

OFFICE COPY

Prepared By _____

Approved By _____

An act to amend Sections 1834 and 1846 of the Civil Code, to amend Sections 31108, 31752, 31752.5, and 32001 of, and to repeal Sections 31753, and 32003, of the Food and Agricultural Code, to amend Section 6276.02 of, and to repeal Sections 23025, 27491.41, and 50087 of, the Government Code, to amend Sections 123600 and 123610 of, and to repeal Sections 1797.193, 123605, 123740, and 123745 of, the Health and Safety Code, to amend Sections 148.6, 914, 933, 933.05, 1001.22, 1001.28, 1203, 1203.72, 1417.3, 2625, 7501, 7510, 7511, 7512, 7512.5, 7514, 7515, 7516, 7518, 7520, 7521, 7522, 7523, 7551, 7554, 13014, 13023, 14205, 14206, 14207, 14210, 18250, 18255, 18265, 18275, 18400, 18405, 18410, and 18420 of, and to repeal Sections 938.4, 1026, 1026.5, 1524.1, 7516.8, 13515, 13518.1, 13519.7, 13701, 13710, and 13730 of, the Penal Code, to amend Sections 1456, 1852, 2357, 3140, and 3205 of, and to repeal Sections 1471 and 1472 of, the Probate Code, to amend Sections 30108.4, 30600, 30600.7, 30601, 30605, 30607.2, 30610.1, 30610.9, 30613, 30620, 30624, 30711, 30801, 30802, 30806, 30809, 30810, 30811, 30820 and 30821.6 of, to add Section 30813 to, to repeal Sections 30108.6, 30340.5, 30340.6, 30600.5, 30600.6, 30601.3, 30602, 30603, 30603.1, 30604, 30620.5, 30624.9, and 30625 of, to repeal Article

4 (commencing with Section 30350) of Chapter 4 of, to repeal Article 1 (commencing with Section 30500) of Chapter 6 of, and to repeal Article 2 (commencing with Section 30510) of Chapter 6 of, Division 20 of, the Public Resources Code, to amend Sections 21670.3, 21670.4, 21671, 21675.1, 21676, 21676.5, and 21679 of, to amend and renumber Section 21670.2 of, and to repeal Sections 21670 and 21670.1 of, the Public Utilities Code, to amend Section 10500 of the Vehicle Code, and to amend Sections 656.2, 1800, 1800.5, 1801.5, and 8103 of, and to repeal Section 6513 of, the Welfare and Institutions Code, relating to state mandates.

DRAFT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to relieve local entities of the duty to perform the reimbursable activities, as determined by the Commission on State Mandates or other authorized entity, included in the following state-mandated local programs:

- (a) Animal Adoption (04-PGA-01, 98-TC-11).
- (b) Deaf Teletype Equipment (04-LM-11).
- (c) SIDS Autopsies (CSM-4393).
- (d) Filipino Employee Surveys (CSM-2142).
- (e) SIDS Training for Firefighters (CSM-4412).
- (f) Perinatal Services (CSM-4397).
- (g) SIDS Contacts by Local Health Officers (CSM-4424).
- (h) Grand Jury Proceedings (98-TC-27).
- (i) Adult Felony Restitution (04-LM-08).
- (j) Prisoner Parental Rights (CSM-4427).
- (k) Inmate AIDS Testing (CSM-4369 and CSM-4429).
- (l) Elder Abuse, Law Enforcement Training (98-TC-12).
- (m) Pocket Masks (CSM-4291).
- (n) Law Enforcement Sexual Harassment Training (97-TC-07).
- (o) Domestic Violence Information (CSM-4222).
- (p) Missing Persons Report (CSM-4255, CSM-4368, and CSM-4484).
- (q) Local Coastal Plans (CSM-4431).
- (r) Airport Land Use Commission/Plans (CSM-4507).

- (s) Victims' Statements-Minors (04-LM-14).
- (t) Extended Commitment, Youth Authority (98-TC-13).
- (u) Crime Victims' Domestic Violence Incident Reports II (02-TC-18).
- (v) Crime Statistics Reports for the Department of Justice and Crime Statistics Reports for the Department of Justice Amended (02-TC-04, 02-TC-11, 07-TC-10).
- (w) Mentally Retarded Defendants Representation (04-LM-12).
- (x) Conservatorship: Developmentally Disabled Adults (04-LM-13).
- (y) Firearm Hearings for Discharged Inpatients (99-TC-11).
- (z) Judiciary Proceedings (CSM-4366).
- (aa) Photographic Record of Evidence (98-TC-07).
- (ab) Not Guilty by Reason of Insanity (CSM-2753).
- (ac) AIDS/Search Warrant (CSM-4392).
- (ad) Stolen Vehicle Notification (CSM-4403).
- (ae) False Reports of Police Misconduct (00-TC-26).

SEC. 2. Section 1834 of the Civil Code is amended to read:

1834. A depository of living animals shall provide the animals with ~~necessary and prompt veterinary care~~, nutrition, and shelter, and treat them kindly. Any depository that fails to perform these duties may be liable for civil damages as provided by law.

SEC. 3. Section 1846 of the Civil Code is amended to read:

1846. (a) A gratuitous depository must use, at least, slight care for the preservation of the thing deposited.

(b) A gratuitous depository of a living animal shall provide the animal with ~~necessary and prompt veterinary care~~, adequate nutrition ~~and~~, water, and shelter, and

shall treat it humanely and, if the animal has any identification, make reasonable attempts to notify the owner of the animal's location. Any gratuitous depositary that does not have sufficient resources or desire to provide that care shall promptly turn the animal over to an appropriate care facility.

(c) If the gratuitous depositary of a living animal is a public pound, shelter operated by a society for the prevention of cruelty to animals, or humane shelter, the depositary shall comply with all other requirements of the Food and Agricultural Code regarding the impounding of live animals.

SEC. 4. Section 31108 of the Food and Agricultural Code is amended to read:

31108. (a) The required holding period for a stray dog impounded pursuant to this division shall be ~~six business days, not including the day of impoundment, except as follows:~~ 72 hours from the time of capture.

~~(1) If the public or private shelter has made the dog available for owner redemption on one weekday evening until at least 7 p.m. or one weekend day, the holding period shall be four business days, not including the day of impoundment.~~

~~(2) If the public or private shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their dogs by appointment at a mutually agreeable time when the public or private shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.~~

Except as provided in Section 17006, stray dogs shall be held for owner redemption during the ~~first three days of the holding period, not including the day of~~

~~impoundment, and shall~~ may be available for owner redemption or adoption ~~for the remainder of the holding period thereafter.~~

(b) Except as provided in Section 17006, any stray dog that is impounded pursuant to this division shall, prior to the euthanasia of that animal, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization prior to the scheduled euthanasia of that animal. The public or private shelter may enter into cooperative agreements with any animal rescue or adoption organization. In addition to any required spay or neuter deposit, the public or private shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals adopted or released.

(c) During the holding period required by this section and prior to the adoption or euthanasia of a dog impounded pursuant to this division, a public or private shelter shall scan the dog for a microchip that identifies the owner of that dog and shall make reasonable efforts to contact the owner and notify him or her that his or her dog is impounded and is available for redemption.

(d) As used in this division, a “business day” includes any day that a public or private shelter is open to the public for at least four hours, excluding state holidays.

SEC. 5. Section 31752 of the Food and Agricultural Code is amended to read:

31752. (a) The required holding period for a stray cat impounded pursuant to this division shall be ~~six business days, not including the day of impoundment, except as follows:~~ 72 hours from the time of capture. This section shall not apply to cats that are severely injured or seriously ill, or to newborn cats unable to feed themselves.

~~(1) If the public or private shelter has made the cat available for owner redemption on one weekday evening until at least 7 p.m. or one weekend day, the holding period shall be four business days, not including the day of impoundment.~~

~~(2) If the public or private shelter has fewer than three full-time employees or is not open during all regular weekday business hours, and if it has established a procedure to enable owners to reclaim their cats by appointment at a mutually agreeable time when the public or private shelter would otherwise be closed, the holding period shall be four business days, not including the day of impoundment.~~

Except as provided in Sections 17006 and 31752.5, stray cats shall be held for owner redemption during the ~~first three days of the holding period, not including the day of impoundment,~~ and shall may be available for owner redemption or adoption for the remainder of the holding period thereafter.

(b) Except as provided in Section 17006, any stray cat that is impounded pursuant to this division shall, prior to the euthanasia of that animal, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization prior to the scheduled euthanasia of that animal. In addition to any required spay or neuter deposit, the public or private shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals adopted or released. The public or private shelter may enter into cooperative agreements with any animal rescue or adoption organization.

(c) During the holding period required by this section and prior to the adoption or euthanasia of a cat impounded pursuant to this division, a public or private shelter shall scan the cat for a microchip that identifies the owner of that cat and shall make

reasonable efforts to contact the owner and notify him or her that his or her cat is impounded and is available for redemption.

(d) As used in this division, a “business day” includes any day that a public or private shelter is open to the public for at least four hours, excluding state holidays.

SEC. 6. Section 31752.5 of the Food and Agricultural Code is amended to read:

31752.5. (a) The Legislature finds and declares the following:

(1) Domestic cats’ temperaments range from completely docile indoor pets to completely unsocialized outdoor cats that avoid all contact with humans.

(2) “Feral cats” are cats with temperaments that are completely unsocialized, although frightened or injured tame pet cats may appear to be feral.

(3) Some people care for or own feral cats.

(4) Feral cats pose particular safety hazards for shelter employees.

(5) It is cruel to keep feral cats caged for long periods of time; however, it is not always easy to distinguish a feral cat from a frightened tame cat.

(b) For the purposes of this section, a “feral cat” is defined as a cat without owner identification of any kind whose usual and consistent temperament is extreme fear and resistance to contact with people. A feral cat is totally unsocialized to people.

(c) ~~Notwithstanding Section 31752, if an apparently feral cat has not been reclaimed by its owner or caretaker within the first three days of the required holding period, shelter personnel qualified to verify the temperament of the animal shall verify whether it is feral or tame by using a standardized protocol. If the a cat is determined to be docile or a frightened or difficult tame cat, the cat shall be held for the entire required holding period specified in Section 31752. If the cat is determined to be truly~~

feral, the cat may be euthanized or relinquished to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal adoption organization that agrees to the spaying or neutering of the cat if it has not already been spayed or neutered. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for the animal released.

SEC. 7. Section 31753 of the Food and Agricultural Code is repealed.

~~31753. Any rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property and that is impounded in a public or private shelter shall be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organizations as provided for cats and dogs. Section 17006 shall also apply to these animals. In addition to any required spay or neuter deposit, the public or private shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals adopted by new owners or released to nonprofit animal rescue or adoption organizations pursuant to this section.~~

SEC. 8. Section 32001 of the Food and Agricultural Code is amended to read:

32001. (a) All public pounds, shelters operated by societies for the prevention of cruelty to animals, and humane shelters, that contract to perform public animal control services, ~~shall~~ may provide the owners of lost animals and those who find lost animals with all of the following:

(a)

(1) Ability to list the animals they have lost or found on “Lost and Found” lists maintained by the pound or shelter.

(b)

(2) Referrals to animals listed that may be the animals the owners or finders have lost or found.

(c)

(3) The telephone numbers and addresses of other pounds and shelters in the same vicinity.

(d)

(4) Advice as to means of publishing and disseminating information regarding lost animals.

(e)

(5) The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.

The

(b) ~~The duties imposed by this section are not mandatory duties for public entities for all purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code and for all private entities with which a public entity has contracted to perform those duties, and no cause of action for damages is created by this section against a public entity or employee or against any other person.~~

(c) Notwithstanding Section 9, a violation of this section is not a misdemeanor.

SEC. 9. Section 32003 of the Food and Agricultural Code is repealed.

~~32003. All public pounds and private shelters shall keep accurate records on each animal taken up, medically treated, or impounded. The records shall include all of the following information and any other information required by the California Veterinary Medical Board:~~

~~(a) The date the animal was taken up, medically treated, euthanized, or impounded.~~

~~(b) The circumstances under which the animal was taken up, medically treated, euthanized, or impounded.~~

~~(c) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.~~

~~(d) A description of any medical treatment provided to the animal and the name of the veterinarian of record.~~

~~(e) The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three years after the date the animal's impoundment ends.~~

SEC. 10. Section 6276.02 of the Government Code is amended to read:

6276.02. Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Public Health programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, former Section 1524.1, Penal Code, as it read on January 1, 2012.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

Advance Health Care Directive Registry, exemption from disclosure for registration information provided to the Secretary of State, subdivision (ac), Section 6254.

SEC. 11. Section 23025 of the Government Code is repealed.

~~23025. A county, whether general law or chartered, which provides any emergency services, shall provide deaf teletype equipment at a central location within the county to relay requests for such emergency services.~~

SEC. 12. Section 27491.41 of the Government Code is repealed.

~~27491.41. (a) For purposes of this section, "sudden infant death syndrome" means the sudden death of any infant that is unexpected by the history of the infant and where a thorough postmortem examination fails to demonstrate an adequate cause of death.~~

~~(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem within the State of California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.~~

~~(c) (1) To facilitate these purposes, the coroner shall, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and unexpectedly.~~

~~(2) However, if the attending physician desires to certify that the cause of death is sudden infant death syndrome, an autopsy may be performed at the discretion of the coroner. If the coroner performs an autopsy pursuant to this section, he or she shall also certify the cause of death.~~

~~(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The protocol is exempt from the procedural~~

requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome was the cause of death when the coroner's findings are consistent with the definition of sudden infant death syndrome specified in the standardized autopsy protocol. The protocol may include requirements and standards for scene investigations, requirements for specific data, criteria for ascertaining cause of death based on the autopsy, and criteria for any specific tissue sampling, and any other requirements. The protocol may also require that specific tissue samples must be provided to a central tissue repository designated by the State Department of Health Services.

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 103850 of the Health and Safety Code.

(g) The coroner may take tissue samples for research purposes from infants who have died suddenly and unexpectedly without consent of the responsible adult if the tissue removal is not likely to result in any visible disfigurement.

~~(h) A coroner shall not be liable for damages in a civil action for any act or omission done in compliance with this section.~~

~~(i) No consent of any person is required prior to undertaking the autopsy required by this section.~~

SEC. 13. Section 50087 of the Government Code is repealed.

~~50087. Every city, county, or city and county which has at least 5,000 residents or in which 5 percent of the population is of Filipino ancestry or ethnic origin, according to the last federal census, and which conducts any survey as to the ancestry or ethnic origin of its employees, or which maintains any statistical tabulation of minority group employees, shall categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in such survey or tabulation.~~

SEC. 14. Section 1797.193 of the Health and Safety Code is repealed.

~~1797.193. (a) By July 1, 1992, existing firefighters in this state shall complete a course on the nature of sudden infant death syndrome taught by experts in the field of sudden infant death syndrome. All persons who become firefighters after January 1, 1990, shall complete a course on this topic as part of their basic training as firefighters. The course shall include information on the community resources available to assist families who have lost children to sudden infant death syndrome.~~

~~(b) For purposes of this section, the term "firefighter" has the same meaning as that specified in Section 1797.182.~~

~~(c) When the instruction and training are provided by a local agency, a fee shall be charged sufficient to defray the entire cost of the instruction and training.~~

SEC. 15. Section 123600 of the Health and Safety Code is amended to read:

123600. By July 1, 1991, the ~~Health and Welfare~~ California Health and Human Services Agency shall develop and disseminate a model needs assessment protocol for pregnant and postpartum substance abusing women in conjunction with the appropriate professional organizations in the areas of hospital administration, substance abuse prevention and treatment, social services, public health, and appropriate state agencies, including the State Department of Social Services, the department, the State Department of Developmental Services, and the State Department of Alcohol and Drug Programs. This model may be utilized by hospitals and counties pursuant to Section 123605.

SEC. 16. Section 123605 of the Health and Safety Code is repealed.

~~123605. (a) Each county shall establish protocols between county health departments, county welfare departments, and all public and private hospitals in the county, regarding the application and use of an assessment of the needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Section 11165.13 of the Penal Code.~~

~~(b) The assessment of the needs shall be performed by a health practitioner, as defined in Section 11165.8 of the Penal Code, or a medical social worker. The needs assessment shall be performed before the infant is released from the hospital.~~

~~(c) The purpose of the assessment of the needs is to do all of the following:~~

~~(1) Identify needed services for the mother, child, or family, including, where applicable, services to assist the mother caring for her child and services to assist maintaining children in their homes.~~

~~(2) Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the~~

~~newborn's health and safety, including a referral to the county welfare department for child welfare services.~~

~~(3) Gather data for information and planning purposes.~~

SEC. 17. Section 123610 of the Health and Safety Code is amended to read:

123610. It is the intent of the Legislature that funding for ~~Sections~~ Section 123600 ~~and 123605~~ be provided in the annual Budget Act.

SEC. 18. Section 123740 of the Health and Safety Code is repealed.

~~123740. (a) For purposes of this section the following definitions shall apply:~~

~~(1) "Appropriately trained public health professional" means a public health nurse or a social worker who is knowledgeable about the incidence of sudden infant death syndrome and the care and support of persons who have experienced a death of this nature, and who has basic grief counseling skills.~~

~~(2) "Contact" is a face-to-face visit, a group visit, or a telephone call that provides one or more of the following services:~~

~~(A) An assessment of the family, child care provider, or both.~~

~~(B) Crisis intervention and counseling.~~

~~(C) A referral to a community service.~~

~~(D) A followup assessment of the family's, the child care provider's, or both family's and child care provider's progress.~~

~~(3) "Immediately" means within three working days of receiving notice from the coroner or other reporting agent of a death presumed by sudden infant death syndrome.~~

~~(4) “Local health officer” means a health officer for a city, county, or city and county.~~

~~(b) Upon being informed by the coroner pursuant to Section 102865 of any case in which sudden infant death syndrome is the presumed cause of death, the local health officer or his or her designated agent, who is an appropriately trained public health professional, after consultation with the infant’s physician of record, when possible, shall immediately contact the person or persons who had custody and control of the infant, including foster parents, when applicable, for the purposes of providing to that person information, support, referral, and followup services relating to sudden infant death syndrome. If the infant was in child care, the local health officer or his or her designated agent who is an appropriately trained public health professional also shall immediately contact the child care provider.~~

~~(c) The local health officer shall perform the duties required by this section throughout the jurisdiction of that local health officer.~~

SEC. 19. Section 123745 of the Health and Safety Code is repealed.

