

AMENDED IN ASSEMBLY AUGUST 27, 2007

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN ASSEMBLY JUNE 11, 2007

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 425

Introduced by Senator Margett

February 21, 2007

An act to amend ~~Section 29551~~ Sections 29551, 70372, 70375, 76000, 76000.5, 76104.1, 76104.6, and 76104.7 of the Government Code, to amend Section 117560 of the Health and Safety Code, to amend Sections 530.5, 647, 977, 1170.11, 1202.4, 1202.45, 1463, 1464, 1465.8, and 1538.5 of the Penal Code, and to amend Section 6608.8 of the Welfare and Institutions Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, Margett. Public safety.

Existing law authorizes certain additional penalties to be levied on fines for criminal offenses, including a state penalty, a county penalty, and penalties relating to state court construction, emergency medical services, and DNA fingerprinting, in specified amounts.

This bill would provide that these additional penalties do not apply to specified fines, penalties, and surcharges. The bill would make certain changes regarding the distribution of penalty funds by counties under these provisions.

Under existing law, a person is guilty of disorderly conduct, a misdemeanor, based on various acts, including if the person loiters or wanders upon the streets or from place to place without apparent reason or business and refuses to identify himself or herself or account for his

or her presence to a law enforcement officer in circumstances making that identification reasonable.

This bill would delete the above provision.

~~Under existing law, juvenile case files may be inspected only by court personnel, the district attorney, city attorney, or city prosecutor, the minor and his or her parents or guardian, and various others involved in the proceeding.~~

~~This bill would add the Attorney General to the list of persons entitled to inspect juvenile case files. The bill would also correct erroneous cross-references and make other clarifying changes to various criminal law provisions.~~

This bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

1 SECTION 1. Section 29551 of the Government Code is
2 amended to read:
3 29551. (a) The board of supervisors or city council of any
4 county, city and county, or city that opts to receive funds pursuant
5 to Section 29552 shall establish a local detention facility revenue
6 account, on behalf of the sheriff or the official responsible for local
7 detention facilities in the county, city and county, or city, into
8 which shall be deposited funds paid by the Controller, pursuant to
9 Section 29552. The funds in the local detention facility revenue
10 account shall be used exclusively for the purpose of operation,
11 renovation, remodeling, or constructing local detention facilities
12 and related equipment.
13 (b) (1) If an appropriation for the purposes specified in Section
14 29552 is made in any fiscal year, a county, city and county, or city,
15 may charge a jail access fee to a local agency that exceeds the
16 agency’s three-year average number of nonfelony bookings for
17 crimes listed in paragraph (2) at a rate not to exceed the actual cost
18 of booking an arrested person into the local detention facility, for
19 each booking in excess of the three-year average. A local agency’s
20 three-year average number of nonfelony bookings for crimes listed
21 in paragraph (2) shall be recalculated each year. The jail access
22 fee shall be calculated and paid on a monthly basis, and all revenue
23 derived from the jail access fee shall be deposited into the local

1 detention facility revenue account created pursuant to subdivision
2 (a).

3 (2) Bookings for violations of each of the following shall be
4 used to determine a local agency's three-year average:

5 (A) Municipal code violations.

6 (B) Misdemeanor violations, except driving under the influence
7 offenses and domestic violence misdemeanor offenses, including
8 enforcement of protective orders.

9 (c) Cities that operate Type One facilities within a county shall
10 be eligible to receive funds from the county's local detention
11 facility revenue account. Cities that operate Type One facilities
12 and charged booking fees pursuant to Section 29550.3 during the
13 2006–07 fiscal year shall receive funds in an amount proportional
14 to the number of persons booked into the city's Type One facility
15 for which the city charged fees to the arresting agency.

16 (d) Except as provided in subdivisions (c) to (f), inclusive, of
17 Section 29550 and subdivisions (a) to (c), inclusive, of Section
18 29550.3, every year in which at least thirty-five million dollars
19 (\$35,000,000) is appropriated for the purposes of Section 29552,
20 counties, cities and counties, and cities are prohibited from
21 collecting fees pursuant to Sections 29550 and 29550.3 from other
22 public entities. In any fiscal year in which the appropriation for
23 the purposes of Section 29552 is less than thirty-five million dollars
24 (\$35,000,000), a county, city and county, or a city may collect fees
25 pursuant to Section 29550 and Section 29550.3 up to a rate,
26 adjusted as provided in subdivision (e), in proportion to the amount
27 that the amount appropriated is less than thirty-five million dollars
28 (\$35,000,000).

29 (e) The maximum rate of the fee charged by each local agency
30 pursuant to subdivision (d) shall be the rate charged as of June 30,
31 2006, pursuant to Section 29550 or 29550.3, increased for each
32 subsequent fiscal year by the California Consumer Price Index as
33 reported by the Department of Finance plus 1 percent, compounded
34 annually.

35 (f) This section shall become operative on July 1, 2007.

36 *SEC. 2. Section 70372 of the Government Code is amended to*
37 *read:*

38 70372. (a) (1) Except as otherwise provided in *subdivision*
39 *(b) of Section 70375 and in this article, there shall be levied a state*
40 *court construction penalty, in addition to any other state or local*

1 penalty including, but not limited to, the penalty provided by
2 Section 1464 of the Penal Code and Section 76000 of the
3 Government Code, in an *the amount equal to of five dollars (\$5)*
4 *for every ten dollars (\$10), or fraction thereof part of ten dollars*
5 *(\$10), upon every fine, penalty, or forfeiture imposed and collected*
6 *by the courts for all criminal offenses, including, but not limited*
7 *to, all offenses, except parking offenses, as defined in subdivision*
8 *(i) of Section 1463 of the Penal Code, involving a violation of a*
9 *section of the Fish and Game Code, the Health and Safety Code,*
10 *or the Vehicle Code or any local ordinance adopted pursuant to*
11 *the Vehicle Code. This penalty is in addition to any other state or*
12 *local penalty, including, but not limited to, the penalty provided*
13 *by Section 1464 of the Penal Code and Section 76000. Any*

14 (2) *The amount of the court construction penalty may be reduced*
15 *by a county as provided in subdivision (b) of Section 70375.*

16 (3) *This construction penalty does not apply to the following:*

17 (A) *Any restitution fine.*

18 (B) *Any penalty authorized by Section 1464 of the Penal Code*
19 *or Chapter 12 (commencing with Section 76000) of Title 8.*

20 (C) *Any parking offense subject to Article 3 (commencing with*
21 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

22 (D) *The state surcharge authorized by Section 1465.7 of the*
23 *Penal Code.*

24 (4) *Any bail schedule adopted pursuant to Section 1269b of the*
25 *Penal Code or adopted by the Judicial Council pursuant to Section*
26 *40310 of the Vehicle Code may include the necessary amount to*
27 *pay the state penalties penalty established by this section, the*
28 *penalties authorized by Section 1464 of the Penal Code, and*
29 *Chapter 12 (commencing with Section 76000) of Title 8 of the*
30 *Government Code, and the surcharge authorized by Section 1465.7*
31 *of the Penal Code for all matters where a personal appearance is*
32 *not mandatory and the bail is posted primarily to guarantee*
33 *payment of the fine. After a determination by the court of the*
34 *amount due, the clerk of the court shall collect the penalty and*
35 *transmit it immediately to the county treasury and the county*
36 *treasurer shall transmit these sums as provided in subdivision (f).*

37 (b) *In addition to the penalty provided by subdivision (a), for*
38 *every parking offense where a parking penalty, fine, or forfeiture*
39 *is imposed, an added state court construction penalty of one dollar*
40 *and fifty cents (\$1.50) shall be included in the total penalty, fine,*

1 or forfeiture. These moneys shall be taken from fines and
2 forfeitures deposited with the county treasurer prior to any division
3 pursuant to Section 1462.3 or 1463.009 of the Penal Code. In those
4 cities, districts, or other issuing agencies which elect to accept
5 parking penalties, and otherwise process parking violations
6 pursuant to Article 3 (commencing with Section 40200) of Chapter
7 1 of Division 17 of the Vehicle Code, that city, district, or issuing
8 agency shall observe the increased bail amounts as established by
9 the court reflecting the added penalty provided for by this section.
10 Each agency which elects to process parking violations shall pay
11 to the county treasurer one dollar and fifty cents (\$1.50) for the
12 parking penalty imposed by this section for each violation which
13 is not filed in court. Those payments to the county treasurer shall
14 be made monthly, and the county treasurer shall transmit these
15 sums as provided in subdivision (f).

16 (c) Where multiple offenses are involved, the state court
17 construction penalty shall be based upon the total fine or bail for
18 each case. When a fine is suspended, in whole or in part, the state
19 court construction penalty shall be reduced in proportion to the
20 suspension.

