arson, the number of actual
9 offenses, the number of clearances, and the estimated dollar value of property
10 damaged. These reports are due monthly, by the 10th working day of the month, and
11 may be submitted manually on form FBI 1-725 or electronically.

12 Section B-3 of the "Criminal Statistics Reporting Requirements"³³ governs the
13 reporting of homicides. The information required to be reported includes the
14 victim/offender relationship, the day and month of the homicide, location, type of
15 weapon used and precipitating event. These reports are due monthly, by the 10th
16 working day of the month and may be submitted manually on form BCS-15 along with
17 Return A or electronically.

18 Section B-4 of the "Criminal Statistics Reporting Requirements"³⁴ governs the

³² Appearing in the Attachment at Page 7 of 20

³³ Appearing in the Attachment at Page 8 of 20

³⁴ Appearing in the Attachment at Page 9 of 20

1 reporting of hate crimes. The information required to be reported includes information
2 on the location of the crime, type of bias-motivation, victim type (individual/property),
3 number of victims/suspects, and the victim's/suspect's race. These reports are due
4 monthly, by the 15th day of each month, and may be reported manually by submitting
5 the agency crime report, or electronically.

6 Section B-5 of the "Criminal Statistics Reporting Requirements"³⁵ requires Sheriff
7 Departments, Police Departments and other state and local agencies with peace officer
8 powers to report data on peace officers that were killed or assaulted in the line of duty
9 and to include information on the type of criminal activity, type of weapon used, type of
10 assignment, time of assault, number with or without personal injury, police assaults
11 cleared and officers killed by felonious act or by accident or negligence. These reports
12 are due monthly, by the 10th working day of each month, and may be reported
13 manually by submitting form FBI 1-705 or FBI 4-927 (Return A) or electronically.

14 Section B-6 of the "Criminal Statistics Reporting Requirements"³⁶ governs the
15 reporting of domestic violence related calls for assistance. The information required to
16 be reported includes the number of calls received, the number of cases involving
17 weapons, and the type of weapon used during the incident. These reports are due
18 monthly, by the 10th working day of the month, and may be reported manually by
19 submitting form CJSC 715 or electronically.

³⁵ Appearing in the Attachment at Page 10 of 20

³⁶ Appearing in the Attachment at Page 11 of 20

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1 Section B-7 of the "Criminal Statistics Reporting Requirements"³⁷ governs the
2 reporting of violent crimes committed against senior citizens. The information required
3 to be reported includes the number of persons 60 years of age or older who were
4 victims of homicide, forcible rape, robbery and aggravated assault. These reports are
5 due monthly, by the 10th working day of the month, and may be reported manually by
6 submitting form BCS 727 or electronically.

7 Section B-8 of the "Criminal Statistics Reporting Requirements"³⁸ requires Sheriff
8 Departments, Police Departments, Probation Departments and other state and local
9 agencies with peace officer powers to provide information on persons who die in
10 custody including the circumstances relating to the death. These reports are due as
11 needed, within 10 days of the date of death, and may be reported manually by
12 submitting form CJSC 713.

13 Section G of the "Criminal Statistics Reporting Requirements"³⁹ requires Sheriff
14 Departments, Police Departments, District Attorneys, Public Defenders, Probation
15 Departments and other state and local agencies with peace officer powers to provide
16 enforcement and criminal justice personnel surveys on the number of full time, sworn
17 and civilian, male and female, law enforcement personnel employed by those agencies.
18 These reports are due annually, on a date specified for each agency, and may be

³⁷ Appearing in the Attachment at page 12 of 20

³⁸ Appearing in the Attachment at page 13 of 20

³⁹ Appearing in the Attachment at page 18 of 20

1 reported manually by submitting form JUS 02.

2 Section H of the "Criminal Statistics Reporting Requirements"⁴⁰ governs the
3 reporting of citizens' complaints against peace officers. The information required to be
4 reported includes the number of non-criminal and criminal (misdemeanor and felony)
5 complaints reported by citizens to law enforcement agencies and the number of those
6 complaints that were sustained. These reports are due annually, in the third week of
7 December, and may be done manually by submitting form CJSC 724.

8 Chapter 254, Statutes of 2000, Section 1, amended subdivision (f) of Penal
9 Code Section 12028.5⁴¹ to extend the time required to initiate a petition in superior court
10 from 10 days to 30 days and to provide that a law enforcement agency may make an ex
11 parte application stating good cause for an order extending the time in which to file a
12 petition. Therefore, for the first time, when good cause exists, community colleges and
13 school districts are required to refer the matter to legal counsel and appear in court ex

⁴⁰ Appearing in the attachment at Page 20 of 20

⁴¹ Penal Code Section 12028.5, added by Chapter 901, Statutes of 1984,
Section 1, as amended by Chapter 254, Statutes of 2000, Section 1:

"(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within ~~40~~ 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm."

1 parte to obtain an order extending the time in which to file a petition.

2 Chapter 626, Statutes of 2000, Section 4, amended Penal Code Section 13023⁴²
3 to add, for the first time, "national origin" to the classification of victims subject to the hate
4 crime reporting requirements.

5 Chapter 1001, Statutes of 2000, Section 5, amended subdivision (b) of Penal
6 Code Section 13701⁴³ to require, for the first time, responding officers to identify the

⁴² Penal Code Section 13023, added by Chapter 1172, Statutes of 1989, Section 1, as amended by Chapter 626, Statutes of 2000, Section 4:

"Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section."

⁴³ Penal Code Section 13701, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 1001, Statutes of 2000, Section 5:

"(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or by a court of any other state, a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In

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1 "dominant" aggressor at the scene of a domestic violence incident.

2 Chapter 468, Statutes of 2001, Section 2, (effective October 4, 2001) amended

3 Penal Code Section 13012⁴⁴ to add subdivision (d) and relettered former subdivision (d)

identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies."

⁴⁴ Penal Code Section 13012, added by Chapter 1128, Statutes of 1955, Section 1, as amended by Chapter 468, Statutes of 2001, Section 2:

"The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

~~(d)~~ (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include ~~also~~ statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned. "

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1 as subdivision (e). New subdivision (d) requires, for the first time, that the annual crime
2 statistics report include administrative actions taken by law enforcement and other
3 agencies in dealing with minors who are the subject of a petition or hearing to transfer
4 their cases to the jurisdiction of an adult criminal court or whose cases are directly filed
5 or otherwise initiated in an adult criminal court. Other technical changes were also made.

6 Chapter 483, Statutes of 2001, Section 1, amended Subdivision (c) of Penal
7 Code Section 13730⁴⁵ to add subsection (3) and to make technical changes. Subsection
8 (3) requires, for the first time, that a domestic violence report include a notation of
9 whether the officer(s) who responded to the domestic violence call found it necessary to

⁴⁵ Penal Code Section 13730, added by Chapter 1609, Statutes of 1984, Section 3, as amended by Chapter 483, Statutes of 2001, Section 1:

"(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. ~~A~~ The report shall include at least ~~both~~ all of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5."

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1 inquire whether a firearm or other deadly weapon was present at the location and, if
2 there was an inquiry, whether there was one present. Subsection (3) also requires, for
3 the first time, that any firearm or weapon discovered at the scene of a domestic violence
4 incident shall be confiscated pursuant to Penal Code Section 12028.5.

5 Chapter 833, Statutes of 2002, Section 1.5, amended Subdivision (b) of Penal
6 Code Section 12028.5⁴⁶ to expand the search which would permit confiscation of a

⁴⁶ Penal Code Section 12028.5, added by Chapter 901, Statutes of 1984, Section 1, as amended by Chapter 833, Statutes of 2002, Section 1.5:

“(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (ef), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than ~~72 hours~~ 5 business days after the seizure. In

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1 firearm from a consensual search to a consensual "or other lawful" search. The
2 subdivision was also amended to require that the receipt also state the time limit for
3 recovery as required by this section. The subdivision was also amended to increase the
4 minimum time in which to make a seized firearm or other deadly weapon available to the
5 owner or person in lawful possession from 72 hours to five business days. Other
6 technical changes were also made. Therefore, for the first time, community college and
7 school district peace officers are required to confiscate a firearm or other deadly weapon
8 discovered as the result of any lawful search and not just consensual searches, and to
9 state on the receipt given to the owner or lawful possessor the time limit for recovery.

10 Chapter 833, Statutes of 2002, Section 1.5, also amended Subdivision (f) of
11 Penal Code Section 12028.5⁴⁷ to extend the time in which to file a petition in superior
12 court from 30 days to 60 days. The subdivision was also amended to extend the
13 maximum time in which to file a petition, including any extension of time, from 60 days to

any civil action or proceeding for the return of firearms or ammunition or other deadly
weapon seized by any state or local law enforcement agency and not returned within ~~72~~
hours five business days following the initial seizure, except as provided in subdivision
(ed), the court shall allow reasonable attorney's fees to the prevailing party."

⁴⁷ "(f) In those cases ~~where~~ in which a law enforcement agency has reasonable
cause to believe that the return of a firearm or other deadly weapon would be likely to
result in endangering the victim or the person reporting the assault or threat, the agency
shall advise the owner of the firearm or other deadly weapon, and within ~~30~~ 60 days of
the date of seizure, initiate a petition in superior court to determine if the firearm or
other deadly weapon should be returned. The law enforcement agency may make an
ex parte application stating good cause for an order extending the time to file a petition.
Including any extension of time granted in response to an ex parte request, a petition
must be filed within ~~60~~ 90 days of the date of seizure of the firearm or other deadly
weapon."

1 90 days. The subdivision also amended the extension of time provision to clarify that it
2 also applied to "other deadly weapons" in addition to just firearms.

3 Chapter 833, Statutes of 2002, Section 1.5, also amended Subdivision (h) of
4 Penal Code Section 12028.5⁴⁸ to lessen the burden of proof for retention at the first
5 hearing from "clear and convincing evidence" to "a preponderance of the evidence".

6 Chapter 833, Statutes of 2002, Section 1.5, also amended Subdivision (j) of
7 Penal Code Section 12028.5⁴⁹ to add a provision that a second hearing would still
8 require a burden of proof of "clear and convincing evidence" and to provide that if the
9 court orders a return of the firearm or other deadly weapon at the second hearing, the
10 district would be required to pay the reasonable attorney's fees of the prevailing party.

⁴⁸ "(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party."

⁴⁹ "(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028."

1 Therefore, for the first time, districts are required to refer requests for a second hearing
2 to legal counsel and appear in court to present clear and convincing evidence that
3 returning the weapon would result in endangering the victim or the person reporting the
4 assault or threat. If the court orders the return of the firearm or other deadly weapon,
5 the district is also required to pay the attorney's fees of the prevailing party.

6 PART III. STATEMENT OF THE CLAIM

7 SECTION 1. COSTS MANDATED BY THE STATE

8 The Statutes, Family Law and Penal Code Sections, and Executive Orders
9 referenced in this test claim result in school districts incurring costs mandated by the
10 state, as defined in Government Code Section 17514⁵⁰, by creating new state-mandated
11 duties related to the uniquely governmental function of providing public service to
12 students and these statutes apply to school districts and do not apply generally to all
13 residents and entities in the state.⁵¹

⁵⁰Government Code Section 17514, as added by Chapter 1459, Statutes of 1984:

“Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted in or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

⁵¹ “Public schools are a Article XIII B, Section 6 “program,” pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155: “In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.

1 The new duties mandated by the state upon school districts and community
2 college districts require state reimbursement of the direct and indirect costs of labor,
3 material and supplies, data processing services and software, contracted services and
4 consultants, equipment and capital assets, staff and student training and travel to
5 implement the following activities:

6 **Miscellaneous Reports:**

7 A) To install and maintain records required by the Department of Justice for
8 the correct reporting of required statistical data as to the reports described
9 in following paragraphs (1) through (10), to report that statistical data to the
10 Department at those times and in the manner that the Attorney General
11 prescribes; and to give the Attorney General access to that statistical data,
12 pursuant to Penal Code Sections 13020 and 13021.

13 (1) To report to the Department, when requested, the administrative
14 actions in dealing with criminals or delinquents taken by the police
15 department of the district, including those in the juvenile justice
16 system and, after October 4, 2001, to additionally include those
17 minors who are the subject of a petition or hearing in the juvenile
18 court to transfer their cases to the jurisdiction of an adult criminal
19 court or whose cases are directly filed or otherwise initiated in an

537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

- 1 adult criminal court, pursuant to Penal Code Section 13012,
2 subdivision (d).
- 3 (2) To report to the Department, monthly by the 10th working day of
4 each month, statistical data on the offenses of criminal homicide,
5 forcible rape, robbery, assault, burglary, larceny-theft and motor
6 vehicle theft, the nature of the crime and the value of property stolen
7 and recovered, pursuant to "Criminal Statistics Reporting
8 Requirements", Section B-1.
- 9 (3) To report to the Department, monthly by the 10th working day of
10 each month, arson data including the type of arson, the number of
11 actual offenses, the number of clearances, and the estimated dollar
12 value of property damages, pursuant to "Criminal Statistics
13 Reporting Requirements", Section B-2.
- 14 (4) To report to the Department, monthly by the 10th working day of
15 each month, on all persons who are the victims of, and all persons
16 who are charged with, homicide, to include demographic
17 information, including age, gender, race and ethnic background,
18 pursuant to Penal Code Section 13014, subdivisions (a)(1) and (b),
19 and "Criminal Statistics Reporting Requirements", Section B-3.
- 20 (5) To report to the Department, monthly by the 15th working day of
21 each month, any information required relative to criminal acts or

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 attempted criminal acts to cause physical injury, emotional suffering,
2 or property damage where there is a reasonable cause to believe
3 that the crime was motivated, in whole or in part, by the victim's
4 race, ethnicity, religion, gender, sexual orientation, national origin, or
5 physical or mental disability, pursuant to Penal Code Section 13023
6 and "Criminal Statistics Reporting Requirements", Section B-4.

7 (6) To report to the Department, monthly by the 10th working day of
8 each month, data on peace officers killed or assaulted in the line of
9 duty, including information on the type of criminal activity, type of
10 weapon used, type of assignment, time of assault, number with or
11 without personal injury, police assaults cleared and officers killed by
12 felonious act or by accident or negligence, pursuant to "Criminal
13 Statistics Reporting Requirements", Section B-5.

14 (7) To report to the Department, monthly by the 10th day of each
15 month, the number of victims of violent crimes who are 60 years or
16 age, or older, pursuant to Senate Concurrent Resolution 64 and
17 "Criminal Statistics Reporting Requirements", Section B-7.

18 (8) To report to the Department, within 10 days of the date of death, on
19 persons who die in custody including the circumstances relating to
20 the death, pursuant to "Criminal Statistics Reporting Requirements",
21 Section B-8.

1 (9) To report to the Department, annually on a date specified, on
2 enforcement and criminal justice surveys on the number of full time,
3 sworn and civilian, male and female, law enforcement personnel
4 employed by the district, pursuant to "Criminal Statistics Reporting
5 Requirements", Section G.

6 (10) To report to the Department, annually in the 3rd week of December,
7 the number of citizens' complaints received by the district
8 concerning its peace officers, indicating the total number of
9 complaints, the number alleging criminal conduct, and the number
10 sustained in each category, pursuant to Penal Code Section 13012,
11 subdivision (e) and "Criminal Statistics Reporting Requirements",
12 Section H.

13 **Domestic Violence Matters**

14 B) To develop, adopt, and implement written policies and standards, and to
15 periodically update those policies and standards, for officers' responses to
16 domestic violence calls which reflect that domestic violence is alleged
17 criminal conduct and that a request for assistance in a situation involving
18 domestic violence is the same as any other request for assistance where
19 violence has occurred, pursuant to Penal Code Section 13701, subdivision
20 (a). These written policies and standards shall:

21 (1) Encourage the arrest of offenders if there is probable cause that

Test Claim of Santa Monica Community College District
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1 an offense has been committed; to require the arrest of an offender,
2 absent exigent circumstances, if there is probable cause that a
3 protective order has been violated; to discourage, but not prohibit,
4 dual arrests; and (after January 1, 2002) to make reasonable efforts
5 to identify the dominant aggressor in any incident, pursuant to Penal
6 Code Section 13701, subdivision (b).

7 (2) Be in writing, made available to the public upon request, and shall
8 include specific identified standards, pursuant to Penal Code
9 Section 13701, subdivision (c).

10 C) To develop, adopt, and implement written policies and standards, and
11 periodically update those policies and standards, for dispatchers'
12 responses to domestic violence calls which shall reflect that calls reporting
13 threatened, imminent, or ongoing domestic violence, and the violation of
14 any protection order shall be ranked among the highest priority of calls and
15 which prohibits the verification of the validity of a protective order before
16 responding to the request for assistance, pursuant to Penal Code Section
17 13702.

18 D) To maintain a complete and systematic record of all protection orders, and
19 periodically update those records, with respect to domestic violence
20 incidents, including orders which have not yet been served, and restraining
21 orders and proofs of service, to enable law enforcement officers

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1 responding to domestic violence calls to be informed of the existence,
2 terms, and effective dates of protection orders in effect, pursuant to Penal
3 Code Section 13710, subdivision (a)(1).

4 E) To notify the sheriff or police chief of the city, in whose jurisdiction the
5 school district is located, of any protection order served by a district peace
6 officer, pursuant to Penal Code Section 13710, subdivision (a)(2).

7 F) To serve a protection order on the party to be restrained at the scene of a
8 domestic violence incident or at any time the party is in custody, pursuant
9 to Penal Code Section 13710, subdivision (c).

10 G) To develop a system for recording all domestic violence-related calls, and
11 periodically update that system, to include whether weapons were
12 involved, supported by a written incident report, compiling and reporting,
13 monthly, the total number of calls received and the number of those calls
14 involving weapons, pursuant to Penal Code Section 13730, subdivision (a).

15 H) To develop an incident report form, and periodically update that report
16 form, to include a domestic violence identification code and which is to be
17 identified on the face of the report as a domestic violence report, pursuant
18 to Penal Code Section 13730, subdivision (c). The report shall include, at
19 least, all of the following:

- 20 (1) Whether the responding officers observed any signs that the
21 alleged abuser was under the influence of alcohol or a controlled

1 substance, pursuant to Penal Code Section 13730, subdivision
2 (c)(1).

3 (2) Whether the responding officers determined if any law enforcement
4 agency had previously responded to a domestic violence call at the
5 same address involving the same alleged abuser or victim, pursuant
6 to Penal Code Section 13730, subdivision (c)(2).

7 (3) After January 1, 2002, whether the responding officers found it
8 necessary, for the protection of the peace officer or other persons
9 present, to inquire of the victim, the alleged abuser, or both, whether
10 a firearm or other deadly weapon was present at the location and, if
11 there is an inquiry, whether that inquiry disclosed the presence of a
12 firearm or other deadly weapon, pursuant to Penal Code Section
13 13730, subdivision (c)(3).

14 I) To report to the Department, monthly by the 10th working day of each
15 month, statistics on the number of domestic violence related calls for
16 assistance received, the number of cases involving weapons, and the type
17 of weapon used during the incident, pursuant to "Criminal Statistics
18 Reporting Requirements", Section B-6.

19 **Emergency Protective Orders**

20 J) To obtain an ex parte emergency protective order from a judicial officer
21 when a district peace officer has reasonable grounds to believe any of the

- 1 following:
- 2 (1) A person is in immediate and present danger of domestic violence,
3 based upon that person's allegation of a recent incident of abuse or
4 threat by the person against whom the order is sought, pursuant to
5 Family Code Section 6250, subdivision (a).
- 6 (2) A child is in immediate and present danger of abuse by a family or
7 household member, based upon an allegation of a recent incident of
8 abuse or threat by the family or household member, pursuant to
9 Family Code Section 6250, subdivision (b).
- 10 (3) A child is in immediate and present danger of being abducted by a
11 parent or relative, based on a reasonable belief that a person has
12 an intent to abduct the child or flee with the child from the
13 jurisdiction or based on an allegation of a recent threat to abduct the
14 child or flee with the child from the jurisdiction, pursuant to Family
15 Code Section 6250, subdivision (c).
- 16 (4) An elder or dependent adult is in immediate and present danger of
17 abuse based on an allegation of a recent incident of abuse or threat
18 of abuse by the person against whom the order is sought, pursuant
19 to Family Code Section 6250, subdivision (d).
- 20 K) To obtain an ex parte emergency protective order from a judicial officer,
21 when consistent with an existing memorandum of understanding between

1 the district police department and the sheriff or police chief of the city in
2 whose jurisdiction the district is located, when the peace officer has
3 reasonable grounds to believe that there is a demonstrated threat to
4 campus safety, pursuant to Family Code Section 6250.5.

- 5 L) To obtain an ex parte emergency protective order from a judicial officer
6 when a district peace officer has reasonable grounds to believe that a
7 person is in immediate and present danger of stalking based upon the
8 person's allegation that he or she has been willfully, maliciously and
9 repeatedly followed or harassed by another person who has made a
10 credible threat with the intent of placing the person who is the target of the
11 threat in reasonable fear of his or her safety, or the safety of his or her
12 immediate family, pursuant to Penal Code Section 646.91, subdivision (a).

13 With reference to such an emergency protective order against stalking:

- 14 (1) The district peace officer is required to reduce the order to writing
15 and sign it, pursuant to Penal Code Section 646.91, subdivision (b).
16 (2) The district peace officer who requests the order shall serve the
17 order on the restrained person, give a copy to the protected person
18 or his parent or guardian if a minor, and file a copy with the court as
19 soon as practicable after issuance, pursuant to Penal Code Section
20 646.91, subdivision (h).
21 (3) The district peace officer is required to use every reasonable effort

1 to enforce an emergency protective order, pursuant to Penal Code
2 Section 646.91, subdivision (i).

3 (4) The district peace officer who requests an emergency protective
4 order shall carry copies of the order while on duty, pursuant to Penal
5 Code Section 646.91, subdivision (k).

6 (5) The district peace officer who requests an emergency protective
7 order is required to notify the sheriff or police chief of the city with
8 jurisdiction after issuance of the order, pursuant to Penal Code
9 Section 646.91, subdivision (l).

10 **Confiscation and Disposal of Weapons**

11 M) To take temporary custody of any firearm or other deadly weapon in plain
12 sight or discovered pursuant to a consensual search (or, after January 1,
13 2003, any lawful search) as necessary for the protection of the peace
14 officers or other persons present, pursuant to Penal Code Section
15 12028.5, subdivision (b). And, after January 1, 2002, to confiscate any
16 firearm or other deadly weapon discovered by an officer at the scene of a
17 domestic violence incident, pursuant to Penal Code Section 13730,
18 subdivision (c)(3).

19 N) On those occasions where a firearm or other deadly weapon is taken into
20 temporary custody or when confiscated by an officer at the scene of a
21 domestic violence incident, the officer shall:

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- 1 (1) Give the owner or person who possessed the firearm a receipt
2 describing the firearm or other deadly weapon and list any
3 identification or serial number on the firearm and indicating where
4 the firearm or other deadly weapon can be recovered and the date
5 after which the owner or possessor can recover the firearm or other
6 deadly weapon, pursuant to Penal Code Section 12028.5,
7 subdivision (b). After January 1, 2003, the receipt shall also state
8 the time limit for recovery.
- 9 (2) Deliver the firearm within 24 hours to the city police department or
10 county sheriff's office in the jurisdiction where the college or school
11 district is located, pursuant to Penal Code Section 12028.5,
12 subdivision (c).
- 13 (3) In those cases where the peace officer has reasonable cause to
14 believe that the return of the firearm or other deadly weapon would
15 likely result in endangering the victim or the person reporting the
16 assault or threat, the district peace officer shall so advise the owner
17 and refer the matter to legal counsel to initiate a petition in superior
18 court within 30 days (60 days after January 1, 2003) of the seizure,
19 to determine if the firearm or other deadly weapon should be
20 returned, pursuant to Penal Code Section 12028.5, subdivision (f).
- 21 (4) When good cause exists, to refer the matter to legal counsel and

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 show cause for an ex parte order extending the time in which to file
2 a petition for up to 90 days, pursuant to Penal Code Section
3 12028.5, subdivision (f).

4 O) In those cases where a superior court petition is filed, to give notice to the
5 owner or person who had lawful possession of the firearm or other deadly
6 weapon, at that person's last known address, by registered mail, return
7 receipt requested, that he or she has 30 days from the date of receipt of
8 the notice to respond confirming his or her desire for a court hearing, and
9 that the failure to respond shall result in a default order forfeiting the
10 confiscated firearm or other deadly weapon, pursuant to Penal Code
11 Section 12028.5(g).

12 P) In those cases where notice of a pending superior court petition is given to
13 the owner and he or she does not reside at the last address provided to
14 the officer, the district shall make a diligent, good faith effort to learn the
15 whereabouts of the person and to comply with the notification
16 requirements, pursuant to Penal Code Section 12028.5(g).