~~123745. The department shall monitor, or contract with a person to monitor, whether the county health officer or his or her designated agent is performing the duties required by Section 123740 and whether they are being performed within the timeframes specified in Section 123740.~~

SEC. 20. Section 148.6 of the Penal Code is amended to read:

148.6. (a) ~~(1)~~ Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

~~(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:~~

~~YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.~~

~~IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.~~

I have read and understood the above statement. -
-

Complainant -

~~(3) The advisory shall be available in multiple languages.~~

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

SEC. 21. Section 914 of the Penal Code is amended to read:

914. (a) When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

~~(b) To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.~~

(b) In recognition of the state and local interest served by the grand jury receiving training formerly required by this section, the Legislature encourages local agencies to continue providing such training as a best practice. It is encouraged that such training, as a best practice, follow the court's consultation with the district attorney, the county counsel, and at least one former grand juror, as was formerly required by this section.

(c) Any costs incurred by the court as a result of this section shall be absorbed by the court ~~or the county~~ from existing resources.

SEC. 22. Section 933 of the Penal Code is amended to read:

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject, except fiscal matters, may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report. In recognition of the state and local interests served by the grand jury final report addressing fiscal matters, as formerly required by this section, the Legislature encourages grand juries to include fiscal matters in their final report as a best practice.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. ~~The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.~~ In recognition of the state and local interests served by the clerk forwarding a copy of each final report and responses to the State Archivist, as formerly required by this section, the Legislature encourages the clerk to forward each final report and responses to the State Archivist as a best practice. The State Archivist shall retain in perpetuity any such final reports and responses received.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section “agency” includes a department.

SEC. 23. Section 933.05 of the Penal Code is amended to read:

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, it is a best practice for the responding person or entity shall to indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response ~~shall specify~~ specifies the portion of the finding that is disputed and ~~shall include~~ includes an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, it is a best practice for the responding person or entity ~~shall to~~ report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. ~~This~~ It is recommended that this timeframe ~~shall~~ not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking

authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, it is a best practice for the grand jury shall to meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

SEC. 24. Section 938.4 of the Penal Code is repealed.

~~938.4. The superior court shall arrange for a suitable meeting room and other support as the court determines is necessary for the grand jury. Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.~~

SEC. 25. Section 1001.22 of the Penal Code is amended to read:

1001.22. The court shall consult with the prosecutor, the defense counsel, the probation department, and the appropriate regional center in order to determine whether

a defendant may be diverted pursuant to this chapter. If the defendant is not represented by counsel, the court shall appoint counsel to represent the defendant. When the court suspects that a defendant may have a cognitive developmental disability, as defined in subdivision (a) of Section 1001.20, and the defendant consents to the diversion process and to his or her case being evaluated for eligibility for regional center services, and waives his or her right to a speedy trial, the court shall order ~~the prosecutor, the probation department, and the regional center to prepare reports~~ a report on specified aspects of the defendant's case. ~~Each report shall be prepared concurrently.~~

~~(a) The~~

The regional center shall submit a report to the probation department within 25 judicial days of the court's order. The regional center's report shall include a determination as to whether the defendant has a cognitive developmental disability and is eligible for regional center diversion-related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program, individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center's report shall also contain a statement whether such a proposed program is available for the defendant through the treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

~~(b) The prosecutor shall submit a report on specified aspects of the defendant's case, within 30 judicial days of the court's order, to the court, to each of the other~~

agencies involved in the case, and to the defendant. The prosecutor's report shall include all of the following:

(1) A statement of whether the defendant's record indicates the defendant's diversion pursuant to this chapter within two years prior to the alleged commission of the charged divertible offense.

(2) If the prosecutor recommends that this chapter may be applicable to the defendant, he or she shall recommend either a dual or single agency diversion program and shall advise the court, the probation department, the regional center, and the defendant, in writing, of that determination within 20 judicial days of the court's order to prepare the report.

(3) If the prosecutor recommends against diversion, the prosecutor's report shall include a declaration in writing to state for the record the grounds upon which the recommendation was made, and the court shall determine, pursuant to Section 1001.23, whether the defendant shall be diverted.

(4) If dual agency diversion is recommended by the prosecutor, a copy of the prosecutor's report shall also be provided by the prosecutor to the probation department, the regional center, and the defendant within the above prescribed time period. This notification shall include all of the following:

(A) A full description of the proceedings for diversion and the prosecutor's investigation procedures.

(B) A general explanation of the role and authority of the probation department, the prosecutor, the regional center, and the court in the diversion program process.

~~(C) A clear statement that the court may decide in a hearing not to divert the defendant and that he or she may have to stand trial for the alleged offense.~~

~~(D) A clear statement that should the defendant fail in meeting the terms of his or her diversion, or if, during the period of diversion the defendant is subsequently charged with a felony, the defendant may be required, after a hearing, to stand trial for the original diverted offense.~~

~~(e) The probation department shall submit a report on specified aspects of the defendant's case within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The probation department's report to the court shall be based upon an investigation by the probation department and consideration of the defendant's age, cognitive developmental disability, employment record, educational background, ties to community agencies and family, treatment history, criminal record if any, and demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would benefit from a diversion-related treatment and habilitation program. The regional center's report in full shall be appended to the probation department's report to the court.~~

SEC. 26. Section 1001.28 of the Penal Code is amended to read:

1001.28. The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months.

~~(a) Where dual agency diversion has been ordered, the probation department shall be responsible for the progress reports. The probation department shall append to its own report a copy of the regional center's assessment of the defendant's progress.~~

~~(b) Where~~

Where single agency diversion has been ordered, the regional center alone shall be responsible for the progress reports.

SEC. 27. Section 1026 of the Penal Code is repealed.

~~1026. (a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community~~

~~program director, or the court may order the defendant placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2.~~

~~(b) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.~~

~~(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical~~

~~director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.~~

~~(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.~~

~~(e) When the court, after considering the placement recommendation of the community program director required in subdivision (b), orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:~~

~~(1) The commitment order, including a specification of the charges.~~

~~(2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.~~

~~(3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.~~

~~(4) State Summary Criminal History information.~~

~~(5) Any arrest reports prepared by the police department or other law enforcement agency.~~

~~(6) Any court-ordered psychiatric examination or evaluation reports.~~

~~(7) The community program director's placement recommendation report.~~

~~(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.~~

~~(g) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.~~

~~(h) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.~~

SEC. 28. Section 1026.5 of the Penal Code is repealed.

~~1026.5. (a) (1) In the case of any person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, 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 this section. 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 person 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, and disregarding any credits which could have been earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3.~~

~~(2) In the case of a person confined in a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, who committed a felony prior to July 1, 1977, and who could have been sentenced under Section 1168 or 1170 if the offense was committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under paragraph (1), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in subdivision (b). The time limits of this section are not jurisdictional.~~

~~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~~

person 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, a longer term may be imposed following the procedures and guidelines set forth in Section 1170.2, except that any hearings deemed necessary by the board shall be held within 90 days of September 28, 1979. Within 90 days of the date the person is received by the state hospital or other treatment facility, or of September 28, 1979, whichever is later, the Board of Prison Terms shall provide each person with the determination of the person's maximum term of commitment or shall notify the person that a hearing will be scheduled to determine the term.

Within 20 days following the determination of the maximum term of commitment the board shall provide the person, the prosecuting attorney, the committing court, and the state hospital or other treatment facility with a written statement setting forth the maximum term of commitment, the calculations, and any materials considered in determining the maximum term.

(3) In the case of a person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604 who committed a misdemeanor, the maximum term of commitment shall be the longest term of county jail confinement which could have been imposed for the offense or offenses which the person was found to have committed, and the person may not be kept in actual custody longer than this maximum term.

~~(4) Nothing in this subdivision limits the power of any state hospital or other treatment facility or of the committing court to release the person, conditionally or otherwise, for any period of time allowed by any other provision of law.~~

~~(b) (1) A person may be committed beyond the term prescribed by subdivision (a) only under the procedure set forth in this subdivision and only if the person has been committed under Section 1026 for a felony and by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others.~~

~~(2) Not later than 180 days prior to the termination of the maximum term of commitment prescribed in subdivision (a), the medical director of a state hospital in which the person is being treated, or the medical director of the person's treatment facility or the local program director, if the person is being treated outside a state hospital setting, shall submit to the prosecuting attorney his or her opinion as to whether or not the patient is a person described in paragraph (1). If requested by the prosecuting attorney, the opinion shall be accompanied by supporting evaluations and relevant hospital records. The prosecuting attorney may then file a petition for extended commitment in the superior court which issued the original commitment. The petition shall be filed no later than 90 days before the expiration of the original commitment unless good cause is shown. The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1).~~

~~(3) When the petition is filed, the court shall advise the person named in the petition of the right to be represented by an attorney and of the right to a jury trial. The rules of discovery in criminal cases shall apply. If the person is being treated in a state~~

hospital when the petition is filed, the court shall notify the community program director of the petition and the hearing date.

~~(4) The court shall conduct a hearing on the petition for extended commitment. The trial shall be by jury unless waived by both the person and the prosecuting attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless that time is waived by the person or unless good cause is shown.~~

~~(5) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee, and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the petition for extended commitment. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.~~

~~(6) A designated facility need not be approved for 72-hour treatment and evaluation pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in paragraph (5) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been~~

~~provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.~~

~~(7) The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees. The state shall be represented by the district attorney who shall notify the Attorney General in writing that a case has been referred under this section. If the person is indigent, the county public defender or State Public Defender shall be appointed. The State Public Defender may provide for representation of the person in any manner authorized by Section 15402 of the Government Code. Appointment of necessary psychologists or psychiatrists shall be made in accordance with this article and Penal Code and Evidence Code provisions applicable to criminal defendants who have entered pleas of not guilty by reason of insanity.~~

~~(8) If the court or jury finds that the patient is a person described in paragraph (1), the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed. This commitment shall be for an additional period of two years from the date of termination of the previous commitment, and the person may not be kept in actual custody longer than two years unless another extension of commitment is obtained in accordance with the provisions of this subdivision. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall~~

~~not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.~~

~~(9) A person committed under this subdivision shall be eligible for release to outpatient status pursuant to the provisions of Title 15 (commencing with Section 1600) of Part 2.~~

~~(10) Prior to termination of a commitment under this subdivision, a petition for recommitment may be filed to determine whether the patient remains a person described in paragraph (1). The recommitment proceeding shall be conducted in accordance with the provisions of this subdivision.~~

~~(11) Any commitment under this subdivision places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.~~

SEC. 29. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation report recommends that registration be ordered at sentencing pursuant to Section 290.006, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

~~(D)~~ The probation officer shall also include in the report his or her recommendation of both of the following:

~~(i)~~ The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

~~(ii)~~ Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

~~(E)~~

(D) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of

the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that there shall be no waiver unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender pursuant to Section 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered

and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state,

would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned,

or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 33215, a machinegun under Section 32625, or a silencer under Section 33410.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in subdivision (b) or (c) of Section 27590.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

SEC. 30. Section 1203.72 of the Penal Code is amended to read:

1203.72. ~~Except as provided in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1203, no~~ No court shall pronounce judgment upon any defendant, as to whom the court has requested a probation report pursuant to Section 1203.7, unless a copy of the probation report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney, at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for consideration of the report with respect to pronouncement of judgment. The report shall be filed with the clerk of the court as a record in the case at the time the court considers the report.

If the defendant is not represented by an attorney, the court, upon ordering the probation report, shall also order the probation officer who prepares the report to discuss its contents with the defendant.

SEC. 31. Section 1417.3 of the Penal Code is amended to read:

1417.3. ~~(a)~~ At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding

three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

~~(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.~~

SEC. 32. Section 1524.1 of the Penal Code is repealed.

~~1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.~~

~~(b)(1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other bodily fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.~~

~~(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, and~~

is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other bodily fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim. As used in this paragraph, "Section 289.5" refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports

regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequisite counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

~~Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.~~

~~(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).~~

~~(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.~~

~~(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.~~

~~(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (e) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for~~

~~in subdivision (e) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.~~

~~(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.~~

~~(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.~~

~~(k) The results of any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.~~

SEC. 33. Section 2625 of the Penal Code is amended to read:

2625. (a) For the purposes of this section only, the term "prisoner" includes any individual in custody in a state prison, the California Rehabilitation Center, or a county jail, or who is a ward of the Department of ~~the Youth Authority~~ Corrections and Rehabilitation or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private treatment facility.

(b) In any proceeding brought under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, ~~and Section 366.26 of the Welfare and Institutions Code~~, where the proceeding seeks to terminate the parental rights of any prisoner, or any proceeding brought under Section 300 of the Welfare and Institutions Code, where

the proceeding seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the proceeding is pending, or a judge thereof, shall order notice of any court proceeding regarding the proceeding transmitted to the prisoner.

(c) Service of notice shall be made pursuant to Section 7881 or 7882 of the Family Code or Section 290.2, 291, or 294 of the Welfare and Institutions Code, as appropriate.

(d) Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under Part 4 (commencing with Section 7800) of Division 12 of the Family Code ~~or Section 366.26 of the Welfare and Institutions Code~~ and no petition to adjudicate the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), ~~(e)~~, (d), ~~(e)~~, ~~(f)~~, ~~(i)~~, or ~~(j)~~ of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.

(e) In any other action or proceeding in which a prisoner's parental or marital rights are subject to adjudication, an order for the prisoner's temporary removal from

the institution and for the prisoner's production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 15 days before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner's presence is no longer required, to return the prisoner to the institution from which he or she was taken. The expense of executing the order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of ____ (as the case may be).

The people of the State of California to the warden of ____:

An order having been made this day by me, that (name of prisoner) be produced in this court as a party in the case of ____, you are commanded to deliver (name of prisoner) into the custody of ____ for the purpose of (recite purposes).

Dated this ____ day of ____, 20__.

(f) When a prisoner is removed from the institution pursuant to this section, the prisoner shall remain in the constructive custody of the warden, superintendent, or other person in charge of the institution.

(g) A prisoner who is a parent of a child involved in a dependency hearing described in this section and who has either waived his or her right to physical presence at the hearing pursuant to subdivision (d) or who has not been ordered before the court

may, at the court's discretion, in order to facilitate the parent's participation, be given the opportunity to participate in the hearing by videoconference, if that technology is available, and if that participation otherwise complies with the law. If videoconferencing technology is not available, teleconferencing may be utilized to facilitate parental participation. Because of the significance of dependency court hearings for parental rights and children's long-term care, physical attendance by the parent at the hearings is preferred to participation by videoconference or teleconference. This subdivision shall not be construed to limit a prisoner's right to physically attend a dependency hearing as provided in this section. This section does not authorize the use of videoconference or teleconference to replace in-person family visits with prisoners.

(h) It is the intent of the Legislature to maintain internal job placement opportunities and preserve earned privileges for prisoners, and prevent the removal of prisoners subject to this section from court-ordered courses as a result of their participation in the proceedings described in this section.

(i) Notwithstanding any other law, a court may not order the removal and production of a prisoner sentenced to death, whether or not that sentence is being appealed, in any action or proceeding in which the prisoner's parental rights are subject to adjudication.

SEC. 34. Section 7501 of the Penal Code is amended to read:

~~7501. In order to address the public health crisis described in Section 7500, it is the intent of the Legislature to do all of the following:~~

7501. In recognition of the state and local public health interests served by the medical testing for exposure to the human immunodeficiency virus (HIV) or for hepatitis

B or C and related procedures as formerly mandated on local governments, the Legislature encourages the performance of the following as best practices:

(a) Establish a procedure through which custodial and law enforcement personnel are required to report certain situations and may request and be granted a confidential test for HIV or for hepatitis B or C of an inmate convicted of a crime, or a person arrested or taken into custody, if the custodial or law enforcement officer has reason to believe that he or she has come into contact with the blood or semen of an inmate or in any other manner has come into contact with the inmate in a way that could result in HIV infection, or the transmission of hepatitis B or C, based on the latest determinations and conclusions by the federal Centers for Disease Control and Prevention and the State Department of Public Health on means for the transmission of AIDS or hepatitis B and C, and if appropriate medical authorities, as provided in this title, reasonably believe there is good medical reason for the test.

(b) Permit inmates to file similar requests stemming from contacts with other inmates.

(c) ~~Require that probation and parole officers be notified~~ Notify probation and parole officers when an inmate being released from incarceration is infected with AIDS or hepatitis B or C, and permit these officers to notify certain persons who will come into contact with the parolee or probationer, if authorized by law.

(d) Authorize prison medical staff authorities to ~~require tests of~~ test a jail or prison inmate under certain circumstances, if they reasonably believe, based upon the existence of supporting evidence, that the inmate may be suffering from HIV infection or AIDS or hepatitis B or C and is a danger to other inmates or staff.

(e) ~~Require~~ Authorize supervisory and medical personnel of correctional institutions to which this title applies to notify staff if they are coming into close and direct contact with persons in custody who have tested positive or who have AIDS or hepatitis B or C, and provide appropriate counseling and safety equipment.

SEC. 35. Section 7510 of the Penal Code is amended to read:

7510. (a) A law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, a person charged with any crime, whether or not the person is in custody, or a person on probation or parole due to conviction of a crime, ~~shall~~ may report the incident through the completion of a form provided by the State Department of Public Health. The form ~~shall~~ may be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement employee. Utilizing this form the law enforcement employee may request a test for HIV or hepatitis B or C of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency, however it is encouraged that the processing of a form by the chief medical officer containing a request for HIV or hepatitis B or C testing of the subject person ~~shall~~ not be delayed by the processing of other reports or forms.