21 (d) When any deposited bail is made for an offense to which
22 this section applies, and for which a court appearance is not
23 mandatory, the person making the deposit shall also deposit a
24 sufficient amount to include the state court construction penalty
25 prescribed by this section for forfeited bail. If bail is returned, the
26 state court construction penalty paid thereon pursuant to this section
27 shall also be returned.

28 (e) In any case where a person convicted of any offense, to
29 which this section applies, is in prison until the fine is satisfied,
30 the judge may waive all or any part of the state court construction
31 penalty, the payment of which would work a hardship on the person
32 convicted or his or her immediate family.

33 (f) Within 45 days after the end of the month that moneys are
34 deposited in the county treasury pursuant to subdivision (a) or (b),
35 the county treasurer shall transmit the moneys to the State
36 Controller, to be deposited in the State Court Facilities Construction
37 Fund.

38 *SEC. 3. Section 70375 of the Government Code is amended to*
39 *read:*

1 70375. (a) This article shall take effect on January 1, 2003,
2 and the fund, penalty, and fee assessment established by this article
3 shall become operative on January 1, 2003, except as otherwise
4 provided in this article.

5 (b) In each county, the *five-dollar (\$5) penalty* amount
6 authorized by *subdivision (a) of Section 70372* shall be reduced
7 by the following:

8 (1) The amount collected for deposit into the local courthouse
9 construction fund established pursuant to Section 76100. *If a county*
10 *board of supervisors elects to distribute part of the county penalty*
11 *authorized by Section 76000 into the local courthouse construction*
12 *fund, the amount of the contribution for each seven dollars (\$7)*
13 *is the difference between seven dollars (\$7) and the amount shown*
14 *for the county penalty in subdivision (e) of Section 76000.*

15 (2) The amount collected for transmission to the state for
16 inclusion in the Transitional State Court Facilities Construction
17 Fund established pursuant to Section 70401 to the extent it is
18 funded by money from the local courthouse construction fund.

19 (c) The authority for all of the following shall expire
20 proportionally on the June 30th following the date of transfer of
21 responsibility for facilities from the county to the Judicial Council,
22 except so long as money is needed to pay for construction provided
23 for in those sections and undertaken prior to the transfer of
24 responsibility for facilities from the county to the Judicial Council:

25 (1) An additional penalty for a local courthouse construction
26 fund established pursuant to Section 76100.

27 (2) A filing fee surcharge in the County of Riverside established
28 pursuant to Section 70622.

29 (3) A filing fee surcharge in the County of San Bernardino
30 established pursuant to Section 70624.

31 (4) A filing fee surcharge in the City and County of San
32 Francisco established pursuant to Section 70625.

33 (d) For purposes of subdivision (c), the term “proportionally”
34 means that proportion of the fee or surcharge that shall expire upon
35 the transfer of responsibility for a facility that is the same
36 proportion as the square footage that facility bears to the total
37 square footage of court facilities in that county.

38 *SEC. 4. Section 76000 of the Government Code is amended to*
39 *read:*

1 76000. (a) ~~In (1) Except as otherwise provided elsewhere in~~
2 ~~this section, in each county there shall be levied an additional~~
3 ~~penalty in the amount of seven dollars (\$7) for every ten dollars~~
4 ~~(\$10), or fraction thereof which shall be collected together with~~
5 ~~and in the same manner as the amounts established by Section~~
6 ~~1464 of the Penal Code part of ten dollars (\$10), upon every fine,~~
7 ~~penalty, or forfeiture imposed and collected by the courts for all~~
8 ~~criminal offenses, including all offenses involving a violation of~~
9 ~~the Vehicle Code or any local ordinance adopted pursuant to the~~
10 ~~Vehicle Code, except parking offenses subject to Article 3~~
11 ~~(commencing with Section 40200) of Chapter 1 of Division 17 of~~
12 ~~the Vehicle Code. These moneys shall be taken from fines and~~
13 ~~forfeitures deposited with the county treasurer prior to any division~~
14 ~~pursuant to Section 1463 of the Penal Code.~~

15 The

16 (2) *This additional penalty shall be collected together with and*
17 *in the same manner as the amounts established by Section 1464*
18 *of the Penal Code. These moneys shall be taken from fines and*
19 *forfeitures deposited with the county treasurer prior to any division*
20 *pursuant to Section 1463 of the Penal Code. The county treasurer*
21 *shall deposit those amounts specified by the board of supervisors*
22 *by resolution in one or more of the funds established pursuant to*
23 *this chapter. However, deposits to these funds shall continue*
24 *through whatever period of time is necessary to repay any*
25 *borrowings made by the county on or before January 1, 1991, to*
26 *pay for construction provided for in this chapter.*

27 (3) *This additional penalty does not apply to the following:*

28 (A) *Any restitution fine.*

29 (B) *Any penalty authorized by Section 1464 of the Penal Code*
30 *or this chapter.*

31 (C) *Any parking offense subject to Article 3 (commencing with*
32 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

33 (D) *The state surcharge authorized by Section 1465.7 of the*
34 *Penal Code.*

35 (b) In each authorized county, provided that the board of
36 supervisors has adopted a resolution stating that the implementation
37 of this subdivision is necessary to the county for the purposes
38 authorized, with respect to each authorized fund established
39 pursuant to Section 76100 or 76101, for every parking offense
40 where a parking penalty, fine, or forfeiture is imposed, an added

1 penalty of two dollars and fifty cents (\$2.50) shall be included in
2 the total penalty, fine, or forfeiture. Except as provided in
3 subdivision (c), for each parking case collected in the courts of the
4 county, the county treasurer shall place in each authorized fund
5 two dollars and fifty cents (\$2.50). These moneys shall be taken
6 from fines and forfeitures deposited with the county treasurer prior
7 to any division pursuant to Section 1462.3 or 1463.009 of the Penal
8 Code. The judges of the county shall increase the bail schedule
9 amounts as appropriate to reflect the added penalty provided for
10 by this section. In those cities, districts, or other issuing agencies
11 which elect to accept parking penalties, and otherwise process
12 parking violations pursuant to Article 3 (commencing with Section
13 40200) of Chapter 1 of Division 17 of the Vehicle Code, that city,
14 district, or issuing agency shall observe the increased bail amounts
15 as established by the court reflecting the added penalty provided
16 for by this section. Each agency which elects to process parking
17 violations shall pay to the county treasurer two dollars and fifty
18 cents (\$2.50) for each fund for each parking penalty collected on
19 each violation which is not filed in court. Those payments to the
20 county treasurer shall be made monthly, and the county treasurer
21 shall deposit all those sums in the authorized fund. No issuing
22 agency shall be required to contribute revenues to any fund in
23 excess of those revenues generated from the surcharges established
24 in the resolution adopted pursuant to this chapter, except as
25 otherwise agreed upon by the local governmental entities involved.

26 (c) The county treasurer shall deposit one dollar (\$1) of every
27 two dollars and fifty cents (\$2.50) collected pursuant to subdivision
28 (b) into the general fund of the county.

29 (d) The authority to impose the two-dollar-and-fifty-cent (\$2.50)
30 penalty authorized by subdivision (b) shall be reduced to one dollar
31 (\$1.00) as of the date of transfer of responsibility for facilities from
32 the county to the Judicial Council pursuant to Article 3
33 (commencing with Section 70321) of Chapter 5.1, except as money
34 is needed to pay for construction provided for in Section 76100
35 and undertaken prior to the transfer of responsibility for facilities
36 from the county to the Judicial Council.

37 (e) The seven-dollar (\$7) additional penalty authorized by
38 subdivision (a) shall be reduced in each county by the additional
39 penalty amount assessed by the county for the local courthouse
40 construction fund established by Section 76100 as of January 1,

1 1998, when the money in that fund is transferred to the state under
2 Section 70402. The amount each county shall charge as an
3 additional penalty under this section shall be as follows:

4						
5	Alameda	\$5.00	Marin	\$5.00	San Luis Obispo	\$6.00
6	Alpine	\$5.00	Mariposa	\$2.00	San Mateo	\$4.75
7	Amador	\$5.00	Mendocino	\$7.00	Santa Barbara	\$3.50
8	Butte	\$6.00	Merced	\$5.00	Santa Clara	\$5.50
9	Calaveras	\$3.00	Modoc	\$4.00	Santa Cruz	\$7.00
10	Colusa	\$6.00	Mono	\$5.00	Shasta	\$3.50
11	Contra Costa	\$5.00	Monterey	\$5.00	Sierra	\$7.00
12	Del Norte	\$5.00	Napa	\$3.00	Siskiyou	\$5.00
13	El Dorado	\$5.00	Nevada	\$5.00	Solano	\$5.00
14	Fresno	\$7.00	Orange	\$3.50	Sonoma	\$5.00
15	Glenn	\$4.06	Placer	\$4.75	Stanislaus	\$5.00
16	Humboldt	\$5.00	Plumas	\$5.00	Sutter	\$3.00
17	Imperial	\$6.00	Riverside	\$4.60	Tehama	\$7.00
18	Inyo	\$4.00	Sacramento	\$5.00	Trinity	\$4.26
19	Kern	\$7.00	San Benito	\$5.00	Tulare	\$5.00
20	Kings	\$7.00	San Bernardino	\$5.00	Tuolumne	\$5.00
21	Lake	\$7.00	San Diego	\$5.00	Ventura	\$5.00
22	Lassen	\$2.00	San Francisco	\$6.99	Yolo	\$7.00
23	Los Angeles	\$5.00	San Joaquin	\$3.75	Yuba	\$3.00
24	Madera	\$4.50				
25						