17 Q) In those cases where a person requests a hearing to recover his or her
18 firearm or other deadly weapon, to refer the matter to legal counsel and
19 appear in court and present clear and convincing evidence (after January
20 1, 2003, a preponderance of evidence) that the return of the firearm or
21 other deadly weapon would result in endangering the victim or the person

- 1 reporting the assault or threat, pursuant to Penal Code Section 12028.5(h).
- 2 R) In those cases where a person requests a hearing to recover his or her
3 firearm or other deadly weapon and prevails, to pay his or her reasonable
4 attorney's fees, pursuant to Penal Code Section 12028.5(h).
- 5 S) In those cases where a superior court petition is filed, and the person
6 does not request a hearing or otherwise respond within 30 days of receipt
7 of notice, to refer the matter to legal counsel to file a petition for an order of
8 default and dispose of the firearm or other deadly weapon, pursuant to
9 Penal Code Section 12028.5(i).
- 10 T) In those cases where a superior court petition is filed and the person who
11 had lawful possession does not prevail at the first hearing and files a
12 second petition within 12 months, to refer the matter to legal counsel and
13 appear in court and present evidence (after January 1, 2003, clear and
14 convincing evidence) that the return of the firearm or other deadly weapon
15 would result in endangering the victim or the person reporting the assault
16 or threat, pursuant to Penal Code Section 12028.5(j).
- 17 U) In those cases where a person requests a second hearing to recover his
18 or her firearm or other deadly weapon and prevails, to pay his or her
19 reasonable attorney's fees, pursuant to Penal Code Section 12028.5(j).
- 20 V) In those cases where a superior court petition is filed and the person who
21 had lawful possession requests a hearing and does not prevail at either the

1 first hearing or the second hearing, or does not petition for a second
2 hearing within 12 months after the first hearing, to dispose of or destroy the
3 firearm or other deadly weapon, pursuant to Penal Code Section 12028.5,
4 subdivision (j).

5 W) In those cases where the firearm and/or other deadly weapon is to be
6 destroyed or disposed of and:

7 (1) The peace officer considers them to have value with respect to
8 sporting, recreational, or collection purposes, to offer them annually
9 for sale at public auction to persons licensed to engage in
10 businesses involving any weapon purchased, pursuant to Penal
11 Code Section 12028, subdivision (c).

12 (2) The weapon had been used unlawfully without the prior knowledge
13 of its lawful owner that it would be so used, it shall not be offered for
14 sale but shall be restored to the lawful owner, as soon as its use as
15 evidence has been served, upon the owner's identification of the
16 weapon and proof of ownership, pursuant to Penal Code Section
17 12028, subdivision (c)

18 (3) The firearm or other deadly weapon to be disposed of is not of the
19 type that can be sold to the public, or is not sold when offered for
20 sale, the weapon shall be destroyed so that it can no longer be used
21 as a weapon, pursuant to Penal Code Section 12028, subdivision

1 (d).

2 (4) The weapon was stolen, and the lawful owner's identity and
3 address can be reasonably ascertained, to give reasonable notice to
4 the lawful owner before any sale or destruction, pursuant to Penal
5 Code Section 12028, subdivision (f)

6 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

7 None of the Government Code Section 17556⁵² statutory exceptions to a finding

⁵²Government Code Section 17556 as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced regulations, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.⁵³

6 **SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM**

7 School districts may receive income from the sale of confiscated firearms or other
8 deadly weapons. Otherwise, no funds are appropriated by the state for reimbursement
9 of these costs mandated by the state and there is no other provision of law for recovery
10 of costs from any other source. To the extent that reimbursements may be received,
11 they would reduce or offset the mandated costs.

12
13 **PART IV. ADDITIONAL CLAIM REQUIREMENTS**

14 The following elements of this claim are provided pursuant to Section 1183, Title
15 2, California Code of Regulations:

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

⁵³Government Code Section 17565:

“If a local agency or school district, at its option, had been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

- 1 Exhibit 1: Declaration of Eileen Miller, Chief of Police
2 Santa Monica Community College District
3
4 Declaration of Gregg Bass
5 Clovis Unified School District
6
7 Exhibit 2: Copy of Senate Resolution 64, 1982
8
8 Exhibit 3: California Department of Justice, Crime Statistics Reporting Requirements,
9 Dated March, 2000
10
11 Exhibit 4: Copies of Code Sections Cited
12 Penal Code Section 646.91
13 Penal Code Section 12028
14 Penal Code Section 12028.5
15 Penal Code Section 13012
16 Penal Code Section 13014
17 Penal Code Section 13020
18 Penal Code Section 13021
19 Penal Code Section 13023
20 Penal Code Section 13700
21 Penal Code Section 13701
22 Penal Code Section 13702
23 Penal Code Section 13710
24 Penal Code Section 13730
25 Family Code Section 6240
26 Family Code Section 6250

Test Claim of Santa Monica Community College District
Chapter 833, Statutes of 2002 Crime Statistics Reports (K-14)

1 Family Code Section 6250.5

2 Exhibit 5: Copies of Statutes Cited

3 Chapter 833, Statutes of 2002

4 Chapter 483, Statutes of 2001

5 Chapter 468, Statutes of 2001

6 Chapter 1001, Statutes of 2000

7 Chapter 626, Statutes of 2000

8 Chapter 254, Statutes of 2000

9 Chapter 662, Statutes of 1999

10 Chapter 661, Statutes of 1999

11 Chapter 659, Statutes of 1999

12 Chapter 933, Statutes of 1998

13 Chapter 872, Statutes of 1996

14 Chapter 965, Statutes of 1995

15 Chapter 803, Statutes of 1995

16 Chapter 1230, Statutes of 1993

17 Chapter 1338, Statutes of 1992

18 Chapter 1172, Statutes of 1989

19 Chapter 1609, Statutes of 1984

20 Chapter 147, Statutes of 1982

21 Chapter 1340, Statutes of 1980

22 Chapter 860, Statutes of 1979

23 Chapter 255, Statutes of 1979

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on December 12, 2002, at Santa Monica, California, by



Cheryl Miller
Associate Vice President
Business Services

Voice: (310) 434-9221
Fax: (310) 434-3607

/
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/

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Cheryl Miller
Associate Vice President
Business Services

12/12/02

Date

**EXHIBIT 1
DECLARATIONS**

DECLARATION OF EILEEN MILLER

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 833, Statutes of 2002	Penal Code Section 646.91
Chapter 483, Statutes of 2001	Penal Code Section 12028
Chapter 486, Statutes of 2001	Penal Code Section 12028.5
Chapter 1001, Statutes of 2000	Penal Code Section 13012
Chapter 626, Statutes of 2000	Penal Code Section 13014
Chapter 254, Statutes of 2000	Penal Code Section 13020
Chapter 662, Statutes of 1999	Penal Code Section 13021
Chapter 661, Statutes of 1999	Penal Code Section 13023
Chapter 659, Statutes of 1999	Penal Code Section 13700
Chapter 933, Statutes of 1998	Penal Code Section 13701
Chapter 872, Statutes of 1996	Penal Code Section 13702
Chapter 965, Statutes of 1995	Penal Code Section 13710
Chapter 803, Statutes of 1995	Penal Code Section 13730
Chapter 1230, Statutes of 1993	
Chapter 1338, Statutes of 1992	Family Code Section 6240
Chapter 1172, Statutes of 1989	Family Code Section 6250
Chapter 1609, Statutes of 1984	Family Code Section 6250.5
Chapter 142, Statutes of 1982	
Chapter 1340, Statutes of 1980	
Chapter 860, Statutes of 1979	
Chapter 255, Statutes of 1979	

Senate Resolution 64, 1982

California Department of Justice,
Crime Statistics Reporting Requirements - March 2000

Crime Statistics Reports (K-14)

I, Eileen Miller, Chief of Police, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Chief of Police of the Santa Monica Community College

District, I am responsible for the Crime Statistics Reports required by the Department of Justice, required responses to domestic violence incidents, the handling of confiscated weapons, and the court procedures related to confiscated weapons. I am familiar with the provisions and requirements of the Penal Code Sections, Family Code Sections, Senate Resolution and Executive Orders enumerated above.

These code sections, Senate Resolution and Executive Orders require the Santa Monica Community College District to:

Miscellaneous Reports:

- A) To install and maintain records required by the Department of Justice for the correct reporting of required statistical data as to the reports described in following paragraphs (1) through (10), to report that statistical data to the Department at those times and in the manner that the Attorney General prescribes; and to give the Attorney General access to that statistical data, pursuant to Penal Code Sections 13020 and 13021.
- (1) To report to the Department, when requested, the administrative actions in dealing with criminals or delinquents taken by the police department of the district, including those in the juvenile justice system and, after October 4, 2001, to additionally include those minors who are the subject of a petition or hearing in the juvenile court to transfer their cases to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an

adult criminal court, pursuant to Penal Code Section 13012, subdivision (d).

- (2) To report to the Department, monthly by the 10th working day of each month, statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft and motor vehicle theft, the nature of the crime and the value of property stolen and recovered, pursuant to "Criminal Statistics Reporting Requirements", Section B-1.
- (3) To report to the Department, monthly by the 10th working day of each month, arson data including the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damages, pursuant to "Criminal Statistics Reporting Requirements", Section B-2.
- (4) To report to the Department, monthly by the 10th working day of each month, on all persons who are the victims of, and all persons who are charged with, homicide, to include demographic information, including age, gender, race and ethnic background, pursuant to Penal Code Section 13014, subdivisions (a)(1) and (b), and "Criminal Statistics Reporting Requirements", Section B-3.
- (5) To report to the Department, monthly by the 15th working day of each month, any information required relative to criminal acts or

attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability, pursuant to Penal Code Section 13023 and "Criminal Statistics Reporting Requirements", Section B-4.

- (6) To report to the Department, monthly by the 10th working day of each month, data on peace officers killed or assaulted in the line of duty, including information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared and officers killed by felonious act or by accident or negligence, pursuant to "Criminal Statistics Reporting Requirements", Section B-5.
- (7) To report to the Department, monthly by the 10th day of each month, the number of victims of violent crimes who are 60 years or age, or older, pursuant to Senate Concurrent Resolution 64 and "Criminal Statistics Reporting Requirements", Section B-7.
- (8) To report to the Department, within 10 days of the date of death, on persons who die in custody including the circumstances relating to the death, pursuant to "Criminal Statistics Reporting

Requirements”, Section B-8.

- (9) To report to the Department, annually on a date specified, on enforcement and criminal justice surveys on the number of full time, sworn and civilian, male and female, law enforcement personnel employed by the district, pursuant to “Criminal Statistics Reporting Requirements”, Section G.
- (10) To report to the Department, annually in the 3rd week of December, the number of citizens’ complaints received by the district concerning its peace officers, indicating the total number of complaints, the number alleging criminal conduct, and the number sustained in each category, pursuant to Penal Code Section 13012, subdivision (e) and “Criminal Statistics Reporting Requirements”, Section H.

Domestic Violence Matters

- B) To develop, adopt, and implement written policies and standards, and to periodically update those policies and standards, for officers’ responses to domestic violence calls which reflect that domestic violence is alleged criminal conduct and that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred, pursuant to Penal Code Section 13701, subdivision (a). These written policies and standards shall:

- (1) Encourage the arrest of offenders if there is probable cause that an offense has been committed; to require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order has been violated; to discourage, but not prohibit, dual arrests; and (after January 1, 2002) to make reasonable efforts to identify the dominant aggressor in any incident, pursuant to Penal Code Section 13701, subdivision (b).
 - (2) Be in writing, made available to the public upon request, and shall include specific identified standards, pursuant to Penal Code Section 13701, subdivision (c).
- C) To develop, adopt, and implement written policies and standards, and periodically update those policies and standards, for dispatchers' responses to domestic violence calls which shall reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order shall be ranked among the highest priority of calls and which prohibits the verification of the validity of a protective order before responding to the request for assistance, pursuant to Penal Code Section 13702.
- D) To maintain a complete and systematic record of all protection orders, and periodically update those records, with respect to domestic violence incidents, including orders which have not yet been served, and

restraining orders and proofs of service, to enable law enforcement officers responding to domestic violence calls to be informed of the existence, terms, and effective dates of protection orders in effect, pursuant to Penal Code Section 13710, subdivision (a)(1).

- E) To notify the sheriff or police chief of the city, in whose jurisdiction the school district is located, of any protection order served by a district peace officer, pursuant to Penal Code Section 13710, subdivision (a)(2).
- F) To serve a protection order on the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody, pursuant to Penal Code Section 13710, subdivision (c).
- G) To develop a system for recording all domestic violence-related calls, and periodically update that system, to include whether weapons were involved, supported by a written incident report, compiling and reporting, monthly, the total number of calls received and the number of those calls involving weapons, pursuant to Penal Code Section 13730, subdivision (a).
- H) To develop an incident report form, and periodically update that report form, to include a domestic violence identification code and which is to be identified on the face of the report as a domestic violence report, pursuant to Penal Code Section 13730, subdivision (c). The report shall include, at least, all of the following:

- (1) Whether the responding officers observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance, pursuant to Penal Code Section 13730, subdivision (c)(1).
 - (2) Whether the responding officers determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim, pursuant to Penal Code Section 13730, subdivision (c)(2).
 - (3) After January 1, 2002, whether the responding officers found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon, pursuant to Penal Code Section 13730, subdivision (c)(3).
- I) To report to the Department, monthly by the 10th working day of each month, statistics on the number of domestic violence related calls for assistance received, the number of cases involving weapons, and the type of weapon used during the incident, pursuant to "Criminal Statistics Reporting Requirements", Section B-6.

Emergency Protective Orders

- J) To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe any of the following:
- (1) A person is in immediate and present danger of domestic violence, based upon that person's allegation of a recent incident of abuse or threat by the person against whom the order is sought, pursuant to Family Code Section 6250, subdivision (a).
 - (2) A child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat by the family or household member, pursuant to Family Code Section 6250, subdivision (b).
 - (3) A child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction, pursuant to Family Code Section 6250, subdivision (c).
 - (4) An elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, pursuant to Family Code Section 6250, subdivision (d).

- K) To obtain an ex parte emergency protective order from a judicial officer, when consistent with an existing memorandum of understanding between the district police department and the sheriff or police chief of the city in whose jurisdiction the district is located, when the peace officer has reasonable grounds to believe that there is a demonstrated threat to campus safety, pursuant to Family Code Section 6250.5.
- L) To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear of his or her safety, or the safety of his or her immediate family, pursuant to Penal Code Section 646.91, subdivision (a).
With reference to such an emergency protective order against stalking:
- (1) The district peace officer is required to reduce the order to writing and sign it, pursuant to Penal Code Section 646.91, subdivision (b).
 - (2) The district peace officer who requests the order shall serve the order on the restrained person, give a copy to the protected person or his parent or guardian if a minor, and file a copy with the court as soon as practicable after issuance, pursuant to Penal Code Section

646.91, subdivision (h).

- (3) The district peace officer is required to use every reasonable effort to enforce an emergency protective order, pursuant to Penal Code Section 646.91, subdivision (i).
- (4) The district peace officer who requests an emergency protective order shall carry copies of the order while on duty, pursuant to Penal Code Section 646.91, subdivision (k).
- (5) The district peace officer who requests an emergency protective order is required to notify the sheriff or police chief of the city with jurisdiction after issuance of the order, pursuant to Penal Code Section 646.91, subdivision (l).

Confiscation and Disposal of Weapons

- M) To take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search (or, after January 1, 2003, any lawful search) as necessary for the protection of the peace officers or other persons present, pursuant to Penal Code Section 12028.5, subdivision (b). And, after January 1, 2002, to confiscate any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident, pursuant to Penal Code Section 13730, subdivision (c)(3).
- N) On those occasions where a firearm or other deadly weapon is taken into

temporary custody or when confiscated by an officer at the scene of a domestic violence incident, the officer shall:

- (1) Give the owner or person who possessed the firearm a receipt describing the firearm or other deadly weapon and list any identification or serial number on the firearm and indicating where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5, subdivision (b). After January 1, 2003, the receipt shall also state the time limit for recovery.
- (2) Deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school district is located, pursuant to Penal Code Section 12028.5, subdivision (c).
- (3) In those cases where the peace officer has reasonable cause to believe that the return of the firearm or other deadly weapon would likely result in endangering the victim or the person reporting the assault or threat, the district peace officer shall so advise the owner and refer the matter to legal counsel to initiate a petition in superior court within 30 days (60 days after January 1, 2003) of the seizure, to determine if the firearm or other deadly weapon should be

returned, pursuant to Penal Code Section 12028.5, subdivision (f).

- (4) When good cause exists, to refer the matter to legal counsel and show cause for an ex parte order extending the time in which to file a petition for up to 90 days, pursuant to Penal Code Section 12028.5, subdivision (f).
- O) In those cases where a superior court petition is filed, to give notice to the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address, by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond confirming his or her desire for a court hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon, pursuant to Penal Code Section 12028.5(g).
- P) In those cases where notice of a pending superior court petition is given to the owner and he or she does not reside at the last address provided to the officer, the district shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements, pursuant to Penal Code Section 12028.5(g).
- Q) In those cases where a person requests a hearing to recover his or her firearm or other deadly weapon, to refer the matter to legal counsel and appear in court and present clear and convincing evidence (after January

1, 2003, a preponderance of evidence) that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, pursuant to Penal Code Section 12028.5(h).

- R) In those cases where a person requests a hearing to recover his or her firearm or other deadly weapon and prevails, to pay his or her reasonable attorney's fees, pursuant to Penal Code Section 12028.5(h).
- S) In those cases where a superior court petition is filed, and the person does not request a hearing or otherwise respond within 30 days of receipt of notice, to refer the matter to legal counsel to file a petition for an order of default and dispose of the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5(i).
- T) In those cases where a superior court petition is filed and the person who had lawful possession does not prevail at the first hearing and files a second petition within 12 months, to refer the matter to legal counsel and appear in court and present evidence (after January 1, 2003, clear and convincing evidence) that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, pursuant to Penal Code Section 12028.5(j).
- U) In those cases where a person requests a second hearing to recover his or her firearm or other deadly weapon and prevails, to pay his or her

reasonable attorney's fees, pursuant to Penal Code Section 12018.5(j).

- V) In those cases where a superior court petition is filed and the person who had lawful possession requests a hearing and does not prevail at either the first hearing or the second hearing, or does not petition for a second hearing within 12 months after the first hearing, to dispose of or destroy the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5, subdivision (j).
- W) In those cases where the firearm and/or other deadly weapon is to be destroyed or disposed of and:
- (1) The peace officer considers them to have value with respect to sporting, recreational, or collection purposes, to offer them annually for sale at public auction to persons licensed to engage in businesses involving any weapon purchased, pursuant to Penal Code Section 12028, subdivision (c).
 - (2) The weapon had been used unlawfully without the prior knowledge of its lawful owner that it would be so used, it shall not be offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the owner's identification of the weapon and proof of ownership, pursuant to Penal Code Section 12028, subdivision (c)
 - (3) The firearm or other deadly weapon to be disposed of is not of the

type that can be sold to the public, or is not sold when offered for sale, the weapon shall be destroyed so that it can no longer be used as a weapon, pursuant to Penal Code Section 12028, subdivision (d).

- (4) The weapon was stolen, and the lawful owner's identity and address can be reasonably ascertained, to give reasonable notice to the lawful owner before any sale or destruction, pursuant to Penal Code Section 12028, subdivision (f)

It is estimated that the Santa Monica Community College District, to the extent that reports, incident responses, confiscations and court appearances are necessary, will incur approximately \$1,000, or more, in staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 12 day of December, 2002, at Santa Monica, California



Eileen Miller
Chief of Police
Santa Monica Community College District

DECLARATION OF GREG BASS

Clovis Unified School District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 833, Statutes of 2002	Penal Code Section 646.91
Chapter 483, Statutes of 2001	Penal Code Section 12028
Chapter 486, Statutes of 2001	Penal Code Section 12028.5
Chapter 1001, Statutes of 2000	Penal Code Section 13012
Chapter 626, Statutes of 2000	Penal Code Section 13014
Chapter 254, Statutes of 2000	Penal Code Section 13020
Chapter 662, Statutes of 1999	Penal Code Section 13021
Chapter 661, Statutes of 1999	Penal Code Section 13023
Chapter 659, Statutes of 1999	Penal Code Section 13700
Chapter 933, Statutes of 1998	Penal Code Section 13701
Chapter 872, Statutes of 1996	Penal Code Section 13702
Chapter 965, Statutes of 1995	Penal Code Section 13710
Chapter 803, Statutes of 1995	Penal Code Section 13730
Chapter 1230, Statutes of 1993	
Chapter 1338, Statutes of 1992	Family Code Section 6240
Chapter 1172, Statutes of 1989	Family Code Section 6250
Chapter 1609, Statutes of 1984	Family Code Section 6250.5
Chapter 142, Statutes of 1982	
Chapter 1340, Statutes of 1980	
Chapter 860, Statutes of 1979	
Chapter 255, Statutes of 1979	

Senate Resolution 64, 1982

California Department of Justice,
Crime Statistics Reporting Requirements - March 2000

Crime Statistics Reports (K-14)

I, Greg Bass, Director of Child Welfare and Attendance for Clovis Unified School District, make the following declaration and statement.

In my capacity as Director of Child Welfare and Attendance for Clovis Unified School District, I am the supervisor of the district's police department and responsible

for the Crime Statistics Reports required by the Department of Justice, required responses to domestic violence incidents, the handling of confiscated weapons, and the court procedures related to confiscated weapons. I am familiar with the provisions and requirements of the Penal Code Sections, Family Code Sections, Senate Resolution and Executive Orders enumerated above.

These code sections, Senate Resolution and Executive Orders require the Clovis Unified School District to:

Miscellaneous Reports:

To install and maintain records needed by the Department of Justice for the correct reporting of required statistical data as to the reports described in following paragraphs A through E, to report that statistical data to the Department at those times and in the manner that the Attorney General prescribes; and to give the Attorney General access to that statistical data.

- A) To report to the Department, when requested, the administrative actions in dealing with criminals or delinquents taken by the police department of the district, including those in the juvenile justice system and, after October 4, 2001, to additionally include those minors who are the subject of a petition or hearing in the juvenile court to transfer their cases to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court, pursuant to Penal Code Section 13012, subdivision (d).

- B) To report to the Department, when requested, the number of citizens' complaints received by the district concerning its peace officers, indicating the total number of complaints, the number alleging criminal conduct, and the number sustained in each category, pursuant to Penal Code Section 13012, subdivision (e).
- C) To report to the Department, when requested, the number of victims of violent crimes who are 60 years or age, or older, pursuant to Senate Concurrent Resolution 64.
- D) To report to the Department, when requested, on forms adopted and distributed by the Department, of all persons who are the victims of, and all persons who are charged with, homicide, to include demographic information, including age, gender, race and ethnic background, pursuant to Penal Code Section 13014, subdivisions (a)(1) and (b).
- E) To report to the Department, annually, any information required relative to criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability, pursuant to Penal Code Section 13023.

Domestic Violence Matters

- F) To develop, adopt, and implement written policies and standards, and to

periodically update those policies and standards, for officers' responses to domestic violence calls which reflect that domestic violence is alleged criminal conduct and that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred, pursuant to Penal Code Section 13701, subdivision (a). These written policies and standards shall:

- (1) Encourage the arrest of offenders if there is probable cause that an offense has been committed; to require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order has been violated; to discourage, but not prohibit, dual arrests; and (after January 1, 2002) to make reasonable efforts to identify the dominant aggressor in any incident, pursuant to Penal Code Section 13701, subdivision (b).
 - (2) Be in writing, made available to the public upon request, and shall include specific identified standards, pursuant to Penal Code Section 13701, subdivision (c).
- G) To develop, adopt, and implement written policies and standards, and periodically update those policies and standards, for dispatchers' responses to domestic violence calls which shall reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order shall be ranked among the highest priority of calls

and which prohibits the verification of the validity of a protective order before responding to the request for assistance, pursuant to Penal Code Section 13702.

- H) To maintain a complete and systematic record of all protection orders, and periodically update those records, with respect to domestic violence incidents, including orders which have not yet been served, and restraining orders and proofs of service, to enable law enforcement officers responding to domestic violence calls to be informed of the existence, terms, and effective dates of protection orders in effect, pursuant to Penal Code Section 13710, subdivision (a)(1).
- I) To notify the sheriff or police chief of the city, in whose jurisdiction the school district is located, of any protection order served by a district peace officer, pursuant to Penal Code Section 13710, subdivision (a)(2).
- J) Upon request, to serve a protection order on the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody, pursuant to Penal Code Section 13710, subdivision (c).
- K) To develop a system for recording all domestic violence-related calls, and periodically update that system, for assistance including whether weapons were involved, supported by a written incident report, compiling and reporting, monthly, the total number of calls received and the number of those calls involving weapons, pursuant to Penal Code Section 13730,

subdivision (a).

L) To develop an incident report form, and periodically update that report form, to include a domestic violence identification code and which is to be identified on the face of the report as a domestic violence report, pursuant to Penal Code Section 13730, subdivision (c). The report shall include, at least, all of the following:

- (1) Whether the responding officers observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance, pursuant to Penal Code Section 13730, subdivision (c)(1).
- (2) Whether the responding officers determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim, pursuant to Penal Code Section 13730, subdivision (c)(2).
- (3) After January 1, 2002, whether the responding officers found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon, pursuant to Penal Code Section 13730, subdivision (c)(3).