(b) The report ~~required by~~ described in subdivision (a) ~~shall~~ may be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, ~~but no longer than two days after the incident,~~ ~~except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists.~~ The report ~~shall~~ may include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. The law enforcement employee ~~shall~~ may assist in the investigation of the incident, as requested by the chief medical officer.

(c) For purposes of this section, Section 7502, and Section 7511, "chief medical officer" means:

(1) In the case of a report filed by a staff member of a state prison, the chief medical officer of that facility.

(2) In the case of a parole officer filing a report, the chief medical officer of the nearest state prison.

(3) In the case of a report filed by an employee of the Division of Juvenile Justice, the chief medical officer of the facility.

(4) In the case of a report filed against a subject who is an inmate of a city or county jail or a county- or city-operated juvenile facility, or a court facility, or who has been arrested or taken into custody whether or not the person has been charged with a crime, but who is not in a correctional facility, including a person detained for, or charged with, an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, or a person charged with a crime,

whether or not the person is in custody, the county health officer of the county in which the individual is jailed or charged with the crime.

(5) In the case of a report filed by a probation officer, a prosecutor or staff person, a public defender attorney or staff person, the county health officer of the county in which the probation officer, prosecutor or staff person, a public defender attorney or staff person, is employed.

(6) In any instance where the chief medical officer, as determined pursuant to this subdivision, is not a physician and surgeon, the chief medical officer shall designate a physician and surgeon to perform his or her duties under this title.

SEC. 36. Section 7511 of the Penal Code is amended to read:

7511. (a) The chief medical officer ~~shall~~ may, regardless of whether a report filed pursuant to Section 7510 contains a request for HIV or hepatitis B or C testing, decide whether or not to require HIV or hepatitis B or C testing of the inmate or other person who is the subject of the report filed pursuant to Section 7510, ~~within 24 hours of receipt of the report~~. If the chief medical officer decides to require HIV or hepatitis B or C testing, he or she ~~shall~~ may specify in his or her decision the circumstances, if any, under which followup testing will also be required.

(b) The chief medical officer ~~shall~~ may order an HIV or hepatitis B or C test only if he or she finds that, considering all of the facts and circumstances, there is a significant risk that HIV or hepatitis B or C was transmitted. In making this decision, the chief medical officer ~~shall~~ may take the following factors into consideration:

(1) Whether an exchange of bodily fluids occurred which could have resulted in a significant risk of AIDS or hepatitis B or C infection, based on the latest written

guidelines and standards established by the federal Centers for Disease Control and Prevention and the State Department of Health Services.

(2) Whether the person exhibits medical conditions or clinical findings consistent with HIV or hepatitis B or C infection.

(3) Whether the health of the institution staff or inmates may have been endangered as to HIV or hepatitis B or C infection resulting from the reported incident.

(c) Prior to reaching a decision, the chief medical officer may ~~if needed~~ receive written or oral testimony from the law enforcement employee filing the report, from the subject of the report, and from witnesses to the incident, as he or she deems necessary for a complete investigation. The Best practices dictate that the decision shall be in writing and shall state the reasons for the decision. A and that a copy shall be provided by the chief medical officer to the law enforcement employee who filed the report and to the subject of the report, and where the subject is a minor, to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

SEC. 37. Section 7512 of the Penal Code is amended to read:

7512. (a) An inmate of a correctional institution may request testing for HIV or hepatitis B or C of another inmate of that institution if he or she has reason to believe that he or she has come into contact with the bodily fluids of that inmate, in situations, which may include, but are not limited to, rape or sexual contact with a potentially infected inmate, tattoo- or drug-needle sharing, an incident involving injury in which bodily fluids are exchanged, or confinement with a cellmate under circumstances involving possible mingling of bodily fluids. A request may be filed under this section

only within two calendar days of the date when the incident causing the request occurred, except that the chief medical officer may waive this filing period requirement when he or she finds that good cause exists.

(b) An inmate in a Division of Juvenile Justice facility or any county- or city-operated juvenile facility who is 15 years of age or older may file a request for a test of another inmate in that facility, in the same manner as an inmate in a state prison, and is subject to the same procedures and rights. An inmate in a Division of Juvenile Justice facility or a county- or city-operated juvenile facility who is a minor may file a request for testing through a staff member of the facility in which he or she is confined. A staff member may file this request on behalf of a minor on his or her own volition if he or she believes that a situation meeting the criteria specified in subdivision (a) has occurred warranting the request. The filing of a request by staff on behalf of an inmate of a Division of Juvenile Justice facility or a local juvenile facility ~~shall~~ is encouraged to be within two calendar days of its discovery by staff, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists.

When a request is filed on behalf of a minor, and before the superintendent of the facility approves or disapproves the request, the facility shall is encouraged to make best efforts to notify the parent or guardian of the minor of the request ~~and seek permission from the parent or guardian for the test request to proceed.~~ If the parent or guardian ~~refuses to grant permission for~~ objects to the test, the Director of the Division of Juvenile Facilities may request the juvenile court in the county in which the facility is located, to rule on whether the test request procedure set forth in this title shall

continue. The juvenile court shall make a ruling within five days of the case being brought before the court.

~~If the parent or guardian cannot be located, the superintendent of the facility shall approve or disapprove the request for a test.~~

(c) Upon receipt of a request for testing as provided in this section, a law enforcement employee ~~shall~~ may submit the request to the chief medical officer, the identity of which ~~shall~~ may be determined as if the request had been made by an employee of the facility. The chief medical officer ~~shall~~ may follow the procedures set forth in Section 7511 with respect to investigating the request and reaching a decision as to mandatory testing of the inmate who is the subject of the request. The inmate submitting the request shall provide names or testimony of witnesses within the limits of his or her ability to do so. The chief medical officer ~~shall~~ may make his or her decision based on the criteria set forth in Section 7511. A copy of the chief medical officer's decision ~~shall~~ may be provided to the person submitting the request for HIV or hepatitis B or C testing, to the subject of the request, and to the superintendent of the correctional institution. In the case of a minor, best efforts should be made to provide a copy of the decision ~~shall be provided~~ to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

SEC. 38. Section 7512.5 of the Penal Code is amended to read:

7512.5. In the absence of the filing of a report pursuant to Section 7510 or a request pursuant to Section 7512, the chief medical officer may order a test of an inmate if he or she concludes there are clinical symptoms of HIV infection, AIDS, or hepatitis

B or C, as recognized by the federal Centers for Disease Control and Prevention or the State Department of Health Services.

A copy of the decision ~~shall~~ may be provided to the inmate, and where the inmate is a minor, to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located. Any decision made pursuant to this section shall not be appealable to a three-member panel provided for under Section 7515.

SEC. 39. Section 7514 of the Penal Code is amended to read:

7514. (a) ~~It shall be the~~ The chief medical officer's responsibility to see officer may ensure that personal counseling is provided to a law enforcement employee filing a report pursuant to Section 7510, an inmate filing a request pursuant to Section 7512, and any potential test subject, at the time the initial report or request for tests is made, at the time when tests are ordered, and at the time when test results are provided to the employee, inmate, or test subject.

(b) The chief medical officer may provide additional counseling to any of these individuals, upon his or her request, or whenever the chief medical officer deems advisable, and may arrange for the counseling to be provided in other jurisdictions. The chief medical officer ~~shall~~ may encourage the subject of the report or request, the law enforcement employee who filed the report, the person who filed the request pursuant to Section 7512, or in the case of a minor, the minor on whose behalf the request was filed, to undergo voluntary HIV or hepatitis B or C testing if the chief medical officer deems it medically advisable. All testing required by this title or any voluntary testing resulting from the provisions of this title, shall be at the expense of the appropriate correctional institution.

SEC. 40. Section 7515 of the Penal Code is amended to read:

7515. (a) ~~An appeal process may be made available to appeal a decision of the chief medical officer made pursuant to Section 7511, 7512, or 7516 may be appealed, within three calendar days of receipt of the decision,~~ to a three-person panel, either by the person required to be tested, his or her parent or guardian when the subject is a minor, the law enforcement employee filing a report pursuant to either Section 7510 or 7516, or the person requesting testing pursuant to Section 7512, whichever is applicable, or the chief medical officer, upon his or her own motion. If no request for appeal is filed ~~under this subdivision,~~ the chief medical officer's decision shall be final.

(b) Depending upon which entity has jurisdiction over the person requesting or appealing a test, the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city ~~shall~~ may convene ~~the an~~ appeal panel and ~~shall ensure that the appeal is heard within seven calendar days.~~

(c) ~~An appeal panel required pursuant to subdivision (a) or (b)~~ shall consist of three members, as follows:

(1) The chief medical officer making the original decision.

(2) A physician and surgeon who has knowledge in the diagnosis, treatment, and transmission of HIV or hepatitis B and C, selected by the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city. The physician and surgeon appointed pursuant to this paragraph shall preside at the hearing and serve as chairperson.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, city, or county and city correctional institution or with an employer of a law

enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis, treatment, and transmission of HIV or hepatitis B and C. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Public Health Services from a list of persons to be compiled by that department. The State Department of Public Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list.

The Legislature finds and declares that the presence of a physician and surgeon on the panel who is selected by the State Department of Public Health Services enhances the objectivity of the panel, and it is the intent of the Legislature that the State Department of Public Health Services make every attempt to comply with this subdivision.

(d) The Department of Corrections and Rehabilitation, the county, the city, or the county and city ~~shall~~ may notify the Office of AIDS in the State Department of ~~Health Services~~ Public Health when a panel ~~must be~~ is convened under subdivision (a) wherein HIV testing has been requested or the State Department of ~~Health Services~~ Public Health when a test for hepatitis B or C has been requested. ~~Within two calendar days of the notification, a~~ A physician and surgeon appointed under paragraph (3) of subdivision (c) ~~shall~~ is encouraged to attempt to reach agreement with the Department of Corrections and Rehabilitation, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b) as soon as practicable.

(e) If the Office of AIDS in the State Department of ~~Health Services~~ Public Health or, in the case of a hepatitis B or C test, the State Department of ~~Health Services~~ Public Health, ~~fails to comply with~~ does not reach agreement as specified in subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) ~~fails to~~ does not attend the scheduled hearing, the Department of Corrections and Rehabilitation, the county, the city, or the county and city ~~shall~~ may appoint a physician and surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV and hepatitis B and C to serve on the appeals panel to replace the physician and surgeon ~~required~~ under paragraph (3) of subdivision (c). The Department of Corrections and Rehabilitation, the county, the city, or the county and city ~~shall have~~ is encouraged to utilize standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city ~~shall~~ may, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel ~~shall meet the requirements of~~ be subject to the specifications contained in paragraphs (1), (2), and (3) of subdivision (c).

~~No panel shall be created pursuant to this paragraph by a~~

A county, city, or county and city correctional institution ~~except with~~ is encouraged to obtain the prior approval of the local health officer before creating a panel pursuant to this paragraph.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons ~~shall have~~ may be afforded the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian and, if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV or hepatitis B or C testing pursuant to Section 7512, whichever is applicable and, if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(h) When a hearing is sought pursuant to this section, or filed by a law enforcement employee pursuant to a request made under Section 7510, ~~the decision shall be rendered within two days of the hearing. A~~ a unanimous vote of the panel shall be necessary in order to require that the subject of the hearing undergo HIV or hepatitis B or C testing.

The criteria specified in Section 7511 for use by the chief medical officer ~~shall~~ may also be utilized by the panel in making its decision.

The

Best practices dictate that the decision shall be in writing, stating reasons for the decision, and shall be signed by the members. ~~A, and that a copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of the institution, except that, when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the minor, unless the parent or guardian cannot be located.~~

SEC. 41. Section 7516 of the Penal Code is amended to read:

7516. (a) When a custodial officer or staff person of a correctional institution, observes or is informed of activity in a correctional institution that is classified as causing, or known to cause, the transmission of the AIDS virus, as described in subdivision (b), he or she may file a written report with the facility's chief medical officer which, in the case of city or county jails, shall be the county health officer.

(b) Reportable activities within a correctional institution for which a report may be filed pursuant to subdivision (a) include, but are not limited to, all of the following activities, if they could result in the transmission of AIDS, according to the standards provided for in this chapter:

- (1) Sexual activity resulting in exchange of bodily fluids.
- (2) IV drug use.
- (3) Incidents involving injury to inmates or staff in which bodily fluids are exchanged.
- (4) Tampering with medical and food supplies or medical or food equipment.

(5) Tattooing among inmates.

(c) The medical officer may investigate the report, conduct interviews, and determine whether the situation reported caused the probable exchange of body fluids in a manner that could result in the transmission of HIV, utilizing the criteria set forth in Section 7511, and pose a danger to the health and safety of the institution's staff and inmate population.

If the chief medical officer concludes this may have occurred, he or she shall may require HIV testing of any inmate which he or she deems necessary pursuant to the investigation. Whenever an inmate is required to undergo an HIV test pursuant to this subdivision, he or she may appeal that decision exercise any right to appeal that decision as may be made available as provided for in Section 7515.

(d) Testing under this section may only be required by a unanimous vote of all three members of the panel. The rights guaranteed of inmates under Section 7515 shall apply.

When a hearing is convened pursuant to this section, the hearing shall be closed, except that both the person filing the original report and the chief medical officer as well as other panel members may also call witnesses to testify at the hearing.

~~When a hearing is sought pursuant to this section, the decision shall be rendered within 20 days of the date the hearing is sought by the medical officer.~~

(e) This section shall apply to situations involving individual inmates or group situations but shall not be utilized to require testing of all inmates in a correctional institution.

(f) ~~The Best practices dictate that the findings~~ of the panel shall be set forth in writing, including reasons for the panel's decision, and shall be signed by the members of the panel. ~~A, and that a copy of the decision shall be provided to the superintendent of the correctional institution, the subjects of the report and to any inmates or officers whom the panel concludes may have been exposed to HIV infection as established by provisions of this title.~~

SEC. 42. Section 7516.8 of the Penal Code is repealed.

~~7516.8. It shall be the responsibility of the chief medical officer to see that copies of the hearing decision are distributed in accordance with requirements of this chapter.~~

SEC. 43. Section 7518 of the Penal Code is amended to read:

7518. (a) The Department of Corrections and Rehabilitation and local health officers shall adopt guidelines for the making of decisions pursuant to this chapter in consultation with the Office of AIDS in the State Department of ~~Health Services~~ Public Health for HIV testing and with the State Department of ~~Health Services~~ Public Health for hepatitis B and C testing. The guidelines shall be based on the latest written guidelines of HIV or hepatitis B and C transmission and infection established by the federal Centers for Disease Control and Prevention and the State Department of ~~Health Services~~ Public Health.

(b) Oversight responsibility for implementation of the applicable provisions of this title, including the oversight of reports involving parole officers and the staff of state adult and youth correctional facilities shall be vested with the Chief of Medical Services in the Department of Corrections and Rehabilitation.

Oversight responsibility at the county, the city, or the county and city level ~~shall~~ may rest with the local health officer.

SEC. 44. Section 7520 of the Penal Code is amended to read:

7520. Upon the release of an inmate from a correctional institution, a medical representative of the institution ~~shall~~ may notify the inmate's parole or probation officer, where it is the case, that the inmate has tested positive for infection with HIV, or has been diagnosed as having AIDS or hepatitis B and C. The representative of the correctional institution ~~shall~~ may obtain the latest available medical information concerning any precautions which should be taken under the circumstances, and shall convey that information to the parole or probation officer.

When a parole or probation officer learns from responsible medical authorities that a parolee or probationer under his or her jurisdiction has AIDS or has tested positive for HIV infection, or hepatitis B or C, the parole or probation officer ~~shall be responsible for ensuring that~~ may encourage the parolee or probationer ~~contacts~~ to contact the county health department ~~in order to be, or through~~ or his or her own physician and surgeon ~~is, in order to be~~ made aware of counseling and treatment for AIDS or hepatitis B or C, as appropriate commensurate with that available to the general population of that county.

SEC. 45. Section 7521 of the Penal Code is amended to read:

7521. (a) When a parole or probation officer learns from responsible medical authorities that a parolee or probationer in his or her custody has any of the conditions listed in Section 7520, but that the parolee or probationer has not properly informed his or her spouse, the officer may ensure that this information is relayed to the spouse

only through either the chief medical officer of the institution from which the person was released or the physician and surgeon treating the spouse or the parolee or probationer. The parole or probation officer ~~shall~~ may seek to ensure that proper counseling accompanies release of this information to the spouse, through the person providing the information to the inmate's spouse.

(b) If a parole or probation officer has received information from appropriate medical authorities that one of his or her parolees or probationers is HIV infected or has AIDS or hepatitis B or C, and the parolee or probationer has a record of assault on a peace officer, and the officer seeks the aid of local law enforcement officers to apprehend or take into custody the parolee or probationer, he or she ~~shall~~ may inform the officers assisting him or her in apprehending or taking into custody the parolee or probationer, of the person's condition, to aid them in protecting themselves from contracting AIDS or hepatitis B or C.

(c) Local law enforcement officers receiving information pursuant to this subdivision shall maintain confidentiality of information received pursuant to subdivision (b). Willful use or disclosure of this information is a misdemeanor. Parole or probation officers who willfully or negligently disclose information about AIDS or hepatitis B or C infection, other than as prescribed under this title or any other provision of law, shall also be guilty of a misdemeanor.

SEC. 46. Section 7522 of the Penal Code is amended to read:

7522. (a) Supervisory and medical personnel in correctional institutions ~~shall~~ may notify all law enforcement employees when those employees have had direct contact with the bodily fluids of inmates or persons charged or in custody who either

have tested positive for infection with HIV, or been diagnosed as having AIDS or hepatitis B or C.