26 *SEC. 5. Section 76000.5 of the Government Code is amended*
27 *to read:*

28 76000.5. (a) ~~For (1) Except as otherwise provided elsewhere~~
29 *in this section, for purposes of supporting emergency medical*
30 *services pursuant to Chapter 2.5 (commencing with Section*
31 *1797.98a) of Division 2.5 of the Health and Safety Code, in*
32 *addition to the penalties set forth in Section 76000, the county*
33 *board of supervisors may elect to levy an additional penalty in the*
34 *amount of two dollars (\$2) for every ten dollars (\$10), or fraction*
35 *thereof part of ten dollars (\$10), which shall be collected, together*
36 *with and in the same manner as the amounts established by Section*
37 *1464 of the Penal Code, upon every fine, penalty, or forfeiture*
38 *imposed and collected by the courts for all criminal offenses,*
39 *including violations of Division 9 (commencing with Section*

1 23000) of the Business and Professions Code relating to the control
 2 of alcoholic beverages, and all offenses involving a violation of
 3 the Vehicle Code or any local ordinance adopted pursuant to the
 4 Vehicle Code, ~~except parking offenses subject to Article 3~~
 5 ~~(commencing with Section 40200) of Chapter 1 of Division 17 of~~
 6 ~~the Vehicle Code. This penalty shall be collected together with~~
 7 ~~and in the same manner as the amounts established by Section~~
 8 ~~1464 of the Penal Code.~~

9 (2) This additional penalty does not apply to the following:

10 (A) Any restitution fine.

11 (B) Any penalty authorized by Section 1464 of the Penal Code
 12 or this chapter.

13 (C) Parking offenses subject to Article 3 (commencing with
 14 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

15 (D) The state surcharge authorized by Section 1465.7 of the
 16 Penal Code.

17 (b) Funds shall be collected pursuant to subdivision (a) only if
 18 the county board of supervisors provides that the increased
 19 penalties do not offset or reduce the funding of other programs
 20 from other sources, but that these additional revenues result in
 21 increased funding to those programs.

22 (c) Money collected pursuant to subdivision (a) shall be taken
 23 from fines and forfeitures deposited with the county treasurer prior
 24 to any division pursuant to Section 1463 of the Penal Code.

25 (d) Funds collected pursuant to this section shall be deposited
 26 into the Maddy Emergency Medical Services (EMS) Fund
 27 established pursuant to Section 1797.98a of the Health and Safety
 28 Code.

29 (e) This section shall remain in effect only until January 1,
 30 2009, and as of that date is repealed, unless a later enacted statute,
 31 that is chaptered before January 1, 2009, deletes or extends that
 32 date.

33 *SEC. 6. Section 76104.1 of the Government Code is amended*
 34 *to read:*

35 76104.1. (a) (1) Except as *otherwise* provided ~~in subdivision~~
 36 ~~(d) in this section~~, and notwithstanding any other provision of law,
 37 for purposes of supporting emergency medical services pursuant
 38 to Chapter 2.5 (commencing with Section 1797.98a) of Division
 39 2.5 of the Health and Safety Code, in Santa Barbara County, a
 40 penalty *in the amount* of five dollars (\$5.00) for every ten dollars

1 (\$10.00), or ~~fraction thereof~~ *part of ten dollars (\$10)*, shall be
2 imposed on every fine, penalty, or forfeiture collected for *all*
3 criminal offenses, including all offenses involving a violation of
4 the Vehicle Code or any local ordinance adopted pursuant to the
5 Vehicle Code, ~~except parking offenses subject to Article 3~~
6 ~~(commencing with Section 40200) of Chapter 1 of Division 17 of~~
7 ~~the Vehicle Code~~. This penalty assessment shall be collected
8 together with and in the same manner as the amount established
9 by Section 1464 of the Penal Code.

10 (2) *The penalty imposed by this section does not apply to the*
11 *following:*

12 (A) *Any restitution fine.*

13 (B) *Any penalty authorized by Section 1464 of the Penal Code*
14 *or this chapter.*

15 (C) *Any parking offense subject to Article 3 (commencing with*
16 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

17 (D) *The state surcharge authorized by Section 1465.7 of the*
18 *Penal Code.*

19 (b) Notwithstanding any other provision of law, for the purposes
20 of supporting emergency medical services pursuant to Chapter 2.5
21 (commencing with Section 1797.98a) of Division 2.5 of the Health
22 and Safety Code, in Santa Barbara County, for every parking
23 offense, as defined in subdivision (i) of Section 1463 of the Penal
24 Code, where a parking penalty, fine, or forfeiture is imposed, an
25 added penalty of two dollars and fifty cents (\$2.50) shall be
26 included in the total penalty, fine, or forfeiture, together with and
27 in the same manner as the amount established pursuant to
28 subdivision (b) of Section 76000.

29 (c) The moneys collected pursuant to this section shall be held
30 by the county treasurer in the same manner, and shall be payable
31 for the same purposes, described in subdivision (e) of Section
32 76104.

33 (d) (1) Notwithstanding any provision of law to the contrary,
34 in the County of Santa Barbara, the distribution set forth in
35 subparagraph (B) of paragraph (5) of subdivision (b) of Section
36 1797.98a shall, instead, be 42 percent of the fund to hospitals
37 providing disproportionate trauma and emergency medical services
38 to uninsured patients who do not make any payment for services.

39 (2) Notwithstanding any provision of law to the contrary, in the
40 County of Santa Barbara, the 17 percent distribution set forth in

1 subparagraph (C) of paragraph (5) of subdivision (b) of Section
2 1797.98a shall not apply.

3 (e) This section shall be implemented only if the Santa Barbara
4 County Board of Supervisors adopts a resolution stating that
5 implementation of this section is necessary to the county for
6 purposes of providing payment for emergency medical services.

7 (f) This section shall remain in effect only until January 1, 2009,
8 and as of that date is repealed.

9 *SEC. 7. Section 76104.6 of the Government Code is amended*
10 *to read:*

11 76104.6. (a) ~~For (1) Except as otherwise provided in this~~
12 *section, for the purpose of implementing the DNA Fingerprint,*
13 *Unsolved Crime and Innocence Protection Act, there shall be levied*
14 *an additional penalty of one dollar for every ten dollars (\$10), or*
15 *fraction thereof part of ten dollars (\$10), in each county which*
16 *shall be collected together with and in the same manner as the*
17 *amounts established by Section 1464 of the Penal Code, upon*
18 *every fine, penalty, or forfeiture imposed and collected by the*
19 *courts for all criminal offenses, including all offenses involving a*
20 *violation of the Vehicle Code or any local ordinance adopted*
21 *pursuant to the Vehicle Code, except parking offenses subject to*
22 *Article 3 (commencing with Section 40200) of Chapter 1 of*
23 *Division 17 of the Vehicle Code. These*

24 *(2) The penalty imposed by this section shall be collected*
25 *together with and in the same manner as the amounts established*
26 *by Section 1464 of the Penal Code. These moneys shall be taken*
27 *from fines and forfeitures deposited with the county treasurer prior*
28 *to any division pursuant to Section 1463 of the Penal Code. The*
29 *board of supervisors shall establish in the county treasury a DNA*
30 *Identification Fund into which shall be deposited the collected*
31 *moneys pursuant to this section. The moneys of the fund shall be*
32 *allocated pursuant to subdivision (b).*

33 *(3) This additional penalty does not apply to the following:*

34 *(A) Any restitution fine.*

35 *(B) Any penalty authorized by Section 1464 of the Penal Code*
36 *or this chapter.*

37 *(C) Any parking offense subject to Article 3 (commencing with*
38 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

39 *(D) The state surcharge authorized by Section 1465.7 of the*
40 *Penal Code.*

1 (b) (1) The fund moneys described in subdivision (a), together
2 with any interest earned thereon, shall be held by the county
3 treasurer separate from any funds subject to transfer or division
4 pursuant to Section 1463 of the Penal Code. Deposits to the fund
5 may continue through and including the 20th year after the initial
6 calendar year in which the surcharge is collected, or longer if and
7 as necessary to make payments upon any lease or leaseback
8 arrangement utilized to finance any of the projects specified herein.