Emergency Protective Orders

- M) To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe any of the following:
- (1) A person is in immediate and present danger of domestic violence, based upon that person's allegation of a recent incident of abuse or threat by the person against whom the order is sought, pursuant to Family Code Section 6250, subdivision (a).
 - (2) A child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat by the family or household member, pursuant to Family Code Section 6250, subdivision (b).
 - (3) A child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction, pursuant to Family Code Section 6250, subdivision (c).
 - (4) An elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought,

pursuant to Family Code Section 6250, subdivision (d).

- N) To obtain an ex parte emergency protective order from a judicial officer, when consistent with an existing memorandum of understanding between the district police department and the sheriff or police chief of the city in whose jurisdiction the district is located, when the peace officer has reasonable grounds to believe that there is a demonstrated threat to campus safety, pursuant to Family Code Section 6250.5.
- O) To obtain an ex parte emergency protective order from a judicial officer when a district peace officer has reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear of his or her safety, or the safety of his or her immediate family, pursuant to Penal Code Section 646.91, subdivision (a).
- With reference to such an emergency protective order against stalking:
- (1) The district peace officer is required to reduce the order to writing and sign it, pursuant to Penal Code Section 646.91, subdivision (b).
 - (2) The district peace officer who requests the order shall serve the order on the restrained person, give a copy to the protected person or his parent or guardian if a minor, and file a copy with the court as

soon as practicable after issuance, pursuant to Penal Code Section 646.91, subdivision (h).

- (3) The district peace officer is required to use every reasonable effort to enforce an emergency protective order, pursuant to Penal Code Section 646.91, subdivision (i).
- (4) The district peace officer who requests an emergency protective order shall carry copies of the order while on duty, pursuant to Penal Code Section 646.91, subdivision (k).
- (5) The district peace officer who requests an emergency protective order is required to notify the sheriff or police chief of the city with jurisdiction after issuance of the order, pursuant to Penal Code Section 646.91, subdivision (l).

Confiscation and Disposal of Weapons

- P) To take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search (or, after January 1, 2003, any lawful search) as necessary for the protection of the peace officers or other persons present, pursuant to Penal Code Section 12028.5, subdivision (b). And, after January 1, 2002, to confiscate any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident, pursuant to Penal Code Section 13730, subdivision (c)(3).

- Q) On those occasions where a firearm or other deadly weapon is taken into temporary custody or when confiscated by an officer at the scene of a domestic violence incident, the officer shall:
- (1) Give the owner or person who possessed the firearm a receipt describing the firearm or other deadly weapon and list any identification or serial number on the firearm and indicating where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5, subdivision (b). After January 1, 2003, the receipt shall also state the time limit for recovery.
 - (2) Deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school district is located, pursuant to Penal Code Section 12028.5, subdivision (c).
 - (3) In those cases where the peace officer has reasonable cause to believe that the return of the firearm or other deadly weapon would likely result in endangering the victim or the person reporting the assault or threat, the district peace officer shall so advise the owner and refer the matter to legal counsel to initiate a petition in superior court within 30 days (60 days after January 1, 2003) of the seizure,

to determine if the firearm or other deadly weapon should be returned, pursuant to Penal Code Section 12028.5, subdivision (f).

(4) When good cause exists, to refer the matter to legal counsel and show cause for an ex parte order extending the time in which to file a petition for up to 90 days, pursuant to Penal Code Section 12028.5, subdivision (f).

R) In those cases where a superior court petition is filed, to give notice to the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address, by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond confirming his or her desire for a court hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon, pursuant to Penal Code Section 12028.5(g).

S) In those cases where notice of a pending superior court petition is given to the owner and he or she does not reside at the last address provided to the officer, the district shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements, pursuant to Penal Code Section 12028.5(g).

T) In those cases where a person requests a hearing to recover his or her firearm or other deadly weapon, to refer the matter to legal counsel and

appear in court and present clear and convincing evidence (after January 1, 2003, a preponderance of evidence) that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, pursuant to Penal Code Section 12028.5(h).

- U) In those cases where a person requests a hearing to recover his or her firearm or other deadly weapon and prevails, to pay his or her reasonable attorney's fees, pursuant to Penal Code Section 12028.5(h).
- V) In those cases where a superior court petition is filed, and the person does not request a hearing or otherwise respond within 30 days of receipt of notice, to refer the matter to legal counsel to file a petition for an order of default and dispose of the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5(i).
- W) In those cases where a superior court petition is filed and the person who had lawful possession does not prevail at the first hearing and files a second petition within 12 months, to refer the matter to legal counsel and appear in court and present evidence (after January 1, 2003, clear and convincing evidence) that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, pursuant to Penal Code Section 12028.5(j).
- X) In those cases where a person requests a second hearing to recover his

or her firearm or other deadly weapon and prevails, to pay his or her reasonable attorney's fees, pursuant to Penal Code Section 12018.5(j).

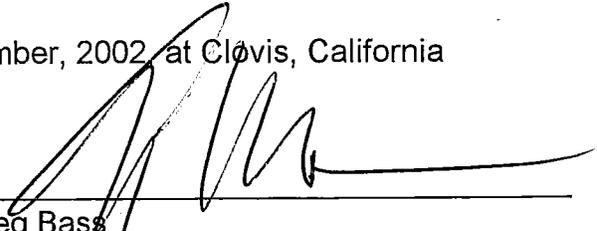
- Y) In those cases where a superior court petition is filed and the person who had lawful possession requests a hearing and does not prevail at either the first hearing or the second hearing, or does not petition for a second hearing within 12 months after the first hearing, to dispose of or destroy the firearm or other deadly weapon, pursuant to Penal Code Section 12028.5, subdivision (j).
- Z) In those cases where the firearm and/or other deadly weapon is to be destroyed or disposed of and:
- (1) The peace officer considers them to have value with respect to sporting, recreational, or collection purposes, to offer them annually for sale at public auction to persons licensed to engage in businesses involving any weapon purchased, pursuant to Penal Code Section 12028, subdivision (c).
 - (2) The weapon had been used unlawfully without the prior knowledge of its lawful owner that it would be so used, it shall not be offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the owner's identification of the weapon and proof of ownership, pursuant to Penal Code Section 12028, subdivision (c)

- (3) The firearm or other deadly weapon to be disposed of is not of the type that can be sold to the public, or is not sold when offered for sale, the weapon shall be destroyed so that it can no longer be used as a weapon, pursuant to Penal Code Section 12028, subdivision (d).
- (4) The weapon was stolen, and the lawful owner's identity and address can be reasonably ascertained, to give reasonable notice to the lawful owner before any sale or destruction, pursuant to Penal Code Section 12028, subdivision (f)

It is estimated that the Clovis Unified School District, to the extent that reports, incident responses, confiscations and court appearances are necessary, will incur approximately \$1,000, or more, annually in staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 17th day of December, 2002 at Clovis, California



Greg Bass
Director of Child Welfare and Attendance
Clovis Unified School District

EXHIBIT 2
SENATE RESOLUTION 64 OF 1982

RESOLUTION CHAPTER 147

Senate Concurrent Resolution No. 64—Relative to crime statistics.

[Filed with Secretary of State August 30, 1982.]

WHEREAS, At the present time, there is no systematic collection of the ages of crime victims; and

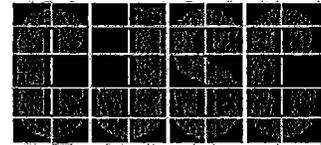
WHEREAS, In order to better understand the problem of crime as it affects senior citizens, systematic collection of this information on a statewide basis is essential; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further

Resolved, That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages of victims of crime and to incorporate that information in its crime statistic reporting system; and be it further

Resolved, That the Secretary of the Senate send copies of this resolution to the Attorney General.

EXHIBIT 3
DEPARTMENT OF JUSTICE
CRIMINAL STATISTICS REPORTING REQUIREMENTS
MARCH 2000



OFFICE OF THE AG PROGRAMS & SERVICES NEWS & ALERTS PUBLICATIONS CONTACT US SEARCH
REGISTERING WITH US EMPLOYMENT OPPORTUNITIES LINKS TO STATE SITES

CRIMINAL STATISTICS REPORTING REQUIREMENTS

**CALIFORNIA
DEPARTMENT OF JUSTICE**

**CRIMINAL JUSTICE
STATISTICS CENTER**

March 2000

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Introduction

This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code section(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

For any additional information or clarification, please write or call our Special Requests Unit. They can be reached by telephone, FAX or e-mail:

California Department of Justice Telephone: (916) 227-3509

Division of Criminal Justice Information Services Fax: (916) 227-0427

Criminal Justice Statistics Center E-mail: CJSC@hdcdojnet.state.ca.us

Special Requests Unit

4949 Broadway, Room E-203

Sacramento, CA 95820

ARRESTS

Introduction

Arrest information is reported to the Department of Justice (DOJ), and is maintained in the Monthly Arrest and Citation Register data base. This data base contains information on felony and misdemeanor level arrests for adults and juveniles. Data elements include name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. This information is used in publishing *Crime and Delinquency in California* and the *Criminal Justice Profile* series. Age, sex, race/ethnicity, and offense information is forwarded to the FBI for publication in *Crime in the United States*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the

PC 13021. Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form JUS 750, or electronically.

CRIMES AND CLEARANCES

Introduction

Crimes and clearance information is to be reported to DOJ to provide statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft. The data is to include the number of actual offenses as well as the number of clearances. Supplemental data are also collected on the nature of crime and the value of property stolen and recovered. This information is forwarded to the FBI for publication in *Crime in the United States*. Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile Series*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) *To install and maintain records needed for the correct reporting of statistical data required by him or her.*

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 4-927 (Return A) and JUS 729, or electronically.

ARSON

Introduction

Arson data is to be reported to DOJ to provide information on the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damaged. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-725, or electronically.

HOMICIDES

Introduction

Homicide data is to be reported to DOJ to provide information on the number of homicides, the victim/offender relationship, the day and month of the homicide, location, type of weapon used, and precipitating event. Homicide data are published in *Homicide in California*, *Crime and Delinquency in California*, and the *Criminal Justice Profile* series. Data are also reported to the FBI for publication in *Crime in the United States*.

Homicides (continued)

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13014. (b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background

PC 13022. Each sheriff and chief of police shall annually furnish the Department of Justice, on a form prescribed by the Attorney General, a report of all justifiable homicides committed in his jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report such homicide.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS-15 along with the Return A, or electronically.

HATE CRIMES

Introduction

Hate Crime data is to be reported to DOJ to provide information on the location of crime, type of bias-motivation, victim type (individual/property), number of victims/suspects, and victim's/suspect's race. This information is provided to the FBI for publication in *Crime in the United States* and published in *Hate Crime in California*, an annual report to the California Legislature.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a

manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

Hate Crimes (continued)

When

Reports are due monthly, by the 15th working day of the month.

How

Reporting may be accomplished manually by submitting the agency Crime Report, or electronically.

LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED

Introduction

Data on peace officers that were killed or assaulted in the line of duty is to be reported to DOJ to provide information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared, and officers killed by felonious act or by accident or negligence. This information is published in *Crime and Delinquency in California* and *Homicide in California*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-705 or FBI 4-927 (Return A), or electronically.

DOMESTIC VIOLENCE RELATED CALLS FOR ASSISTANCE

Introduction

Domestic violence information is to be reported to DOJ to provide monthly summary statistical data on the number of domestic violence-related calls received, number of cases involving weapons, and the type of weapon used during the incident. This information is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision, (c) identifying the domestic violence

incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJS 715, or electronically.

VIOLENT CRIMES COMMITTED AGAINST SENIOR CITIZENS

Introduction

Information regarding violent crimes committed against senior citizens is to be reported to DOJ to provide summary data on the number of persons 60 years of age or older who were victims of homicide, forcible rape, robbery, and aggravated assault.

Violent Crimes Committed Against Senior Citizens (continued)

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

Senate Resolution 64, Chapter 147, 1982, be it resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS 727, or electronically.

DEATH IN CUSTODY

Introduction

Information on persons who die while in the custody of a local or state law enforcement agency is to be reported to DOJ to provide descriptive statistical information on the circumstances relating to the death.

Who

Sheriff Departments, Police Departments, Probation Departments and other state and local agencies with peace officer powers.

Why

GC 12525. In any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. These writings are public records within the meaning of subdivision (d) of Section 6252 of the California Public Records Act (Chapter 3.5 (commencing with

Section 6250) of Division 7 of Title 1), are open to public inspection pursuant to Sections 6253, 6256, 6257, and 6258. Nothing in this section shall permit the disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report except as provided in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

Death in Custody (continued)

When

Reports are due as needed, within 10 days of the date of death.

How

Reporting is accomplished manually by submitting form CJSC 713.

ADULT PROBATION

Introduction

Data regarding adult probation is to be reported to DOJ to provide a statistical profile of the probation function for superior and lower courts by county, type of placement, reasons for removal from probation, and the number of persons in supervision caseloads. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished manually by submitting form CJSC 726.

JUVENILE COURT AND PROBATION STATISTICAL SYSTEM

Introduction

justice in California. Information is collected on a juvenile's progress through the juvenile justice system from probation intake to final case disposition.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

WI 285. All probation officers shall make such periodic reports to the Bureau of Criminal Statistics as the bureau may require and upon forms furnished by the bureau, provided that no names or social security numbers shall be transmitted regarding any proceeding under Section 300 or 601.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished electronically, by cartridge or diskette, using JCPSS software.

CONCEALABLE WEAPONS STATISTICAL SYSTEM

Introduction

Concealable weapon data is to be reported to DOJ to provide information on race, ethnicity, age, and gender for each individual charged with a felony or a misdemeanor for carrying either a concealed weapon or loaded firearm.

Who

District Attorneys.

Why

PC 12025(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

PC 12031(m) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJSC 4, or electronically, through the Attorney General's LegalNet system or file transfer protocol.

HATE CRIME PROSECUTION SURVEY

Introduction

Hate crime data is to be reported to DOJ to provide information regarding criminal acts to cause physical injury, emotional suffering or property damage where there is a reasonable cause to believe that the crime was motivated by the victim's race, ethnicity, religion, gender, sexual orientation or physical or mental disability.

Who

District Attorneys.

Hate Crime Prosecution Survey (continued)

Why

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts

or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

When

Annually - the first week in February.

How

Reporting is accomplished manually by submitting form CJSC 5.

**LAW ENFORCEMENT AND CRIMINAL JUSTICE PERSONNEL
SURVEYS**

Introduction

Agencies are to report to DOJ the number of full time, sworn and civilian male and female law enforcement personnel employed by law enforcement agencies, District Attorneys, Public Defenders or Probation Departments. Data are provided to the FBI for publication in *Crime in the United States*. Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, District Attorneys, Public Defenders, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority,

Law Enforcement and Criminal Justice Personnel Surveys (continued)

Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Annually - date specified for each agency.

How

Reporting is accomplished manually by submitting form JUS 02.

CITIZENS' COMPLAINTS AGAINST PEACE OFFICERS SURVEY

Introduction

Agencies are to report to DOJ statewide summary information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens to law enforcement agencies, and the number of complaints that were sustained. Data are published in *Crime and Delinquency in California*.

Who

Sheriff Departments, Police Departments, District Attorneys, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

When

Annually - the third week of December.

How

Reporting is accomplished manually by submitting form CJSC 724.



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EXHIBIT 4
COPIES OF CODE SECTIONS CITED

646.91. Stalking; emergency protective orders; issuance; expiration; service; filing; enforcement; liability; scope of section; punishment

(a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(l) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(m) "Judicial officer," as used in this section, means a judge, commissioner, or referee.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing.

(o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

(Amended by Stats.1999, c. 659 (S.B.355), § 2.)

§ 12028. Firearms and other weapons as nuisance; surrender of weapon; sale at public auction; restoration to owner; destruction

(a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) A firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

Penal Code Section 12028.5

§ 12028.5. Domestic violence incidents; temporary custody of firearms by officers; subsequent procedures

(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 commencing with Section 7600) of Division 12 of the Family Code.

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1; a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2; a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2; an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer; a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2; a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2; a peace officer, as defined in subdivision (d) of Section 830.31; a peace officer as defined in subdivisions (a) and (b) of Section 830.32; and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm.

Penal Code Section 12028.5

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

(Amended by Stats.2000, c. 254 (S.B.2052), § 1.)

Penal Code Section 13012

§ 13012. Contents of annual report.

The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

- (a) The amount and the types of offenses known to the public authorities.
- (b) The personal and social characteristics of criminals and delinquents.
- (c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.
- (d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
- (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include *** statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

§ 13014. Homicide cases; investigation and prosecution responsibilities

(a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms which will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.

(Added by Stats.1992, c. 1338 (S.B.1184), § 3.)

§ 13020. Records, reports; access to data

It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- (a) To install and maintain records needed for the correct reporting of statistical data required by him or her.
- (b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.
- (c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

Penal Code Section 13021

§ 13021. Information relating to misdemeanor violations

Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

Penal Code Section 13023

§ 13023. Reports by local law enforcement agencies of crimes motivated by victim's race, ethnicity, religion, sexual orientation, national origin, or physical or mental disability; report of results

Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

§ 13700. Definitions

As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence.

§ 13701. Written policies and standards; development, adoption, and implementation; availability to public; consultations with experts

(a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or by a court of any other state, a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1986. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
 - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
 - (B) A statement that, "For further information about a shelter you may contact _____."
 - (C) A statement that, "For information about other services in the community, where available, you may contact _____."
 - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."
 - (E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
 - (F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
 - (i) An order restraining the attacker from abusing the victim and other family members.
 - (ii) An order directing the attacker to leave the household.
 - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
 - (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
 - (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
 - (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
 - (vii) An order directing the defendant to make specified debt payments coming due while the order is in effect.
 - (viii) An order directing that either or both parties participate in counseling.

Penal Code Section 13701

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13887, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

Penal Code Section 13702

§ 13702. Written policies and standards for dispatchers' response to domestic calls

Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for dispatchers' response to domestic violence calls by July 1, 1991. These policies shall reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Section 136.2, and restraining orders, shall be ranked among the highest priority calls. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance.

§ 13710. Record of orders; enforceability of terms and conditions; service to party to be restrained

(a)(1) Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders which have not yet been served, issued pursuant to Section 136.2, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

(2) The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall notify the sheriff or police chief of the city in whose jurisdiction the department is located of any protection order served by the department pursuant to this section.

(b) The terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

(c) Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody.

Penal Code Section 13730

§ 13730. Recordation system for domestic violence calls; annual report; incident report form

(a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. The report shall include at least all of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5.

Family Code Section 6240

§ 6240. Definitions

As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(8) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(9) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(10) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(11) A peace officer employed by a police department of a school district, as defined in subdivision (b) of Section 830.32.

(c) "Abduct" means take, entice away, keep, withhold, or conceal.

Family Code Section 6250

§ 6250. Grounds for issuance

A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.¹

Family Code Section 6250.5

§ 6250.5. Issuance of ex parte emergency protective orders to peace officers

A judicial officer may issue an ex parte emergency protective order to a peace officer defined in subdivisions (a) and (b) of Section 830.32 if the issuance of that order is consistent with an existing memorandum of understanding between the college or school police department where the peace officer is employed and the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located and the peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety.

EXHIBIT 5
COPIES OF STATUTES CITED

PEACE OFFICERS—DOMESTIC VIOLENCE—CUSTODY OF WEAPON

CHAPTER 833

S.B. No. 1807

AN ACT to amend Section 12028.5 of the Penal Code, relating to firearms,

[Filed with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1807, Chesbro. Firearms.

Existing law requires specified law enforcement officers who are at the scene of a domestic violence incident involving a threat to human life or physical assault to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search, as necessary for the protection of the peace officer or other persons present. Existing law details a procedure for return or disposal of these weapons, depending

This bill would also require a peace officer to take custody of a firearm or other deadly weapon in these circumstances if it were discovered pursuant to any other lawful search, and would subject a weapon so taken to this same procedure. By imposing new duties on peace officers, the bill would impose a state-mandated local program.

Ordinarily, existing law provides for the return of the weapon within a specified period. However, a law enforcement agency with reasonable cause to believe that the return of a firearm or other deadly weapon taken pursuant to these provisions would be likely to result in endangering the victim or the person reporting the assault or threat, may initiate a petition in superior court to determine if a firearm or other deadly weapon should be returned. Existing law provides that a court shall order the return of the firearm or other weapon unless shown by clear and convincing evidence that the return would result in endangering the victim or the person reporting the assault.

This bill would require an order returning the firearm or other weapon unless shown by a preponderance of the evidence that the return would result in endangering the victim or the person reporting the assault.

Under existing law, if, at this hearing, the court does not order the return of the weapon, the owner or person who had lawful possession of it may petition for a 2nd hearing within 12 months.

This bill would specify that, at the 2nd hearing, unless it is shown by clear and convincing evidence that the return of the weapon would endanger the victim or the person reporting the assault or threat, the court shall order the return of the weapon and award reasonable attorney's fees to the prevailing party.

Under existing law, weapons taken pursuant to these procedures must be returned, auctioned off or destroyed, and are subject to certain storage requirements.

By expanding the number of weapons to which these requirements apply, this bill would impose a state-mandated local program.

This bill would also make technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would incorporate changes to Section 12028.5 of the Penal Code proposed by AB 2695 that would become operative if both bills become effective on or before January 1, 2003, and this bill is enacted after AB 2695.

The people of the State of California do enact as follows:

SECTION 1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

- (A) Intentionally or recklessly to cause or attempt to cause bodily injury.
- (B) Sexual assault.
- (C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
- (D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

- (A) A spouse or former spouse.
- (B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (C) A person with whom the respondent is having or has had a dating or engagement relationship.
- (D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
- (E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases * * * in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by * * * a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month

period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 1.5. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the

firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than * * * 5 business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within * * * 5 business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases * * * in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and AB 2695. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after AB 2695, in which case Section 1 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CRIMINAL PROCEDURE—DOMESTIC VIOLENCE—WEAPONS

CHAPTER 483

A.B. No. 469

AN ACT to amend Section 13730 of the Penal Code, relating to domestic violence.

[Filed with Secretary of State October 4, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 469, Cohn. Domestic violence.

Existing law requires all law enforcement agencies to prepare a written incident report containing specified information about all domestic violence-related calls for assistance made to the department. Existing law also requires that the total number of domestic violence calls received and the number of those cases involving weapons be compiled by the agency monthly and submitted to the Attorney General.

This bill would require a law enforcement officer who responds to the scene of a domestic violence-related incident to prepare a domestic violence incident report which includes a notation of whether he or she found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and whether the inquiry disclosed the presence of a firearm or other deadly weapon. This bill would also require officers to confiscate any firearm or deadly weapon discovered at the location of a domestic violence incident. Because this bill would require local law enforcement officers to perform additional duties, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. The report shall include at least all of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHILDREN AND MINORS—JUVENILE COURTS—
TRANSFER TO ADULT CRIMINAL COURT

CHAPTER 468

S.B. No. 314

AN ACT to amend Sections 13010.5 and 13012 of, and to add Section 13012.5 to, the Penal Code, relating to criminal statistics, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 4, 2001.]

Governor's deletion message follows this Chapter

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Alpert. Criminal statistics.

Existing law requires the Department of Justice to present a report to the Governor annually containing the criminal statistics of the preceding year, as specified. Existing law also requires the Department of Justice to collect data pertaining to the juvenile justice system.

This bill would require the report to contain statistics on the administrative actions taken by various branches of law enforcement and the criminal justice system in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court, as specified, beginning with the report due on July 1, 2003. This bill would also require that the data collected serve to assist the department in making this report.

This bill would appropriate the sum of \$75,000 from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 13010.5 of the Penal Code is amended to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivisions (c) and (d) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 2. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

- (a) The amount and the types of offenses known to the public authorities.
- (b) The personal and social characteristics of criminals and delinquents.
- (c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.
- (d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
- (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include * * * statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 3. Section 13012.5 is added to the Penal Code, to read:

13012.5. (a) The annual report published by the department under Section 13010 shall, in regard to the contents required by subdivision (d) of Section 13012, include the following statewide information:

(1) The annual number of fitness hearings held in the juvenile courts under Section 707 of the Welfare and Institutions Code, and the outcomes of those hearings including orders to remand to adult criminal court, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are the subject of those fitness hearings.

(2) The annual number of minors whose cases are filed directly in adult criminal court under Sections 602.5 and 707 of the Welfare and Institutions Code, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are filed directly to the adult criminal court.

(3) The outcomes of cases involving minors who are prosecuted in adult criminal courts, regardless of how adult court jurisdiction was initiated, including whether the minor was acquitted or convicted, or whether the case was dismissed and returned to juvenile court, including sentencing outcomes, cross-referenced with the age, gender, ethnicity, and offense of the minors subject to these court actions.

(b) The department's annual report published under Section 13010 shall include the information described in subdivision (d) of Section 13012, as further delineated by this section, beginning with the report due on July 1, 2003, for the preceding calendar year.

SEC. 4. The sum of seventy-five thousand dollars (\$75,000) is hereby appropriated from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the department to collect the information required under these provisions by the reporting deadline, it is necessary for this act to take effect immediately as an urgency statute.