(b) Supervisory and medical personnel at correctional institutions ~~shall~~ may provide to employees covered by this section the latest medical information regarding precautions to be taken under the circumstances, and ~~shall~~ may furnish proper protective clothing and other necessary protective devices or equipment, and instruct staff on the applicability of this title.

(c) The law enforcement employee who reported an incident pursuant to Section 7510 ~~shall~~ may be notified of the results of any test administered to any person as a result of the reporting.

SEC. 47. Section 7523 of the Penal Code is amended to read:

7523. Information obtained by a law enforcement employee pursuant to this chapter ~~shall be confidential, and shall~~ not be disclosed except as specifically authorized by this chapter. Information obtained by a member of a panel pursuant to Section 7515 or 7516 shall not be disclosed except as authorized by this title.

SEC. 48. Section 7551 of the Penal Code is amended to read:

7551. A correctional, custodial, or law enforcement agency to which this title applies ~~shall be responsible for informing~~ may inform staff of the provisions of this title, and assisting in its implementation as it applies to the respective agency.

SEC. 49. Section 7554 of the Penal Code is amended to read:

7554. (a) The purpose of this section is to establish the extent of peace officers' occupational exposure for HIV infection.

(b) The correctional, custodial, or law enforcement agency to which this title applies or the chief medical officer of a correctional, custodial, or law enforcement agency to which this title applies ~~shall~~ may report each reportable incident involving a law enforcement employee under this title together with the disposition of each case to the State Department of ~~Health Services~~ Public Health.

The report ~~shall~~ may include all of the following: the assignment of the law enforcement employee; the type of incident; the type of injury sustained; the treatment rendered to the injured employee; citations to criminal laws which were allegedly violated; and the identity of the employing agency. Under no circumstances shall the identity of the law enforcement employee or the source person be transmitted by the local law enforcement agency or the chief medical officer of the local agency to the State Department of ~~Health Services~~ Public Health.

(c) The State Department of ~~Health Services~~ Public Health shall release the data, upon written request, to any law enforcement agency or to any bona fide, nonprofit law enforcement research body primarily concerned with peace officer health issues, provided that the identity of any law enforcement employee, any person who is the subject of a report, or any tested person under this title shall remain anonymous. Any unauthorized release of information leading to the identity of a person whose identity is protected under this section shall constitute a misdemeanor.

(d) For purposes of this section, a “reportable incident” means an incident described in subdivision (a) of Section 7510. A “source person” means a person whose bodily fluids are believed to have contacted the bodily fluids of a law enforcement employee as described in subdivision (a) of Section 7510.

SEC. 50. Section 13014 of the Penal Code is amended 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 as a written form or by electronic means to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms that 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~~ may 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.

SEC. 51. Section 13023 of the Penal Code is amended to read:

13023. (a) Subject to the availability of adequate funding, the Attorney General shall ~~direct~~ request 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 hate crimes. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required pursuant to Section 422.92. Compliance with this subdivision by local law enforcement agencies shall be optional.

(b) On or before July 1 of each year, 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.

(c) For purposes of this section, "hate crime" has the same meaning as in Section 422.55.

SEC. 52. Section 13515 of the Penal Code is repealed.

~~13515. (a) Every city police officer or deputy sheriff at a supervisory level and below who is assigned field or investigative duties shall complete an elder and dependent adult abuse training course certified by the Commission on Peace Officer Standards and Training within 18 months of assignment to field duties. Completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, include all of the following subjects:~~

- ~~(1) Relevant laws.~~
- ~~(2) Recognition of elder and dependent adult abuse.~~
- ~~(3) Reporting requirements and procedures.~~
- ~~(4) Neglect of elders and dependent adults.~~
- ~~(5) Fraud of elders and dependent adults.~~
- ~~(6) Physical abuse of elders and dependent adults.~~

~~(7) Psychological abuse of elders and dependent adults.~~

~~(8) The role of the local adult protective services and public guardian offices.~~

~~(b) When producing new or updated training materials pursuant to this section, the commission shall consult with the Bureau of Medi-Cal Fraud and Elder Abuse and other subject matter experts. Any new or updated training materials shall address all of the following:~~

~~(1) The jurisdiction and responsibility of law enforcement agencies pursuant to Section 368.5.~~

~~(2) The fact that the protected classes of "dependent person" as defined in Section 288 and "dependent adult" as defined in Section 368 include many persons with disabilities, regardless of the fact that most of those persons live independently.~~

~~(3) Other relevant information and laws.~~

~~(c) The commission also may inform the law enforcement agencies of other relevant training materials.~~

SEC. 53. Section 13518.1 of the Penal Code is repealed.

~~13518.1. In order to prevent the spread of communicable disease, every law enforcement agency employing peace officers described in subdivision (a) of Section 13518 shall provide to each of these peace officers an appropriate portable manual mask and airway assembly for use when applying cardiopulmonary resuscitation.~~

SEC. 54. Section 13519.7 of the Penal Code is repealed.

~~13519.7. (a) On or before August 1, 1994, the commission shall develop complaint guidelines to be followed by city police departments, county sheriffs' departments, districts, and state university departments, for peace officers who are~~

victims of sexual harassment in the workplace. In developing the complaint guidelines, the commission shall consult with appropriate groups and individuals having an expertise in the area of sexual harassment.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1995, include instruction on sexual harassment in the workplace. The training shall include, but not be limited to, the following:

- (1) The definition of sexual harassment.
- (2) A description of sexual harassment, utilizing examples.
- (3) The illegality of sexual harassment.
- (4) The complaint process, legal remedies, and protection from retaliation available to victims of sexual harassment.

In developing this training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment.

(c) All peace officers who have received their basic training before January 1, 1995, shall receive supplementary training on sexual harassment in the workplace by January 1, 1997.

SEC. 55. Section 13701 of the Penal Code is repealed.

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 (c) 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. 56. Section 13710 of the Penal Code is repealed.

~~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. 57. Section 13730 of the Penal Code, as amended by Section 94 of Chapter 178 of the Statutes of 2010, is repealed.

~~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 Division 4 (commencing with Section 18250) of Title 2 of Part 6.~~

SEC. 58. Section 14205 of the Penal Code, as amended by Section 2 of Chapter 225 of the Statutes of 2010, is amended to read:

14205. (a) ~~All local police and sheriffs' departments shall accept any report, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to crimes involving property. In cases where the person making a report of a missing person or runaway, contacts, including by telephone, the California Highway Patrol, the California Highway Patrol may take the report, and shall immediately advise the person making the report of the name and telephone number of the police or sheriff's department having jurisdiction of the residence address of the missing person and of the name and telephone number of the police or sheriff's department having jurisdiction of the place where the person was last seen. In cases of reports involving missing persons, including, but not limited to, runaways, the local police or sheriff's department shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person. If the missing person is under 16 years of age, or there is evidence that the person is at risk, the department shall broadcast a "Be On the Look-Out" bulletin, without delay, within its jurisdiction. In recognition of the state and local interest served by local police and sheriff's departments taking reports of missing persons, as formerly required by this section, the Legislature encourages local police and sheriff's departments to continue taking such missing persons reports, assessing reasonable steps to be taken to locate the person, and if the missing person is at risk or under 16 years of age, broadcast a "Be On the Look-Out" bulletin, without delay, within its jurisdiction, as a best practice.~~

(b) If the person reported missing is under 21 years of age, or if there is evidence that the person is at risk, and if the California Highway Patrol takes the report, the law

~~enforcement agency receiving the report~~ California Highway Patrol shall, within two hours after the receipt of the report, transmit the report to the Department of Justice for inclusion in the Violent Crime Information Center and the National Crime Information Center databases. For reported missing persons under 21 years of age or at risk, the Legislature encourages local police and sheriff's department to continue to, within two hours after the receipt of the report, transmits the reports to the Department of Justice for inclusion in the Violent Crime Information Center and the National Crime Information Center databases, as formerly required by this section.

(c) In cases where the report is taken by a ~~department, other than that of the city or county of residence of the missing person or runaway, the department, or division of the California Highway Patrol taking the report,~~ the division taking the report shall, without delay, and, in the case of children under 16 years of age or where there was evidence that the missing person was at risk, within no more than 24 hours, notify, and forward a copy of the report to the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or runaway and of the place where the person was last seen. The report shall also be submitted by the ~~department or division of the California Highway Patrol which took the report to the center.~~ In cases where the report is taken by a department, other than that of the city or county of residence of the missing person or runaway, the Legislature encourages the department to, with out delay and, in the case of children under 16 years of age or where there was evidence that the missing person was at risk, within no more than 24 hours, notify, and forward a copy of the report to the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or

runaway and of the place where the person was last seen. The Legislature also encourages the department which took the report to submit it to the center as a best practice.

~~(d) The requirements imposed by this section on local police and sheriffs' departments shall not be operative if the governing body of that local agency, by a majority vote of the members of that body, adopts a resolution expressly making those requirements inoperative.~~

SEC. 59. Section 14206 of the Penal Code is amended to read:

~~14206. (a) (1)~~

14206. In recognition of the state and local interests served by local law enforcement agencies accepting and responding to reports of missing persons, as was formerly required by this section, the Legislature encourages local agencies to continue to accept and respond to missing persons reports as a best practice. These recommended best practices are detailed in the requirements of this section that apply as requirements only to state law enforcement agencies.

(a) (1) When any person makes a report of a missing person to a police department, sheriff's department, district attorney's office, the California Highway Patrol, or other state law enforcement agency, the report shall be given in person or by mail in a format acceptable to the Attorney General. That form shall include a statement authorizing the release of the dental or skeletal X-rays, or both, of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under 18 years of age. Included with the form shall be instructions which state that if the person reported missing is still missing 30 days after the report

is made, the release form signed by a member of the family or next of kin of the missing person shall be taken by the family member or next of kin to the dentist, physician and surgeon, or medical facility in order to obtain the release of the dental or skeletal X-rays, or both, of that person or may be taken by a peace officer, if others fail to take action, to secure those X-rays. Notwithstanding any other provision of law, dental or skeletal X-rays, or both, shall be released by the dentist, physician and surgeon, or medical facility to the person presenting the request and shall be submitted within 10 days by that person to the police or sheriff's department or other state law enforcement agency having jurisdiction over the investigation. When the person reported missing has not been found within 30 days and no family or next of kin exists or can be located, the state law enforcement agency may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental or skeletal X-rays, or both, are necessary for the exclusive purpose of furthering the investigation. Notwithstanding any other provision of law, the written declaration, signed by a peace officer, is sufficient authority for the dentist, physician and surgeon, or medical facility to release the missing person's dental or skeletal X-rays, or both.

(2) The form provided under this subdivision shall also state that if the person reported missing is under 18 years of age, the completed form shall be taken to the dentist, physician and surgeon, or medical facility immediately when the state law enforcement agency determines that the disappearance involves evidence that the person is at risk or when the state law enforcement agency determines that the person missing is under 16 years of age and has been missing at least 14 days. The form shall

further provide that the dental or skeletal X-rays, or both, and a recent photograph of the missing child shall be submitted immediately to the state law enforcement agency. Whenever authorized under this subdivision to execute a written declaration to obtain the release of dental or skeletal X-rays, or both, is provided, the investigating state law enforcement agency may obtain those X-rays when a person reported missing is under 18 years of age and the law enforcement agency determines that the disappearance involves evidence that the person is at risk. In each case, the state law enforcement agency may confer immediately with the coroner or medical examiners and may submit its report including the dental or skeletal X-rays, or both, within 24 hours thereafter to the Attorney General. The Attorney General's office shall code and enter the dental or skeletal X-rays, or both, into the center.

(b) When a person reported missing has not been found within 45 days, the sheriff, chief of police, or other law enforcement agency conducting the investigation for the missing person may confer with the coroner or medical examiner prior to the preparation of a missing person report. The coroner or medical examiner shall cooperate with the law enforcement agency. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement agency initiating and conducting the investigation for the missing person may submit a missing person report and the dental or skeletal X-rays, or both, and photograph received pursuant to subdivision (a) to the Attorney General's office in a format acceptable to the Attorney General.

(c) Nothing in this section prohibits a parent or guardian of a child, reported to a law enforcement agency as missing, from voluntarily submitting fingerprints, and

other documents, to the law enforcement agency accepting the report for inclusion in the report which is submitted to the Attorney General.

~~(d) The requirements imposed by this section on local police and sheriff's departments shall not be operative if the governing body of that local agency, by a majority vote of the members of that body, adopts a resolution expressly making those requirements inoperative.~~

SEC. 60. Section 14207 of the Penal Code is amended to read:

14207. (a) When a person reported missing has been found, it is a best practice for the sheriff, chief of police, coroner or medical examiner, or the local law enforcement agency locating the missing person shall immediately report that information to the Attorney General's office. For state law enforcement agencies locating the missing person, they shall report that information immediately to the Attorney General's office.

(b) When a child under 12 years of age or a missing person, where there was evidence that the person was at risk, is found, it is a best practice for local law enforcement agencies and a requirement for state law enforcement agencies that the report indicating that the person is found shall be made not later than 24 hours after the person is found. A It is a best practice for local law enforcement agencies and a requirement for state law enforcement agencies that a report shall also be made to the local law enforcement agency that made the initial missing person report. The Attorney General's office shall then notify the National Crime Information Center that the missing person has been found.

(c) In the event that a missing person is found alive or dead in less than 24 hours and the local police or sheriff's department has reason to believe that the person had

been abducted, it is a best practice the department ~~shall~~ to submit a report to the center in a format established by the Attorney General. In the event that a missing person has been found before he or she has been reported missing to the center, the information related to the incident ~~shall~~ is encouraged to be submitted to the center.

SEC. 61. Section 14210 of the Penal Code is amended to read:

14210. (a) The Legislature finds and declares that it is the duty of all state law enforcement agencies, and a best practice for local law enforcement agencies, to immediately assist any person who is attempting to make a report of a missing person or runaway.

(b) The Department of the California Highway Patrol shall continue to implement the written policy, required to be developed and adopted pursuant to former Section 11114.3, for the coordination of each of its divisions with the police and sheriffs' departments located within each division in taking, transmitting, and investigating reports of missing persons, including runaways.

SEC. 62. Section 18250 of the Penal Code is amended to read:

18250. If any of the ~~following~~ persons described in subdivisions (a) to (i), inclusive, is at the scene of a domestic violence incident involving a threat to human life or a physical assault, that person 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. If a firearm or other deadly weapon is discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or

a physical assault, the firearm or deadly weapon may be taken into temporary custody when necessary for the protection of the peace officer or other persons present.

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

(b) A peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2.

(c) A member of the University of California Police Department, as defined in subdivision (b) of Section 830.2.

(d) An officer listed in Section 830.6, while acting in the course and scope of the officer's employment as a peace officer.

(e) A member of a California State University Police Department, as defined in subdivision (c) of Section 830.2.

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

(g) A peace officer, as defined in subdivision (d) of Section 830.31.

(h) A peace officer, as defined in subdivisions (a) and (b) of Section 830.32.

(i) A peace officer, as defined in Section 830.5.

SEC. 63. Section 18255 of the Penal Code is amended to read:

18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to this division, the officer shall give the owner or person who possessed the firearm a receipt.

(b) The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm.

(c) The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this division, and the date after which the owner or possessor can recover the firearm or other deadly weapon.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 64. Section 18265 of the Penal Code is amended to read:

18265. (a) No firearm or other deadly weapon taken into custody pursuant to this division shall be held less than 48 hours.

(b) Except as provided in Section 18400, 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 five business days after the owner or person who was in lawful possession demonstrates compliance with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) In any civil action or proceeding for the return of any firearm, ammunition, or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days after the initial seizure, except as provided in Section 18270, the court shall allow reasonable attorney's fees to the prevailing party.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 65. Section 18275 of the Penal Code is amended to read:

18275. (a) Any firearm or other deadly weapon that has been taken into custody and held by any of the following law enforcement authorities for longer than 12 months, and has not been recovered by the owner or person who had lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivisions (a) and (b) of Section 18000 and subdivisions (a) and (b) of Section 18005:

- (1) A police, university police, or sheriff's department.
- (2) A marshal's office.
- (3) A peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2.
- (4) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2.
- (5) A peace officer, as defined in subdivision (d) of Section 830.31.
- (6) A peace officer, as defined in Section 830.5.

(b) If a firearm or other deadly weapon is not recovered within 12 months due to an extended hearing process as provided in Section 18420, it is 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.

(c) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 66. Section 18400 of the Penal Code is amended to read:

18400. (a) When a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon seized under this division would be likely to result in endangering the victim or the person who reported the assault or threat, the agency shall so 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.

(b) The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition.

(c) 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.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 67. Section 18405 of the Penal Code is amended to read:

18405. (a) If a petition is filed under Section 18400, 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 the person has 30 days from the date of receipt of the notice to respond

to the court clerk to confirm the person's desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon.

(b) For purposes of this section, 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.

(c) 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.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 68. Section 18410 of the Penal Code is amended to read:

18410. (a) If the person who receives a petition under Section 18405 requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request.

(b) 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.

(c) 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~~ may order the return of the firearm or

other deadly weapon and ~~shall~~ may award reasonable attorney's fees to the prevailing party.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section when the firearm or other deadly weapon was found pursuant to a lawful search other than a consensual search or in plain sight.

SEC. 69. Section 18420 of the Penal Code is amended to read:

18420. (a) If, at a hearing under Section 18410, 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.

(b) 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~~ may order the return of the firearm or other deadly weapon and ~~shall~~ may award reasonable attorney's fees to the prevailing party.

(c) 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 Sections 18000 and 18005.

(d) Notwithstanding any other provision of law, no city or county shall be required to take the action described in this section, but may exercise its own discretion to do so.