9 (2) On the last day of each calendar quarter of the year specified
10 in this subdivision, the county treasurer shall transfer fund moneys
11 in the county's DNA Identification Fund to the state Controller
12 for credit to the state's DNA Identification Fund, which is hereby
13 established in the State Treasury, as follows:

14 (A) in the first two calendar years following the effective date
15 of this section, 70 percent of the amounts collected, including
16 interest earned thereon;

17 (B) in the third calendar year following the effective date of this
18 section, 50 percent of the amounts collected, including interest
19 earned thereon;

20 (C) in the fourth calendar year following the effective date of
21 this section and in each calendar year thereafter, 25 percent of the
22 amounts collected, including interest earned thereon.

23 (3) Funds remaining in the county's DNA Identification Fund
24 shall be used only to reimburse local sheriff or other law
25 enforcement agencies to collect DNA specimens, samples, and
26 print impressions pursuant to this chapter; for expenditures and
27 administrative costs made or incurred to comply with the
28 requirements of paragraph (5) of subdivision (b) of Section 298
29 including the procurement of equipment and software integral to
30 confirming that a person qualifies for entry into the Department
31 of Justice DNA Database and Data Bank Program; and to local
32 sheriff, police, district attorney, and regional state crime
33 laboratories for expenditures and administrative costs made or
34 incurred in connection with the processing, analysis, tracking, and
35 storage of DNA crime scene samples from cases in which DNA
36 evidence would be useful in identifying or prosecuting suspects,
37 including the procurement of equipment and software for the
38 processing, analysis, tracking, and storage of DNA crime scene
39 samples from unsolved cases.

1 (4) The state's DNA Identification Fund shall be administered
2 by the Department of Justice. Funds in the state's DNA
3 Identification Fund, upon appropriation by the Legislature, shall
4 be used by the Attorney General only to support DNA testing in
5 the state and to offset the impacts of increased testing and shall be
6 allocated as follows:

7 (A) Of the amount transferred pursuant to subparagraph (A) of
8 paragraph (2) of subdivision (b), 90 percent to the Department of
9 Justice DNA Laboratory, first, to comply with the requirements
10 of Section 298.3 of the Penal Code and, second, for expenditures
11 and administrative costs made or incurred in connection with the
12 processing, analysis, tracking, and storage of DNA specimens and
13 samples including the procurement of equipment and software for
14 the processing, analysis, tracking, and storage of DNA samples
15 and specimens obtained pursuant to the DNA and Forensic
16 Identification Database and Databank Act, as amended, and 10
17 percent to the Department of Justice Information Bureau Criminal
18 History Unit for expenditures and administrative costs that have
19 been approved by the Chief of the Department of Justice Bureau
20 of Forensic Services made or incurred to update equipment and
21 software to facilitate compliance with the requirements of
22 subdivision (e) of Section 299.5 of the Penal Code.

23 (B) Of the amount transferred pursuant to subparagraph (B) of
24 paragraph (2) of subdivision (b), funds shall be allocated by the
25 Department of Justice DNA Laboratory, first, to comply with the
26 requirements of Section 298.3 of the Penal Code and, second, for
27 expenditures and administrative costs made or incurred in
28 connection with the processing, analysis, tracking, and storage of
29 DNA specimens and samples including the procurement of
30 equipment and software for the processing, analysis, tracking, and
31 storage of DNA samples and specimens obtained pursuant to the
32 DNA and Forensic Identification Database and Databank Act, as
33 amended.

34 (C) Of the amount transferred pursuant to subparagraph (C) of
35 paragraph (2) of subdivision (b), funds shall be allocated by the
36 Department of Justice to the DNA Laboratory to comply with the
37 requirements of Section 298.3 of the Penal Code and for
38 expenditures and administrative costs made or incurred in
39 connection with the processing, analysis, tracking, and storage of
40 DNA specimens and samples including the procurement of

1 equipment and software for the processing, analysis, tracking, and
2 storage of DNA samples and specimens obtained pursuant to the
3 DNA and Forensic Identification Database and Databank Act, as
4 amended.

5 (c) On or before April 1 in the year following adoption of this
6 section, and annually thereafter, the board of supervisors of each
7 county shall submit a report to the Legislature and the Department
8 of Justice. The report shall include the total amount of fines
9 collected and allocated pursuant to this section, and the amounts
10 expended by the county for each program authorized pursuant to
11 paragraph (3) of subdivision (b) of this section. The Department
12 of Justice shall make the reports publicly available on the
13 department's Web site.

14 (d) All requirements imposed on the Department of Justice
15 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence
16 Protection Act are contingent upon the availability of funding and
17 are limited by revenue, on a fiscal year basis, received by the
18 Department of Justice pursuant to this section and any additional
19 appropriation approved by the Legislature for purposes related to
20 implementing this measure.

21 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
22 and Innocence Protection Act, the Legislature shall loan the
23 Department of Justice General Fund in the amount of \$7,000,000
24 for purposes of implementing that act. This loan shall be repaid
25 with interest calculated at the rate earned by the Pooled Money
26 Investment Account at the time the loan is made. Principal and
27 interest on the loan shall be repaid in full no later than four years
28 from the date the loan was made and shall be repaid from revenue
29 generated pursuant to this section.

30 *SEC. 8. Section 76104.7 of the Government Code is amended*
31 *to read:*

32 76104.7. ~~In~~(a) *Except as otherwise provided in this section,*
33 *in addition to the penalty levied pursuant to Section 76104.6, there*
34 *shall be levied an additional state-only penalty of one dollar (\$1)*
35 *for every ten dollars (\$10), or fraction thereof part of ten dollars*
36 *(\$10), in each county, which shall be collected together with and*
37 *in the same manner as the amounts established by Section 1464*
38 *of the Penal Code, upon every fine, penalty, or forfeiture imposed*
39 *and collected by the courts for all criminal offenses, including all*
40 *offenses involving a violation of the Vehicle Code or any local*

1 ordinance adopted pursuant to the Vehicle Code, except parking
 2 offenses subject to Article 3 (commencing with Section 40200) of
 3 Chapter 1 of Division 17 of the Vehicle Code. These

4 (b) *This additional penalty shall be collected together with and*
 5 *in the same manner as the amounts established by Section 1464*
 6 *of the Penal Code. These moneys shall be taken from fines and*
 7 *forfeitures deposited with the county treasurer prior to any division*
 8 *pursuant to Section 1463 of the Penal Code. These funds shall be*
 9 *deposited into the county treasury DNA Identification Fund. One*
 10 *hundred percent of these funds, including any interest earned*
 11 *thereon, shall be transferred to the state Controller at the same time*
 12 *that moneys are transferred pursuant to paragraph (2) of subdivision*
 13 *(b) of Section 76104.6, for deposit into the state's DNA*
 14 *Identification Fund. These funds may be used to fund the operation*
 15 *of the DNA Fingerprint, Unsolved Crime and Innocence Protection*
 16 *Act, and to facilitate compliance with the requirements of*
 17 *subdivision (e) of Section 299.5 of the Penal Code.*

18 (c) *This additional penalty does not apply to the following:*

19 (1) *Any restitution fine.*

20 (2) *Any penalty authorized by Section 1464 of the Penal Code*
 21 *or this chapter.*

22 (3) *Any parking offense subject to Article 3 (commencing with*
 23 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

24 (4) *The state surcharge authorized by Section 1465.7 of the*
 25 *Penal Code.*

26 ~~SEC. 2:~~

27 *SEC. 9.* Section 117560 of the Health and Safety Code is
 28 amended to read:

29 117560. A state fish and game warden, police officer of a city,
 30 sheriff, deputy of a sheriff, person described in subdivision (j) of
 31 Section 830.7 of the Penal Code, and any other peace officer of
 32 the State of California, within his or her respective jurisdiction,
 33 shall enforce this article.

34 ~~SEC. 3:~~

35 *SEC. 10.* Section 530.5 of the Penal Code is amended to read:

36 530.5. (a) Every person who willfully obtains personal
 37 identifying information, as defined in subdivision (b) of Section
 38 530.55, of another person, and uses that information for any
 39 unlawful purpose, including to obtain, or attempt to obtain, credit,
 40 goods, services, real property, or medical information without the

1 consent of that person, is guilty of a public offense, and upon
2 conviction therefor, shall be punished by a fine, by imprisonment
3 in a county jail not to exceed one year, or by both a fine and
4 imprisonment, or by imprisonment in the state prison.

5 (b) In any case in which a person willfully obtains personal
6 identifying information of another person, uses that information
7 to commit a crime in addition to a violation of subdivision (a), and
8 is convicted of that crime, the court records shall reflect that the
9 person whose identity was falsely used to commit the crime did
10 not commit the crime.