GOVERNOR'S DELETION MESSAGE

I am signing Senate Bill 314, however, I am vetoing Section 4 of the bill which would appropriate \$75,000 from the Controller for disbursement to the Department of Justice in order to implement the provisions of this bill.

I believe that the inclusion of statistical data related to minors who are subject to the jurisdiction of an adult criminal court in the Department of Justice's annual report would be beneficial in order to assess the public safety impact and fiscal consequences of trying minors as adults. However, due to the economic situation facing the State, the Department of Justice should fund the implementation of this bill through the \$350,000 of federal funding that is available from the Office of Criminal Justice Planning and through existing resources of the Department.

GRAY DAVIS, Governor

CRIMES—DOMESTIC VIOLENCE—EXPERT TESTIMONY

CHAPTER 1001

S.B. No. 1944

AN ACT to amend Sections 1107 and 1370 of the Evidence Code, to amend Section 6222 of the Family Code, to amend Section 13701 of, and to amend the title heading of Title 11.5 of Part 1 of, the Penal Code, relating to domestic violence.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1944, Solis. Domestic violence.

(1) Existing law permits the admission of expert testimony regarding battered women's syndrome in criminal actions, as specified.

This bill would provide that the expert testimony on the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence is admissible, and would specify that the definition of "abuse" as used by these provisions includes the crimes of battery, rape of a spouse, infliction of corporal punishment on a person with whom he or she has a domestic relationship or a child, intentional violation of a protective order, issuance of terrorist threats, as defined, and annoying a person by means of a telephone or electronic communications.

(2) Existing law provides that a court may issue specified protective orders for up to 3 years, subject to termination or modification upon the motion or stipulation of a party, and provides that these orders may be renewed either for 3 years or permanently. Existing law also provides that no filing fee shall be charged for a petition or response, or for a paper seeking the modification or enforcement of specified protective orders.

This bill would provide that there is no filing fee for an application or other pleading or specified order that seeks to obtain, modify, or enforce a protective order or other specified order when the request for the other order is necessary to obtain or give effect to a protective order.

(3) Existing law, known as the "hearsay rule," provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Existing law also provides exceptions to the hearsay rule to permit the admission of specified kinds of evidence.

This bill would create a new exception to the hearsay rule for evidence of a statement made by a declarant who meets specified criteria to a physician, nurse, or paramedic.

This bill would make technical changes to other provisions of law.

The people of the State of California do enact as follows:

SECTION 1. Section 1107 of the Evidence Code is amended to read:

1107. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the nature and effect of physical, emotional, or mental * * * abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, "abuse" is defined in Section 6203 of the Family Code and "domestic violence" is defined in Section 6211 of the Family Code or acts defined in Section 242, subdivision (e) of Section 243, or Section 262, 273.5, 273.6, 422, or 653m of the Penal Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

(e) This section shall be known, and may be cited as, the Expert Witness Testimony on Battered Women's Experiences Section of the Evidence Code.

SEC. 2. Section 1370 of the Evidence Code is amended to read:

1370. (a) Evidence of a statement by a declarant is not made inadmissible by the hearsay rule if all of the following conditions are met:

(1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(2) The declarant is unavailable as a witness pursuant to Section 240.

(3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of statements made more than five years before the filing of the current action or proceeding shall be inadmissible under this section.

(4) The statement was made under circumstances that would indicate its trustworthiness.

(5) The statement was made in writing, was electronically recorded, or made to a physician, nurse, paramedic, or to a law enforcement official.

(b) For purposes of paragraph (4) of subdivision (a), circumstances relevant to the issue of trustworthiness include, but are not limited to, the following:

(1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(2) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

(3) Whether the statement is corroborated by evidence other than statements that are admissible only pursuant to this section.

(c) A statement is admissible pursuant to this section only if the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings in order to provide the adverse party with a fair opportunity to prepare to meet the statement.

SEC. 3. Section 6222 of the Family Code is amended to read:

6222. (a) There is no filing fee * * * for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order * * * or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

SEC. 4. The heading of Title 11.5 of Part 1 of the Penal Code is amended to read:

TITLE 11.5: CRIMINAL THREATS

SEC. 5. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or by a court of any other state, a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
 - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
 - (B) A statement that, "For further information about a shelter you may contact _____."
 - (C) A statement that, "For information about other services in the community, where available, you may contact _____."
 - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."
 - (E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

- (i) An order restraining the attacker from abusing the victim and other family members.
- (ii) An order directing the attacker to leave the household.
- (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
- (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
- (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
- (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- (vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.
- (viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289; a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

STATE AGENCIES—ATTORNEY GENERAL—DUTIES

CHAPTER 626

A.B. No. 715

AN ACT to amend Sections 12512, 12520, and 12544 of the Government Code, and to amend Section 13023 of the Penal Code, relating to the Attorney General.

[Filed with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 715, Firebaugh. Attorney General duties: criminal information reporting.

(1) Existing law requires the Attorney General to prosecute and defend all causes to which the state or state officers in their official capacities are parties, as well as all causes to which any county is a party, unless the interest of the county is adverse to the state or state officers in their official capacities.

This bill would repeal the above-described provisions regarding the prosecution and defense of causes to which any county is a party.

(2) Existing law prohibits the Attorney General from employing special counsel, except when those cases concern escheated property and the supervision of district attorneys.

This bill would provide that this prohibition does not affect the right of the Attorney General to employ counsel to represent or assist in the representation of a state agency, as defined, or a state employee if the representation meets specified standards.

(3) Existing law provides that, if an escheat proceeding is prosecuted by the regular staff of the Attorney General's office, the Attorney General shall recover the costs and charges of commencing and filing a suit to recover escheated property from the escheated funds, by presenting a claim.

This bill would repeal the requirement that the action be prosecuted by the regular staff of the Attorney General's office, and make other technical changes.

(4) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information that may be required relative to criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability.

This bill would add national origin to the list of victim characteristics in this reporting requirement. By increasing the reporting duties of local officials, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 12512 of the Government Code is amended to read:

12512. The Attorney General shall attend the Supreme Court and prosecute or defend all causes to which the State, or any State officer is a party in his * * * or her * * * official capacity.

SEC. 2. Section 12520 of the Government Code is amended to read:

12520. (a) The Attorney General may not employ special counsel in any case except pursuant to either of the following:

(1) Article 3 (commencing with Section 12540).

(2) Article 4 (commencing with Section 12550).

(b) Subdivision (a) does not affect the right of the Attorney General to employ counsel to represent, or to assist in the representation of, a state agency as defined in Section 11000, including the Attorney General or the Department of Justice, or to represent a state employee if that representation meets any of the standards set forth in paragraph (3), (5), (7), (8), (9), or (10) of subdivision (b) of Section 19130.

SEC. 3. Section 12544 of the Government Code is amended to read:

12544. If an escheat proceeding is prosecuted by the * * * staff of the Attorney General's office, the Attorney General shall recover, by presenting a claim to the Controller, all costs and charges of commencing and prosecuting the suit, from the funds so escheated. Those claims shall be paid from the * * * Abandoned Property Account in the Unclaimed Property Fund and credited to and in augmentation of any support appropriation of the Attorney General. The costs and charges may not in any case exceed 10 per cent of the sum or sums actually escheated to the State in those suits.

SEC. 4. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

**LAW ENFORCEMENT AGENCY—FIREARMS—
RETENTION AFTER SEIZURE**

CHAPTER 254

S.B. No. 2052

AN ACT to amend Section 12028.5 of the Penal Code, and to amend Section 8102 of the Welfare and Institutions Code, relating to firearms.

[Filed with Secretary of State August 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2052, Schiff. Firearms; retention after seizure.

Existing law provides that where a firearm is seized at the scene of a domestic violence incident, as specified, and the law enforcement agency has reasonable cause to believe that the return of the firearm would be likely to result in endangering specified persons, the agency may, within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

This bill would provide that the law enforcement agency would have 30 days, or, if granted an extension by the court, 60 days to initiate the petition to determine if the firearm should be returned.

Existing law provides that where a firearm has been seized by law enforcement in connection with a person who has been detained or apprehended for examination of his or her mental condition, the law enforcement agency may, within 30 days, initiate a petition in the superior court for a hearing to determine whether the return of the firearm would be likely to result in endangering the person or others.

This bill would provide that the law enforcement agency would have 30 days, or, if granted an extension by the court, 60 days to initiate the petition to determine if the firearm should be returned.

The people of the State of California do enact as follows:

SECTION 1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

- (A) Intentionally or recklessly to cause or attempt to cause bodily injury.
- (B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

- (A) A spouse or former spouse.
- (B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 2. Section 8102 of the Welfare and Institutions Code is amended to read:

8102. (a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

"Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the

required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days * * * to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the release of the person from a health facility.

(d) If the law enforcement agency does not initiate proceedings within the 30-day period, or the period of time authorized by the court in an ex parte order issues pursuant to subdivision (c), it shall make the weapon available for return.

(e) The law enforcement agency shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(f) If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request. The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing.

(g) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default.

* * *

CRIMES—DOMESTIC VIOLENCE—PROTECTIVE ORDERS

CHAPTER 662

S.B. No. 218

AN ACT to amend Section 185 of the Code of Civil Procedure, to amend Sections 6304, 6343, 6380.5, and 6389 of the Family Code, to amend Section 124251 of the Health and Safety Code, to amend Sections 166, 273d, 273.5, 273.6, 836, 1328, 11163.3, 12021, and 12028.5 of, to repeal Sections 273.55 and 273.56 of, and to add Section 11163.6 to, the Penal Code, relating to domestic violence.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 218, Solis. Domestic violence.

(1) Existing law requires every written proceeding in a judicial court to be in the English language.

This bill would declare that nothing in this section prohibits a court from issuing an unofficial translation of a court order in a language other than English. It would also require the Judicial Council, by July 1, 2001, to make available in other languages, specified forms relating to domestic violence.

(2) Existing law provides that when a court makes a protective order and both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, and including notice of the penalty for a violation.

This bill would provide that, in addition, the court would be required to inform the respondent that the respondent is prohibited from owning, possessing, or attempting to own or possess a firearm.

(3) Existing law authorizes a court, after notice and a hearing, to issue an order requiring a restrained person to participate in appropriate counseling, as specified, and batterer's treatment counseling.

This bill would, instead, authorize the court, after notice and a hearing, to order a restrained person to participate in a batterer's program that has been approved by the probation department as meeting the standards stated in a specified provision of law. The bill would also provide that the courts shall, in consultation with local domestic violence

seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(d) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(e) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(f) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(g) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(h) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(i) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(j) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 18.5. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means * * * any of the following:

(A) Intentionally or recklessly * * * to cause * * * or attempt to cause bodily injury * * *

(B) Sexual assault

(C) To place a person in reasonable apprehension of imminent serious bodily injury to * * * that person or to another.

* * *

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female * * * parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (e) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements:

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 19. Section 4.5 of this bill incorporates amendments to Section 6380.5 of the Family Code proposed by both this bill and AB 825. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6380.5 of the Family Code, and (3) this bill is enacted after AB 825, in which case Section 4 of this bill shall not become operative.

SEC. 20. Section 9.5 of this bill incorporates amendments to Section 273.5 of the Penal Code proposed by both this bill and SB 563. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 273.5 of the Penal Code, and (3) this bill is enacted after SB 563, in which case Section 9 of this bill shall not become operative.

SEC. 21. Section 12.5 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by both this bill and AB 59. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 273.6 of the Penal Code, and (3) this bill is enacted after AB 59, in which case Section 12 of this bill shall not become operative.

SEC. 22. Section 18.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and SB 355. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after SB 355, in which case Section 18 of this bill shall not become operative.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

**CRIMES—DOMESTIC VIOLENCE—PROTECTIVE
AND RESTRAINING ORDERS**

CHAPTER 661

A.B. No. 825

AN ACT to amend Sections 527.6 and 527.8 of the Code of Civil Procedure, to amend Sections 145, 6221, 6380, 6380.5, 6381, and 6383 of the Family Code, to amend Sections 136.2, 836, 13701, and 13711 of the Penal Code, and to amend Section 213.5 of the Welfare and Institutions Code, relating to domestic violence.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 825, Keeley. Domestic violence: protective and restraining orders.

(1) Existing law requires the Department of Justice to maintain a Domestic Violence Protective Order Registry, as specified.

This bill would rename that registry the Domestic Violence Restraining Order System, and require forms for certain protective and restraining orders to be adopted by the Judicial Council and approved by the Department of Justice. The bill would provide that only protective and restraining orders on these forms may be transmitted to the Department of Justice, except as specified. The bill, however, would also provide that a protective or restraining order issued by a court that is not on the specified forms would not be, in and of itself, unenforceable. The bill would also make clarifying changes regarding the validity and enforceability of protective and restraining orders issued by courts other than the courts of this state.

The bill would impose a state-mandated local program by requiring specified protective and restraining orders to be issued only on these forms.

(2) The bill would incorporate additional changes to Section 6380 of the Family Code made by this bill and AB 59, to take effect only if this bill and AB 59 are both enacted and this bill is enacted last.

(3) The bill would incorporate additional changes to Section 6380.5 of the Family Code, made by this bill and SB 218, to take effect only if this bill and SB 218 are both enacted and this bill is enacted last.

(4) The bill would incorporate additional changes to Section 836 of the Penal Code made by this bill and SB 218, to take effect only if this bill and SB 218 are both enacted and this bill is enacted last.

(5) The bill would incorporate additional changes to Section 213.5 of the Welfare and Institutions Code, made by this bill and AB 1671, to take effect only if this bill and AB 1671 are both enacted and this bill is enacted last.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days * * * from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a plaintiff's right to use other existing civil remedies.

(l) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

(m) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(n) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

SEC. 2. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.

(b) For the purposes of this section:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mail, interoffice mail, fax, or computer e-mail.

(c) Nothing in this section shall be construed to permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms "employer" and "employee" mean persons defined in Section 350 of the Labor Code. The term "employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. The term "employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, the term "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the employee.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff.

Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(j) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) Nothing in this section shall be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(l) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise.

(m) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(n) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

SEC. 3. Section 145 of the Family Code is amended to read:

145. "State" means a state of the United States, the District of Columbia, * * * or a commonwealth, territory, or insular possession subject to the jurisdiction of the United States.

SEC. 4. Section 6221 of the Family Code is amended to read:

6221. (a) Unless the provision or context otherwise requires, this division applies to any order described in this division, whether the order is issued in a proceeding brought pursuant to this division, in an action brought pursuant to the Uniform Parentage Act (Part 3 commencing with Section 7600) of Division 12), or in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(b) Nothing in this division affects the jurisdiction of the juvenile court.

(c) Any order issued by a court to which this division applies shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

SEC. 5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the court of another state, * * * as defined in Section 145, or a military tribunal or tribe, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this

chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, * * * as defined in Section 145, or on a reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a military tribunal, or a tribe. Those orders shall, upon request, be registered pursuant to Section 6380.5.

SEC. 5.5. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the court of another state, * * * as defined in Section 145, or a military tribunal or tribe, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms. All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall use on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, * * * as defined in Section 145, or on a reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a military tribunal, or a tribe. Those orders shall, upon request, be registered pursuant to Section 6380.5.

SEC. 6. Section 6380.5 of the Family Code is amended to read:

6380.5. (a) * * * A protective or restraining order * * * related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or a military tribunal, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state or tribe; or * * * under the law applicable to the military tribunal. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or * * * a military tribunal, shall, upon request of the person in possession of the foreign protective order, be registered with a court of this state in order to be entered in the Domestic Violence Restraining Order System established under this chapter. The Judicial Council shall adopt rules of court to do the following:

(1) Set forth the process whereby a person in possession of a valid foreign protective or restraining order may voluntarily register the order with a court of this state for entry into the Domestic Violence Restraining Order System.

(2) Require the sealing of foreign protective orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(c) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or * * * a military tribunal, shall be accorded full faith and credit by the courts of this state, and shall be enforced as set forth in Section 6381, as if it had been issued in this state.

SEC. 6.5. Section 6380.5 of the Family Code is amended to read:

6380.5. (a) * * * A protective or restraining order * * * related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or a military tribunal, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state or tribe, or * * * under the law applicable to the military tribunal. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or * * * a military tribunal, shall, upon request of the person in possession of the foreign protective order, be registered with a court of this state in order to be entered in the Domestic Violence Restraining Order System established under this chapter. The Judicial Council shall adopt rules of court to do the following:

(1) Set forth the process whereby a person in possession of a valid foreign protective or restraining order may voluntarily register the order with a court of this state for entry into the Domestic Violence Restraining Order System.

(2) Require the sealing of foreign protective orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(c) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a tribe, or * * * a military tribunal, shall be accorded full faith and credit by the courts of this state, and the term, as written shall be enforced as set forth in Section 6381, as if it had been issued in this state.

SEC. 7. Section 6381 of the Family Code is amended to read:

6381. (a) Notwithstanding Section 6380 and subject to subdivision (b), an order issued under this part is enforceable in any place in this state.

(b) An order issued under this part is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order, or the officer enforcing the order has been shown a copy of the order or has obtained information, through the Domestic Violence Restraining Order System maintained by the Department of Justice, of the contents of the order, as described in subdivision (b).

(c) The data contained in the Domestic Violence Restraining Order System shall be deemed to be original, self-authenticating, documentary evidence of the court orders. Oral notification of the terms of the orders shall be sufficient notice for enforcement under subdivision (g) of Section 136.2 and Section 273.6 of the Penal Code.

SEC. 8. Section 6383 of the Family Code is amended to read:

6383. (a) A temporary restraining order or emergency protective order issued under this part shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.

(b) The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

(c) It is a rebuttable presumption that the proof of service was signed on the date of service.

(d) Upon receiving information at the scene of a domestic violence incident that a protective order has been issued under this part, or that a person who has been taken into custody is the respondent to such an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately inquire of the Department of Justice Domestic Violence Restraining Order System to verify the existence of the order.

(e) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order. Verbal notice of the terms of the order is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(f) If a report is required under Section 13730 of the Penal Code, or if no report is required, then in the daily incident log, the officer shall provide the name and assignment of the officer notifying the respondent pursuant to subdivision (e) and the case number of the order.

(g) Upon service of the order outside of the court, a law enforcement officer shall advise the respondent to go to the local court to obtain a copy of the order containing the full terms and conditions of the order.

(h) There shall be no civil liability on the part of, and no cause of action for, false arrest or false imprisonment against any peace officer who makes an arrest pursuant to a protective or restraining order which is regular upon its face, if the peace officer in making the arrest acts in good faith and has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order. If there is more than one civil order regarding the same parties, the peace officer shall enforce the order which was issued last. If there are both civil and criminal orders regarding the same parties, the peace officer shall enforce the criminal order issued last. Nothing in this section shall be deemed to exonerate a peace officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity which may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

SEC. 9. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.

(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness's household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, "immediate family members" include the spouse, children, or parents of the victim or witness.

(g) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance of the order, pursuant to subdivision (a) of Section 6380 of the Family Code.

Any order issued by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h)(1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence over any other outstanding court order against the defendant.

(i) The Judicial Council shall adopt forms for orders under this section:

SEC. 10. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c)(1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by a court of another state, * * * a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Restraining Order System maintained pursuant to Section 6380 of the

Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is living or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 10.5. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c)(1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by a court of another state, * * * a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer * * * shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Restraining Order System maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 11. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or by a court of any other state, * * * a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
 - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
 - (B) A statement that, "For further information about a shelter you may contact _____."
 - (C) A statement that, "For information about other services in the community, where available, you may contact _____."
 - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

- (i) An order restraining the attacker from abusing the victim and other family members.
- (ii) An order directing the attacker to leave the household.
- (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
- (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
- (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
- (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- (vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.
- (viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

SEC. 12. Section 13711 of the Penal Code is amended to read:

13711. Whenever a protection order with respect to domestic violence incidents, including orders issued pursuant to Section 136.2 and restraining orders, is applied for or issued, it shall be the responsibility of the clerk of the superior court to distribute a pamphlet to the person who is to be protected by the order that includes the following:

- (a) Information as specified in subdivision (i) of Section 13701.
- (b) Notice that it is the responsibility of the victim to request notification of an inmate's release.
- (c) Notice that the terms and conditions of the protection order remain enforceable, notwithstanding any acts of the parties, and may be changed only by order of the court.
- (d) Notice that the protection order is enforceable in any state, in a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, or on a

reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of a protective order issued by a court of this state.

SEC. 13. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian or current or former member of the child's household from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e)(1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

SEC. 13.5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian or current or former member of the child's household from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed * * * three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e)(1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

SEC. 14. Section 5.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 59. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6380 of the Family Code, and (3) this bill is enacted after AB 59, in which case Section 5 of this bill shall not become operative.

SEC. 15. Section 6.5 of this bill incorporates amendments to Section 6380.5 of the Family Code proposed by both this bill and SB 218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6380.5 of the Family Code, and (3) this bill is enacted after SB 218, in which case Section 6 of this bill shall not become operative.

SEC. 16. Section 10.5 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and SB 218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 836 of the Penal Code, and (3) this bill is enacted after SB 218, in which case Section 10 of this bill shall not become operative.

SEC. 17. Section 13.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and AB 1671. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 213.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1671, in which case Section 13 of this bill shall not become operative.

SEC. 18. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

**PEACE OFFICERS—COMMUNITY COLLEGE AND
SCHOOL DISTRICT POLICE—PROVISIONS**

CHAPTER 659

S.B. No. 355

AN ACT to amend Section 6240 of, and add Section 6250.5 to, the Family Code, and to amend Sections 646.91, 12028.5, 13519, 13700, and 13710 of the Penal Code, relating to peace officers.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 355. Hughes. Peace officers: community colleges and school districts.

(1) Existing law defines or describes certain peace officers who are authorized to respond to domestic violence calls or act in domestic violence cases, as specified, or are deemed eligible for a course or courses of instruction in the handling of domestic violence complaints.

This bill would include among these peace officers any member of a California Community College police department and any person employed as a member of a police department of a school district. The bill also would require that these departments notify the sheriff or police chief of the city in whose jurisdiction the departments are located of any protection order served by the departments with respect to domestic violence incidents. Because this bill would increase the duties performed by a local agency, it would impose a state-mandated local program.

(2) Existing law provides that a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined, has reasonable grounds to believe that a person is in immediate and present danger of stalking.

This bill would expand these provisions to include community college and school district police, as specified. The bill also would require any of these police who request this emergency protective order to also notify the sheriff or police chief of the city in whose jurisdiction the college or school district of the police is located after issuance of the order. Because this bill would increase the duties performed by a local agency, it would impose a state-mandated local program.

(3) Existing law authorizes a court to issue emergency protective orders in specified situations.

This bill would permit a court to issue an emergency protective order to community college and school district police if a specified memorandum of understanding exists and the police officer asserts that there is a demonstrated threat to campus safety. Because the bill would increase the duties performed by local officials, it would impose a state-mandated local program.

(4) Existing law provides circumstances under which, among others, community college and school district peace officers may take custody of a firearm or other deadly weapon.

This bill would require any of these officers who takes custody of a firearm or other deadly weapon under these circumstances to deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6240 of the Family Code is amended to read:

6240. As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(8) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(9) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(10) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(11) A peace officer employed by a police department of a school district, as defined in subdivision (b) of Section 830.32.

(c) "Abduct" means take, entice away, keep, withhold, or conceal.

SEC. 1.5. Section 6250.5 is added to the Family Code, to read:

6250.5. A judicial officer may issue an ex parte emergency protective order to a peace officer defined in subdivisions (a) and (b) of Section 830.32 if the issuance of that order is consistent with an existing memorandum of understanding between the college or school police department where the peace officer is employed and the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located and the peace officer asserts reasonable grounds to believe that there is a demonstrated threat to campus safety.

SEC. 2. Section 646.91 of the Penal Code is amended to read:

646.91. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(l) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(m) "Judicial officer," as used in this section, means a judge, commissioner, or referee.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a

labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing.

(o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

SEC. 3. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 4. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and

community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office; any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, * * * a peace officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(c) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The signs of domestic violence.

(6) The legal rights of, and remedies available to, victims of domestic violence.

(7) The use of an arrest by a private person in a domestic violence situation.

(8) Documentation, report writing, and evidence collection.

(9) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(10) Tenancy issues and domestic violence.

(11) The impact on children of law enforcement intervention in domestic violence.

(12) The services and facilities available to victims and batterers.

(13) The use and applications of this code in domestic violence situations.

(14) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(15) Verification and enforcement of stay-away orders.

(16) Cite and release policies.

(17) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

(d) The guidelines developed by the commission shall also incorporate the foregoing factors.

(e)(1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3)(A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(f)(1) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(g) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 5. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, * * * a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 6. Section 13710 of the Penal Code is amended to read:

13710. (a)(1) Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, including orders which have not yet been served, issued pursuant to Section 136.2, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

(2) The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall notify the sheriff or police chief of the city in whose jurisdiction the department is located of any protection order served by the department pursuant to this section.

(b) The terms and conditions of the protection order remain enforceable, notwithstanding the acts of the parties, and may be changed only by order of the court.