SEC. 70. Section 1456 of the Probate Code is amended to read:

1456. (a) In addition to any other requirements that are part of the judicial branch education program, on or before January 1, 2008, the Judicial Council shall adopt a rule of court that shall do all of the following:

(1) Specifies the qualifications of a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to ~~Sections 1470 and 1471~~ Section 1470.

(2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis.

(3) Specifies the number of hours of education in classes related to conservatorships or guardianships that a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to ~~Sections 1470 and 1471~~ Section 1470 shall complete each year.

(4) Specifies the particular subject matter that shall be included in the education required each year.

(5) Specifies reporting requirements to ensure compliance with this section.

(b) In formulating the rule required by this section, the Judicial Council shall consult with interested parties, including, but not limited to, the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, the Professional Fiduciary Association of California, the California Association of Public Administrators,

Public Guardians and Public Conservators, a disability rights organization, and the Association of Professional Geriatric Care Managers.

SEC. 71. Section 1471 of the Probate Code is repealed.

~~1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:~~

- ~~(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.~~
- ~~(2) A proceeding to terminate the conservatorship.~~
- ~~(3) A proceeding to remove the conservator.~~
- ~~(4) A proceeding for a court order affecting the legal capacity of the conservatee.~~
- ~~(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.~~

~~(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court~~

determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee:

~~(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.~~

SEC. 72. Section 1472 of the Probate Code is repealed.

~~1472. (a) If a person is furnished legal counsel under Section 1471:~~

~~(1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.~~

~~(2) If the court determines that the person has the ability to pay all or a portion of the sum, the court shall order the conservator of the estate or, if none, the person, to pay in any installments and in any manner the court determines to be reasonable and compatible with the person's financial ability.~~

~~(3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community property, the court may order payment out of the proceeds of the transaction.~~

~~(4) If a conservator is not appointed for the person furnished legal counsel, the order for payment may be enforced in the same manner as a money judgment.~~

~~(b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1) of subdivision (a), the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay.~~

~~(c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the public defender and the county has compensated that counsel. In the case of other court-appointed counsel, the payment shall be made to that counsel.~~

SEC. 73. Section 1852 of the Probate Code is amended to read:

1852. If the conservatee wishes to petition the court for termination of the conservatorship or for removal of the existing conservator or for the making, modification, or revocation of a court order under Chapter 4 (commencing with Section 1870) or for restoration of the right to register to vote, or if, based on information contained in the court investigator's report or obtained from any other source, the court determines that a trial or hearing for termination of the conservatorship or removal of the existing conservator is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to file the petition and represent the conservatee at the trial or hearing and, if such appointment is made, Section 1472 applies.

SEC. 74. Section 2357 of the Probate Code is amended to read:

2357. (a) As used in this section:

(1) “Guardian or conservator” includes a temporary guardian of the person or a temporary conservator of the person.

(2) “Ward or conservatee” includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to this medical treatment, the guardian or conservator may petition the court under this section for an order authorizing the medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed, the court shall appoint ~~the public defender or private counsel under Section 1471,~~ to consult with and represent the ward or conservatee at the hearing on the petition ~~and, if that appointment is made, Section 1472 applies.~~

(e) Notice of the petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 75. Section 3140 of the Probate Code is amended to read:

3140. (a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of Developmental Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) The court may, in its discretion and if necessary, appoint an investigator to review the proposed transaction and report to the court regarding its advisability.

(c) If the court determines that a spouse alleged to lack legal capacity has not competently retained independent counsel, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

(d) (1) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint ~~the public defender or private counsel under Section 1471 to represent the spouse and, if that appointment is made, Section 1472 applies.~~

(2) If the petition proposes a transfer of substantial assets to the petitioner from the other spouse and the court determines that the spouse has not competently retained independent counsel for the proceeding, the court may, in its discretion, appoint counsel for the other spouse if the court determines that appointment would be helpful to resolve the matter or necessary to protect the interests of the other spouse.

(e) Except as provided in paragraph (1) of subdivision (d), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the

court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.

(f) The court may order the cost of the review and report by a court investigator pursuant to subdivision (b) to be paid out of the proceeds of the transaction or otherwise as the court may direct, if the court determines that its order would not cause a hardship.

SEC. 76. Section 3205 of the Probate Code is amended to read:

3205. Upon the filing of the petition, the court shall determine the name of the attorney the patient has retained to represent the patient in the proceeding under this part or the name of the attorney the patient plans to retain for that purpose. If the patient has not retained an attorney and does not plan to retain one, the court shall appoint the public defender or private counsel under Section 1471 to consult with and represent the patient at the hearing on the petition and, if such appointment is made, Section 1472 applies.

SEC. 77. Section 30108.4 of the Public Resources Code is amended to read:

30108.4. "Implementing actions" means the ordinances, regulations, or programs which that implement either the provisions of the certified local coastal program or the policies of this division and which are submitted pursuant to Section 30502.

SEC. 78. Section 30108.6 of the Public Resources Code is repealed.

30108.6. "Local coastal program" means a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.

SEC. 79. Section 30340.5 of the Public Resources Code is repealed.

~~30340.5. (a) It is the policy of the state that no less than 50 percent of funds received by the state from the federal government pursuant to the Federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.) shall be used for the preparation, review, approval, certification, and implementation of local coastal programs:~~

~~(b) A local government subject to this division may claim reimbursement of costs incurred as a direct result of the operation of or any requirement promulgated pursuant to this division. Notwithstanding any other provision of law, a claim for reimbursement of mandated costs directly attributable to the operation of this division shall only be submitted, reviewed, and approved in the manner set forth in this section:~~

~~(c) A claim pursuant to this section shall be submitted to the executive director of the commission no later than September 30. The executive director shall review the claim in accordance with this section and shall submit the claim to the Controller within 60 days after receipt of a claim but in no event later than November 30:~~

~~(d) A claim submitted pursuant to this section shall be filed on forms approved and prepared by the commission in consultation with the Controller. The forms shall specify the information needed to enable the executive director of the commission and the Controller to make the determinations required by subdivision (e). The forms shall clearly set forth information requirements for the evaluation of the following categories of costs:~~

~~(1) Costs for work relating to the preparation, review, and approval of a local coastal program or a portion of a program:~~

~~(2) Costs for work that is not covered by paragraph (1):~~

~~The claim forms required by this section shall provide for claims of actual costs incurred during the fiscal year preceding submittal and for the costs the claimant local government estimates will be incurred during the then-current fiscal year.~~

~~(e) The executive director shall review and evaluate each claim submitted pursuant to this section and shall determine whether:~~

~~(1) The costs claimed are not paid for or reimbursed from any other source of state or federal funding.~~

~~(2) The costs are for work that is the direct result of and is mandated by the operation of this division or by the commission or whether the work is optional.~~

~~(3) With respect to costs specified in paragraph (1) of subdivision (d), the work done or to be done is reasonable and necessary for the preparation and approval of a local coastal program pursuant to a local coastal program work program approved by the commission, or for work that is not part of an approved work program if the work can be shown to be necessary for the completion of a certifiable local coastal program or if new information or other circumstances cause the commission to require that the work be carried out.~~

~~(f) The executive director of the commission shall submit to the Controller, on behalf of each claimant local government, all claims submitted pursuant to this section together with his or her recommendation whether the Controller should allow or deny, in whole or in part, the claim. The executive director's recommendation shall be based on his or her determinations made pursuant to subdivision (e). If the executive director fails to make a recommendation by the time a claim is required to be submitted to the~~

~~Controller as provided in subdivision (e), the executive director is deemed to have recommended approval of the claim.~~

~~(g) Section 17561 of the Government Code shall apply to a claim filed pursuant to this section. However, where a conflict between Section 17561 of the Government Code and this section occurs, the conflict shall be resolved in a manner that best carries out the purposes of this section. The Controller shall apply the criteria of subdivision (e) in determining whether to allow or deny, in whole or in part, a claim and shall consider the recommendations of the executive director of the commission.~~

SEC. 80. Section 30340.6 of the Public Resources Code is repealed.

~~30340.6. (a) It is the intent of the Legislature that all costs mandated by the operation of this division be paid either with state or federal funds or both. The Legislature hereby declares that Section 30340.5 is designed to ensure that local governments are paid for legitimate claims for costs mandated by this division or the commission, costs for work which is not optional, and costs which are not otherwise reimbursed.~~

~~(b) In the event a claimed mandated cost has been approved by the Controller pursuant to Section 30340.5 and the Legislature fails to appropriate the funds to pay such claims by special legislation or in the annual state budget for the fiscal year following approval of such claims by the Controller, except the date specified in Section 30518, any dates specified in this division or by order of the commission for the submission of a local coastal program or any portion thereof or for the performance of any task or duty by a claimant local government whose approved claim has not been paid shall, at the request of such claimant local government, be postponed by the~~

~~number of years elapsing between such specified date and the year in which the funds to pay the approved claim are provided.~~

~~(c) The provisions of subdivision (b) shall not apply to any local government if the Legislature determines that such local government's claim should not be paid because such claim is not of the type intended to be subject to reimbursement pursuant to Section 30340.5.~~

SEC. 81. Article 4 (commencing with Section 30350) of Chapter 4 of Division 20 of the Public Resources Code is repealed.

SEC. 82. Article 1 (commencing with Section 30500) of Chapter 6 of Division 20 of the Public Resources Code is repealed.

SEC. 83. Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code is repealed.

SEC. 84. Section 30600 of the Public Resources Code is amended to read:

30600. (a) ~~Except as provided in subdivision (c), and in~~ In addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

~~(b) (1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part~~

of the procedures relating to any other appropriate land use development permit issued by the local government.

~~(2) A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.~~

~~(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).~~

~~(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.~~

~~(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:~~

~~(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.~~

~~(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.~~

SEC. 85. Section 30600.5 of the Public Resources Code is repealed.

~~30600.5. (a) Prior to the certification of a local coastal program and notwithstanding the provisions of subdivision (a) of Section 30519, after the effective date of this section, the authority for issuance of coastal development permits provided for in Chapter 7 (commencing with Section 30600) shall be delegated to local governments pursuant to the provisions of this section.~~

~~(b) Except for any development specified in subdivision (b) of Section 30519 and Section 30601 or with respect to any development proposed by any state agency, the authority for issuance of coastal development permits provided for in Chapter 7 (commencing with Section 30600) shall be delegated to the respective local governments within 120 days after (1) the effective date of certification of a land use plan pursuant to Chapter 6 (commencing with Section 30500) or (2) the effective date of this section, whichever occurs last. This delegation shall only apply with respect to those areas~~

governed by the certified land use plan or a certified portion thereof, applicable to an identifiable geographic area.

~~(c) Notwithstanding any other provision of this division, after delegation of authority to issue coastal development permits pursuant to subdivision (b), a coastal development permit shall be issued by the respective local government or the commission on appeal, if that local government or the commission on appeal finds that the proposed development is in conformity with the certified land use plan.~~

~~(d) Any action taken by a local government on a coastal development permit application pursuant to the provisions of this section may be appealed to the commission pursuant to Section 30602. The commission shall hear an appeal brought pursuant to the provisions of this section, unless it determines that the local government action taken raises no substantial issue as to conformity with the certified land use plan. For purposes of this subdivision, failure by any local government to act within any time limit specified in this division shall constitute an "action taken."~~

~~(e) The commission shall, following a public hearing and within 90 days after the effective date of this section, adopt minimum standards for public notice, hearing, and appeal procedures to govern local government review of coastal development permit applications pursuant to this section. The standards shall, as nearly as practical, follow the standards required for local agencies after certification of local coastal programs for appealable developments and shall ensure that the notice and hearing required for the coastal development permit can be provided at the same time as the notice and hearing requirements for other local land use decisions which may be necessary for the project requiring the permit. Within 60 days prior to assumption of~~

authority for issuance of coastal development permits pursuant to this section, the local government shall provide drafts of all procedures for issuance of coastal development permits to the executive director of the commission. Delegation of the authority to issue coastal development permits pursuant to subdivision (b) shall not occur until the local government has provided copies of all the adopted procedures for the issuance of coastal development permits to the executive director of the commission. Any amendments to the procedures shall also be furnished to the executive director for his information.

(f) Prior to the delegation of authority to issue coastal development permits as provided in subdivision (b), a local government, after appropriate notice and hearing, shall adopt an ordinance prescribing the procedures to be used in issuing such coastal development permits. Each such ordinance shall incorporate at least the minimum standards for public notice, hearings, and appeals established by the commission pursuant to subdivision (c). In addition, each such ordinance shall contain provisions which prohibit the issuance of a coastal development permit for any development which may conflict with the ordinances which are being prepared to implement the certified land use plan.

(g) In order to expedite certification of complete local coastal programs and the transfer of coastal development controls to local government, the commission shall, on request from a local government, prepare the ordinances necessary for that local government to implement the coastal permit responsibilities of this division.

~~(h) The time limits set forth in subdivision (b) shall be extended, by right, for not more than 90 days if a local government, by resolution of its governing body, so requests.~~

~~(i) The provisions of this section and of any local ordinance enacted pursuant thereto shall have no further force or effect or application after that local government's local coastal program has been certified and taken effect pursuant to the provisions of this division.~~

~~(j) This section shall become inoperative and shall have no force or effect on the date, if any, of a final judicial decision that its provisions are inconsistent with the requirements of the federal coastal act.~~

SEC. 86. Section 30600.6 of the Public Resources Code is repealed.

~~30600.6. (a) The Legislature finds that some new cost may be incurred by local governments when the authority to issue coastal development permits is delegated to these local governments as provided in Section 30600.5. It is the intent of the Legislature that during the period prior to certification of a local government's local coastal program these new costs shall be funded as provided in this section:~~

~~(b) If a local government has been delegated authority to issue coastal development permits as provided in Section 30600.5, any new costs incurred by reason thereof shall be recovered from fees charged to individual permit applicants. Such fees shall cover only those costs which meet all of the following criteria:~~

~~(1) The costs are attributable to the actual issuance of coastal development permits, including a pro rata share of general administrative costs.~~

~~(2) The costs would not have been incurred except for the delegation of authority to issue coastal development permits as provided in Section 30600.5.~~

~~(3) The costs are of a type which would not normally be incurred by the local government in carrying out its land use planning and regulatory responsibilities pursuant to other provisions of law.~~

~~(c) A local government may elect not to levy fees as provided in this section. If the local government does not levy such fees, it shall not be eligible to be reimbursed for such costs pursuant to other provisions of law.~~

~~(d) After certification of its local coastal program, each respective local government shall be reimbursed for costs associated with implementation of that local coastal program as provided in Article 4 (commencing with Section 30350) of Chapter 4.~~

SEC. 87. Section 30600.7 of the Public Resources Code is amended to read:

30600.7. ~~Where, prior to delegation of coastal permit authority pursuant to Section 30519,~~ If a modification of a refinery facility or petrochemical facility is necessary to comply with a goal, policy, or requirement of an air pollution control district, the State Air Resources Board, or the California Environmental Protection Agency to provide for reformulated or alternative fuels, that modification shall require a coastal development permit from the commission only, ~~notwithstanding the option afforded local governments under subdivision (b) of Section 30600.~~

SEC. 88. Section 30601 of the Public Resources Code is amended to read:

30601. ~~Prior to certification of the local coastal program and, where applicable,~~ In addition to a permit from local government pursuant to subdivision (b) or (d) of

Section 30600, a coastal development permit shall be obtained from the commission for any of the following:

(1)

(a) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2)

(b) Developments not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3)

(c) Any development which constitutes a major public works project or a major energy facility.

SEC. 89. Section 30601.3 of the Public Resources Code is repealed.

~~30601.3. (a) Notwithstanding Section 30519, the commission may process and act upon a consolidated coastal development permit application if both of the following criteria are satisfied:~~

~~(1) A proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission.~~

~~(2) The applicant, the appropriate local government, and the commission, which may agree through its executive director, consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation.~~

~~(b) The standard of review for a consolidated coastal development permit application submitted pursuant to subdivision (a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.~~

~~(c) The application fee for a consolidated coastal development permit shall be determined by reference to the commission's permit fee schedule.~~

~~(d) To implement this section, the commission may adopt guidelines, in the same manner as interpretive guidelines adopted pursuant to paragraph (3) of subdivision (a) of Section 30620.~~

SEC. 90. Section 30602 of the Public Resources Code is repealed.

~~30602. Prior to certification of its local coastal program, any action taken by a local government on a coastal development permit application may be appealed by the executive director of the commission, any person, including the applicant, or any two members of the commission to the commission. The action shall become final at the close of business on the 20th working day from the date of receipt of the notice required by subdivision (c) of Section 30620.5, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.~~

SEC. 91. Section 30603 of the Public Resources Code is repealed.

~~30603. (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:~~

~~(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.~~

~~(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.~~

~~(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.~~

~~(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).~~

~~(5) Any development which constitutes a major public works project or a major energy facility.~~

~~(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.~~

~~(2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.~~

~~(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.~~

~~(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.~~

SEC. 92. Section 30603.1 of the Public Resources Code is repealed.

~~30603.1. (a) In any city and county which so requests, the commission may adjust the inland boundary of the area within which the issuance of coastal development permits may be appealed to the commission pursuant to paragraph (1) of subdivision (a) of Section 30603. Any such adjustment shall be made solely to avoid the circumstance of having the boundary of that area bisect an individual parcel of property. The adjustment may be made landward or seaward, but shall be the minimum distance necessary, consistent with the policies of Chapter 3 (commencing with Section 30200), to avoid bisecting a parcel of property.~~

~~(b) If the commission subsequently finds that the circumstances which warranted a boundary adjustment pursuant to subdivision (a) have changed, it may, after notice to the city and county, readjust the boundary so that it is consistent with the changed circumstances. The requirements of subdivision (a) shall apply to any such boundary adjustment.~~

SEC. 93. Section 30604 of the Public Resources Code is repealed.