11 (c) (1) Every person who, with the intent to defraud, acquires
12 or retains possession of the personal identifying information, as
13 defined in subdivision (b) of Section 530.55, of another person is
14 guilty of a public offense, and upon conviction therefor, shall be
15 punished by a fine, by imprisonment in a county jail not to exceed
16 one year, or by both a fine and imprisonment.

17 (2) Every person who, with the intent to defraud, acquires or
18 retains possession of the personal identifying information, as
19 defined in subdivision (b) of Section 530.55, of another person,
20 and who has previously been convicted of a violation of this
21 section, upon conviction therefor shall be punished by a fine, by
22 imprisonment in a county jail not to exceed one year, or by both
23 a fine and imprisonment, or by imprisonment in the state prison.

24 (3) Every person who, with the intent to defraud, acquires or
25 retains possession of the personal identifying information, as
26 defined in subdivision (b) of Section 530.55, of 10 or more other
27 persons is guilty of a public offense, and upon conviction therefor,
28 shall be punished by a fine, by imprisonment in a county jail not
29 to exceed one year, or by both a fine and imprisonment, or by
30 imprisonment in the state prison.

31 (d) (1) Every person who, with the intent to defraud, sells,
32 transfers, or conveys the personal identifying information, as
33 defined in subdivision (b) of Section 530.55, of another person is
34 guilty of a public offense, and upon conviction therefor, shall be
35 punished by a fine, by imprisonment in a county jail not to exceed
36 one year, or by both a fine and imprisonment, or by imprisonment
37 in the state prison.

38 (2) Every person who, with actual knowledge that the personal
39 identifying information, as defined in subdivision (b) of Section
40 530.55, of a specific person will be used to commit a violation of

1 subdivision (a), sells, transfers, or conveys that same personal
2 identifying information is guilty of a public offense, and upon
3 conviction therefor, shall be punished by a fine, by imprisonment
4 in the state prison, or by both a fine and imprisonment.

5 (e) Every person who commits mail theft, as defined in Section
6 1708 of Title 18 of the United States Code, is guilty of a public
7 offense, and upon conviction therefor shall be punished by a fine,
8 by imprisonment in a county jail not to exceed one year, or by both
9 a fine and imprisonment. Prosecution under this subdivision shall
10 not limit or preclude prosecution under any other provision of law,
11 including, but not limited to, subdivisions (a) to (c), inclusive, of
12 this section.

13 (f) An interactive computer service or access software provider,
14 as defined in subsection (f) of Section 230 of Title 47 of the United
15 States Code, shall not be liable under this section unless the service
16 or provider acquires, transfers, sells, conveys, or retains possession
17 of personal information with the intent to defraud.

18 ~~SEC. 4.~~

19 *SEC. 11.* Section 647 of the Penal Code is amended to read:

20 647. Every person who commits any of the following acts is
21 guilty of disorderly conduct, a misdemeanor:

22 (a) Who solicits anyone to engage in or who engages in lewd
23 or dissolute conduct in any public place or in any place open to
24 the public or exposed to public view.

25 (b) Who solicits or who agrees to engage in or who engages in
26 any act of prostitution. A person agrees to engage in an act of
27 prostitution when, with specific intent to so engage, he or she
28 manifests an acceptance of an offer or solicitation to so engage,
29 regardless of whether the offer or solicitation was made by a person
30 who also possessed the specific intent to engage in prostitution.
31 No agreement to engage in an act of prostitution shall constitute
32 a violation of this subdivision unless some act, in addition to the
33 agreement, is done within this state in furtherance of the
34 commission of an act of prostitution by the person agreeing to
35 engage in that act. As used in this subdivision, “prostitution”
36 includes any lewd act between persons for money or other
37 consideration.

38 (c) Who accosts other persons in any public place or in any
39 place open to the public for the purpose of begging or soliciting
40 alms.

1 (d) Who loiters in or about any toilet open to the public for the
2 purpose of engaging in or soliciting any lewd or lascivious or any
3 unlawful act.

4 (e) Who lodges in any building, structure, vehicle, or place,
5 whether public or private, without the permission of the owner or
6 person entitled to the possession or in control of it.

7 (f) Who is found in any public place under the influence of
8 intoxicating liquor, any drug, controlled substance, toluene, or any
9 combination of any intoxicating liquor, drug, controlled substance,
10 or toluene, in a condition that he or she is unable to exercise care
11 for his or her own safety or the safety of others, or by reason of
12 his or her being under the influence of intoxicating liquor, any
13 drug, controlled substance, toluene, or any combination of any
14 intoxicating liquor, drug, or toluene, interferes with or obstructs
15 or prevents the free use of any street, sidewalk, or other public
16 way.

17 (g) When a person has violated subdivision (f), a peace officer,
18 if he or she is reasonably able to do so, shall place the person, or
19 cause him or her to be placed, in civil protective custody. The
20 person shall be taken to a facility, designated pursuant to Section
21 5170 of the Welfare and Institutions Code, for the 72-hour
22 treatment and evaluation of inebriates. A peace officer may place
23 a person in civil protective custody with that kind and degree of
24 force which would be lawful were he or she effecting an arrest for
25 a misdemeanor without a warrant. No person who has been placed
26 in civil protective custody shall thereafter be subject to any criminal
27 prosecution or juvenile court proceeding based on the facts giving
28 rise to this placement. This subdivision shall not apply to the
29 following persons:

30 (1) Any person who is under the influence of any drug, or under
31 the combined influence of intoxicating liquor and any drug.

32 (2) Any person who a peace officer has probable cause to believe
33 has committed any felony, or who has committed any misdemeanor
34 in addition to subdivision (f).

35 (3) Any person who a peace officer in good faith believes will
36 attempt escape or will be unreasonably difficult for medical
37 personnel to control.

38 (h) Who loiters, prowls, or wanders upon the private property
39 of another, at any time, without visible or lawful business with the
40 owner or occupant. As used in this subdivision, “loiter” means to

1 delay or linger without a lawful purpose for being on the property
2 and for the purpose of committing a crime as opportunity may be
3 discovered.

4 (i) Who, while loitering, prowling, or wandering upon the private
5 property of another, at any time, peeks in the door or window of
6 any inhabited building or structure, without visible or lawful
7 business with the owner or occupant.

8 (j) (1) Any person who looks through a hole or opening, into,
9 or otherwise views, by means of any instrumentality, including,
10 but not limited to, a periscope, telescope, binoculars, camera,
11 motion picture camera, or camcorder, the interior of a bedroom,
12 bathroom, changing room, fitting room, dressing room, or tanning
13 booth, or the interior of any other area in which the occupant has
14 a reasonable expectation of privacy, with the intent to invade the
15 privacy of a person or persons inside. This subdivision shall not
16 apply to those areas of a private business used to count currency
17 or other negotiable instruments.

18 (2) Any person who uses a concealed camcorder, motion picture
19 camera, or photographic camera of any type, to secretly videotape,
20 film, photograph, or record by electronic means, another,
21 identifiable person under or through the clothing being worn by
22 that other person, for the purpose of viewing the body of, or the
23 undergarments worn by, that other person, without the consent or
24 knowledge of that other person, with the intent to arouse, appeal
25 to, or gratify the lust, passions, or sexual desires of that person and
26 invade the privacy of that other person, under circumstances in
27 which the other person has a reasonable expectation of privacy.

28 (3) (A) Any person who uses a concealed camcorder, motion
29 picture camera, or photographic camera of any type, to secretly
30 videotape, film, photograph, or record by electronic means, another,
31 identifiable person who may be in a state of full or partial undress,
32 for the purpose of viewing the body of, or the undergarments worn
33 by, that other person, without the consent or knowledge of that
34 other person, in the interior of a bedroom, bathroom, changing
35 room, fitting room, dressing room, or tanning booth, or the interior
36 of any other area in which that other person has a reasonable
37 expectation of privacy, with the intent to invade the privacy of that
38 other person.

39 (B) Neither of the following is a defense to the crime specified
40 in this paragraph:

1 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
2 employer, employee, or business partner or associate of the victim,
3 or an agent of any of these.

4 (ii) The victim was not in a state of full or partial undress.

5 (k) In any accusatory pleading charging a violation of
6 subdivision (b), if the defendant has been once previously convicted
7 of a violation of that subdivision, the previous conviction shall be
8 charged in the accusatory pleading. If the previous conviction is
9 found to be true by the jury, upon a jury trial, or by the court, upon
10 a court trial, or is admitted by the defendant, the defendant shall
11 be imprisoned in a county jail for a period of not less than 45 days
12 and shall not be eligible for release upon completion of sentence,
13 on probation, on parole, on work furlough or work release, or on
14 any other basis until he or she has served a period of not less than
15 45 days in a county jail. In all cases in which probation is granted,
16 the court shall require as a condition thereof that the person be
17 confined in a county jail for at least 45 days. In no event does the
18 court have the power to absolve a person who violates this
19 subdivision from the obligation of spending at least 45 days in
20 confinement in a county jail.