(c) Upon request, law enforcement agencies shall serve the party to be restrained at the scene of a domestic violence incident or at any time the party is in custody.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CRIMES—BATTERY—FINES

CHAPTER 660

S.B. No. 563

AN ACT to amend Sections 243 and 273.5 of the Penal Code, relating to the crime of battery.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 563, Speier. Battery: domestic partners.

Under existing law, any person who commits a battery is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. Any person who commits a battery against a person where serious bodily injury is inflicted, is punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison for 2, 3, or 4 years. Any person who commits a battery against a person with a specified domestic relationship to the batterer is punishable by imprisonment in a county jail not exceeding one year, or by fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would increase the punishment for a battery committed against a person with a specified relationship to the batterer, if the conviction for that battery occurs within 7 years of 2 or more prior convictions for specified offenses committed against a person with a specified relationship to the batterer. That increased punishment would be imprisonment in a county jail for not more than one year or by a fine of \$5,000, or by both that fine and punishment, or by imprisonment in the state prison for 16 months, or 2 or 3 years. By increasing the penalty of an offense from a misdemeanor to a felony, this bill would impose a state-mandated local program.

Existing law provides that the infliction of corporal injury resulting in a traumatic condition by any person upon his or her spouse, cohabitant, or the mother or father of his or her child is a felony.

This bill would expand the list of specified persons for purposes of this provision to include a former spouse, or a former cohabitant. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that a person convicted of battery may be required to participate in and complete a batterer's treatment program.

This bill would provide that a person required to complete a batterer's program who fails to do so twice shall be imprisoned in a county jail for not less than 90 days and not more than one year. By creating a new crime, the bill would impose a state-mandated local program.

CRIMES—DEPENDENT ADULT ABUSE—PROTECTIVE ORDERS

CHAPTER 561

A.B. No. 59

AN ACT to amend Sections 6250, 6251, 6252, and 6380 of the Family Code, to amend Section 273.6 of the Penal Code, and to add Section 15657.03 to the Welfare and Institutions Code, relating to elderly and dependent adults.

[Filed with Secretary of State September 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 59, Cedillo. Elder or dependent adults: abuse: protective orders.

(1) Existing law sets forth procedures under which a person who has suffered harassment or an employer whose employee has suffered unlawful violence or a credible threat of violence from an individual may seek a temporary restraining order and an injunction and under which protective orders to prevent domestic violence may be ordered. Under existing law, any intentional and knowing violation of these orders is a misdemeanor.

This bill would make any intentional or knowing violation of the protective orders authorized by this bill as described in (2) a misdemeanor. Because the bill would create a new crime, it would impose a state-mandated local program.

(2) Existing law authorizes the award, by courts, of attorney's fees and costs where it is proven by clear and convincing evidence that a defendant is liable for abuse of an elder or dependent adult, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would set forth procedures under which an elder or dependent adult in immediate and present danger of abuse may seek protective orders.

(3) Existing law, contained in the Domestic Violence Prevention Act, authorizes a judicial officer to issue an ex parte emergency protective order when a law enforcement officer asserts reasonable grounds to believe that an immediate and present danger exists for domestic violence or abduction of a child. The act also authorizes the court to issue a protective order, as defined, either ex parte or after a hearing, to restrain any person to prevent a recurrence of domestic violence.

This bill would revise the grounds for the issuance of an ex parte emergency protective order to include circumstances in which an elder or dependent adult in an immediate and present danger of abuse and would limit those grounds with respect to financial abuse to circumstances in which law enforcement asserts reasonable grounds to believe that physical or emotional harm would otherwise result to the petitioner.

Existing law authorizes an emergency protective order to include certain specific orders.

This bill would revise the scope of the orders that may be included in an emergency protective order respecting elder and dependent adults.

(4) Existing law requires the Department of Justice to maintain a Domestic Violence Protective Order Registry, as specified.

This bill would include the issuance of a protective order issued for the protection of an elder or dependent adult who has suffered abuse within the scope of those orders for which the Department of Justice is required to be notified immediately.

By expanding the duties of the law enforcement personnel in reporting the orders to the Department of Justice, this bill would result in a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would incorporate additional changes in Section 6380 of the Family Code, proposed by AB 825, to be operative only if AB 825 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

This bill would incorporate additional changes in Section 273.6 of the Penal Code, proposed by SB 218, to be operative only if SB 218 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 6250 of the Family Code is amended to read:

6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.

SEC. 2. Section 6251 of the Family Code is amended to read:

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, * * * child abduction, or abuse of an elder or dependent adult.

SEC. 3. Section 6252 of the Family Code is amended to read:

6252. An emergency protective order may include any of the following specific orders, as appropriate:

(a) A protective order, as defined in Section 6218.

(b) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

(d) An order determining the temporary care and control of any minor child who is in danger of being abducted.

(e) An order authorized by Section 15657.03 of the Welfare and Institutions Code.

SEC. 4. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of

¹ So in enrolled bill.

This bill would incorporate additional changes in Section 6380 of the Family Code, proposed by AB 825, to be operative only if AB 825 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

This bill would incorporate additional changes in Section 273.6 of the Penal Code, proposed by SB 218, to be operative only if SB 218 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 6250 of the Family Code is amended to read:

6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.

SEC. 2. Section 6251 of the Family Code is amended to read:

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, * * * child abduction, or abuse of an elder or dependent adult.

SEC. 3. Section 6252 of the Family Code is amended to read:

6252. An emergency protective order may include any of the following specific orders, as appropriate:

(a) A protective order, as defined in Section 6218.

(b) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

(d) An order determining the temporary care and control of any minor child who is in danger of being abducted.

(e) An order authorized by Section 15657.03 of the Welfare and Institutions Code,

Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code; or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding, the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included, however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 45. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the court of another state, as defined in Section 145, or a military tribunal or tribe, or territory, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

- (6) The department or division number and the address of the court.
- (7) Whether or not the order was served upon the respondent.
- (8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b); whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, * * * as defined in Section 145, or on a reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a military tribunal, or a tribe. Those orders shall, upon request, be registered pursuant to Section 6380.5.

SEC. 5. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), * * * by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order described in subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders * * * described in subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 5.5. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order * * * described in subdivision (a).

(4) Any order issued by another state that is recognized under Section 6380.5 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to * * * a victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders * * * described in subdivisions (a), (b), (d), and (e).

* * *

(g)(1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), * * * (c), (d), or (e), the court shall enforce probation consistent with the provisions of Section 1203.097 and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 6. Section 15657.03 is added to the Welfare and Institutions Code, to read:

15657.03 (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, "protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d)(1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the county clerk to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(j) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(k) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(l)(1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (p).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(m) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(n) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(o) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(p) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 825. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6380 of the Family Code, and (3) this bill is enacted after AB 825, in which case Section 4 of this bill shall not become operative.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by both this bill and SB 218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 273.6 of the Penal Code, and (3) this bill is enacted after SB 218, in which case Section 5 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CRIMES—GENDER OF VICTIM—PROTECTION

CHAPTER 933

A.B. No. 1999

AN ACT to amend Sections 186.21, 422.75, 11410, 13023, and 13519.6 of, and to add Section 422.76 to, the Penal Code, relating to gender.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, Kuehl. Hate crimes: gender.

(1) Existing law punishes as a misdemeanor, a person who uses force or threat of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of a right or privilege because of that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Similarly, existing law imposes an enhanced penalty on a person who, while acting in concert with another person, commits or attempts to commit a felony because of the victim's membership in one or more of the above specified groups. An enhanced penalty is also imposed on any person who commits or attempts to commit a felony against the property of a public agency or private institution because the property is identified or associated with a person who is a member of, or a group that is included within, one of the groups specified above. Additionally, existing law imposes enhanced penalties on a person who commits or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, and on a person for each prior felony conviction committed because of the victim's membership in any of the groups just specified.

This bill would amend the last 2 provisions summarized above, and an intent section of an act relating to the prevention of street terrorism, by adding gender to the list of groups in which the victim's membership entitles the victim to protection under those statutes. This bill would also define "gender" for purposes of the provisions summarized in this digest and other specified provisions, to mean the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity or appearance, whether or not that identity or appearance is different from that traditionally associated with the victim's sex at birth. By expanding the definition of an enhancement, this bill would impose a state-mandated local program. The bill would state that this definition section does not constitute a change in, but is declaratory of, existing law.

(2) Existing law expresses the Legislature's intent that every person regardless of race, color, creed, religion, or national origin, has the right to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

This bill would add a person's gender to the above list of characteristics that are protected by law.

(3) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information regarding physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

This bill would add gender to the list of victim characteristics in the above reporting provision. By increasing the reporting duties of local officials, this bill would impose a state-mandated local program.

(4) This bill would incorporate additional changes in Section 422.75 of the Penal Code proposed by SB 2168, to be operative if SB 2168 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(5) This bill would incorporate a cross reference to Section 190.03 of the Penal Code that would be added by AB 2324, to be operative only if both this bill and AB 2324 are enacted and become operative on or before January 1, 1999, and AB 2324 adds Section 190.03 to the Penal Code.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 186.21 of the Penal Code is amended to read:

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

SEC. 2. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender,

disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i)(1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under *In Re M.S.* (1995) 10 Cal. 4th 698 and *People v. Superior Court (Aishman)* (1995) 10 Cal. 4th 735.

SEC. 2.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or

by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i)(1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.

SEC. 3. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 3.1. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Sections 186.21, 190.03, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 4. Section 11410 of the Penal Code is amended to read:

11410. The Legislature finds and declares that it is the right of every person regardless of race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

SEC. 5. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 6. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The commission shall, on or before December 31, 1993, develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, means any act of intimidation, harassment, physical force, or the threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability, or sexual orientation, with the intention of causing fear and intimidation.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following procedures and techniques:

- (1) Indicators of hate crimes.
- (2) The impact of these crimes on the victim, the victim's family, and the community.
- (3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.
- (4) Law enforcement procedures, reporting, and documentation of hate crimes.
- (5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b).

(d) The course of training leading to the basic certificate issued by the commission shall, not later than July 1, 1994, include the course of instruction described in subdivision (a).

(e) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

SEC. 7. Section 422.76 of the Penal Code as added by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 422.75 of the Penal Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 422.75 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 422.75 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 9. Section 3.1 of this bill shall become operative only if (1) both this bill and AB 2324 are enacted and become effective on or before January 1, 1999, and (2) AB 2324 adds Section 190.03 to the Penal Code, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 1797 CHAPTERED 09/30/96

CHAPTER 1142
 FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1996
 APPROVED BY GOVERNOR SEPTEMBER 30, 1996
 PASSED THE SENATE AUGUST 30, 1996
 PASSED THE ASSEMBLY AUGUST 22, 1996
 AMENDED IN ASSEMBLY AUGUST 12, 1996
 AMENDED IN ASSEMBLY JULY 10, 1996
 AMENDED IN SENATE MAY 1, 1996
 AMENDED IN SENATE MARCH 21, 1996
 AMENDED IN SENATE MARCH 14, 1996

INTRODUCED BY Senator Thompson
 (Principal coauthor: Assembly Member Willard Murray)
 (Coauthors: Assembly Members Boland, and Rainey)

FEBRUARY 22, 1996

An act to amend Sections 457.1, 830.6, 830.8, 832.6, 12028, and 12032 of the Penal Code, and to amend Sections 28, 22651, 22651.2, 22651.3, 22652, 22655.5, and 22850.5 of the Vehicle Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1797, M. Thompson. Peace officers.

(1) Existing law requires convicted arsonists to register with the chief of police or sheriff of the city or county where he or she resides.

This bill would include the chief of police of any state university in this provision if the convicted arsonist is domiciled on the campus where the chief has jurisdiction.

(2) Existing law authorizes qualified persons to be deputized or appointed as reserve or auxiliary sheriffs or police officers of various local governmental agencies, which reserve officers are assigned to the prevention and detection of crime and the general enforcement of the laws of this state, and are considered peace officers, under specified circumstances.

This bill would expressly include all persons designated by a Native American tribe recognized by the United States Secretary of the Interior, who are deputized by the county sheriff as reserve or auxiliary sheriffs or reserve deputy sheriffs, among those reserve officers who are considered peace officers, if they satisfactorily complete an introductory course of training.

The bill would declare the intent of the Legislature that this provision does not constitute a change in, but is declaratory of, existing law. The bill would also provide that nothing in the bill shall prevent a city, county, or special district from providing public safety services to a Native American tribe through an agreement or contract.

(3) Existing law provides that federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer for violations of state or local laws under specified circumstances.

This bill would provide that this provision does not apply to

federal officers of the Bureau of Land Management and that these officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

(4) Under existing law, any weapon deemed to be a nuisance is required to be surrendered to a city chief of police, a county sheriff, or the Commissioner of the California Highway Patrol.

This bill would include in this provision the chief of police of any campus of the University of California or the California State University.

(5) Existing law requires any person taking possession of any vehicle on behalf of the legal owner under the terms of a security or lease agreement to immediately notify the city police department or the county sheriff department where the taking of possession occurred.

This bill would require notice to the University of California or California State University Police Department if the taking of possession occurred on a campus over which it has jurisdiction.

(6) Existing law authorizes any peace officer or city or county employee who directs traffic or enforces parking to impound vehicles located on land within the officer's or employee's territorial limits.

This bill would add the jurisdiction of a state agency to the various provisions that grant this authorization and would make conforming changes.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 457.1 of the Penal Code is amended to read:

457.1. (a) As used in this section, "arson" means a violation of Section 451 or 453.

(b) Upon a conviction of the offense of arson or attempted arson, or upon the discharge or parole of any person from the Department of the Youth Authority for the commission of the offense of arson or attempted arson, the court shall impose, in addition to any other penalty prescribed by law, a requirement that the person shall register with the chief of police of the city in which he or she resides, or with the sheriff of the county if he or she resides in an unincorporated area, and with the chief of police of the campus of the University of California or the California State University where the person is domiciled, if he or she is domiciled on campus or in any campus facility, within 30 days of coming into any county or city in which he or she expects to reside or is temporarily domiciled for at least 30 days.

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or other penal institution, or from the Department of the Youth Authority where he or she was confined because of the commission or attempted commission of arson, shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her

discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted in time so as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) The duty to register under this section for offenses adjudicated by a juvenile court shall cease 10 years after the adjudication of the offense for which the registration was required.

(e) All records relating specifically to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register under this subdivision for offenses adjudicated by a juvenile court attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by the court under Section 781 of the Welfare and Institutions Code.

(f) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the court in which he or she has been convicted, and the court shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(g) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the Department of Justice.

(h) If any person required to register by this section changes his or her residence address, he or she shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency shall, within three days after receipt of the information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(i) Any person required to register under this section who violates any of the provisions thereof is guilty of a misdemeanor.

Any person who has been convicted of arson or attempted arson and who is required to register under this section who willfully violates any of the provisions thereof is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(j) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Department of the Youth Authority, or the court, as the case may be, shall order the parole or probation of that person revoked.

(k) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(l) In any case in which a person who would be required to register pursuant to this section is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including, but not limited to, firefighting or disaster control, the local law enforcement agency having jurisdiction over the place or places where that assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(m) Nothing in this section shall be construed to conflict with Section 1203.4 concerning termination of probation and release from penalties and disabilities of probation.

A person required to register under this section may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 and, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section. This certificate shall not relieve the petitioner of the duty to register under this section for any offense subject to this section of which he or she is convicted in the future.

SEC. 2. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve park ranger, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, a reserve officer of a school district police department under Section 35021.5 of the Education Code, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry

firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, or a school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1. A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, and a school district reserve police officer has the powers and duties authorized in Section 830.32.

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

(c) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person is vested with the powers of a peace officer that are expressly delegated to him or her by the summoning officer or that are otherwise reasonably necessary to properly assist the officer.

SEC. 3. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

(1) Any circumstances specified in Section 836 or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.

(2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.

(3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.

(4) When probable cause exists to believe there is any public offense that involves immediate danger to persons or property.

In all of these instances, the provisions of Section 847 shall

apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

This subdivision does not apply to federal officers of the Bureau of Land Management. These officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

(c) National park rangers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided these rangers are exercising the arrest powers incidental to the performance of their federal duties or providing or attempting to provide law enforcement services in response to a request initiated by California state park rangers to assist in preserving the peace and protecting state parks and other property for which California state park rangers are responsible. National park rangers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfactorily completed the training requirements of Section 832.3, or the equivalent thereof.

(d) Notwithstanding any other provision of law, during a state of war emergency or a state of emergency, as defined in Section 8558 of the Government Code, federal criminal investigators and law enforcement officers who are assisting California law enforcement officers in carrying out emergency operations are not deemed California peace officers, but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws. In these instances, the provisions of Section 847 and of Section 8655 of the Government Code shall apply.

SEC. 4. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) (A) Deputized or appointed pursuant to paragraph (1) of subdivision (a) of Section 830.6 and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training prescribed by the Commission on Peace Officer Standards and Training. For the level I reserve officers appointed pursuant to this subparagraph after January 1, 1997, the basic training shall meet the minimum requirements established by the commission for deputy sheriffs and police officers. A law enforcement agency may request an exemption from this training requirement if the agency has policies approved by the commission limiting duties of level I reserve officers and these level I reserve officers satisfy other training requirements established by the commission. All level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(B) A person deputized or appointed pursuant to paragraph (2) of subdivision (a) or subdivision (b) of Section 830.6 shall have the powers of a peace officer when assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training.

Level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer possessing a basic certificate issued by the Commission on Peace Officer Standards and Training, the person is engaged in a field training program approved by the Commission on Peace Officer Standards and Training, and the person has completed the course required by Section 832 and any other training prescribed by the commission.

(3) Deployed and authorized only to carry out limited duties not requiring general law enforcement powers in their routine performance. Those persons shall be permitted to perform these duties only under the direct supervision of a peace officer possessing a basic certificate issued by the commission, and shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons. Notwithstanding the provisions of this paragraph, a level III reserve officer may perform search and rescue, personnel administration support, community public information services, communications technician services, and scientific services, which do not involve direct law enforcement without supervision.

(4) Assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(5) Shall develop a supplemental course for existing level I reserve officers desiring to satisfy the basic training course for deputy sheriffs and police officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

SEC. 5. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) A firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses

involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 6. Section 12032 of the Penal Code is amended to read:

12032. Notwithstanding any provision of law or of any local ordinance to the contrary, when any firearm is in the possession of any officer of the state, or of a county, city and county or city, or of any campus of the University of California or the California State University, and the firearm is an exhibit filed in any criminal action or proceeding which is no longer needed or is unclaimed or abandoned property, which has been in the possession of the officer for at least 180 days, the firearm shall be sold, or destroyed, as provided for in Section 12028.

This section shall not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of law, or regulation thereunder, in the Fish and Game Code.

SEC. 7. Section 28 of the Vehicle Code is amended to read:

28. (a) Whenever possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement or lease agreement, the person taking possession shall immediately notify by the most expeditious means available the city police department where the taking of possession occurred, if within an incorporated city, or the sheriff's department of the county where the taking of possession occurred, if outside an incorporated city, or the police department of a campus of the University of California or the California State University, if the taking of possession occurred on that campus, and shall within one business day forward a written notice to the city police or sheriff's department.

(b) Any person failing to notify the city police department, sheriff's department, or campus police department as required by this section is guilty of an infraction, and shall be fined a minimum of three hundred dollars (\$300), and up to five hundred dollars (\$500). The district attorney, city attorney, or city prosecutor shall promptly notify the Bureau of Security and Investigative Services of any conviction resulting from a violation of this section.

SEC. 8. Section 22651 of the Vehicle Code, as amended by Chapter

10 of the Statutes of 1996, is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for

72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of six months before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle

which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 9. Section 22651.2 of the Vehicle Code is amended to read:

22651.2. (a) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act when the vehicle is found upon a highway or any public lands, and if all of the following requirements are satisfied:

(1) Because of the size and placement of signs or placards on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to advertise to the public an event or function on private property or on public property hired for a private event or function to which the public is invited.

(2) The vehicle is known to have been previously issued a notice of parking violation which was accompanied by a notice warning that an additional parking violation may result in the impoundment of the vehicle.

(3) The registered owner of the vehicle has been mailed a notice advising of the existence of the parking violation and that an additional violation may result in the impoundment of the vehicle.

(b) Subdivision (a) does not apply to a vehicle bearing any sign or placard advertising any business or enterprise carried on by or through the use of that vehicle.

(c) Section 22852 applies to the removal of any vehicle pursuant to this section.

SEC. 10. Section 22651.3 of the Vehicle Code is amended to read:

22651.3. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which any vehicle, other than a rented vehicle, is located may remove the vehicle from an offstreet public parking facility located within the territorial limits in which the officer or employee may act when the vehicle is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded or when any vehicle is illegally parked so as to prevent the movement of a legally parked vehicle.

A notice of parking violation issued to a vehicle which is registered in a foreign jurisdiction or is without current California registration and is known to have been issued five or more notices of parking violation over a period of five or more days shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle.

(b) The vehicle may be impounded until the owner or person in control of the vehicle furnishes to the impounding law enforcement agency evidence of his or her identity and an address within this

state at which he or she can be located and furnishes satisfactory evidence that bail has been deposited for all notices of parking violation issued for the vehicle. In lieu of requiring satisfactory evidence that the bail has been deposited, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that the bail has been deposited or accepting the notice to appear, the owner or person in control of the vehicle may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded.

(c) Evidence of current registration shall be produced after a vehicle has been impounded. At the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 may be issued to the owner or person in control of the vehicle, if the two days immediately following the day of impoundment are weekend days or holidays.

SEC. 11. Section 22652 of the Vehicle Code is amended to read:

22652. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee engaged in directing traffic or enforcing parking laws and regulations of a city, county, or jurisdiction of a state agency may remove any vehicle from a stall or space designated for physically handicapped persons pursuant to Section 22511.7 or 22511.8, located within the jurisdictional limits in which the officer or employee is authorized to act, if the vehicle is parked in violation of Section 22507.8 and if the police or sheriff's department or the Department of the California Highway Patrol has been notified.

In a privately or publicly owned or operated offstreet parking facility, this section applies only to those stalls and spaces if the posting requirements under subdivisions (a) and (d) of Section 22511.8 have been complied with and if the stalls or spaces are clearly signed or marked.

SEC. 12. Section 22655.5 of the Vehicle Code is amended to read:

22655.5. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a motor vehicle from the highway or from public or private property within the territorial limits in which the officer may act under the following circumstances:

(a) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a public offense.

(b) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed.

(c) Notwithstanding Section 3068 of the Civil Code or Section 22851 of this code, no lien shall attach to a vehicle removed under this section unless the vehicle was used by the alleged perpetrator of the crime with the express or implied permission of the owner of the vehicle.

(d) In any prosecution of the crime for which a vehicle was impounded pursuant to this section, the prosecutor may request, and the court may order, the perpetrator of the crime, if convicted, to pay the costs of towing and storage of the vehicle, and any

administrative charges imposed pursuant to Section 22850.5.

(e) This section shall become operative on January 1, 1993.

SEC. 13. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt an ordinance or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) Administrative costs shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(c) Any administrative costs imposed shall be collected by the local or state authority at the time of release.

(d) The administration charges imposed pursuant to this section shall be in addition to any other charges authorized or imposed pursuant to this code.

SEC. 14. Nothing in this act shall prevent a city, county, or special district from providing public safety services to a Native American tribe through an agreement or contract.

SEC. 15. The Legislature hereby finds and declares that Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify as soon as possible the peace officer status of persons designated by a sovereign Native American tribe who are deputized by the county sheriff as reserve or auxiliary sheriffs or reserve deputy sheriffs, it is necessary that this act take effect immediately.