~~30604. (a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding that sets forth the basis for that conclusion.~~

~~(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.~~

~~(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).~~

~~(d) No development or any portion thereof that is outside the coastal zone shall be subject to the coastal development permit requirements of this division, nor shall anything in this division authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.~~

~~(e) No coastal development permit may be denied under this division on the grounds that a public agency is planning or contemplating to acquire the property on, or property adjacent to the property on, which the proposed development is to be located, unless the public agency has been specifically authorized to acquire the property and there are funds available, or funds that could reasonably be expected to be made available within one year, for the acquisition. If a permit has been denied for that reason and the property has not been acquired by a public agency within a reasonable period of time, a permit may not be denied for the development on grounds that the property, or adjacent property, is to be acquired by a public agency when the application for such a development is resubmitted.~~

~~(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.~~

~~(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.~~

SEC. 94. Section 30605 of the Public Resources Code is amended to read:

30605. To promote greater efficiency for the planning of any public works or state university or college or private university development projects and as an alternative to project-by-project review, plans for public works or state university or college or private university long-range land use development plans may be submitted to the commission for review ~~in the same manner prescribed for the review of local coastal programs as set forth in Chapter 6 (commencing with Section 30500). If any plan for public works or state university or college development project is submitted prior to certification of the local coastal programs for the jurisdictions affected by the proposed public works, the~~ The commission shall certify whether the proposed plan is consistent with Chapter 3 (commencing with Section 30200). The commission shall, by regulation, provide for the submission and distribution to the public, prior to public hearings on the plan, detailed environmental information sufficient to enable the commission to determine the consistency of the plans with the policies of this division. ~~If any such plan for public works is submitted after the certification of local coastal programs, any such plan shall be approved by the commission only if it finds, after full consultation with the affected local governments, that the proposed plan for public works is in conformity with certified local coastal programs in jurisdictions affected by the proposed public works.~~ Each state university or college or private university shall coordinate and consult with local government in the preparation of long-range

development plans ~~so as to be consistent, to the fullest extent feasible, with the appropriate local coastal program.~~ Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1. A certified long-range development plan may be amended by the state university or college or private university, but no amendment shall take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission ~~in the same manner as prescribed for amendment of a local coastal program.~~

SEC. 95. Section 30607.2 of the Public Resources Code is amended to read:

30607.2. (a) Conditions requiring housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, which were incorporated into a coastal development permit issued prior to January 1, 1982, may, at the request of the permittee, be amended or modified by the commission ~~or by a local government having the authority to issue coastal development permits.~~ In approving those amendments or modifications, only those conditions and requirements authorized by Section 65590 of the Government Code may be imposed on the permittee.

(b) Any person who, prior to January 1, 1982, has been issued a coastal development permit which contains requirements for low- and moderate-income housing but who, prior to January 1, 1982, has not performed substantial work on the development site (such as grading, installation of streets, sewers, or utilities, or

construction of major buildings) may elect to proceed under either of the following options:

(1) To proceed pursuant to all of the requirements of the coastal development permit, in which event the provisions of subdivision (a) shall apply to any subsequent request to amend or alter the coastal development permit in regard to housing requirements.

(2) To proceed without complying with the housing requirements contained in the coastal development permit, in which event the housing requirements for the development shall be governed by Section 65590 of the Government Code.

(c) No new coastal development permit or amendment to any existing permit for a sewer project shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs.

(d) Nothing in this section authorizes or requires the modification of or amendment to any terms or conditions of any previously issued coastal development permit which guarantees housing opportunities for persons and families of low or moderate income where the term or condition has been met through an agreement executed and recorded on or before January 1, 1982, between an applicant and the commission. For previously approved or issued permits which involve new construction of less than 10 residential units, an executed and recorded agreement guaranteeing housing opportunities for persons or families of low or moderate income, which has not been implemented by the transfer of an interest in real property or payment of a fee to a public agency or nonprofit association for the purpose of providing these housing opportunities, shall be voided if the applicant records the notice provided by

the executive director of the commission. Further, nothing in this section impairs the commission's authority to deny, restrict, or condition new permits or amendments to existing permits based on any requirement of this division.

(e) Nothing in this section authorizes or requires the modification of or amendment to any terms or conditions in Permit #P-80-419 issued by the commission with respect to the reservation or administration of sewer capacity for affordable housing in the San Mateo County local coastal program.

SEC. 96. Section 30610.1 of the Public Resources Code is amended to read:

30610.1. (a) ~~Prior to certification of the applicable local coastal program, no~~ A coastal development permit shall not be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

(b) Within 60 days from the effective date of this section, the commission shall designate specific areas in the coastal zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit. Areas shall be designated for the exclusion provided for in this section if construction of single-family residences within the area to be designated has no potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural land or on agricultural lands currently in production, or on public access to or along the coast.

In addition, if septic tanks will be required or used, an area identified as having septic tank problems by the appropriate regional water quality control board or the State Water Resources Control Board in an approved basin plan or by other formal action of such board may not be designated for exclusion pursuant to this section.

(c) Within areas designated pursuant to subdivision (b), no coastal development permit shall be required for the construction of a single-family residence on any vacant lot which meets all of the following criteria:

(1) Is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.

(2) Is a legal lot as of the effective date of this section and conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinances.

(3) Is not located within an area known to the affected local government, or designated by any other public agency, as a geologic hazard area or as a flood hazard area, or, if located within such an area, it has been determined by the affected local government to be a safe site for the construction of a single-family residence.

(4) Is no more than 250 feet from an existing improved road adequate for use throughout the year.

(5) Can be served by an adequate water supply that is legally available for use either by means of a well or by means of a connection to a water system with sufficient capacity to serve such lot or lots; provided, that no such connection shall require the extension of an existing water main which would have the capacity of serving four or more additional single-family residential structures.

(d) The commission shall, within 120 days from the effective date of this section, specify uniform criteria that shall be used to determine the location of “the first public road” and the inland extent of any beach for purposes of paragraph (1) of subdivision (c).

(e) Within 30 days after the 120-day period specified in subdivision (b), the commission shall report to the Legislature and the Governor what has been done to carry out the provisions of this section.

(f) The provisions of this section shall apply notwithstanding any other provision of this division to the contrary.

SEC. 97. Section 30610.9 of the Public Resources Code is amended to read:

~~30610.9. (a) This section applies only if the governing body of a local government elects to designate the commission as the processing and permitting authority for purposes of this section.~~

~~(b) In~~

30610.9. In order to expedite the processing of an application for a coastal development permit for a motion picture, television, or commercial production project in the coastal zone, ~~the governing body of a local government with a certified local coastal program may elect to designate~~ the commission as the appropriate authority to process and issue a coastal development permit for a temporary, nonrecurring location set, if the production activity, including preparation, construction, filming, and set removal at the site will not exceed 190 days, in accordance with the following procedures:

~~(1)~~

(a) The applicant shall submit a copy of the commission's coastal development permit application, or the local coastal development permit application, to the local government. The governing body of the local government may elect to designate the commission as the processing and permitting authority on a project-by-project basis. The governing body may designate the local coastal administrator or other designee as the decisionmaking authority to decide the projects that will be transmitted to the commission for processing and permitting.

~~(2)~~

(b) If the governing body of the local government elects to designate the commission as the processing and permitting authority for a project, all documents and changes submitted to the commission during the course of the application process shall also be submitted to the local government for informational purposes. The local government may transmit any recommendations it may have for the project to the commission.

~~(3)~~

(c) If the commission issues an administrative permit for a project, rather than a coastal development permit, the local coastal administrator, other designee, or governing body, as the case may be, may object to the commission regarding the issuance of that permit.

~~(4)~~

(d) The applicant shall obtain all local noncoastal use permits in connection with the project. The approval of the commission's coastal development permit shall be conditioned on the approval of the local noncoastal permits.

~~(5)~~

(e) The applicant shall transmit all complaints and comments from residents and business owners in connection with the filming activity to the commission for consideration prior to the approval of the application.

~~(6)~~

(f) The applicant shall obtain all other applicable permits required by state and federal jurisdictions in connection with the project.

SEC. 98. Section 30613 of the Public Resources Code is amended to read:

30613. (a) The provisions of subdivision (b) of Section 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any lands which may be subject to the public trust but which the commission, after consultation with the State Lands Commission, determines are (1) filled and developed and are (2) located within an area which is committed to urban uses.

(b) No later than 120 days after receiving a request from a local government, the commission shall determine the lands within the jurisdiction of that local government to which the provisions of subdivision (a) apply.

(c) The provisions of this section shall apply to lands which have been the subject of coastal development permits, ~~local coastal programs~~ or, categorical exclusions or urban exclusions, which have previously been approved, authorized, or certified by the commission.

SEC. 99. Section 30620 of the Public Resources Code is amended to read:

30620. (a) By January 30, 1977, the commission shall, consistent with this chapter, prepare interim procedures for the submission, review, and appeal of coastal development permit applications and of claims of exemption. These procedures shall include, but are not limited to, all of the following:

(1) Application and appeal forms.

(2) Reasonable provisions for notification to the commission and other interested persons of any action taken by a local government pursuant to this chapter, in sufficient detail to ensure that a preliminary review of that action for conformity with this chapter can be made.

(3) Interpretive guidelines designed to assist local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone ~~prior to the certification of local coastal programs~~. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.

(b) Not later than May 1, 1977, the commission shall, after public hearing, adopt permanent procedures that include the components specified in subdivision (a) and shall transmit a copy of those procedures to each local government within the coastal zone and make them readily available to the public. The commission may thereafter, from time to time, and, except in cases of emergency, after public hearing, modify or adopt additional procedures or guidelines that the commission determines to be necessary to better carry out the purposes of this division.

(c) (1) The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal

development permit under this division and, ~~except for local coastal program submittals,~~ for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission.

(2) Any coastal development permit fees collected by the commission under paragraph (1) shall be deposited in the Coastal Act Services Fund established pursuant to Section 30620.1. This paragraph does not authorize an increase in fees or create any new authority on the part of the commission.

(d) With respect to an appeal of an action taken by a local government pursuant to Section 30602 or 30603, the executive director shall, within five working days of receipt of an appeal from a person other than a member of the commission or a public agency, determine whether the appeal is patently frivolous. If the executive director determines that an appeal is patently frivolous, the appeal shall not be filed unless a filing fee in the amount of three hundred dollars (\$300) is deposited with the commission within five working days of the receipt of the executive director's determination. If the commission subsequently finds that the appeal raises a substantial issue, the filing fee shall be refunded.

SEC. 100. Section 30620.5 of the Public Resources Code is repealed.

~~30620.5. (a) A local government may exercise the option provided in subdivision (b) of Section 30600, if it does so for the entire area of its jurisdiction within the coastal zone and after it establishes procedures for the issuance of coastal development permits. Such procedures shall incorporate, where applicable, the interpretive guidelines issued by the commission pursuant to Section 30620.~~

~~(b) If a local government elects to exercise the option provided in subdivision (b) of Section 30600, the local government shall, by resolution adopted by the governing body of such local government, notify the commission and shall take appropriate steps to assure that the public is properly notified of such action. The provisions of subdivision (b) of Section 30600 shall take effect and shall be exercised by the local government on the 10th working day after the date on which the resolution required by this subdivision is adopted.~~

~~(c) Every local government exercising the option provided in subdivision (b) of Section 30600 or acting on coastal development permits prior to certification of its local coastal program pursuant to Sections 30520, 30600.5, and 30624, shall within five working days notify the commission and any person who, in writing, has requested such notification, in the manner prescribed by the commission pursuant to Section 30600.5 or 30620, of any coastal development permit it issues.~~

~~(d) Within five working days of receipt of the notice required by subdivision (c), the executive director of the commission shall post, at a conspicuous location in the commission's office, a description of the coastal development permit issued by the local government. Within 15 working days of receipt of such notice, the executive director shall, in the manner prescribed by the commission pursuant to subdivision (a) of Section 30620, provide notice of the locally issued coastal development permit to members of the commission.~~

SEC. 101. Section 30624 of the Public Resources Code is amended to read:

30624. (a) The commission shall provide, by regulation, for the issuance of coastal development permits by the executive director of the commission ~~or, where~~

~~the coastal development permit authority has been delegated to a local government pursuant to Section 30600.5, by an appropriate local official designated by resolution of the local government~~ without compliance with the procedures specified in this chapter in cases of emergency, other than an emergency provided for under Section 30611, and for the following nonemergency developments: improvements to any existing structure; any single-family dwelling; any development of four dwelling units or less within any incorporated area that does not require demolition; any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land; and any development specifically authorized as a principal permitted use and proposed in an area for which the land use portion of the applicable local coastal program has been certified. Such permit for nonemergency development shall not be effective until after reasonable public notice and adequate time for the review of such issuance has been provided.

(b) If one-third of the appointed members of the commission so request at the first meeting following the issuance of such permit by the executive director, such issuance shall not be effective, and, instead, the application shall be processed in accordance with the commission's procedures for permits and pursuant to the provisions of this chapter.

~~(c) Any permit issued by a local official pursuant to the provisions of this section shall be scheduled on the agenda of the governing body of the local agency at its first scheduled meeting after that permit has been issued. If, at that meeting, one-third of the members of that governing body so request, the permit issued by the local official~~

~~shall not go into effect and the application for a coastal development permit shall be processed by the local government pursuant to Section 30600.5.~~

~~(d)~~

~~(c) No monetary limitations shall be required for emergencies covered by the provisions of this section.~~

SEC. 102. Section 30624.9 of the Public Resources Code is repealed.

~~30624.9. (a) For purposes of this section, "minor development" means a development which a local government determines satisfies all of the following requirements:~~

~~(1) Is consistent with the certified local coastal program, as defined in Section 30108.6.~~

~~(2) Requires no discretionary approvals other than a coastal development permit.~~

~~(3) Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.~~

~~(b) After certification of its local coastal program, a local government may waive the requirement for a public hearing on a coastal development permit application for a minor development only if both of the following occur:~~

~~(1) Notice that a public hearing shall be held upon request by any person is provided to all persons who would otherwise be required to be notified of a public hearing as well as any other persons known to be interested in receiving notice.~~

~~(2) No request for public hearing is received by the local government within 15 working days from the date of sending the notice pursuant to paragraph (1).~~

~~(c) The notice provided pursuant to subdivision (b) shall include a statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the commission any action taken by a local government on a coastal development permit application.~~

SEC. 103. Section 30625 of the Public Resources Code is repealed.

~~30625. (a) Except as otherwise specifically provided in subdivision (a) of Section 30602, any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission. The commission may approve, modify, or deny such proposed development, and if no action is taken within the time limit specified in Sections 30621 and 30622, the decision of the local government or port governing body, as the case may be, shall become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.~~

~~(b) The commission shall hear an appeal unless it determines the following:~~

~~(1) With respect to appeals pursuant to subdivision (a) of Section 30602, that no substantial issue exists as to conformity with Chapter 3 (commencing with Section 30200).~~

~~(2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.~~

~~(3) With respect to appeals to the commission after certification of a port master plan, that no substantial issue exists as to conformity with the certified port master plan.~~

~~(c) Decisions of the commission, where applicable, shall guide local governments or port governing bodies in their future actions under this division.~~

SEC. 104. Section 30711 of the Public Resources Code is amended to read:

30711. (a) A port master plan that carries out the provisions of this chapter ~~shall~~ may be prepared and adopted by each port governing body, ~~and for informational purposes, each city, county, or city and county which has a port within its jurisdiction shall incorporate the certified port master plan in its local coastal program.~~ A port master plan shall include all of the following:

- (1) The proposed uses of land and water areas, where known.
- (2) The projected design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.
- (3) An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact.
- (4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.

(5) Provisions for adequate public hearings and public participation in port planning and development decisions.

(b) A port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division.

SEC. 105. Section 30801 of the Public Resources Code is amended to read:

30801. Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final.

For purposes of this section and subdivision (c) of Section 30513 and Section 30625, an “aggrieved person” means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. “Aggrieved person” includes the applicant for a permit ~~and, in the case of an approval of a local coastal program, the local government involved.~~

SEC. 106. Section 30802 of the Public Resources Code is amended to read:

30802. Any person, including an applicant for a permit or the commission, aggrieved by the decision or action of a ~~local government~~ port governing body that is implementing a ~~certified local coastal program~~ or certified port master plan, ~~or is exercising its powers pursuant to Section 30600.5,~~ which decision or action may not

be appealed to the commission, shall have a right to judicial review of such decision or action by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 60 days after the decision or action has become final. The commission may intervene in any such proceeding upon a showing that the matter involves a question of the conformity of a proposed development with ~~a certified local coastal program~~ or certified port master plan or the validity of a local government action taken to implement ~~a local coastal program~~ or certified port master plan. Any ~~local government~~ or port governing body may request that the commission intervene. Notice of this action against ~~a local government~~ or port governing body shall be filed with the commission within five working days of the filing of this action. When an action is brought challenging the validity of ~~a local coastal program~~ or certified port master plan, a preliminary showing shall be made prior to proceeding on the merits as to why such action should not have been brought pursuant to the provisions of Section 30801.

SEC. 107. Section 30806 of the Public Resources Code is amended to read:

30806. ~~(a) Any civil action under this division by, or against, a city, county, or city and county,~~ the commission, special district, or any other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city, special district, or any other public agency which is a party to the action is located.

~~(b) In any action brought by or against any local government, other than an action brought by or against the commission, that involves the enforcement or implementation~~

~~of its certified local coastal program, the Department of Justice shall, upon the request of the local government, provide such legal assistance as its resources permit.~~

SEC. 108. Section 30809 of the Public Resources Code is amended to read:

30809. (a) If the executive director determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit or (2) may be inconsistent with any permit previously issued by the commission, the executive director may issue an order directing that person or governmental agency to cease and desist. The order may be also issued to enforce any requirements of a ~~certified local coastal program or~~ port master plan, or any requirements of this division which are subject to the jurisdiction of the ~~certified program or plan~~, under any of the following circumstances:

(1) ~~The local government or port governing body~~ requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the ~~local government or port governing body~~ declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) ~~The local government or port governing body~~ is a party to the violation.