21 In any accusatory pleading charging a violation of subdivision
22 (b), if the defendant has been previously convicted two or more
23 times of a violation of that subdivision, each of these previous
24 convictions shall be charged in the accusatory pleading. If two or
25 more of these previous convictions are found to be true by the jury,
26 upon a jury trial, or by the court, upon a court trial, or are admitted
27 by the defendant, the defendant shall be imprisoned in a county
28 jail for a period of not less than 90 days and shall not be eligible
29 for release upon completion of sentence, on probation, on parole,
30 on work furlough or work release, or on any other basis until he
31 or she has served a period of not less than 90 days in a county jail.
32 In all cases in which probation is granted, the court shall require
33 as a condition thereof that the person be confined in a county jail
34 for at least 90 days. In no event does the court have the power to
35 absolve a person who violates this subdivision from the obligation
36 of spending at least 90 days in confinement in a county jail.

37 In addition to any punishment prescribed by this section, a court
38 may suspend, for not more than 30 days, the privilege of the person
39 to operate a motor vehicle pursuant to Section 13201.5 of the
40 Vehicle Code for any violation of subdivision (b) that was

1 committed within 1,000 feet of a private residence and with the
2 use of a vehicle. In lieu of the suspension, the court may order a
3 person's privilege to operate a motor vehicle restricted, for not
4 more than six months, to necessary travel to and from the person's
5 place of employment or education. If driving a motor vehicle is
6 necessary to perform the duties of the person's employment, the
7 court may also allow the person to drive in that person's scope of
8 employment.

9 ~~SEC. 5.~~

10 *SEC. 12.* Section 977 of the Penal Code is amended to read:

11 977. (a) (1) In all cases in which the accused is charged with
12 a misdemeanor only, he or she may appear by counsel only, except
13 as provided in paragraphs (2) and (3). If the accused agrees, the
14 initial court appearance, arraignment, and plea may be by video,
15 as provided by subdivision (c).

16 (2) If the accused is charged with a misdemeanor offense
17 involving domestic violence, as defined in Section 6211 of the
18 Family Code, or a misdemeanor violation of Section 273.6, the
19 accused shall be present for arraignment and sentencing, and at
20 any time during the proceedings when ordered by the court for the
21 purpose of being informed of the conditions of a protective order
22 issued pursuant to Section 136.2.

23 (3) If the accused is charged with a misdemeanor offense
24 involving driving under the influence, in an appropriate case, the
25 court may order a defendant to be present for arraignment, at the
26 time of plea, or at sentencing. For purposes of this paragraph, a
27 misdemeanor offense involving driving under the influence shall
28 include a misdemeanor violation of any of the following:

29 (A) Subdivision (b) of Section 191.5.

30 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
31 Code.

32 (C) Section 23152 of the Vehicle Code.

33 (D) Section 23153 of the Vehicle Code.

34 (b) (1) In all cases in which a felony is charged, the accused
35 shall be present at the arraignment, at the time of plea, during the
36 preliminary hearing, during those portions of the trial when
37 evidence is taken before the trier of fact, and at the time of the
38 imposition of sentence. The accused shall be personally present
39 at all other proceedings unless he or she shall, with leave of court,
40 execute in open court, a written waiver of his or her right to be

1 personally present, as provided by paragraph (2). If the accused
2 agrees, the initial court appearance, arraignment, and plea may be
3 by video, as provided by subdivision (c).

4 (2) The accused may execute a written waiver of his or her right
5 to be personally present, approved by his or her counsel, and the
6 waiver shall be filed with the court. However, the court may
7 specifically direct the defendant to be personally present at any
8 particular proceeding or portion thereof. The waiver shall be
9 substantially in the following form:

10

11 “Waiver of Defendant’s Personal Presence”

12

13 “The undersigned defendant, having been advised of his or her
14 right to be present at all stages of the proceedings, including, but
15 not limited to, presentation of and arguments on questions of fact
16 and law, and to be confronted by and cross-examine all witnesses,
17 hereby waives the right to be present at the hearing of any motion
18 or other proceeding in this cause. The undersigned defendant
19 hereby requests the court to proceed during every absence of the
20 defendant that the court may permit pursuant to this waiver, and
21 hereby agrees that his or her interest is represented at all times by
22 the presence of his or her attorney the same as if the defendant
23 were personally present in court, and further agrees that notice to
24 his or her attorney that his or her presence in court on a particular
25 day at a particular time is required is notice to the defendant of the
26 requirement of his or her appearance at that time and place.”

27 (c) The court may permit the initial court appearance and
28 arraignment in superior court of defendants held in any state,
29 county, or local facility within the county on felony or
30 misdemeanor charges, except for those defendants who were
31 indicted by a grand jury, to be conducted by two-way electronic
32 audiovideo communication between the defendant and the
33 courtroom in lieu of the physical presence of the defendant in the
34 courtroom. If the defendant is represented by counsel, the attorney
35 shall be present with the defendant at the initial court appearance
36 and arraignment, and may enter a plea during the arraignment.
37 However, if the defendant is represented by counsel at an initial
38 hearing in superior court in a felony case, and if the defendant does
39 not plead guilty or nolo contendere to any charge, the attorney
40 shall be present with the defendant or if the attorney is not present

1 with the defendant, the attorney shall be present in court during
2 the hearing. The defendant shall have the right to make his or her
3 plea while physically present in the courtroom if he or she so
4 requests. If the defendant decides not to exercise the right to be
5 physically present in the courtroom, he or she shall execute a
6 written waiver of that right. A judge may order a defendant's
7 personal appearance in court for the initial court appearance and
8 arraignment. In a misdemeanor case, a judge may, pursuant to this
9 subdivision, accept a plea of guilty or no contest from a defendant
10 who is not physically in the courtroom. In a felony case, a judge
11 may, pursuant to this subdivision, accept a plea of guilty or no
12 contest from a defendant who is not physically in the courtroom
13 if the parties stipulate thereto.

14 (d) Notwithstanding subdivision (c), if the defendant is
15 represented by counsel, the attorney shall be present with the
16 defendant in any county exceeding 4,000,000 persons in
17 population.

18 ~~SEC. 6.~~

19 *SEC. 13.* Section 1170.11 of the Penal Code is amended to
20 read:

21 1170.11. As used in Section 1170.1, the term “specific
22 enhancement” means an enhancement that relates to the
23 circumstances of the crime. It includes, but is not limited to, the
24 enhancements provided in Sections 186.10, 186.11, 186.22, 186.26,
25 186.33, 273.4, 289.5, 290.4, 290.45, 290.46, 347, and 368,
26 subdivisions (a) and (b) of Section 422.75, paragraphs (2), (3), (4),
27 and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3),
28 and (4) of subdivision (a) of Section 452.1, subdivision (g) of
29 Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10,
30 667.15, 667.16, 667.17, 674, 675, 12021.5, 12022, 12022.2,
31 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7,
32 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and
33 12280 of this code, and in Sections 1522.01 and 11353.1,
34 subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5,
35 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.7, 25189.5,
36 and 25189.7 of the Health and Safety Code, and in Sections 20001
37 and 23558 of the Vehicle Code, and in Sections 10980 and 14107
38 of the Welfare and Institutions Code.

39 *SEC. 14.* Section 1202.4 of the Penal Code is amended to read:

1 1202.4. (a) (1) It is the intent of the Legislature that a victim
2 of crime who incurs any economic loss as a result of the
3 commission of a crime shall receive restitution directly from any
4 defendant convicted of that crime.

5 (2) Upon a person being convicted of any crime in the State of
6 California, the court shall order the defendant to pay a fine in the
7 form of a penalty assessment in accordance with Section 1464.

8 (3) The court, in addition to any other penalty provided or
9 imposed under the law, shall order the defendant to pay both of
10 the following:

11 (A) A restitution fine in accordance with subdivision (b).

12 (B) Restitution to the victim or victims, if any, in accordance
13 with subdivision (f), which shall be enforceable as if the order
14 were a civil judgment.

15 (b) In every case where a person is convicted of a crime, the
16 court shall impose a separate and additional restitution fine, unless
17 it finds compelling and extraordinary reasons for not doing so, and
18 states those reasons on the record.

19 (1) The restitution fine shall be set at the discretion of the court
20 and commensurate with the seriousness of the offense, but shall
21 not be less than two hundred dollars (\$200), and not more than ten
22 thousand dollars (\$10,000), if the person is convicted of a felony,
23 and shall not be less than one hundred dollars (\$100), and not more
24 than one thousand dollars (\$1,000), if the person is convicted of
25 a misdemeanor.