BILL NUMBER: AB 3472 CHAPTERED 09/25/96

CHAPTER 872

FILED WITH SECRETARY OF STATE SEPTEMBER 25, 1996

APPROVED BY GOVERNOR SEPTEMBER 24, 1996

PASSED THE ASSEMBLY AUGUST 28, 1996

PASSED THE SENATE AUGUST 20, 1996

AMENDED IN SENATE AUGUST 6, 1996

AMENDED IN SENATE JULY 7, 1996

AMENDED IN SENATE JUNE 27, 1996

INTRODUCED BY Committee on Local Government (Assembly Members Rainey (Chairman), Ackerman, Granlund, Hannigan, Kuykendall, Margett, Kevin Murray, Napolitano, Setencich, and Sweeney)

MARCH 5, 1996

An act to amend Sections 8762, 8771, and 22350 of the Business and Professions Code, to amend Sections 17, 139, 211, 216, 217, 234, 339, 481.140, 491.160, 511.060, 574, 680.260, 708.170, 715.040, 995.160, 1166a, and 2015.3 of the Code of Civil Procedure, to amend Sections 607f and 1861.1 of the Civil Code, to amend Section 10405 of the Corporations Code, to amend Section 17850 of the Education Code, to amend Sections 8203 and 13109 of the Elections Code, to amend Sections 7579, 12645, 21883, 27601, 52513, and 52976 of the Food and Agricultural Code, to amend Sections 1458, 1481, 1853, 6103.2, 6103.5, 11158, 24004, 24055, 24103, 24150, 24204, 25174, 26524, 26665, 26907, 27263, 27279, 27492, 29610, 54954, 65361, 66416.5, 66417, 68079, 68084, 68546, 68726, 71001, 71085, 71088, 71091, 71140, 71220, 71221, 71264, 71265, 71266, 71267, 71600, 71609, 73399.1, and 73685 of, to amend and renumber Sections 12035 and 12036 of, to add Section 26911 to, and to repeal Sections 12037, 12038, 26617, 29614, 29615, 66452.7, 66455.5, 71090, 71602, 71603, 71603.2, 71603.5, 71603.6, 71604, and 71604.1 of, the Government Code, to amend Sections 495.3, 495.4, 495.6, 495.8, 495.9, and 497 of the Harbors and Navigation Code, to amend Sections 40275, 41210, and 41220 of the Health and Safety Code, to amend Sections 25, 101, 102, 211, and 3352 of the Labor Code, to amend Sections 463 and 467 of the Military and Veterans Code, to amend Sections 97, 335, 597d, 599a, 703, 726, 830.1, 832.4, 981, 1053, 1119, 1311, 1529, 3081, 4004.5, 4019.5, 4533, and 13020 of the Penal Code, to amend Sections 3423.2, 3423.4, 3772.2, 3772.4, 5538.5, 5552.1, 5841, 8813, 8813.1, 8813.2, 8815.2, and 8815.3 of the Public Resources Code, to amend Sections 2192.2, 3005, 6776, 6777, 7882, 7883, 9001, 9002, 11501, 11502, 13615, 13616, 19232, 19233, 30341, 30342, 32365, 32366, 38541, 38542, 40161, 40162, 41125, 41126, 43421, 43422, 45501, 45502, 46431, 46432, 50125, 50126, 55161, 55162, 60451, and 60452 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Section 2416 of, and to repeal Section 5005.5 of, the Vehicle Code, and to amend Section 50752 of the Water Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 3472, Committee on Local Government. Local government.

Existing law provides that, after making a survey in conformity with the practice of land surveying, the surveyor or civil engineer may file with the county surveyor in the county in which the survey was made, a record of the survey and, requires that a record of the survey relating to land boundaries or property lines shall be filed

ostensibly for the purpose of enforcing institutional sanitation but actually used for the purpose of inflicting punishment on any fellow prisoner, or group of prisoners in any prison, jail, jail camp, or other place of detention.

(c) It is unlawful for any sheriff, deputy sheriff, police officer, warden or keeper of a jail to delegate to any prisoner or group of prisoners, authority to exercise the right of punishment over any other prisoner or group of prisoners in any county or city prison, jail, jail camp, or other place of detention at which any person charged with or convicted of crime is detained.

(d) It is unlawful for any sheriff, deputy sheriff, police officer, warden or keeper of a jail to knowingly permit any prisoner or group of prisoners to assume authority over any other prisoner or group of prisoners by the operation of "kangaroo courts" or "sanitary committees."

(e) Every public official in charge of a prison, jail or other place of detention shall keep a record of all disciplinary infractions and punishment administered therefor.

(f) This section shall not prevent the use of skilled inmates, under adequate and proper supervision and guidance of jailers or other employed personnel, as instructors of other inmates in the performance of assigned work, if that relationship does not include the exercise of disciplinary authority.

SEC. 125. Section 4533 of the Penal Code is amended to read:

4533. Every keeper of a prison, sheriff, deputy sheriff, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison, and fine not exceeding ten thousand dollars (\$10,000).

SEC. 126. Section 13020 of the Penal Code is amended to read:

13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

SEC. 127. Section 3423.2 of the Public Resources Code is amended to read:

3423.2. A warrant may be issued by the Controller or his or her duly authorized representative for the collection of any charges, interest and penalties and for the enforcement of any such lien directed to the sheriff and shall have the same effect as a writ of execution. It may and shall be levied and sale made pursuant to it in the manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

SEC. 128. Section 3423.4 of the Public Resources Code is amended to read:

3423.4. The sheriff shall receive, upon the completion of his or her services pursuant to a warrant, and the Controller is authorized to pay to him or her the same fees and commissions and expenses in connection with services pursuant to the warrant as are provided by

(4) Any vehicle operated by the chief, assistant chief, or one other uniformed person designated by the chief of a fire department organized as provided in the Health and Safety Code or the Government Code or pursuant to special act of the Legislature.

(5) Any vehicle of an air pollution control district used to enforce provisions of law relating to air pollution from motor vehicles.

(6) Any vehicle operated by the chief of any fire department established on any base of the armed forces of the United States.

(7) Any vehicle owned and operated by any fire company organized pursuant to Part 4 (commencing with Section 14825) of the Health and Safety Code.

(8) Privately owned ambulances licensed pursuant to Chapter 2.5 (commencing with Section 2500).

(9) Vehicles other than privately owned ambulances used by privately owned ambulance operators exclusively to transport medical supplies, lifesaving equipment, or personnel to the scene of an emergency when a request for medical supplies, lifesaving equipment, or personnel has been made by any person or public agency responsible for providing emergency medical transportation. These vehicles shall display a sign or lettering not less than two and one-half inches in height, in a color providing a sharp contrast to its background, on each side showing the name of the ambulance operator.

(10) Any vehicle owned and operated by an office or department of a city, county, or district which is designated by an ordinance adopted by the governing body of that local agency as a hazardous materials response team vehicle for response to hazardous materials emergencies.

(b) The commissioner may adopt and enforce regulations to implement this section.

(c) Violation of any regulation adopted by the commissioner pursuant to this section is a misdemeanor.

SEC. 178. Section 5000.5 of the Vehicle Code is repealed.

SEC. 179. Section 50752 of the Water Code is amended to read:

50752. The election board shall canvass the votes cast and issue certificates of election to the persons elected, and shall place the ballots, when canvassed, in a sealed envelope and forward it to the county clerk acting as registrar of voters.

SEC. 180. Any section of any act enacted by the Legislature during the 1996 calendar year that takes effect on or before January 1, 1997, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section relating to constables that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

SEC. 181. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIIIIB of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 132 CHAPTERED 10/16/95

CHAPTER 965
 FILED WITH SECRETARY OF STATE OCTOBER 16, 1995
 APPROVED BY GOVERNOR OCTOBER 16, 1995
 PASSED THE SENATE SEPTEMBER 5, 1995
 PASSED THE ASSEMBLY AUGUST 31, 1995
 AMENDED IN ASSEMBLY JULY 15, 1995
 AMENDED IN ASSEMBLY MAY 25, 1995
 AMENDED IN SENATE MARCH 28, 1995
 AMENDED IN SENATE MARCH 16, 1995

INTRODUCED BY Senator Watson
 (Coauthor: Assembly Member Kuehl)

JANUARY 23, 1995

An act to amend Sections 13519 and 13730 of the Penal Code,
 relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 132, Watson. Domestic violence.

(1) Under existing law, the Commission on Peace Officer Standards and Training is required to implement a course or courses of instruction for the training of law enforcement officers in the handling of domestic violence complaints. The course of instruction is required to be developed by the commission in consultation with specified groups and individuals.

This bill would require each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence to complete, every 2 years, an updated course of instruction on domestic violence. This instruction would be funded from existing resources.

Existing law requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code and requires a report to be written in all incidents of domestic violence.

This bill would specify certain information to be included in a domestic violence incident report.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would impose a state-mandated local program by imposing new duties on peace officers.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2,

shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.

Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 488 CHAPTERED 10/13/95

CHAPTER 803
 FILED WITH SECRETARY OF STATE OCTOBER 13, 1995
 APPROVED BY GOVERNOR OCTOBER 12, 1995
 PASSED THE ASSEMBLY SEPTEMBER 15, 1995
 PASSED THE SENATE SEPTEMBER 14, 1995
 AMENDED IN SENATE SEPTEMBER 7, 1995
 AMENDED IN SENATE AUGUST 22, 1995
 AMENDED IN ASSEMBLY APRIL 17, 1995
 AMENDED IN ASSEMBLY MARCH 22, 1995

INTRODUCED BY Assembly Members Baca and Brulte
 (Coauthors: Assembly Members Alpert, Davis, Gallegos, Knox,
 Kuehl, Lee, Mazzone, Willard Murray, and Napolitano)
 (Coauthor: Senator Watson)

FEBRUARY 16, 1995

An act to amend Sections 4497.34 and 13012 of, and to add Section 13010.5 to, the Penal Code, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 488, Baca. Juvenile justice system.

(1) Existing law specifies procedures under which counties are eligible to receive funding to construct, reconstruct, remodel, or replace juvenile facilities from moneys in the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. These procedures require the county to enter into a contract with the Department of the Youth Authority and begin construction or renovation work within 4 years of the operative date of the regulations that implement the provisions.

This bill would extend the period in which a county may begin construction or renovation work on juvenile facilities and still be eligible to receive funding under these provisions to within 6 years of the operative date of the regulations that implement the provisions. This bill also would require the Department of the Youth Authority to immediately reallocate unused awards to eligible participating counties, excluding moneys allocated to San Bernardino County.

(2) Existing law requires the Department of Justice to collect data necessary for the work of the department, to process, tabulate, analyze, and interpret the data, to present an annual report to the Governor containing the criminal statistics of the preceding calendar year, and to periodically review the requirements of units of government using criminal justice statistics. The department's annual report is required to contain statistics showing the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions in dealing with criminals or delinquents.

This bill would expressly require this report to contain statistics showing administrative actions taken by those agencies or institutions in the juvenile justice system. The bill would require the department to collect data pertaining to the juvenile justice system for statistical purposes. The bill would require that this information serve to assist the department in complying with the

reporting requirement described above, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

The bill would appropriate \$149,000 from the General Fund to the Department of Justice for the purpose of implementing this program for the 1995-96 fiscal year, and would direct the department thereafter to implement this program using funds appropriated therefor in the Budget Act.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4497.34 of the Penal Code is amended to read:

4497.34. (a) Counties with overcrowded juvenile facilities shall not be eligible to receive funds to construct, reconstruct, remodel, or replace juvenile facilities unless they have adopted a plan to correct overcrowded conditions within their facilities which includes the use of alternatives to detention. The corrective action plan shall provide for the use of five or more methods or procedures to minimize the number of minors detained and shall be approved by the board of supervisors during or subsequent to a public hearing.

(b) To be eligible for funding under this chapter, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work within six years of the operative date of the regulations that implement this chapter.

If a county fails to meet this requirement, any allocations or awards to that county under this chapter shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority for reallocation to another county as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(c) To be eligible for funding for juvenile facilities under the County Correctional Facility Capital Expenditure Bond Act of 1986, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work by July 31, 1991. If a county fails to meet this requirement, all allocations or awards that have been made to that county under that act shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority and are reappropriated for reallocation as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(d) Excluding moneys allocated for San Bernardino County, the Department of the Youth Authority shall immediately reallocate unused awards to eligible participating counties.

SEC. 2. Section 13010.5 is added to the Penal Code, to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivision (c) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 3. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public

authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable counties with demonstrated need for relief of overcrowded juvenile facilities to utilize funds that they were entitled to for that purpose, but for inadvertent failure to meet a deadline for entering into a contract and beginning construction, and to enable the Department of Justice to implement the data collection program as expeditiously as possible, it is necessary that this act go into immediate effect.

SEC. 5. (a) The sum of one hundred forty-nine thousand dollars (\$149,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing Sections 2 and 3 of this act for the 1995-96 fiscal year.

(b) Thereafter, the Department of Justice shall implement Sections 2 and 3 of this act using funds appropriated in the Budget Act for these purposes.

BILL NUMBER: AB 2250 CHAPTERED 10/11/93

CHAPTER 1230
 FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
 APPROVED BY GOVERNOR OCTOBER 11, 1993
 PASSED THE SENATE SEPTEMBER 10, 1993
 PASSED THE ASSEMBLY SEPTEMBER 10, 1993
 AMENDED IN SENATE SEPTEMBER 8, 1993
 AMENDED IN SENATE AUGUST 17, 1993
 AMENDED IN SENATE JULY 16, 1993
 AMENDED IN ASSEMBLY MAY 11, 1993

INTRODUCED BY Assembly Members Speier and Collins

MARCH 5, 1993

An act to amend Sections 13700 and 13730 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2250, Speier. Domestic violence.

Existing law requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' response to domestic violence calls, as specified, maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, as specified, and develop a system for recording all domestic violence-related calls for assistance made to the Department of Justice. Existing law also requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code, as specified.

This bill would require that domestic violence-related calls for assistance, for the purposes of these provisions, be supported with the written incident report form developed under the above provisions, identifying the domestic violence incident.

Existing law defines "domestic violence" for this purpose as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

This bill would redefine "domestic violence" for this purpose, as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, specified cohabitant, or former cohabitant in the case of adults, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, thereby imposing a state-mandated local program by expanding the scope of the duties of local law enforcement with regard to recording and providing written incident reports on domestic violence-related calls.

This bill would incorporate additional changes in Section 13700 of the Penal Code proposed by AB 224, to be operative only if AB 224 and this bill are both chaptered and become effective January 1, 1994, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State

Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, or any peace officer of the California State University Police Department, as defined in subdivision (d) of Section 830.2.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 1.5. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves

out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the California Highway Patrol, the California State Police, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, or a housing authority patrol officer, as defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 2. Section 13730 of the Penal Code is amended to read:

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 13700 of the Penal Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 13700 of the Penal Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1338

An act to amend Sections 290.3 and 11170 of, to add Section 13014 to, and to add Chapter 9.5 (commencing with Section 13885) to Title 6 of Part 4 of, the Penal Code, relating to sexual habitual offenders.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 290.3 of the Penal Code is amended to read:
290.3. Every person convicted of a violation of any offense listed in subdivision (a) of Section 290, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, shall be punished by a fine of one hundred dollars (\$100) upon the first conviction or a fine of two hundred dollars (\$200) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

Out of the moneys deposited with the county treasurer pursuant to this section, there shall be transferred, once a month, to the Controller for deposit in the General Fund, an amount equal to all fines collected during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders

SEC. 2. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a

make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished, as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars (\$15).

All the moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Part 6 of Part 4 and Section 290.2.

(c) Whenever a report of suspected child abuse names a school employee and forms the basis for disciplinary action of the employee by the school employer, the school or school district, subject to Section 44031 of the Education Code or any applicable agreement adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may maintain customary records regarding the alleged incident. However, under no circumstances shall the report of suspected child abuse itself be retained in a school employee's personnel file.

SEC. 3. Section 13014 is added to the Penal Code, to read:

13014. (a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms which will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.

CHAPTER 1172

An act to add Section 13023 to the Penal Code, relating to criminal records.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 13023 is added to the Penal Code, to read: 13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, such information as may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution:

CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 (commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any

officer or employee of a local police department or sheriff's office.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, report writing, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 5 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but

shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars (\$40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the this state shall develop, adopt, and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. These

existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (a) Felony arrests.
- (b) Misdemeanor arrests.
- (c) Use of citizen arrests.
- (d) Verification and enforcement of temporary restraining orders when (1) the suspect is present and (2) when the suspect has fled.
- (e) Verification and enforcement of stay-away orders.
- (f) Cite and release policies.
- (g) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (h) Writing of reports.
- (i) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

In the development of these policies, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

CHAPTER 2. RESTRAINING ORDERS

13710. Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

CHAPTER 3. STAY-AWAY ORDERS

13720. A stay-away order may be issued by the court in a criminal case involving domestic violence where, with notice to the defendant and upon an affidavit, a likelihood of harassment of the victim by the defendant has been demonstrated to the satisfaction of the court. Such an order may remain in effect as long as the suspect is under the court's jurisdiction, including any sentence or probationary period.

CHAPTER 4. DATA COLLECTION

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be

compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars (\$25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 142

An act to amend Sections 245, 12022, 12022.5, and 12028 of, and to add Sections 417.6, 417.8, and 833.5 to, the Penal Code, relating to weapons.

[Approved by Governor March 31, 1982. Filed with Secretary of State March 31, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both such fine and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, when such peace officer or fireman is engaged in the performance of his duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.1. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.2. Section 245 of the Penal Code is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of another with a firearm is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding five thousand dollars (\$5,000) and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or

fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.3. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both such fine and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) Every person who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury upon the person of an operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or upon the person of a station agent or ticket agent for the entity providing such transportation, when such driver, operator, or agent is engaged in the performance of his or her duties, and where the person who commits such assault knows or reasonably should know that such victim is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(e) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and

the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and destroyed in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.4. Section 245 of the Penal Code is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of another with a firearm is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.5. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in

a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) Every person who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury upon the person of an operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or upon the person of a station agent or ticket agent for the entity providing such transportation, when such driver, operator, or agent is engaged in the performance of his or her duties, and where the person who commits such assault knows or reasonably should know that such victim is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(e) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and destroyed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.6. Section 245 of the Penal Code is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of another with a firearm is punishable by imprisonment in the state

prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding five thousand dollars (\$5,000) and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) Every person who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury upon the person of an operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or upon the person of a station agent or ticket agent for the entity providing such transportation, when such driver, operator, or agent is engaged in the performance of his or her duties, and where the person who commits such assault knows or reasonably should know that such victim is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(e) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and destroyed in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.7. Section 245 of the Penal Code is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of

another with a firearm is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) Every person who commits an assault with a firearm upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when the peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(d) Every person who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury upon the person of an operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or upon the person of a station agent or ticket agent for the entity providing such transportation, when such driver, operator, or agent is engaged in the performance of his or her duties, and where the person who commits such assault knows or reasonably should know that such victim is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(e) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. Section 417.6 is added to the Penal Code, to read:

417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison. As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of

consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(b) When a person is convicted of a violation of Section 417 or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 2.2. Section 417.6 is added to the Penal Code, to read:

417.6. (a) If, in the commission of a violation of Section 417, 417.1, or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison. As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(b) When a person is convicted of a violation of Section 417, 417.1, or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 2.3. Section 417.6 is added to the Penal Code, to read:

417.6. (a) If, in the commission of a violation of Section 417, 417.5, or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison. As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(b) When a person is convicted of a violation of Section 417, 417.5, or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 2.4. Section 417.6 is added to the Penal Code, to read:

417.6. (a) If, in the commission of a violation of Section 417, 417.1, 417.5, or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison. As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or

impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(b) When a person is convicted of a violation of Section 417, 417.1, 417.5, or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC 2.5. Section 417.8 is added to the Penal Code, to read:

417.8. Every person who draws or exhibits any firearm, whether loaded or unloaded, or other deadly weapon, with the intent to resist or prevent the arrest or detention of himself or another by a peace officer shall be imprisoned in the state prison for two, three, or four years.

SEC. 3. Section 833.5 is added to the Penal Code, to read:

833.5. (a) In addition to any other detention permitted by law, if a peace officer has reasonable cause to believe that a person has a firearm or other deadly weapon with him or her in violation of any provision of law relating to firearms or deadly weapons the peace officer may detain that person to determine whether a crime relating to firearms or deadly weapons has been committed.

For purposes of this section "reasonable cause to detain" requires that the circumstances known or apparent to the officer must include specific and articulable facts causing him or her to suspect that some offense relating to firearms or deadly weapons has taken place or is occurring or is about to occur and that the person he or she intends to detain is involved in that offense. The circumstances must be such as would cause any reasonable peace officer in like position, drawing when appropriate on his or her training and experience, to suspect the same offense and the same involvement by the person in question.

(b) Incident to any detention permitted pursuant to subdivision (a), a peace officer may conduct a limited search of the person for firearms or weapons if the peace officer reasonably concludes that the person detained may be armed and presently dangerous to the peace officer or others. Any firearm or weapon seized pursuant to a valid detention or search pursuant to this section shall be admissible in evidence in any proceeding for any purpose permitted by law.

(c) This section shall not be construed to otherwise limit the authority of a peace officer to detain any person or to make an arrest based on reasonable cause.

(d) This section shall not be construed to permit a peace officer to conduct a detention or search of any person at the person's residence or place of business absent a search warrant or other reasonable cause to detain or search.

(e) If a firearm or weapon is seized pursuant to this section and the person from whom it was seized owned the firearm or weapon and is convicted of a violation of any offense relating to the possession of such firearm or weapon, the court shall order the firearm or weapon to be deemed a nuisance and disposed of in the manner

provided by Section 12028.

SEC. 4. Section 12022 of the Penal Code is amended to read:

12022. (a) Any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he was convicted.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

SEC. 4.5. Section 12022 of the Penal Code is amended to read:

12022. (a) Any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he was convicted.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Any person who personally uses a knife in the commission or attempted commission of a felony, shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of offense of which he or she was convicted. As used in this subdivision, "uses a knife" means intentionally stabbing or cutting a human being with such knife. As used in this subdivision, "knife" means any instrument capable of cutting or stabbing which may be fashioned from any type of metal or other material, and which instrument is more than two inches in length including the handle.

SEC. 5. Section 12022.5 of the Penal Code is amended to read:

12022.5. Any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of imprisonment in the state prison for two years, unless use of a firearm is an element of the offense of which he was convicted.

The additional term provided by this section may be imposed in cases of assault with a deadly weapon under Section 245.

When a person is found to have personally used a firearm in the commission or attempted commission of a felony as provided in this section and the firearm is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 6. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any of the weapons mentioned in Section 653k, 12020, or 12025 is a nuisance.

(b) A firearm of any nature used in the commission of any misdemeanor as provided in this code or any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of defendant, any weapon described in subdivision (b), shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed

under federal law to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c) the weapon shall, in the month of July, next succeeding, be destroyed so that it can no longer be used as such weapon.

(e) This section shall not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of law, or regulation thereunder, in the Fish and Game Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivisions (c) or (d) unless reasonable notice is given to its lawful owner, if his identity and address can be reasonably ascertained.

SEC. 7. (a) It is the intent of the Legislature that Section 2.2 of this act shall become operative only if this bill and Assembly Bill 614 are both chaptered and become effective January 1, 1983, and Assembly Bill 614 adds Section 417.1 to the Penal Code, in which case Sections 2, 2.3, and 2.4 of this act shall not become operative.

(b) It is the intent of the Legislature that Section 2.3 of this act shall become operative only if this bill and Senate Bill 1014 are both chaptered and become effective January 1, 1983, and Senate Bill 1014 adds Section 417.5 to the Penal Code and that section becomes operative, in which case Sections 2, 2.2, and 2.4 of this act shall not become operative.

(c) It is the intent of the Legislature that Section 2.4 of this act shall become operative only if this bill, Assembly Bill 614, and Senate Bill 1014 are all chaptered and become effective January 1, 1983, and Assembly Bill 614 adds Section 417.1 to the Penal Code and Senate Bill 1014 adds Section 417.5 to the Penal Code and Section 417.5 becomes operative, in which case Sections 2, 2.2, and 2.3 of this act shall not become operative.

SEC. 8. It is the intent of the Legislature, if this bill and Assembly Bill 269 are both chaptered and become effective January 1, 1983, both bills amend Section 12022 of the Penal Code, and this bill is chaptered after Assembly Bill 269, that the amendments to Section 12022 proposed by both bills be given effect and incorporated in Section 12022 in the form set forth in Section 4.5 of this act. Therefore, Section 4.5 of this act shall become operative only if this bill and Assembly Bill 269 are both chaptered and become effective January 1, 1983, both amend Section 12022, and this bill is chaptered after Assembly Bill 269, in which case Section 4 of this act shall not become operative.

SEC. 9. It is the intent of the Legislature that if this bill is

chaptered and amends Section 245 of the Penal Code, and if Assembly Bill 685, Assembly Bill 846, or Senate Bill 302 is chaptered and amends Section 245 of the Penal Code, and this bill is chaptered last, that on January 1, 1983, the amendments to Section 245 proposed by this bill and any of the above bills which has already been chaptered and which also amends Section 245 be given effect.

Therefore, if on January 1, 1983, this bill has been chaptered and amends Section 245, and of the above bills:

(a) None has already been chaptered which also amends Section 245, then Section 245, as amended by Section 1 of this bill shall become operative, and Sections 1.1 to 1.7, inclusive, shall not become operative.

(b) Assembly Bill 685 is the only bill which has already been chaptered which also amends Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.1 of this bill shall become operative, and Section 1 and Sections 1.2 to 1.7, inclusive, shall not become operative.

(c) Assembly Bill 846 is the only bill which has already been chaptered which also amends Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.2 of this bill shall become operative and Sections 1 and 1.1 and Sections 1.3 to 1.7, inclusive, shall not become operative.

(d) Senate Bill 302 is the only bill which has already been chaptered which also amends Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.3 of this bill shall become operative, and Sections 1 to 1.2, inclusive, and Sections 1.4 to 1.7, inclusive, shall not become operative.

(e) Assembly Bill 685 and Assembly Bill 846 are the only bills which have already been chaptered which also amend Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.4 of this bill shall become operative, and Sections 1 to 1.3, inclusive, and Sections 1.5 to 1.7, inclusive, shall not become operative.

(f) Assembly Bill 685 and Senate Bill 302 are the only bills which have already been chaptered which also amend Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.5 of this bill shall become operative, and Sections 1 to 1.4, inclusive, and Sections 1.6 and 1.7, shall not become operative.

(g) Assembly Bill 846 and Senate Bill 302 are the only bills which have already been chaptered which also amend Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.6 of this bill shall become operative, and Sections 1 to 1.5, inclusive, and Section 1.7, shall not become operative.