(b) The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity. The notice shall include the following:

(1) A description of the activity which meets the criteria of subdivision (a).

(2) A statement that the described activity constitutes development which is in violation of this division because it is not authorized by a valid coastal development permit.

(3) A statement that the described activity be immediately stopped or the alleged violator may receive a cease and desist order, the violation of which may subject the violator to additional fines.

(4) The name, address, and phone number of the commission or local government office which is to be contacted for further information.

(c) The cease and desist order may be subject to such terms and conditions as the executive director may determine are necessary to avoid irreparable injury to any area within the jurisdiction of the commission pending action by the commission under Section 30810.

(d) The cease and desist order shall be effective upon its issuance, and copies shall be served forthwith by certified mail upon the person or governmental agency subject to the order.

(e) A cease and desist order issued pursuant to this section shall become null and void 90 days after issuance.

SEC. 109. Section 30810 of the Public Resources Code is amended to read:

30810. (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The order may also be issued to enforce any requirements of a ~~certified local coastal program or port master plan~~; or any requirements of this division which are subject to the jurisdiction of the ~~certified program or plan~~, under any of the following circumstances:

(1) The ~~local government or port governing body~~ requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the ~~local government or port governing body~~ declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) The ~~local government or port governing body~~ is a party to the violation.

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

(c) Notice of the public hearing on a proposed cease and desist order shall be given to all affected persons and agencies and the order shall be final and effective upon the issuance of the order. Copies shall be served immediately by certified mail upon the person or governmental agency subject to the order and upon other affected persons and agencies who appeared at the hearing or requested a copy. The notice shall include a description of the civil remedy to a cease and desist order, authorized by Section 30803.

SEC. 110. Section 30811 of the Public Resources Code is amended to read:

30811. In addition to any other authority to order restoration, the commission; ~~a local government that is implementing a certified local coastal program;~~ or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission; ~~local government;~~ or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

SEC. 111. Section 30813 is added to the Public Resources Code, to read:

30813. A coastal development issued by a local government before the effective date of this section shall be deemed a permit issued by the commission. The commission shall intervene in any pending action or proceeding seeking judicial review of a coastal development permit issued before the effective date of this section.

SEC. 112. Section 30820 of the Public Resources Code is amended to read:

30820. (a) Any person who violates any provision of this division may be civilly liable in accordance with this subdivision as follows:

(1) Civil liability may be imposed by the superior court in accordance with this article on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission; ~~a local government that is implementing a certified local coastal program;~~ or a port governing body that is implementing a certified port master plan, in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500).

(2) Civil liability may be imposed for any violation of this division other than that specified in paragraph (1) in an amount that shall not exceed thirty thousand dollars (\$30,000).

(b) Any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission, ~~a local government that is implementing a certified local coastal program,~~ or a port governing body that is implementing a certified port master plan, when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court in accordance with this article for a violation as specified in this subdivision in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

(c) In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits,

if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

SEC. 113. Section 30821.6 of the Public Resources Code is amended to read:

30821.6. (a) Any person or governmental agency who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the executive director or the commission, or any restoration order issued, reissued, or amended by the commission, ~~a local government that is implementing a certified local coastal program,~~ or a port governing body that is implementing a certified port master plan may be liable civilly in a sum of not to exceed six thousand dollars (\$6,000) for each day in which that violation persists. Any actual penalty imposed shall be reasonably proportionate to the damage suffered as a consequence of the violation.

(b) Sections 30809 and 30810 and subdivision (a) of this section do not authorize the issuance or enforcement of any cease and desist order as to any activity undertaken by a local governmental agency pursuant to a declaration of emergency by the board of supervisors of the county in which the activity is being or may be undertaken.

SEC. 114. Section 21670 of the Public Utilities Code is repealed.

~~21670. (a) The Legislature hereby finds and declares that:~~

~~(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.~~

~~(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures~~

~~that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.~~

~~(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:~~

~~(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.~~

~~(2) Two representing the county, appointed by the board of supervisors.~~

~~(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.~~

~~(4) One representing the general public, appointed by the other six members of the commission.~~

~~(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.~~

~~(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.~~

~~(e) A person having an “expertise in aviation” means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.~~

~~(f) It is the intent of the Legislature to clarify that, for the purposes of this article, that special districts, school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.~~

SEC. 115. Section 21670.1 of the Public Utilities Code is repealed.

~~21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.~~

~~(b) A body designated pursuant to subdivision (a) that does not include among its membership at least two members having expertise in aviation, as defined in subdivision (c) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.~~

~~(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.~~

~~(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1), that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:~~

~~(A) Adopt processes for the preparation, adoption, and amendment of the airport land use compatibility plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.~~

~~(B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the airport land use compatibility plans.~~

~~(C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the airport land use compatibility plans.~~

~~(D) Adopt processes for the amendment of general and specific plans to be consistent with the airport land use compatibility plans.~~

~~(E) Designate the agency that shall be responsible for the preparation, adoption, and amendment of each airport land use compatibility plan.~~

~~(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:~~

~~(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.~~

~~(B) Rely on the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations.~~

~~(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.~~

~~(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the airport land use compatibility plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and an airport land use compatibility plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.~~

~~(d) A commission need not be formed in a county that has contracted for the preparation of airport land use compatibility plans with the Division of Aeronautics under the California Aid to Airports Program (Chapter 4 (commencing with Section 4050) of Title 21 of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the airport land use compatibility plans:~~

~~(1) Agree to adopt and implement the airport land use compatibility plans that have been developed under contract.~~

~~(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, as part of the general and specific plans for the county and for each affected city.~~

~~(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.~~

~~(e) (1) A commission need not be formed in a county if all of the following conditions are met:~~

~~(A) The county has only one public use airport that is owned by a city.~~

~~(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.~~

~~(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article.~~

SEC. 116. Section 21670.2 of the Public Utilities Code is amended and renumbered to read:

~~21670.2.~~

21670. (a) ~~Sections 21670 and 21670.1 do not apply to the County of Los Angeles. In that county,~~ In the County of Los Angeles, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

(b) By January 1, 1992, the county regional planning commission shall adopt the airport land use compatibility plans required pursuant to Section 21675.

(c) Sections 21675.1, 21675.2, and 21679.5 do not apply to the County of Los Angeles until January 1, 1992. If the airport land use compatibility plans required pursuant to Section 21675 are not adopted by the county regional planning commission by January 1, 1992, Sections 21675.1 and 21675.2 shall apply to the County of Los Angeles until the airport land use compatibility plans are adopted.

SEC. 117. Section 21670.3 of the Public Utilities Code is amended to read:

21670.3. (a) ~~Sections 21670 and 21670.1 do not apply to the County of San Diego. In that county,~~ In the County of San Diego, the San Diego County Regional Airport Authority, as established pursuant to Section 170002, shall be responsible for the preparation, adoption, and amendment of an airport land use compatibility plan for each airport in San Diego County.

(b) The San Diego County Regional Airport Authority shall engage in a public collaborative planning process when preparing and updating an airport land use compatibility plan.

SEC. 118. Section 21670.4 of the Public Utilities Code is amended to read:

21670.4. (a) As used in this section, “intercounty airport” means any airport bisected by a county line through its runways, runway protection zones, inner safety zones, inner turning zones, outer safety zones, or sideline safety zones, as defined by the department’s Airport Land Use Planning Handbook and referenced in the airport land use compatibility plan formulated under Section 21675.

(b) It is the purpose of this section to provide the opportunity to establish a separate airport land use commission so that an intercounty airport may be served by a single airport land use planning agency, rather than having to look separately to the airport land use commissions of the affected counties.

~~(c) In addition to the airport land use commissions created under Section 21670 or the alternatives established under Section 21670.1, for their respective counties, the~~
The boards of supervisors and city selection committees for the affected counties, by independent majority vote of each county's two delegations, for any intercounty airport, may do either of the following:

(1) Establish a single separate airport land use commission for that airport. That commission shall consist of seven members to be selected as follows:

(A) One representing the cities in each of the counties, appointed by that county's city selection committee.

(B) One representing each of the counties, appointed by the board of supervisors of each county.

(C) One from each county having expertise in aviation, appointed by a selection committee comprised of the managers of all the public airports within that county.

(D) One representing the general public, appointed by the other six members of the commission.

~~(2) In accordance with subdivision (a) or (b) of Section 21670.1, designate~~
Designate an existing appropriate entity as that airport's land use commission.

SEC. 119. Section 21671 of the Public Utilities Code is amended to read:

21671. In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives ~~provided by paragraph (1) of subdivision (b) of Section 21670~~ shall be appointed by the city selection committee of mayors of the cities of the county in which the owner of that airport is located, and one of the representatives ~~provided by paragraph (2) of subdivision (b) of Section 21670~~ shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

SEC. 120. Section 21675.1 of the Public Utilities Code is amended to read:

21675.1. (a) By June 30, 1991, each commission shall adopt the airport land use compatibility plan required pursuant to Section 21675, except that any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, shall adopt that airport land use compatibility plan on or before June 30, 1992.

(b) Until a commission adopts an airport land use compatibility plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give for those actions, regulations, or permits. As used in this section, "vicinity" means land that will be included or reasonably could be included within the airport land use compatibility plan. If the commission has not designated an airport influence area for the airport land use compatibility plan, then "vicinity" means land within two miles of the boundary of a public airport.

(c) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the airport land use compatibility plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the airport land use compatibility plan being prepared by the commission.

(3) There is little or no probability of substantial detriment to or interference with the future adopted airport land use compatibility plan if the action, regulation, or permit is ultimately inconsistent with the airport land use compatibility plan.

(d) If the commission disapproves an action, regulation, or permit, the commission shall notify the city or county. The city or county may overrule the commission, by a two-thirds vote of its governing body, if it makes specific findings that the proposed action, regulation, or permit is consistent with the purposes of this article, as stated in Section 21670 stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676.

(e) If a city or county overrules the commission pursuant to subdivision (d), that action shall not relieve the city or county from further compliance with this article after the commission adopts the airport land use compatibility plan.

(f) If a city or county overrules the commission pursuant to subdivision (d) with respect to a publicly owned airport that the city or county does not operate, the operator of the airport is not liable for damages to property or personal injury resulting from the city's or county's decision to proceed with the action, regulation, or permit.

(g) A commission may adopt rules and regulations that exempt any ministerial permit for single-family dwellings from the requirements of subdivision (b) if it makes the findings required pursuant to subdivision (c) for the proposed rules and regulations, except that the rules and regulations may not exempt either of the following:

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

SEC. 121. Section 21676 of the Public Utilities Code is amended to read:

21676. (a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission

or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the

commission and the division in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) (1) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the ~~purposes of this article stated in Section 21670.~~ At following purposes:

(A) The orderly development of the airport and the area surrounding the airport so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(B) Protection of the public health, safety, and welfare by ensuring the orderly expansion of the airport and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around the airport to the extent that these areas are not already devoted to incompatible uses.

(2) At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available

within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

SEC. 122. Section 21676.5 of the Public Utilities Code is amended to read:

21676.5. (a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670 stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made. If, in the determination of the commission, an action, regulation, or permit of the local agency is inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall hold a hearing to reconsider its plan. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article

~~as stated in Section 21670~~ stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Whenever the local agency has revised its general plan or specific plan or has overruled the commission pursuant to subdivision (a), the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed by the commission.

SEC. 123. Section 21679 of the Public Utilities Code is amended to read:

21679. (a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use compatibility plan, an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency,

that directly affects the use of land within one mile of the boundary of a public airport within the county.

(b) The court may issue an injunction that postpones the effective date of the zoning change, zoning variance, permit, or regulation until the governing body of the local agency that took the action does one of the following:

(1) In the case of an action that is a legislative act, adopts a resolution declaring that the proposed action is consistent with the purposes of this article stated in Section 21670 stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676.

(2) In the case of an action that is not a legislative act, adopts a resolution making findings based on substantial evidence in the record that the proposed action is consistent with the purposes of this article stated in Section 21670 stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670 stated in subparagraphs (A) and (B) of paragraph (1) of subdivision (c) of Section 21676, and complies with either paragraph (1) or (2), whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency that took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use compatibility plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

SEC. 124. Section 10500 of the Vehicle Code is amended to read:

10500. (a) Every peace officer, upon receiving a report based on reliable information that any vehicle registered under this code has been stolen, taken, or driven in violation of Section 10851, or that a leased or rented vehicle has not been returned within five days after its owner has made written demand for its return, by certified or registered mail, following the expiration of the lease or rental agreement, or that license plates for any vehicle have been lost or stolen, shall, immediately after receiving that information, report the information to the Department of Justice Stolen Vehicle System. An officer, upon receiving information of the recovery of any vehicle described in this subdivision, or of the recovery of plates which have been previously reported as lost or stolen, shall immediately report the fact of the recovery to the Department of Justice Stolen Vehicle System. At the same time, the recovering officer shall advise the

Department of Justice Stolen Vehicle System and the original reporting police agency of the location and condition of the vehicle or license plates recovered. ~~The original reporting police agency, upon receipt of the information from the recovering officer, shall, immediately attempt to notify the reporting party by telephone, if the telephone number of the reporting party is available or readily accessible, of the location and condition of the recovered vehicle. If the reporting party's telephone number is unknown, or notification attempts were unsuccessful, the original reporting police agency shall notify the reporting party by placing, in the mail, a notice providing the location and condition of the recovered vehicle. This written notice shall be mailed within 24 hours of the original reporting police agency's receipt of the information of the recovery of the vehicle, excluding holidays and weekends.~~

(b) If the recovered vehicle is subject to parking or storage charges, Section 10652.5 applies.

SEC. 125. Section 656.2 of the Welfare and Institutions Code is amended to read:

656.2. (a) ~~Notwithstanding any other provision of law, a victim shall have the right to present a victim impact statement in all juvenile court hearings concerning petitions filed pursuant to Section 602 alleging the commission of any criminal offense. In any case in which a minor is alleged to have committed a criminal offense, the probation officer shall inform the victim of the rights of victims to submit a victim impact statement. If the victim exercises the right to submit a victim impact statement to the probation officer, the probation officer shall include the~~ includes a statement in his or her social study submitted to the court pursuant to Section 706 and, if applicable,

in his or her report submitted to the court pursuant to Section 707. ~~The, the~~ probation officer ~~also~~ shall advise those persons as to the time and place of the disposition hearing to be conducted pursuant to Sections 702 and 706; ~~any fitness hearing to be conducted pursuant to Section 707, and any other judicial proceeding concerning the case.~~

The case. In any case in which the probation officer shall also provide provides the victim with information concerning the victim's right to an action for civil damages against the minor and his or her parents and the victim's opportunity to be compensated from the restitution fund, the information shall be provided to each victim for whom the probation officer has a current mailing address. The information shall be in the form of written material prepared by the Judicial Council ~~and shall be provided to each victim for whom the probation officer has a current mailing address.~~

(b) Notwithstanding any other ~~provision of law~~, the persons ~~from whom the probation officer is required to solicit~~ providing a statement pursuant to subdivision (a) shall have the right to attend the disposition hearing conducted pursuant to Section 702 and to express their views concerning the offense and disposition of the case pursuant to Section 706, to attend any fitness hearing conducted pursuant to Section 707, and to be present during juvenile proceedings as provided in Section 676.5.

(c) Notwithstanding any other ~~provision of law~~, in any case in which a minor is alleged to have committed an act subject to a fitness hearing under Section 707, the victim shall have the right to be informed of all court dates and continuances pertaining to the case, and shall further have the right to obtain copies of the charging petition, the minutes of the proceedings, and orders of adjudications and disposition of the court that are contained in the court file. The arresting agency shall notify the victim in a

timely manner of the address and telephone number of the juvenile branch of the district attorney's office that will be responsible for the case and for informing the victim of the victim's right to attend hearings and obtain documents as provided in this section. The district attorney shall, upon request, inform the victim of the date of the fitness hearing, the date of the disposition hearing, and the dates for any continuances of those hearings, and shall inform the court if the victim seeks to exercise his or her right to obtain copies of the documents described in this subdivision.

Where

If the proceeding against the minor is based on a felony that is not listed in Section 676, a victim who obtains information about the minor under this subdivision shall not disclose or disseminate this information beyond his or her immediate family or support persons authorized by Section 676, unless authorized to do so by a judge of the juvenile court, and the judge may suspend or terminate the right of the victim to access to information under this subdivision if the information is improperly disclosed or disseminated by the victim or any members of his or her immediate family. The intentional dissemination of documents in violation of this subdivision is a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500). Documents released by the court to a victim pursuant to this section shall be stamped as confidential and with a statement that the unlawful dissemination of the documents is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500).

(d) Upon application of the district attorney for good cause and a showing of potential danger to the public, the court may redact any information contained in any documents released by the court to a victim pursuant to this section.

(e) For purposes of this section, “victim” means the victim, the parent or guardian of the victim if the victim is a minor, or, if the victim has died, the victim’s next of kin.

SEC. 126. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. ~~(a)~~ Whenever the Division of Juvenile Facilities determines that the discharge of a person from the control of the division at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person’s mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior, the division, through its Chief Deputy Secretary for Juvenile Justice, shall ~~request the prosecuting attorney to~~ petition the committing court for an order directing that the person remain subject to the control of the division beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the division bases its opinion that discharge from control of the division at the time stated would be physically dangerous to the public, but the petition may not be dismissed and an order may not be denied merely because of technical defects in the application.