26 (2) In setting a felony restitution fine, the court may determine
27 the amount of the fine as the product of two hundred dollars (\$200)
28 multiplied by the number of years of imprisonment the defendant
29 is ordered to serve, multiplied by the number of felony counts of
30 which the defendant is convicted.

31 (c) The court shall impose the restitution fine unless it finds
32 compelling and extraordinary reasons for not doing so, and states
33 those reasons on the record. A defendant's inability to pay shall
34 not be considered a compelling and extraordinary reason not to
35 impose a restitution fine. Inability to pay may be considered only
36 in increasing the amount of the restitution fine in excess of the two
37 hundred-dollar (\$200) or one hundred-dollar (\$100) minimum.
38 The court may specify that funds confiscated at the time of the
39 defendant's arrest, except for funds confiscated pursuant to Section
40 11469 of the Health and Safety Code, be applied to the restitution

1 fine if the funds are not exempt for spousal or child support or
2 subject to any other legal exemption.

3 (d) In setting the amount of the fine pursuant to subdivision (b)
4 in excess of the two hundred-dollar (\$200) or one hundred-dollar
5 (\$100) minimum, the court shall consider any relevant factors
6 including, but not limited to, the defendant's inability to pay, the
7 seriousness and gravity of the offense and the circumstances of its
8 commission, any economic gain derived by the defendant as a
9 result of the crime, the extent to which any other person suffered
10 any losses as a result of the crime, and the number of victims
11 involved in the crime. Those losses may include pecuniary losses
12 to the victim or his or her dependents as well as intangible losses,
13 such as psychological harm caused by the crime. Consideration
14 of a defendant's inability to pay may include his or her future
15 earning capacity. A defendant shall bear the burden of
16 demonstrating his or her inability to pay. Express findings by the
17 court as to the factors bearing on the amount of the fine shall not
18 be required. A separate hearing for the fine shall not be required.

19 (e) The restitution fine shall not be subject to penalty
20 assessments ~~as provided~~ *authorized* in Section 1464 or Chapter
21 *12 (commencing with Section 76000) of Title 8 of the Government*
22 *Code, or the state surcharge authorized in Section 1465.7, and*
23 shall be deposited in the Restitution Fund in the State Treasury.

24 (f) Except as provided in subdivision (q), in every case in which
25 a victim has suffered economic loss as a result of the defendant's
26 conduct, the court shall require that the defendant make restitution
27 to the victim or victims in an amount established by court order,
28 based on the amount of loss claimed by the victim or victims or
29 any other showing to the court. If the amount of loss cannot be
30 ascertained at the time of sentencing, the restitution order shall
31 include a provision that the amount shall be determined at the
32 direction of the court. The court shall order full restitution unless
33 it finds compelling and extraordinary reasons for not doing so, and
34 states them on the record. The court may specify that funds
35 confiscated at the time of the defendant's arrest, except for funds
36 confiscated pursuant to Section 11469 of the Health and Safety
37 Code, be applied to the restitution order if the funds are not exempt
38 for spousal or child support or subject to any other legal exemption.

39 (1) The defendant has the right to a hearing before a judge to
40 dispute the determination of the amount of restitution. The court

1 may modify the amount, on its own motion or on the motion of
2 the district attorney, the victim or victims, or the defendant. If a
3 motion is made for modification of a restitution order, the victim
4 shall be notified of that motion at least 10 days prior to the
5 proceeding held to decide the motion.

6 (2) Determination of the amount of restitution ordered pursuant
7 to this subdivision shall not be affected by the indemnification or
8 subrogation rights of any third party. Restitution ordered pursuant
9 to this subdivision shall be ordered to be deposited to the
10 Restitution Fund to the extent that the victim, as defined in
11 subdivision (k), has received assistance from the Victim
12 Compensation Program pursuant to Chapter 5 (commencing with
13 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
14 Code.

15 (3) To the extent possible, the restitution order shall be prepared
16 by the sentencing court, shall identify each victim and each loss
17 to which it pertains, and shall be of a dollar amount that is sufficient
18 to fully reimburse the victim or victims for every determined
19 economic loss incurred as the result of the defendant's criminal
20 conduct, including, but not limited to, all of the following:

21 (A) Full or partial payment for the value of stolen or damaged
22 property. The value of stolen or damaged property shall be the
23 replacement cost of like property, or the actual cost of repairing
24 the property when repair is possible.

25 (B) Medical expenses.

26 (C) Mental health counseling expenses.

27 (D) Wages or profits lost due to injury incurred by the victim,
28 and if the victim is a minor, wages or profits lost by the minor's
29 parent, parents, guardian, or guardians, while caring for the injured
30 minor. Lost wages shall include any commission income as well
31 as any base wages. Commission income shall be established by
32 evidence of commission income during the 12-month period prior
33 to the date of the crime for which restitution is being ordered,
34 unless good cause for a shorter time period is shown.

35 (E) Wages or profits lost by the victim, and if the victim is a
36 minor, wages or profits lost by the minor's parent, parents,
37 guardian, or guardians, due to time spent as a witness or in assisting
38 the police or prosecution. Lost wages shall include any commission
39 income as well as any base wages. Commission income shall be
40 established by evidence of commission income during the

1 12-month period prior to the date of the crime for which restitution
2 is being ordered, unless good cause for a shorter time period is
3 shown.

4 (F) Noneconomic losses, including, but not limited to,
5 psychological harm, for felony violations of Section 288.

6 (G) Interest, at the rate of 10 percent per annum, that accrues
7 as of the date of sentencing or loss, as determined by the court.

8 (H) Actual and reasonable attorney’s fees and other costs of
9 collection accrued by a private entity on behalf of the victim.

10 (I) Expenses incurred by an adult victim in relocating away
11 from the defendant, including, but not limited to, deposits for
12 utilities and telephone service, deposits for rental housing,
13 temporary lodging and food expenses, clothing, and personal items.
14 Expenses incurred pursuant to this section shall be verified by law
15 enforcement to be necessary for the personal safety of the victim
16 or by a mental health treatment provider to be necessary for the
17 emotional well-being of the victim.

18 (J) Expenses to install or increase residential security incurred
19 related to a crime, as defined in subdivision (c) of Section 667.5,
20 including, but not limited to, a home security device or system, or
21 replacing or increasing the number of locks.

22 (K) Expenses to retrofit a residence or vehicle, or both, to make
23 the residence accessible to or the vehicle operational by the victim,
24 if the victim is permanently disabled, whether the disability is
25 partial or total, as a direct result of the crime.

26 (4) (A) If, as a result of the defendant’s conduct, the Restitution
27 Fund has provided assistance to or on behalf of a victim or
28 derivative victim pursuant to Chapter 5 (commencing with Section
29 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
30 the amount of assistance provided shall be presumed to be a direct
31 result of the defendant’s criminal conduct and shall be included
32 in the amount of the restitution ordered.

33 (B) The amount of assistance provided by the Restitution Fund
34 shall be established by copies of bills submitted to the California
35 Victim Compensation and Government Claims Board reflecting
36 the amount paid by the board and whether the services for which
37 payment was made were for medical or dental expenses, funeral
38 or burial expenses, mental health counseling, wage or support
39 losses, or rehabilitation. Certified copies of these bills provided
40 by the board and redacted to protect the privacy and safety of the

1 victim or any legal privilege, together with a statement made under
2 penalty of perjury by the custodian of records that those bills were
3 submitted to and were paid by the board, shall be sufficient to meet
4 this requirement.

5 (C) If the defendant offers evidence to rebut the presumption
6 established by this paragraph, the court may release additional
7 information contained in the records of the board to the defendant
8 only after reviewing that information in camera and finding that
9 the information is necessary for the defendant to dispute the amount
10 of the restitution order.

11 (5) Except as provided in paragraph (6), in any case in which
12 an order may be entered pursuant to this subdivision, the defendant
13 shall prepare and file a disclosure identifying all assets, income,
14 and liabilities in which the defendant held or controlled a present
15 or future interest as of the date of the defendant's arrest for the
16 crime for which restitution may be ordered. The financial disclosure
17 statements shall be made available to the victim and the board
18 pursuant to Section 1214. The disclosure shall be signed by the
19 defendant upon a form approved or adopted by the Judicial Council
20 for the purpose of facilitating the disclosure. Any defendant who
21 willfully states as true any material matter that he or she knows to
22 be false on the disclosure required by this subdivision is guilty of
23 a misdemeanor, unless this conduct is punishable as perjury or
24 another provision of law provides for a greater penalty.