(h) Assembly Bill 685, Assembly Bill 846, and Senate Bill 302 have all been chaptered and all also amend Section 245, and this bill is chaptered last, then Section 245 as amended by Section 1.7 of this bill shall become operative, and Sections 1 to 1.6, inclusive, shall not become operative.

SEC. 10. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the

California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1340

An act to amend Section 7522 of the Business and Professions Code, to amend Section 8325 of the Health and Safety Code, to amend Sections 241, 243, 245, 830.1, 830.2, 830.3, 830.4, 830.5, 830.6, 831, 832.4, 12027, 12031, and 13012 of, to add Sections 830.31, 830.7, 830.8, and 830.10 to, and to repeal Sections 243.2, 243.4, 245.2, 245.4, 830.31, 830.35, 830.36, 830.5a, 830.7, 830.10, and 830.11 of, the Penal Code, to amend Sections 165, 1808.4, 2416, 22651, 22653, 22654, 22655, 22656, and 22702 of, and to repeal Sections 165.3, 165.4, 22657.5, and 22659 of, the Vehicle Code, and to amend Section 5008 of the Welfare and Institutions Code, relating to peace officers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with
Secretary of State September 30, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided that such person at no time carries or uses any deadly weapon in the performance of

investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or another is in immediate danger and that the carrying of such weapon is necessary for the preservation of such person or property.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(l) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his place of residence, including any temporary residence or campsite.

SEC. 26. Section 13012 of the Penal Code is amended to read:
13012. The annual report of the department provided for in Section 13010 shall contain statistics showing:

(a) The amount and the types of offenses known to the public authorities;

(b) The personal and social characteristics of criminals and delinquents; and

(c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.

(d) The number of citizens complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of such statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 26.5. Section 165 of the Vehicle Code is amended to read:
165. An authorized emergency vehicle is:

(a) Any publicly owned ambulance, lifeguard or lifesaving equipment or any privately owned ambulance used to respond to emergency calls and operated under a license issued by the Commissioner of the California Highway Patrol.

(b) Any publicly owned vehicle operated by the following persons, agencies, or organizations:

(1) Any federal, state, or local agency or department employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by such officers in the performance of their duties.

(2) Any forestry or fire department of any public agency or fire department organized as provided in the Health and Safety Code.

(c) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.

(d) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Office of Emergency Services or by any public agency or industrial fire department to which the Office of Emergency Services has assigned such vehicle.

(e) Any vehicle owned or operated by any department or agency of the United States government when such vehicle is used in responding to emergency fire, ambulance, or lifesaving calls.

(f) Any vehicle for which an authorized emergency vehicle permit has been issued by the Commissioner of the California Highway Patrol.

SEC. 27. Section 165.3 of the Vehicle Code is repealed.

SEC. 28. Section 165.4 of the Vehicle Code is repealed.

SEC. 29. Section 1808.4 of the Vehicle Code is amended to read:

CHAPTER 860

An act to amend Sections 11501.5, 11555, and 11556 of the Government Code, to amend Sections 6025.5, 13011, and 13020 of the Penal Code, and to amend Sections 731, 780, 1000.7, 1009, 1176, 1177, 1178, 1703, 1737.1, 1753, 1754, 1757, 1760, 1765, 1766, 1767.3, 1767.4, 1767.5, 1772, 1776, 1780, 1782, 1800, 1802, and 1830 of, to add Article 2 (commencing with Section 1710) and Article 2.5 (commencing with Section 1716) to Chapter 1 of Division 2.5 of, and to repeal Article 2 (commencing with Section 1710) of Chapter 1 of Division 2.5 and Sections 1751, 1762, 1764, and 1767 of, the Welfare and Institutions Code, relating to the Youth Authority.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

The people of the State of California do enact as follows:

SECTION 1. Section 11501.5 of the Government Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

11501.5. (a) The following state agencies shall provide language assistance at adjudicatory hearings pursuant to subdivision (d) of Section 11513:

Agricultural Labor Relations Board
State Department of Alcohol and Drug Abuse
Athletic Commission
California Unemployment Insurance Appeals Board
Board of Prison Terms
Board of Cosmetology
State Department of Developmental Services
Public Employment Relations Board
Franchise Tax Board
State Department of Health Services
Department of Housing and Community Development
Department of Industrial Relations
State Department of Mental Health
Department of Motor Vehicles
Notary Public Section, office of the Secretary of State
Public Utilities Commission
Office of Statewide Health Planning and Development
State Department of Social Services
Workers' Compensation Appeals Board
Department of the Youth Authority
Youthful Offender Parole Board
Bureau of Employment Agencies
Board of Barber Examiners
Department of Insurance
State Personnel Board

(b) Nothing in this section shall be construed to prevent any agency other than those listed in subdivision (a) from electing to adopt any of the procedures set forth in subdivision (d), (e), (f), (g), (h), or (i) of Section 11513, except that the State Personnel Board shall determine the general language proficiency of prospective interpreters as described in subdivisions (d) and (e) of Section 11513 unless otherwise provided for as described in subdivision (f) of Section 11513.

SEC. 2. Section 11555 of the Government Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

11555. An annual salary of twenty-six thousand two hundred fifty dollars (\$26,250) shall be paid to the following:

- (a) Chairman of the Board of Prison Terms
- (b) Chairman of the State Water Resources Control Board
- (c) Chairman of the Youthful Offender Parole Board.

SEC. 3. Section 11556 of the Government Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

11556. An annual salary of twenty-five thousand dollars (\$25,000) shall be paid to each of the following:

- (a) Director of Navigation and Ocean Development
- (b) Director, Office of Emergency Services
- (c) Members of the Board of Prison Terms
- (d) Members of the State Water Resources Control Board
- (e) Members of the Youthful Offender Parole Board
- (f) State Fire Marshal.

SEC. 4. Section 6025.5 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

6025.5. The Director of Corrections, Board of Prison Terms, the Youthful Offender Parole Board, and the Director of the Youth Authority shall file with the Board of Corrections for information of the board or for review and advice to the respective agency as the board may determine, all rules, regulations and manuals relating to or in implementation of policies, procedures, or enabling laws.

SEC. 5. Section 13011 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

13011. The department may serve as statistical and research agency to the Department of Corrections, the Board of Prison Terms, the Board of Corrections, the Department of the Youth Authority, and the Youthful Offender Parole Board.

SEC. 6. Section 13020 of the Penal Code, as amended by Chapter 255 of the Statutes of 1979, is amended to read:

13020. It shall be the duty of every constable, city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- (a) To install and maintain records needed for the correct reporting of statistical data required by him;
- (b) To report statistical data to the department at such times and in such manner as the Attorney General prescribes; and
- (c) To give to the Attorney General, or his accredited agent, access to statistical data for the purpose of carrying out the provisions of this title.

SEC. 7. Section 731 of the Welfare and Institutions Code is amended to read:

731. When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730, and, in addition may order the ward to make restitution or to participate in uncompensated work programs or may commit the ward to a sheltered-care facility or may order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of such minor or may commit the minor to the Department of the Youth Authority.

A minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. Nothing in this section limits the power of the Youthful Offender Parole Board to retain the minor on parole status for the period permitted by Section 1769.

SEC. 8. Section 780 of the Welfare and Institutions Code is amended to read:

780. If any person who has been committed to the Youth Authority appears to be an improper person to be received by or retained in any institution or facility under the jurisdiction of the Youth Authority or to be so incorrigible or so incapable of reformation under the discipline of any institution or facility under the jurisdiction of the Youth Authority as to render his or her retention detrimental to the interests of the Youth Authority, the Youthful Offender Parole Board may order the return of such person

CHAPTER 255

An act to amend Sections 11501.5, 11555, and 11556 of, and to repeal Section 11563.2 of, the Government Code, and to amend Sections 11561, 11563 and 11564 of the Health and Safety Code, and to amend Sections 1170, 1170.2, 1389.7, 1554.2, 2081.5, 2651, 2684, 2911, 2932, 3000, 3040, 3041, 3041.5, 3041.7, 3042, 3046, 3053, 3053.5, 3059, 3060, 3062, 3084, 3421, 4600, 4801, 4802, 4803, 4810, 4812, 4813, 4814, 4850, 4851, 4852.14, 4852.18, 5001, 5002, 5003.5, 5011 of, the heading of Chapter 3 (commencing with Section 5075) of Title 3 of Part 3 of, and Sections 5075, 5076, 5076.1, 5076.2, 5077, 5078, 5080, 5081, 5082, 5089, 6025.5, 11193, 11194, 13011, and 13020 of, the Penal Code, and to amend Section 6316.1 of the Welfare and Institutions Code, relating to imprisonment.

[Approved by Governor July 11, 1979. Filed with
Secretary of State July 11, 1979.]

The people of the State of California do enact as follows:

SECTION 1. Section 11501.5 of the Government Code is amended to read:

11501.5. (a) The following state agencies shall provide language assistance at adjudicatory hearings pursuant to supervision (d) of Section 11513:

Agricultural Labor Relations Board
State Department of Alcohol and Drug Abuse
Athletic Commission
California Unemployment Insurance Appeals Board
Board of Prison Terms
Board of Cosmetology
State Department of Developmental Services
Public Employment Relations Board
Franchise Tax Board
State Department of Health Services
Department of Housing and Community Development
Department of Industrial Relations
State Department of Mental Health
Department of Motor Vehicles
Notary Public Section, Office of the Secretary of State
Public Utilities Commission
Office of Statewide Health Planning and Development
State Department of Social Services
Workers' Compensation Appeals Board
Department of the Youth Authority
Bureau of Employment Agencies
Board of Barber Examiners
Department of Insurance
State Personnel Board

(b) Nothing in this section shall be construed to prevent any agency other than those listed in subdivision (a) from electing to adopt any of the procedures set forth in subdivision (d), (e), (f), (g), (h), or (i) of Section 11513, except that the State Personnel Board shall determine the general language proficiency of prospective interpreters as described in subdivisions (d) and (e) of Section 11513 unless otherwise provided for as described in subdivision (f) of Section 11513.

SEC. 2. Section 11555 of the Government Code is amended to read:

11555. An annual salary of twenty-six thousand two hundred fifty dollars (\$26,250) shall be paid to the following:

- (a) Chairman of the Board of Prison Terms
- (b) Chairman of the State Water Resources Control Board
- (c) Chairman of the Youth Authority Board.

SEC. 3. Section 11556 of the Government Code is amended to read:

11556. An annual salary of twenty-five thousand dollars (\$25,000) shall be paid to each of the following:

- (a) Director of Navigation and Ocean Development
- (b) Director, Office of Emergency Services
- (c) Members of the Board of Prison Terms
- (d) Members of the State Water Resources Control Board
- (e) Members of the Youth Authority Board
- (f) State Fire Marshal

SEC. 4. Section 11563.2 of the Government Code is repealed.

SEC. 5. Section 11561 of the Health and Safety Code is amended to read:

11561. When the Board of Prison Terms concludes that there are reasonable grounds for believing that a man on parole is addicted to, or is in imminent danger of addiction to, controlled substances it may issue an order to detain or place such person in a controlled substance treatment control unit for a period not to exceed 90 days. Such order shall be a sufficient warrant for any peace officer or employee of the Department of Corrections to return to physical custody any such person. Detention pursuant to such order shall not be deemed a suspension, cancellation or revocation of parole until such time as the Board of Prison Terms so orders pursuant to Section 3060 of the Penal Code. A parolee taken into physical custody pursuant to Section 3060 of the Penal Code may be detained in a controlled substance treatment control unit established pursuant to this article.

SEC. 6. Section 11563 of the Health and Safety Code is amended to read:

11563. When the Board of Prison Terms concludes that there are reasonable grounds for believing that a woman on parole is addicted to, or is in imminent danger of addiction to, controlled substances, it may issue an order to detain or place such person in a controlled substance treatment control unit for a period not to exceed 90 days.

Such order shall be a sufficient warrant for any peace officer or employee of the Department of Corrections to return to physical custody any such person. Detention pursuant to such order shall not be deemed a suspension, cancellation or revocation of parole until such time as the board so orders pursuant to Section 3060 of the Penal Code. A parolee taken into physical custody pursuant to Section 3060, 6043, or 6044 of the Penal Code may be detained in a controlled substance treatment control unit established pursuant to this article.

SEC. 7. Section 11564 of the Health and Safety Code is amended to read:

11564. The authority granted to the Board of Prison Terms and the Youth Authority in no way limits Sections 3060 and 3325 of the Penal Code.

SEC. 8. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purposes of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of 16 months, two or three years; two, three, or four years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless such convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he had committed his crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been

served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, any such sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment either party may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.5, 12022.6, or 12022.7. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) In all cases the Board of Prison Terms shall, not later than one year after the commencement of the term of imprisonment, review the sentence and shall by motion recommend that the court recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not been previously

sentenced if the board determines the sentence is disparate. The review under this section shall concern the decision to deny probation and the sentencing decisions enumerated in subdivisions (b), (c), (d), and (e) of Section 1170.3 and apply the sentencing rules of the Judicial Council and the information regarding the sentences in this state of other persons convicted of similar crimes so as to eliminate disparity of sentences and to promote uniformity of sentencing.

SEC. 9. Section 1170.2 of the Penal Code is amended to read:

1170.2. (a) In the case of any inmate who committed a felony prior to July 1, 1977, who would have been sentenced under Section 1170 if he had committed it after July 1, 1977, the Board of Prison Terms shall determine what the length of time of imprisonment would have been under Section 1170 without consideration of good-time credit and utilizing the middle term of the offense bearing the longest term of imprisonment of which the prisoner was convicted increased by any enhancements justified by matters found to be true and which were imposed by the court at the time of sentencing for such felony. Such matters include: being armed with a deadly or dangerous weapon as specified in Section 211a, 460, 3024, or 12022 prior to July 1, 1977, which may result in a one-year enhancement pursuant to the provisions of Section 12022; using a firearm as specified in Section 12022.5 prior to July 1, 1977; which may result in a two-year enhancement pursuant to the provisions of Section 12022.5; infliction of great bodily injury as specified in Section 213, 264, or 461 prior to July 1, 1977, which may result in a three-year enhancement pursuant to the provisions of Section 12022.7; any prior felony conviction as specified in any statute prior to July 1, 1977, which prior felony conviction is the equivalent of a prior prison term as defined in Section 667.5, which may result in the appropriate enhancement pursuant to the provisions of Section 667.5; and any consecutive sentence.

(b) If the calculation required under subdivision (a) is less than the time to be served prior to a release date set prior to July 1, 1977, or if a release date had not been set, the Board of Prison Terms shall establish the prisoner's parole date, subject to subdivision (d), on the date calculated under subdivision (a) unless at least two of the members of the Board of Prison Terms after reviewing the prisoner's file, determine that due to the number of crimes of which the prisoner was convicted, or due to the number of prior convictions suffered by the prisoner, or due to the fact that the prisoner was armed with a deadly weapon when the crime was committed, or used a deadly weapon during the commission of the crime, or inflicted or attempted to inflict great bodily injury on the victim of the crime, the prisoner should serve a term longer than that calculated in subdivision (a); in which event the prisoner shall be entitled to a hearing before a panel consisting of at least two members of the Board of Prison Terms as provided for in Section 3041.5. The Board of Prison Terms shall notify each prisoner who is

scheduled for such a hearing within 90 days of July 1, 1977, or within 90 days of the date the prisoner is received by or returned to the custody of the Department of Corrections, whichever is later. The hearing shall be held before October 1, 1978, or within 120 days of receipt of the prisoner, whichever is later. It is the intent of the Legislature that the hearings provided for in this subdivision shall be accomplished in the most expeditious manner possible. At such hearing the prisoner shall be entitled to be represented by legal counsel, a release date shall be set, and the prisoner shall be informed in writing of the extraordinary factors specifically considered determinative and on what basis the release date has been calculated. In fixing a term under this section the board shall be guided by, but not limited to, the term which reasonably could be imposed on a person who committed a similar offense under similar circumstances on or after July 1, 1977, and further, the board shall be guided by the following finding and declaration hereby made by the Legislature: that the necessity to protect the public from repetition of extraordinary crimes of violence against the person is the paramount consideration.

(c) Nothing in this section shall be deemed to keep an inmate in the custody of the Department of Corrections for a period of time longer than he would have been kept in its custody under the provisions of law applicable to him prior to July 1, 1977. Nothing in this section shall be deemed to require the release of an inmate sentenced to consecutive sentences under the provisions of law applicable to him prior to July 1, 1977, earlier than if he had been sentenced to concurrent sentences.

(d) In the case of any prisoner who committed a felony prior to July 1, 1977, who would have been sentenced under Section 1170 if the felony was committed on or after July 1, 1977, the good behavior and participation provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply from July 1, 1977, and thereafter.

(e) In the case of any inmate who committed a felony prior to July 1, 1977, who would have been sentenced under Section 1168 if the felony was committed on or after July 1, 1977, the Board of Prison Terms shall provide for release from prison as provided for by this code.

(f) In the case of any inmate who committed a felony prior to July 1, 1977, the length, conditions, revocation, and other incidents of parole shall be the same as if the prisoner had been sentenced for an offense committed on or after July 1, 1977.

(g) Nothing in this chapter shall affect the eligibility for parole under Article 3 (commencing with Section 3040) of Chapter 8 of Title 1 of Part 3 of an inmate sentenced pursuant to Section 1168 as operative prior to July 1, 1977, for a period of parole as specified in subdivision (b) of Section 3000.

(h) In fixing a term under this section, the Board of Prison Terms shall utilize the terms of imprisonment as provided in Chapter 1139

of the Statutes of 1976 and Chapter 165 of the Statutes of 1977.

SEC. 10. Section 1389.7 of the Penal Code is amended to read:

1389.7. When, pursuant to the agreement on detainers or other provision of law, a person in actual confinement under sentence of another jurisdiction is brought before a California court and sentenced by the judge to serve a California sentence concurrently with the sentence of the other jurisdiction or has been transferred to another jurisdiction for concurrent service of previously imposed sentences, the Board of Prison Terms, and the panels and members thereof, may meet in such other jurisdiction, or enter into cooperative arrangements with corresponding agencies in the other jurisdiction, as necessary to carry out the term-fixing and parole functions.

SEC. 11. Section 1554.2 of the Penal Code is amended to read:

1554.2. (a) When the return to this state of a person charged with crime in this state is required, the district attorney shall present to the Governor his written application for a requisition for the return of the person charged. In such application there shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. Such application shall certify that, in the opinion of the district attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this state is required of a person who has been convicted of a crime in this state and who has escaped from confinement or has violated the terms of his bail, probation or parole the district attorney of the county in which the offense was committed, the Board of Prison Terms, the Director of Corrections, the California Institution for Women, the Youth Authority, or the sheriff of the county from which escape from confinement was made, shall present to the Governor a written application for a requisition for the return of such person. In such application there shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape or of the violation of the terms of his bail, probation or parole, and the state in which he is believed to be, including the location of such person therein at the time application is made.

(c) The application shall be verified, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment, the information, or the verified complaint made to the magistrate stating the offense with which the accused is charged, or the judgment of conviction or the sentence. The officer or board requesting the requisition may also attach such affidavits and other documents in duplicate as are deemed proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the

certified copies of the indictment, verified complaint, information, or judgment of conviction or sentence shall be filed in the office of the Secretary of State. The other copies of all papers shall be forwarded with the Governor's requisition.

SEC. 12. Section 2081.5 of the Penal Code is amended to read:

2081.5. The Director of Corrections shall keep complete case records of all prisoners under custody of the department, which records shall be made available to the Board of Prison Terms at such times and in such form as the board may prescribe.

Case records shall include all information received by the Director of Corrections from the courts, probation officers, sheriffs, police departments, district attorneys, State Department of Justice, Federal Bureau of Investigation, and other interested agencies and persons. Case records shall also include a record of diagnostic findings, considerations, actions and dispositions with respect to classification, treatment, employment, training, and discipline as related to the institutional correctional program followed for each prisoner.

The director shall appoint, after consultation with the Board of Prison Terms, such employees of the various institutions under his control as may be necessary for the proper performance of the duties of the Board of Prison Terms, and when requested shall also have in attendance at hearings of the Board of Prison Terms, psychiatric or medical personnel. The director shall furnish, after consultation with the Board of Prison Terms and the Director of General Services, such hearing rooms and other physical facilities at such institutions as may be necessary for the proper performance of the duties of the Board of Prison Terms.

SEC. 13. Section 2651 of the Penal Code is amended to read:

2651. No punishment, except as may be authorized by the Director of Corrections, shall be inflicted and then only by the order and under the direction of the wardens. Nothing in this section shall be construed as a limitation or impairment of the authority of the Board of Prison Terms in exercising its functions.

SEC. 14. Section 2684 of the Penal Code is amended to read:

2684. If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him until in the opinion of the superintendent such person has been treated to such an extent that he will not benefit from further care and treatment in the state hospital.

SEC. 15. Section 2911 of the Penal Code is amended to read:

2911. (a) The Director of Corrections may enter into contracts, with the approval of the Director of General Services, with appropriate officials or agencies of the United States for the confinement, care, education, treatment and employment of such persons convicted of criminal offenses in the courts of this state and committed to state prisons as the director believes can benefit by such confinement, care, education, treatment, and employment.

(b) Any contract entered into pursuant to subdivision (a) shall provide for (1) reimbursement to the United States government for the cost of such services, including any costs incurred by such government in transporting such prisoners, and (2) such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the respective parties to the contract.

(c) No inmate may be transferred from an institution within this state to a federal facility pursuant to such a contract unless he has executed, in the presence of the warden or other head of the institution in this state in which he is confined, a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his choice, concerning his rights and obligations under this section, prior to his appearance before the warden or other head of the institution for the purpose of executing the written consent.

(d) Whenever a contract has been made pursuant to this section the director may direct the transfer of an inmate to the facility designated and shall thereafter deliver the inmate to the custody of the appropriate federal officials for transportation to such facility. An inmate so transferred shall at all times be subject to the jurisdiction of this state and may at any time be removed from the facility in which he is confined for return to this state, for transfer to another facility in which this state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of this state; in all other respects, an inmate transferred to a federal facility shall be subject to all provisions of the law or regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed on such inmate.

(e) The Board of Prison Terms, and the panels and members thereof, may meet at the federal facility where an inmate is confined pursuant to this section or enter into cooperative arrangements with corresponding federal agencies or officials, as necessary to carry out the term-fixing and parole functions. Nothing in this subdivision shall be deemed to waive an inmate's right to personally appear before the Board of Prison Terms.

(f) Any inmate confined pursuant to a contract entered into pursuant to this section shall be released within the territory of this state unless the inmate, this state and the federal government shall agree upon release in some other place. This state shall bear the cost of return of the inmate to its territory.

SEC. 16. Section 2932 of the Penal Code is amended to read:

2932. (a) Not more than 90 days of good behavior credit nor more than 30 days of participation credit may be denied or lost during any eight-month period during which the misbehavior or failure to participate took place. Good behavior and participation credit shall be deemed to be earned in cases where the department fails to adhere to the time limitations of this section except as specified in subdivision (c). Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections for serious disciplinary infractions if those procedures are not in conflict with this section.

(1) The Department of Corrections shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within five days after the discovery of information leading to charges that may result in a possible denial of good behavior or participation credit, but not later than 30 days after the alleged misbehavior took place, unless the evidence was not reasonably discoverable. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at such hearing, and in the case where the prisoner has been notified more than 30 days after the alleged misbehavior why the evidence was not reasonably discoverable within the 30 days or any sooner than it was discovered. Such hearing shall be conducted by an individual who shall be independent of the case and shall take place within 10 days of such written notice; unless for good cause shown by the Department of Corrections that extraordinary circumstances prevented the hearing from being conducted within 10 days and the prisoner is not prejudiced by the delay the Department of Corrections shall notify the prisoner in writing specifying the extraordinary circumstances and shall conduct the hearing as soon as possible but in no case later than 30 days after the initial written notice of possible good behavior or participation denial.

(2) The prisoner has the right to elect to be assigned an investigative employee who will gather information, talk to witnesses, prepare a written report and be present at the hearing.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. Such specific reasons shall be set forth in writing and a copy of such document shall be presented to the prisoner.

(4) The person who will conduct the hearing shall determine if the prisoner shall need assistance with presentation of a defense at the hearing and if so, at the prisoner's discretion, the prisoner has the right to be assigned an employee of the Department of Corrections to assist in presenting the prisoner's defense.

(5) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(6) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the inmate may be found guilty on the basis of a preponderance of the evidence.

(7) If found guilty the prisoner shall be advised within 10 days in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of good-time loss. The prisoner may appeal such decision through the Department of Corrections review procedure, and may, upon final notification of appeal denial, within 10 days of such notification demand review of the department's denial of credit to the Board of Prison Terms, and the board may affirm, reverse, or modify the department's decision or grant a hearing before the board at which hearing the inmate will have the rights specified in Section 3041.5.

(b) Within 30 days of reception in prison, each prisoner shall be notified of the total amount of good behavior and participation credit which may be credited to his term and his anticipated good-time release date and shall be notified of any change in the anticipated release date.