~~(b) The prosecuting attorney shall promptly notify the Division of Juvenile Facilities of a decision not to file a petition.~~

SEC. 127. Section 1800.5 of the Welfare and Institutions Code is amended to read:

1800.5. Notwithstanding any other ~~provision of law~~, the Board of Parole Hearings may request the Chief Deputy Secretary for Juvenile Justice to review any case ~~in which the Division of Juvenile Facilities has not made a request to the prosecuting attorney pursuant to Section 1800~~ and in which the board finds that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior. Upon the board's request, a mental health professional designated by the chief deputy secretary shall review the case and thereafter may affirm the finding or order additional assessment of the ward. If, after review, the mental health designee affirms the initial finding, concludes that a subsequent assessment does not demonstrate that a ward is subject to extended detention pursuant to Section 1800, or fails to respond to a request from the board within the timeframe mandated by this section, the board thereafter may ~~request the prosecuting attorney to~~ petition the committing court for an order directing that the person remain subject to the control of the division pursuant to Section 1800 if the board continues to find that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior. ~~The board's request to the prosecuting attorney shall be accompanied by a copy of the ward's file and any documentation upon which the board bases its opinion, and shall include any documentation of the division's review and recommendations made pursuant to this section.~~ Any request for review pursuant to this section shall be submitted to the chief deputy secretary not less than 120 days before the date of final discharge, and the

review shall be completed and transmitted to the board not more than 15 days after the request has been received.

SEC. 128. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, ~~and by the prosecuting attorney,~~ in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

SEC. 129. Section 6513 of the Welfare and Institutions Code is repealed.

~~6513. (a) The State Department of Developmental Services shall pay for the costs, as defined in this section, of judicial proceedings, including commitment, placement, or release, under this article under both of the following conditions:~~

~~(1) The judicial proceedings are in a county within which a state hospital or developmental center maintains a treatment program for mentally retarded persons who are a danger to themselves or others.~~

~~(2) The judicial proceedings relate to a mentally retarded person who is at the time residing in the state hospital or developmental center located in the county of the proceedings.~~

~~(b) The appropriate financial officer or other designated official in a county described in subdivision (a) may prepare a statement of all costs incurred by the county in the investigation, preparation for, and conduct of the proceeding, including any costs of the district attorney or county counsel and any public defender or court-appointed counsel representing the person, and including any costs incurred by the county for the guarding or keeping of the person while away from the state hospital and for transportation of the person to and from the hospital. The statement shall be certified to by a judge of the superior court and shall be sent to the State Department of Developmental Services. In lieu of sending statements after each proceeding, the statements may be held and submitted quarterly for the preceding three-month period.~~

SEC. 130. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued

to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the

above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer

present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the People of the State of California have not met their burden pursuant to paragraph (6).

(2) (A) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form

prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. ~~Where~~ If the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five-year period. The request for

hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) Any person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the ~~district attorney~~ Attorney General. The People of the State of California shall be the plaintiff in the proceeding and shall be represented by the ~~district attorney~~ Attorney General. Upon motion of the ~~district attorney~~ Attorney General, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person ~~and to the district attorney~~. The court shall set the hearing within 30 days of receipt of the request for a hearing. Upon showing good cause, the ~~district attorney~~ Attorney General shall be entitled to a continuance not to exceed 14 days after the ~~district attorney~~ Attorney General was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The ~~district attorney~~ Attorney General may notify the county mental health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the ~~district attorney~~ Attorney

General. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition in this section on the ownership, control, receipt, possession or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) ~~Where~~ ~~If the district attorney~~ Attorney General declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days,

delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) (A) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Commencing July 1, 2012, facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, ~~and the Department of Justice, and the district attorney~~ Attorney General. The People of the State of California shall be the respondent in the proceeding and shall be represented by the ~~district attorney~~ Attorney General. Upon motion of the ~~district attorney~~ Attorney General, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person ~~and to the district attorney~~. The ~~district attorney~~ Attorney General shall be entitled to a continuance of the hearing to a date of not less than 14 days after the ~~district attorney~~ Attorney General was notified of the hearing date by the clerk of the court. The ~~district attorney~~ Attorney General may notify the county mental health director of the petition, and the county mental health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the ~~district attorney~~ Attorney General. The court, upon motion of the person

subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public.

Notwithstanding any other provision of law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other

deadly weapon in violation of this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for not more than one year.

(j) “Deadly weapon,” as used in this section, has the meaning prescribed by Section 8100.

SEC. 131. The Legislature finds and declares that certain state-mandated local programs which in prior years have been suspended due to the failure to appropriate sufficient funds in the state budget should be permanently eliminated pursuant to this act. The Legislature directs the Commission on State Mandates, within one year of the effective date of this act, to amend the respective parameters and guidelines of those mandates in order to end reimbursement on the effective date of this act. In recognition of the state and local interests served by making other state-mandated local programs optional pursuant to this act, the Legislature encourages local agencies to continue taking the action formerly mandated by the statutes being made permissive by this act. However, nothing in this act may be construed to impose any liability on a local agency that does not continue to carry out the formerly mandated duties.

OFFICE COPY

Prepared By _____

Approved By _____

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: State mandates.

(1) Existing law requires that a depository of living animals provide the animals with necessary and prompt veterinary care. Existing law requires that the required holding period for a stray dog or cat is 6 business days, not including the day of impoundment, except as specified. Existing law requires animal shelter personnel to evaluate the temperament of cats to determine whether the cats are feral or tame if an apparently feral cat has not been claimed by its owner or caretaker within the first 3 days of the required holding period. If the cat is determined to be docile or a tame cat, existing law requires that the cat be held for the entire holding period. Existing law requires all public pounds and shelters operated by humane societies, as specified, that contract to perform animal control services, to provide owners of lost animals with specified services to find those animals, such as the ability to list the animals they have

lost on “Lost and Found” lists maintained by the pound or shelter, and that they keep accurate records on each animal taken up, medically treated, or impounded.

Existing law requires that various other small animals, such as rabbit and guinea pigs, be held for the same period of time as stray dogs and cats, under the same requirements of care.

A violation of these provisions is a misdemeanor, unless otherwise specified.

This bill would repeal the provision requiring that a depository of living animals provide the animals with necessary and prompt veterinary care. The bill would reduce that holding period for a stray dog or cat to 72 hours from the time of capture. The bill would repeal the requirement that an animal shelter evaluate the temperament of apparently feral cats. The bill would make permissive the requirement that pounds and shelters provide owners with specified services to find lost animals and specify that a violation of this provision is not a misdemeanor and is not a mandatory duty of a public entity. The bill would also repeal the requirements that all public pounds and private shelters keep accurate records on each animal taken up, medically treated, or impounded, and that various other small animals be held for the same period of time as stray dogs and cats, under the same requirements of care.

(2) Existing law requires a county that provides emergency services to provide deaf teletype equipment at a central location within the county to relay requests for those emergency services.

This bill would repeal that requirement.

(3) Existing law requires a coroner to, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and

unexpectedly. However, if the attending physician certifies that the cause of death is sudden infant death syndrome, existing law authorizes an autopsy to be performed at the discretion of the coroner. If the coroner performs an autopsy, existing law requires a certification of the cause of death.

This bill would repeal those provisions.

(4) Existing law requires every city, county, or city and county that has at least 5,000 residents or in which 5% of the population is of Filipino ancestry or ethnic origin and that conducts a survey as to the ancestry or ethnic origin of its employees, or that maintains any statistical tabulation of minority group employees, to categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in the survey or tabulation.

This bill would repeal that requirement.

(5) Existing law provides for the regulation of various matters relating to maternal, child, and adolescent health.

Existing law requires a firefighter, as defined, to complete a specified course on the nature of sudden infant death syndrome. Existing law also imposes specified duties on a local health officer, or his or her designee, upon being informed by the coroner of a case in which sudden infant death syndrome is the presumed cause of death.

Existing law requires each county to establish protocols between county health departments, county welfare departments, and public and private hospitals in the county, regarding the application and use of a needs assessment of, and a referral for, certain substance-exposed infants to a county welfare department.

This bill would delete the above-described responsibilities of counties, firefighters, and local health officers, with respect to sudden infant death syndrome and the assessment of substance-exposed infants, and would make related conforming changes.

(6) Existing law makes it a misdemeanor to knowingly file a false allegation of misconduct against a peace officer. Existing law requires any law enforcement agency accepting an allegation of misconduct against a peace officer to require the complainant to read and sign a specified statement. Existing law also requires that advisory to be available in multiple languages.

This bill would delete the requirement that any law enforcement agency accepting an allegation of misconduct against a peace officer require the complainant to read and sign a specified statement. The bill would also delete the requirement that the advisory be available in multiple languages.

(7) Existing law sets forth the duties of the grand jury. Existing law requires the grand jury to submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Existing law provides that final reports on any appropriate subject may be submitted to the presiding judge of the superior court. Existing law requires the responding person or entity on a grand jury to indicate whether he or she agrees with the finding of the grand jury, with respect to each finding, as specified. Existing law requires the grand jury to meet with the subject of an investigation, except as specified. Existing law requires the court clerk to forward a copy of the report and the responses to the State Archivist.

Existing law also requires that the court ensure that a grand jury that considers or takes action on civil matters receive training that addresses report writing, interviews, and the scope of a grand jury's responsibility and statutory authority. Existing law also requires the court to arrange for a suitable meeting room and other support as the court deems necessary for the grand jury.

This bill would delete the requirement that the responding person or entity on a grand jury indicate whether he or she agrees with the finding of the grand jury, with respect to each finding, and that the grand jury meet with the subject of the investigation, and would instead provide that it is a best practice to take those actions. The bill would delete the requirement that the court clerk forward a copy of the report and the responses to the State Archivist, but would state that the Legislature encourages the clerk to take that action. The bill would delete the requirement that the court ensure that a grand jury that considers or takes action on civil matters receive training that addresses report writing, interviews, and the scope of a grand jury's responsibility and statutory authority. The bill would also delete the requirement that the court arrange for a suitable meeting room and other support as the court deems necessary for the grand jury.

(8) Existing law establishes procedures for the diversion of defendants who have cognitive developmental disabilities. Existing law authorizes the court to order, among other things, the prosecutor and the probation department to prepare reports on specified aspects of the defendant's case. Existing law requires the prosecutor and the probation department to submit these reports within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. Existing

law also requires the probation department to be responsible for reports regarding the defendant's progress in the diversion program.

This bill would delete the requirement that the prosecutor and the probation department prepare and submit those reports.

(9) Existing law establishes procedures for the trial and subsequent commitment of a defendant who pleads not guilty by reason of insanity, as specified.

This bill would delete those provisions.

(10) Existing law requires, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court to immediately refer the matter to a probation office to investigate and report to the court. Existing law requires the probation officer to include in the report his or her recommendation regarding the amount the defendant should be required to pay as a restitution fine and whether the court must require, as a condition of probation, restitution to the victims or to the Restitution Fund.

This bill would delete the requirement that the probation officer include that information in his or her report.

(11) Existing law requires that toxic exhibits be introduced to the court in the form of a photograph, except as specified.

This bill would delete that provision.

(12) Existing law requires the court, at the request of a victim, to issue a search warrant for the purpose of testing a defendant's blood or saliva for HIV, when that defendant has been charged with a specified sex offense, or an attempt to commit such an offense, and he or she is the subject of a police report alleging the commission of

a separate, uncharged offense that could be charged as a specified sex offense or an attempt to commit such an offense, or when that defendant is a minor who is the subject of a petition filed in juvenile court alleging the commission or attempted commission of a specified sex offense and he or she is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged as a specified sex offense or an attempt to commit such an offense. Existing law imposes various duties related to the issuance of the search warrant on the district attorney. Existing law also requires the local health officer to make provision for administering all HIV tests ordered pursuant to this provision, to disclose the test results to the victim who requested the test, and to comply with all law and policies relating to medical confidentiality, as specified.

This bill would delete that provision. The bill would make a conforming change.

(13) Existing law provides that in certain proceedings to terminate the parental rights of an individual in custody in state prison, notice must be transmitted to the individual. Existing law also requires the court to issue an order for the temporary removal of the prisoner from the institution and for his or her production before the court.

This bill would delete those requirements.

(14) Existing law requires that probation and parole officers be notified when an inmate being released from incarceration is infected with AIDS or hepatitis B or C. Existing law requires supervisory and medical personnel of correctional institutions to notify staff if they are coming into close and direct contact with persons in custody

who have tested positive for those diseases. Existing law imposes various duties on medical personnel relating to testing inmates for those diseases.

This bill would make those actions permissive, rather than mandatory.

(15) Existing law imposes various duties on local law enforcement personnel, including collecting and reporting to the Department of Justice data regarding homicide cases and hate crimes, and developing sexual harassment complaint guidelines, elder and dependent abuse response training, and domestic violence response protocols. Existing law also requires every law enforcement agency, as specified, to provide to each officer an appropriate portable mask and airway assembly.

This bill would make the duty to collect and report data regarding homicide cases and hate crimes permissive. The bill would repeal the other provisions.

Existing law also imposes various duties on local law enforcement relating to missing persons.

This bill would repeal those duties with respect to local law enforcement.

Existing law requires law enforcement to confiscate firearms from the scene of domestic violence incidents, as specified.

This bill would make those provisions permissive.

(16) Existing law requires each local government lying, in whole or in part, within the coastal zone to prepare a local coastal program. Existing law vests jurisdiction with the California Coastal Commission to issue coastal development permits prior to the certification of a local coastal program. Existing law grants jurisdiction to the local government to issue coastal development permit once a local coastal program has been

certified by the commission. Existing law requires each port governing body to prepare and adopt a port master plan.

This bill would repeal the local coastal program. This bill would, instead, makes the preparation of a port master plan a discretionary activity of the port governing body. The bill would also make conforming changes.

(17) The State Aeronautics Act governs the creation and operation of airports in this state. Under the act, each county in which there is an airport served by a scheduled airline and each county with an airport operated for the benefit of the general public, with certain exceptions, is required to establish an airport land use commission, to designate a body to carry out the responsibilities of a commission, or to contract with the Division of Aeronautics in the Department of Transportation to carry out the responsibilities of a commission, including the formulation of a comprehensive land use compatibility plan to provide for the orderly growth of the airport and the area surrounding the airport within the jurisdiction of the commission, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.

This bill would repeal the requirement that each county in which there is an airport served by a scheduled airline and each county with an airport operated for the benefit of the general public establish an airport land use commission, to designate a body to carry out the responsibilities of a commission, or to contract with the Division of Aeronautics in the Department of Transportation to carry out the responsibilities of a commission.

(18) The Guardianship-Conservatorship Law generally provides for the appointment of guardians and conservators, and for the exercise of their powers and duties. Existing law authorizes the appointment of a public defender or private attorney, if certain conditions exist, as legal counsel to represent the interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity to assist in particular matters and specified proceedings. Existing law also authorizes the appointment of a public defender or private attorney as legal counsel, if certain conditions exist, in any proceeding to establish a limited conservatorship, as specified, and provides for compensation for the legal counsel for those purposes, as specified.

This bill would repeal the provisions of law described above authorizing the appointment and compensation of counsel. The bill would make additional conforming changes.

(19) Existing law requires the original reporting police agency, upon receipt of information regarding a recovered stolen vehicle, to attempt to notify the party who reported the vehicle stolen, by telephone or by mail, regarding the location and condition of the recovered vehicle.

This bill would delete that requirement.

(20) Under existing law, a victim has the right to present a victim impact statement in juvenile court hearings concerning any petition to declare a minor a ward of the juvenile court for the alleged commission of a criminal offense. In a case in which a minor is alleged to have committed a criminal offense, the probation officer is required to inform the victim of that right to submit a victim impact statement and to take other specified actions in connection with obtaining a victim impact statement.

The probation officer is also required to provide the victim with information concerning his or her right to an action for civil damages against the minor and his or her parents and the victim's opportunity to be compensated from the restitution fund.

This bill would delete the requirements that the probation officer inform the victim of these victims' rights, and would make other actions required in connection with obtaining a victim impact statement contingent on whether the probation officer includes the statement in his or her social study.

(21) Existing law requires the Chief Deputy Secretary for Juvenile Justice of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, to request the prosecuting attorney to petition the committing court for an order seeking the extended detention of certain persons who would otherwise be discharged from the division if the division determines that those persons would be physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality that causes them to have serious difficulty controlling their dangerous behavior.

This bill would require the Chief Deputy Secretary for Juvenile Justice to directly petition the committing court for an order for extended detention when the division makes the above-described determination. The bill would make other conforming changes.

(22) Existing law provides for the commitment of a mentally retarded person to the State Department of Developmental Services if that person is a danger to himself or herself or to others, under specified conditions, including that the judicial proceedings are in a county within which a state hospital or developmental center maintains a treatment program for mentally retarded persons who are a danger to themselves or

others and that the proceedings relate to a mentally retarded person who is residing in the state hospital or developmental center located in the county of the proceedings.

Existing law requires the department to pay for the costs, as defined, of judicial proceedings pursuant to those provisions. Existing law requires the appropriate financial officer or other designated officer in a county to prepare a statement of all costs incurred by the county in the investigation, preparation for, and conduct of the proceeding, and requires that the statement be sent to the department.

This bill would repeal the provision requiring the department to pay for the costs, as defined, of judicial proceedings described above, and the related provisions, including the provision requiring the appropriate county officer to prepare a statement of all costs.

(23) Existing law provides that no person who has been taken into custody or admitted to a designated facility because that person is a danger to himself, herself, or others shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of 5 years after the person is released from the facility, as specified. Existing law authorizes that person to request a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. Existing law also provides that no person who has been certified for intensive treatment related to mental disorder or impairment by chronic alcoholism may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of 5 years. Existing law authorizes the person to petition the superior court of

his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms.

Existing law provides that the People of the State of California shall be the respondent in these proceedings and shall be represented by the district attorney.

This bill would instead provide that the Attorney General, rather than the district attorney, shall represent the People of the State of California in these proceedings.

The bill would delete references to the district attorney and instead require the Attorney General to carry out those duties.

(24) This bill would set forth findings and declarations relating to state mandates. The bill would direct the Commission on State Mandates, within 1 year of the effective date of the act, to amend the respective parameters and guidelines of the mandates identified in the act in order to end reimbursement for those mandates on the effective date of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.