(c) If the conduct the prisoner is charged with also constitutes a crime, the Department of Corrections may refer the case to criminal authorities for possible prosecution and notify the prisoner as provided in subdivision (a), in which case the time limitations specified in subdivision (a) shall not apply. If the district attorney has not filed an accusatory pleading against the prisoner within 60 days of such referral, the prisoner may request that a hearing be held in which case the department must hold the hearing within 15 days of such request.

In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections shall not deny good behavior credit where the prisoner is found not guilty and may deny good behavior credit pursuant to the schedule specified in Section 2931 if the prisoner is found guilty.

(d) If good behavior or participation credit denial proceedings, or criminal prosecution prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and

discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section. Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter:

(a) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170, or at the expiration of such term as reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the board for good cause waives parole and discharges the inmate from custody of the department.

(b) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned under a life sentence, and shall not exceed three years in the case of an inmate whose prison sentence does not consist of imprisonment under a life sentence, unless in either case the board for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(c) The board shall consider the request of any inmate regarding the length of his parole and the conditions thereof.

(d) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward such period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner sentenced pursuant to Section 1170 be retained under parole supervision or in custody for a period longer than four years from the date of his initial parole, and, except as provided in Section 3064, in no case may a prisoner sentenced pursuant to subdivision (b) of Section 1168 be retained under parole supervision or in custody for a period longer than seven years from the date of his initial parole.

(e) It is not the intent of this section to diminish resources presently allocated to the Department of Corrections for parole functions.

(f) The Department of Corrections shall meet with each inmate at least 30 days prior to his good time release date, unless such release date is within 30 days of July 1, 1977, and shall provide, under guidelines specified by the Board of Prison Terms, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the Board of Prison Terms.

SEC. 18. Section 3040 of the Penal Code is amended to read:

3040. The Board of Prison Terms shall have the power to allow prisoners imprisoned in the state prisons pursuant to subdivision (b) of Section 1168 to go upon parole outside the prison walls and enclosures. The board may parole prisoners in the state prisons to camps for paroled prisoners established under Section 2792.

SEC. 19. Section 3041 of the Penal Code is amended to read:

3041. (a) In the case of any prisoner sentenced pursuant to any provision of law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall meet with each such inmate within the first year of incarceration solely for the purposes of reviewing the inmate's file and making recommendations. One year prior to the inmate's minimum eligible parole release date a panel consisting of at least two members of the Board of Prison Terms shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the prisoner was sentenced and other factors in mitigation or aggravation of the crime. At least one member of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole to the full board for an en banc hearing. In case of such a review, a majority vote of the full Board of Prison Terms in favor of parole is required to grant parole to any prisoner.

(b) The panel or board shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

(c) For the purpose of reviewing the suitability for parole of those prisoners eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each such prisoner until such time as the person is released pursuant to such proceedings or reaches the expiration of his term as calculated under Section 1170.2.

SEC. 20. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing or rescinding of parole dates:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which

will be examined by the board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner will have rights set forth in paragraphs (3) and (5) of subdivision (a) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated. The board shall hear each such case annually thereafter.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an opportunity for review of such action within 90 days of the time the prisoner receives the statement.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for such action and shall, within six months, set the prisoner's parole release date in accord with the provisions of Section 3041 and this section.

SEC. 21. Section 3041.7 of the Penal Code is amended to read:

3041.7. At any hearing for the purpose of setting, postponing, or rescinding a parole release date of a prisoner under a life sentence, such prisoner shall be entitled to be represented by counsel and the provisions of Section 3041.5 shall apply. The Board of Prison Terms shall provide by rule for the invitation of the prosecutor of the county from which the prisoner was committed, or his representative, to represent the interests of the people at any such hearing. The Board of Prison Terms shall notify the prosecutor at least 30 days prior to the date of the hearing.

Notwithstanding Section 12550 of the Government Code, the prosecutor of the county from which the prisoner was committed, or

his representative, who shall not be the Attorney General, shall be the sole representative of the interests of the people.

SEC. 22. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting or advancing of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced, and the law enforcement agency that investigated the case.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

SEC. 23. Section 3046 of the Penal Code is amended to read:

3046. No prisoner imprisoned under a life sentence may be paroled until he has served at least seven calendar years. Where two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, no prisoner so imprisoned may be paroled until he has served at least seven calendar years on each of the life sentences which are ordered to run consecutively. The Board of Prison Terms shall, in considering a parole for such prisoner, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of such parole. The board shall enter on its order granting or denying parole to such prisoners, the fact that such statements and recommendations have been considered by it.

SEC. 24. Section 3053 of the Penal Code is amended to read:

3053. The Board of Prison Terms upon granting any parole to any prisoner may also impose on the parole such conditions as it may deem proper.

SEC. 25. Section 3053.5 of the Penal Code is amended to read:

3053.5. Upon granting parole to any prisoner convicted of any of the offenses enumerated in Section 290, the Board of Prison Terms shall inquire into the question whether the defendant at the time the

offense was committed was intoxicated or addicted to the excessive use of alcoholic liquor or beverages at that time or immediately prior thereto, and if it is found that the person was so intoxicated or so addicted, it shall impose as a condition of parole that such prisoner shall totally abstain from the use of alcoholic liquor or beverages.

SEC. 26. Section 3059 of the Penal Code is amended to read:

3059. If any paroled prisoner shall leave the state without permission of the Board of Prison Terms, he shall be held as an escaped prisoner and arrested as such.

SEC. 27. Section 3060 of the Penal Code is amended to read:

3060. The Board of Prison Terms shall have full power to suspend or revoke any parole, and to order returned to prison any prisoner upon parole. The written order of any member of the Board of Prison Terms shall be a sufficient warrant for any peace or prison officer to return to actual custody any conditionally released or paroled prisoner.

SEC. 28. Section 3062 of the Penal Code is amended to read:

3062. The Governor of the state shall have like power to revoke the parole of any prisoner. The written authority of the Governor shall likewise be sufficient to authorize any peace officer to retake and return said prisoner to the state prison. His written order revoking the parole shall have the same force and effect and be executed in like manner as the order of the Board of Prison Terms.

SEC. 29. Section 3084 of the Penal Code is amended to read:

3084. Each county board may release to the State Department of Corrections for return to a state prison or correctional institution any county or city jail inmate who is a state parole violator, when notified by the Board of Prison Terms.

SEC. 30. Section 3421 of the Penal Code is amended to read:

3421. Children of women inmates may only participate in the program until they reach the age of two years and two months, at which time the Board of Prison Terms may arrange for their care elsewhere under any procedure authorized by statute and transfer the mother to another placement under the jurisdiction of the Department of Corrections if necessary; and provided further, that at its discretion in exceptional cases, including, but not limited to, cases where the mother's period of incarceration is extended, the board may retain such child and mother for a longer period of time.

SEC. 31. Section 4600 of the Penal Code is amended to read:

4600. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any jail, prison, or any public property in any jail or prison, is punishable by a fine not exceeding ten thousand dollars (\$10,000), and by imprisonment in the state prison, except that where the damage or injury to any city, city and county or county jail property or prison property is determined to be two hundred dollars (\$200) or less, such person is guilty of a misdemeanor.

SEC. 32. Section 4801 of the Penal Code is amended to read:

4801. The Board of Prison Terms may report to the Governor

from time to time the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause which, in their opinion, should entitle the prisoner to a pardon or commutation of sentence.

SEC. 33. Section 4802 of the Penal Code is amended to read:

4802. In the case of a person twice convicted of felony, the application for pardon or commutation of sentence shall be made directly to the Governor, who shall transmit all papers and documents relied upon in support of and in opposition to the application to the Board of Prison Terms.

SEC. 34. Section 4803 of the Penal Code is amended to read:

4803. When an application is made to the Governor for pardon or commutation of sentence, or when an application has been referred to the Board of Prison Terms, he or it may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him or it, without delay, with a summarized statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing said application, together with his recommendation for or against the granting of the same and his reason for such recommendation.

SEC. 35. Section 4810 of the Penal Code is amended to read:

4810. (a) The Board of Prison Terms shall succeed to and shall exercise and perform all powers and duties granted to and imposed upon the Advisory Pardon Board by law.

(b) The Advisory Pardon Board is abolished.

(c) The report required of the Board of Prison Terms by Section 4814 may be included in the report of the department.

SEC. 36. Section 4812 of the Penal Code is amended to read:

4812. Upon request of the Governor the Board of Prison Terms shall investigate and report on all applications for reprieves, pardons and commutation of sentence and shall make such recommendations to the Governor with reference thereto as to it may seem advisable. To that end the board shall examine and consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection therewith, and shall have power to employ assistants and take testimony and to examine witnesses under oath and to do any and all things necessary to make a full and complete investigation of and concerning all applications referred to it. Members of the board and its administrative officer are, and each of them is, hereby authorized to administer oaths.

SEC. 37. Section 4813 of the Penal Code is amended to read:

4813. In the case of applications of persons twice convicted of a felony, the Board of Prison Terms, after investigation, shall transmit its written recommendation upon such application to the Governor, together with all papers filed in connection with the application.

SEC. 38. Section 4814 of the Penal Code is amended to read:

4814. The Board of Prison Terms shall, on or before the first day of December of each even-numbered year, report to the Governor upon the status and history of matters under its consideration, together with an account of expenditures and such suggestions pertinent to its duties as may appear to be necessary and expedient.

SEC. 39. Section 4850 of the Penal Code is amended to read:

4850. No application which has not received a recommendation from the Board of Prison Terms favorable to the applicant shall be forwarded to the Clerk of the Supreme Court, unless the Governor, notwithstanding the fact that the board has failed to make a recommendation favorable to the applicant, especially refers an application to the justices for their recommendation.

SEC. 40. Section 4851 of the Penal Code is amended to read:

4851. In all cases where the Board of Prison Terms has made a recommendation favorable to the applicant and in those cases referred by the Governor, notwithstanding an adverse recommendation, the application, together with all papers and documents relied upon in support of and in opposition to said application, including prison records and recommendation of the authority, shall be forwarded to the Clerk of the Supreme Court for consideration of the justices.

SEC. 41. Section 4852.14 of the Penal Code is amended to read:

4852.14. The clerk of the court shall immediately transmit certified copies of the certificate of rehabilitation to the Governor, to the Board of Prison Terms and the Department of Justice, and, in the case of persons twice convicted, of a felony, to the Supreme Court.

SEC. 42. Section 4852.18 of the Penal Code is amended to read:

4852.18. The Board of Prison Terms shall furnish to the county clerk of each county a set of sample forms for a petition for certificate of rehabilitation and pardon, a notice of filing of petition for certificate of rehabilitation and pardon, and a certificate of rehabilitation. The county clerk shall have a sufficient number of these forms printed to meet the needs of the people of his county, and he shall make these forms available at no charge to persons requesting them.

SEC. 43. Section 5001 of the Penal Code is amended to read:

5001. The department is composed of the Director of Corrections, the Board of Prison Terms, and the Correctional Industries Commission.

SEC. 44. Section 5002 of the Penal Code is amended to read:

5002. (a) The department shall succeed to and is hereby vested with all of the powers and duties exercised and performed by the following departments, boards, bureaus, commissions and officers when such powers and duties are not otherwise vested by law:

- (1) The Department of Penology.
- (2) The State Board of Prison Directors.
- (3) The Board of Prison Terms and Paroles.
- (4) The Advisory Pardon Board.

(5) The Bureau of Paroles.

(6) The warden and the clerk of the California State Prison at San Quentin.

(7) The warden and the clerk of the California State Prison at Folsom.

(8) The warden or superintendent of and the clerk of the California Institution for Men.

(9) The California Crime Commission.

(b) Whenever any designation of any of the departments, boards, bureaus, commissions or officers mentioned in subdivision (a) is contained in any provision of law and such designation is expressly made to refer to the Department of Corrections, the Board of Corrections or the Board of Prison Terms, then the Department of Corrections, the Board of Corrections or the Board of Prison Terms, to whichever one the designation is made to refer, shall exercise the power or perform the duty heretofore exercised or performed by the particular departments, boards, bureaus, or officers mentioned in subdivision (a).

(c) The powers and duties of the State Board of Prison Directors and of the clerks of the state prisons and the California Institution for Men are transferred to and shall be exercised and performed by the Department of Corrections, except as may be otherwise expressly provided by law.

(d) The powers and duties of wardens of the state prisons and the California Institution for Men, presently or hereafter, expressly vested by law in them shall be exercised by them but such exercise shall be subject to the supervision and control of the Director of Corrections. All powers and duties not expressly vested in the wardens are transferred to and shall be exercised and performed by the Department of Corrections. When the designation of warden is expressly made to refer to the Department of Corrections, the department shall exercise the power and perform the duty heretofore exercised or performed by the warden.

(e) The powers and duties of the Advisory Pardon Board and the Board of Prison Terms and Paroles are transferred to and shall be exercised and performed by the Board of Prison Terms, except as may be otherwise expressly provided by law.

SEC. 45. Section 5003.5 of the Penal Code is amended to read:
5003.5. The Board of Prison Terms is empowered to advise and recommend to the Director of Corrections on general and specific policies and procedures relating to the duties and functions of the director. The director is empowered to advise and recommend to the Board of Prison Terms on matters of general and specific policies and procedures, relating to the duties and functions of the board. The director and the board shall meet for purposes of exchange of information and advice.

It is the intention of the Legislature that the Board of Prison Terms and the Director of Corrections shall cooperate with each other in the establishment of the classification, transfer, and discipline

policies of the Department of Corrections, to the end that the objectives of the State Correctional System can best be attained. The director and the Board of Prison Terms shall, not less than four times each calendar year, meet for the purpose of discussion of classification, transfer, and discipline policies and problems and it is the intent of the Legislature that whenever possible there shall be agreement on these subjects. But for the purpose of maintaining responsibility for the secure and orderly administration of the prison system, the Director of Corrections shall have the final right to determine the policies on classification, transfer and discipline.

In the event there is no agreement the Board of Prison Terms shall file in writing with the Board of Corrections a statement of its proposals or recommendations to the director, and the director shall answer such statement in writing to the Board of Prison Terms, and a copy of both documents shall be transmitted to the Governor and to the Board of Corrections.

SEC. 46. Section 5011 of the Penal Code is amended to read:

5011. (a) The Department of Corrections shall not require, as a condition for any form of treatment or custody that the department offers, an admission of guilt to any crime for which an inmate was committed to the custody of the department.

(b) The Board of Prison Terms shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed.

SEC. 47. The heading of Chapter 3 (commencing with Section 5075) of Title 3 of Part 3 of the Penal Code is amended to read:

CHAPTER 3. THE BOARD OF PRISON TERMS

SEC. 48. Section 5075 of the Penal Code is amended to read:

5075. The Board of Prison Terms shall be composed of nine members, each of whom shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and until the appointment and qualification of his successor. Members shall be eligible for reappointment.

The chairman of the board shall be designated by the Governor from time to time. The chairman shall be the administrative head of the board and shall exercise all duties and functions necessary to insure that the responsibilities of the board are successfully discharged. He shall be the appointing authority for all civil service positions of employment in the board.

The terms of the members shall expire as follows: two on March 15, 1978, two on March 15, 1979, two on March 15, 1980, and three on March 15, 1981. Successor members shall hold office for terms of four years, each term to commence on the expiration date of the term of the predecessor. The Governor shall fill every vacancy for the balance of the unexpired term. The selection of persons and their appointment by the Governor and confirmation by the Senate shall reflect as nearly as possible a cross-section of the racial, sexual,

economic, and geographic features of the population of the state.

It is the further intent of this section that the board shall adopt such policies and practices as will permit continuing operations and improvements without any further increase in the number of its members.

SEC. 49. Section 5076 of the Penal Code is amended to read:

5076. Each member of the board shall devote his entire time to the duties of his office and shall receive an annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 50. Section 5076.1 of the Penal Code is amended to read:

5076.1. The board shall meet at each of the state prisons at such times as may be necessary for a full and complete study of the cases of all prisoners whose applications for parole come before it. Other times and places of meeting may also be fixed by the board. Each member of the board shall receive his actual necessary traveling expenses incurred in the performance of his official duties. Where the board performs its functions by meeting en banc in either public or executive sessions to decide matters of general policy, at least five members shall be present, and no such action shall be valid unless it is concurred in by a majority vote of those present.

The board may meet and transact business in panels. Each panel shall consist of at least three persons. No action shall be valid unless concurred in by a majority vote of the persons present.

Consideration of parole release for persons sentenced to life imprisonment pursuant to subdivision (b) of Section 1168 shall be heard by a panel, a majority of whose members are members of the Board of Prison Terms. A recommendation for recall of a sentence under subdivisions (c) and (f) of Section 1170 shall be made by a panel, a majority of whose members are members of the Board of Prison Terms.

The board may employ representatives to whom it may assign appropriate duties, including that of hearing cases and making decisions. Such decisions shall be made in accordance with policies approved by a majority of the total membership of the board.

SEC. 51. Section 5076.2 of the Penal Code is amended to read:

5076.2. (a) Any rules and regulations, including any resolutions and policy statements, promulgated by the Board of Prison Terms, shall be promulgated and filed pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The Board of Prison Terms shall maintain, publish and make available to the general public, a compendium of its rules and regulations, including any resolutions and policy statements, promulgated pursuant to this section.

(c) The following exception to the procedures specified in this section shall apply to the Board of Prison Terms: the chairman may specify an effective date that is any time more than 30 days after the

rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to such effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

SEC. 52. Section 5077 of the Penal Code is amended to read:

5077. The Board of Prison Terms shall review all prisoners' requests for reconsideration of denial of good-time credit, and setting of parole length or conditions, and shall have the authority to modify the previously made decisions of the Department of Corrections as to these matters. The revocation of parole shall be determined by the Board of Prison Terms.

SEC. 53. Section 5078 of the Penal Code is amended to read:

5078. (a) The Board of Prison Terms shall succeed to and shall exercise and perform all powers and duties granted to, exercised by, and imposed upon the Adult Authority, the California Women's Board of Terms and Paroles, and the Community Release Board.

(b) The Adult Authority and California Women's Board of Terms and Paroles are abolished.

SEC. 54. Section 5080 of the Penal Code is amended to read:

5080. The Director of Corrections may transfer persons confined in one state prison institution or facility of the Department of Corrections to another. The Board of Prison Terms may request the Director of Corrections to transfer an inmate who is under its parole-granting jurisdiction if, after review of the case history in the course of routine procedures, such transfer is deemed advisable for the further diagnosis, and treatment of the inmate. The director shall as soon as practicable comply with such request, provided that, if facilities are not available he shall report that fact to the Board of Prison Terms and shall make the transfer as soon as facilities become available; provided further, that if in the opinion of the Director of Corrections such transfer would endanger security he may report that fact to the Board of Prison Terms and refuse to make such transfer.

When transferring an inmate from one state prison, institution, or facility of the Department of Corrections to another, the director may, as necessary or convenient, authorize transportation via a route that lies partly outside this state.

SEC. 55. Section 5081 of the Penal Code is amended to read:

5081. The Governor may remove any member of the Board of Prison Terms for misconduct, incompetency or neglect of duty after a full hearing by the Board of Corrections.

SEC. 56. Section 5082 of the Penal Code is amended to read:

5082. (a) Such employees of the Board of Prison Terms as are needed to carry out its functions shall be selected and appointed pursuant to the State Civil Service Act. Nothing shall prohibit the Board of Prison Terms from employing any person employed formerly by the Adult Authority or Women's Board of Terms and Paroles.

(b) The provisions of Chapter 6 (commencing with Section 6050) of this title, relating to the employment of personnel by the department, do not apply to the employees of the Board of Prison Terms.

SEC. 57. Section 5089 of the Penal Code is amended to read:

5089. The Board of Prison Terms may designate a representative who shall be notified of the time and place of meetings of the Correctional Industries Commission, and may attend such meetings and participate in the deliberations of the commission, but shall have no vote.

SEC. 58. Section 6025.5 of the Penal Code is amended to read:

6025.5. The Director of Corrections, Board of Prison Terms, the Youth Authority Board, and the Director of the Youth Authority shall file with the Board of Corrections for information of the board or for review and advice to the respective agency as the board may determine, all rules, regulations and manuals relating to or in implementation of policies, procedures, or enabling laws:

SEC. 59. Section 11193 of the Penal Code is amended to read:

11193. Any inmate sentenced under California law who is imprisoned in another state, pursuant to a compact, shall be entitled to all hearings, within 120 days of the time and under the same standards, which are normally accorded to persons similarly sentenced who are confined in institutions in this state. If the inmate consents in writing, such hearings may be conducted by the corresponding agencies or officials of such other jurisdiction. The Board of Prison Terms or its duly authorized representative is hereby authorized and directed to hold such hearings as may be requested by such other jurisdiction or the inmate pursuant to this section or to Article IV (f) of the Interstate Corrections Compact or of the Western Interstate Corrections Compact.

SEC. 60. Section 11194 of the Penal Code is amended to read:

11194. The Director of Corrections is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Interstate Corrections Compact and the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the Director of General Services. Such contracts may authorize confinement of inmates in, or transfer of inmates from, only such institutions in this state as are under the jurisdiction of the Department of Corrections, and no such contract may provide for transfer out of this state of any person committed to the custody of the Director of the Youth Authority. No such contract may authorize the confinement of an inmate, who is in the custody of the Director of Corrections, in an institution of a state other than a state that is a party to the Interstate Corrections Compact or to the Western Interstate Corrections Compact. The Director of Corrections, subject to the approval of the Board of Prison Terms, must first determine, on the basis of an inspection made by his direction, that such institution of another state is a

suitable place for confinement of prisoners committed to his custody before entering into a contract permitting such confinement, and shall, at least annually, redetermine the suitability of such confinement. In determining the suitability of such institution of another state, the director shall assure himself that such institution maintains standards of care and discipline not incompatible with those of the State of California and that all inmates therein are treated equitably, regardless of race, religion, color, creed or national origin.

SEC. 61. Section 13011 of the Penal Code is amended to read:
13011. The department may serve as statistical and research agency to the Department of Corrections, the Board of Prison Terms, the Board of Corrections, and the Department of the Youth Authority.

SEC. 62. Section 13020 of the Penal Code is amended to read:
13020. It shall be the duty of every constable, city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- (a) To install and maintain records needed for the correct reporting of statistical data required by him;
- (b) To report statistical data to the department at such times and in such manner as the Attorney General prescribes; and
- (c) To give to the Attorney General, or his accredited agent, access to statistical data for the purpose of carrying out the provisions of this title.

SEC. 63. Section 6316.1 of the Welfare and Institutions Code is amended to read:

6316.1. (a) In the case of any person found to be a mentally disordered sex offender who committed a felony on or after July 1, 1977, the court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in Section 6316.2. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the defendant was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits as defined by Section 2900.5 of the Penal Code and disregarding any credits which could have been earned under

Sections 2930 to 2932, inclusive, of the Penal Code.

(b) In the case of a person found to be a mentally disordered sex offender who committed a felony prior to July 1, 1977, who could have been sentenced under Section 1168 or 1170 of the Penal Code if the offense were committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under subdivision (a), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in Section 6316.2.

In fixing a term under this section, the board shall utilize the upper term of imprisonment which could have been imposed for the offense or offenses of which the defendant was convicted, increased by any additional terms which could have been imposed based on matters which were found to be true in the committing court. However, if at least two of the members of the board after reviewing the person's file determine that a longer term should be imposed for the reasons specified in Section 1170.2 of the Penal Code, a longer term may be imposed following the procedures and guidelines set forth in Section 1170.2 of the Penal Code, except that any hearings deemed necessary by the board shall be held before April 1, 1978. Within 90 days of July 1, 1977, or of the date the person is received by the State Department of Mental Health, whichever is later, the Board of Prison Terms shall provide each person committed pursuant to Section 6316 with the determination of his maximum term of commitment or shall notify such person that he will be scheduled for a hearing to determine his term.

Within 20 days following the determination of the maximum term of commitment the board shall provide the person committed, the prosecuting attorney, the committing court, and the State Department of Mental Health with a written statement setting forth the maximum term of commitment, the calculations, the statements, the recommendations, and any other materials considered in determining the maximum term.

(c) In the case of a person found to be a mentally disordered sex offender who committed a misdemeanor, whether before or after July 1, 1977, the maximum term of commitment shall be the longest term of county jail confinement which could have been imposed for the offense or offenses of which the defendant was convicted, and the person may not be kept in actual custody longer than this maximum term. The provisions of this subdivision shall be applied retroactively.

(d) Nothing in this section limits the power of the State Department of Mental Health or of the committing court to release the person, conditionally or otherwise, for any period of time allowed by any other provision of law.

SEC. 64. It is the intent of the Legislature that Sections 1 to 30, inclusive, 32 to 48, inclusive, and 50 to 63, inclusive, of this act shall only effect a change of name from the Community Release Board to the Board of Prison Terms. Any section of any act enacted by the

Legislature during the 1979 portion of the 1979-80 Regular Session, which takes effect on or before January 1, 1980, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by Sections 1 to 30, inclusive, 32 to 48, inclusive, and 50 to 63, inclusive, of this act, shall prevail over such sections of this act, whether such act is enacted prior to or subsequent to this act.