25 (6) A defendant who fails to file the financial disclosure required
26 in paragraph (5), but who has filed a financial affidavit or financial
27 information pursuant to subdivision (c) of Section 987, shall be
28 deemed to have waived the confidentiality of that affidavit or
29 financial information as to a victim in whose favor the order of
30 restitution is entered pursuant to subdivision (f). The affidavit or
31 information shall serve in lieu of the financial disclosure required
32 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
33 apply.

34 (7) Except as provided in paragraph (6), the defendant shall file
35 the disclosure with the clerk of the court no later than the date set
36 for the defendant's sentencing, unless otherwise directed by the
37 court. The disclosure may be inspected or copied as provided by
38 subdivision (b), (c), or (d) of Section 1203.05.

39 (8) In its discretion, the court may relieve the defendant of the
40 duty under paragraph (7) of filing with the clerk by requiring that

1 the defendant's disclosure be submitted as an attachment to, and
2 be available to, those authorized to receive the following:

3 (A) Any report submitted pursuant to subparagraph (C) of
4 paragraph (2) of subdivision (b) of Section 1203 or subdivision
5 (g) of Section 1203.

6 (B) Any stipulation submitted pursuant to paragraph (4) of
7 subdivision (b) of Section 1203.

8 (C) Any report by the probation officer, or any information
9 submitted by the defendant applying for a conditional sentence
10 pursuant to subdivision (d) of Section 1203.

11 (9) The court may consider a defendant's unreasonable failure
12 to make a complete disclosure pursuant to paragraph (5) as any of
13 the following:

14 (A) A circumstance in aggravation of the crime in imposing a
15 term under subdivision (b) of Section 1170.

16 (B) A factor indicating that the interests of justice would not be
17 served by admitting the defendant to probation under Section 1203.

18 (C) A factor indicating that the interests of justice would not be
19 served by conditionally sentencing the defendant under Section
20 1203.

21 (D) A factor indicating that the interests of justice would not
22 be served by imposing less than the maximum fine and sentence
23 fixed by law for the case.

24 (10) A defendant's failure or refusal to make the required
25 disclosure pursuant to paragraph (5) shall not delay entry of an
26 order of restitution or pronouncement of sentence. In appropriate
27 cases, the court may do any of the following:

28 (A) Require the defendant to be examined by the district attorney
29 pursuant to subdivision (h).

30 (B) If sentencing the defendant under Section 1170, provide
31 that the victim shall receive a copy of the portion of the probation
32 report filed pursuant to Section 1203.10 concerning the defendant's
33 employment, occupation, finances, and liabilities.

34 (C) If sentencing the defendant under Section 1203, set a date
35 and place for submission of the disclosure required by paragraph
36 (5) as a condition of probation or suspended sentence.

37 (11) If a defendant has any remaining unpaid balance on a
38 restitution order or fine 120 days prior to his or her scheduled
39 release from probation or 120 days prior to his or her completion
40 of a conditional sentence, the defendant shall prepare and file a

1 new and updated financial disclosure identifying all assets, income,
2 and liabilities in which the defendant holds or controls or has held
3 or controlled a present or future interest during the defendant's
4 period of probation or conditional sentence. The financial
5 disclosure shall be made available to the victim and the board
6 pursuant to Section 1214. The disclosure shall be signed and
7 prepared by the defendant on the same form as described in
8 paragraph (5). Any defendant who willfully states as true any
9 material matter that he or she knows to be false on the disclosure
10 required by this subdivision is guilty of a misdemeanor, unless
11 this conduct is punishable as perjury or another provision of law
12 provides for a greater penalty. The financial disclosure required
13 by this paragraph shall be filed with the clerk of the court no later
14 than 90 days prior to the defendant's scheduled release from
15 probation or completion of the defendant's conditional sentence.

16 (g) The court shall order full restitution unless it finds
17 compelling and extraordinary reasons for not doing so, and states
18 those reasons on the record. A defendant's inability to pay shall
19 not be considered a compelling and extraordinary reason not to
20 impose a restitution order, nor shall inability to pay be a
21 consideration in determining the amount of a restitution order.

22 (h) The district attorney may request an order of examination
23 pursuant to the procedures specified in Article 2 (commencing
24 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
25 2 of the Code of Civil Procedure, in order to determine the
26 defendant's financial assets for purposes of collecting on the
27 restitution order.

28 (i) A restitution order imposed pursuant to subdivision (f) shall
29 be enforceable as if the order were a civil judgment.

30 (j) The making of a restitution order pursuant to subdivision (f)
31 shall not affect the right of a victim to recovery from the Restitution
32 Fund as otherwise provided by law, except to the extent that
33 restitution is actually collected pursuant to the order. Restitution
34 collected pursuant to this subdivision shall be credited to any other
35 judgments for the same losses obtained against the defendant
36 arising out of the crime for which the defendant was convicted.

37 (k) For purposes of this section, "victim" shall include all of
38 the following:

39 (1) The immediate surviving family of the actual victim.

1 (2) Any corporation, business trust, estate, trust, partnership,
2 association, joint venture, government, governmental subdivision,
3 agency, or instrumentality, or any other legal or commercial entity
4 when that entity is a direct victim of a crime.

5 (3) Any person who has sustained economic loss as the result
6 of a crime and who satisfies any of the following conditions:

7 (A) At the time of the crime was the parent, grandparent, sibling,
8 spouse, child, or grandchild of the victim.

9 (B) At the time of the crime was living in the household of the
10 victim.

11 (C) At the time of the crime was a person who had previously
12 lived in the household of the victim for a period of not less than
13 two years in a relationship substantially similar to a relationship
14 listed in subparagraph (A).

15 (D) Is another family member of the victim, including, but not
16 limited to, the victim's fiancé or fiancée, and who witnessed the
17 crime.

18 (E) Is the primary caretaker of a minor victim.

19 (4) Any person who is eligible to receive assistance from the
20 Restitution Fund pursuant to Chapter 5 (commencing with Section
21 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

22 (l) At its discretion, the board of supervisors of any county may
23 impose a fee to cover the actual administrative cost of collecting
24 the restitution fine, not to exceed 10 percent of the amount ordered
25 to be paid, to be added to the restitution fine and included in the
26 order of the court, the proceeds of which shall be deposited in the
27 general fund of the county.

28 (m) In every case in which the defendant is granted probation,
29 the court shall make the payment of restitution fines and orders
30 imposed pursuant to this section a condition of probation. Any
31 portion of a restitution order that remains unsatisfied after a
32 defendant is no longer on probation shall continue to be enforceable
33 by a victim pursuant to Section 1214 until the obligation is
34 satisfied.

35 (n) If the court finds and states on the record compelling and
36 extraordinary reasons why a restitution fine or full restitution order
37 should not be required, the court shall order, as a condition of
38 probation, that the defendant perform specified community service,
39 unless it finds and states on the record compelling and
40 extraordinary reasons not to require community service in addition

1 to the finding that restitution should not be required. Upon
2 revocation of probation, the court shall impose restitution pursuant
3 to this section.

4 (o) The provisions of Section 13963 of the Government Code
5 shall apply to restitution imposed pursuant to this section.

6 (p) The court clerk shall notify the California Victim
7 Compensation and Government Claims Board within 90 days of
8 an order of restitution being imposed if the defendant is ordered
9 to pay restitution to the board due to the victim receiving
10 compensation from the Restitution Fund. Notification shall be
11 accomplished by mailing a copy of the court order to the board,
12 which may be done periodically by bulk mail or electronic mail.

13 (q) Upon conviction for a violation of Section 236.1, the court
14 shall, in addition to any other penalty or restitution, order the
15 defendant to pay restitution to the victim in any case in which a
16 victim has suffered economic loss as a result of the defendant's
17 conduct. The court shall require that the defendant make restitution
18 to the victim or victims in an amount established by court order,
19 based on the amount of loss claimed by the victim or victims or
20 any other showing to the court. In determining restitution pursuant
21 to this section, the court shall base its order upon the greater of the
22 following: the gross value of the victim's labor or services based
23 upon the comparable value of similar services in the labor market
24 in which the offense occurred, or the value of the victim's labor
25 as guaranteed under California law, or the actual income derived
26 by the defendant from the victim's labor or services or any other
27 appropriate means to provide reparations to the victim.

28 *SEC. 15. Section 1202.45 of the Penal Code is amended to*
29 *read:*

30 1202.45. In every case where a person is convicted of a crime
31 and whose sentence includes a period of parole, the court shall at
32 the time of imposing the restitution fine pursuant to subdivision
33 (b) of Section 1202.4, assess an additional parole revocation
34 restitution fine in the same amount as that imposed pursuant to
35 subdivision (b) of Section 1202.4. This additional parole revocation
36 restitution fine *shall not be subject to penalty assessments*
37 *authorized by Section 1464 or Chapter 12 (commencing with*
38 *Section 76000) of Title 8 of the Government Code, or the state*
39 *surcharge authorized by Section 1465.7, and shall be suspended*
40 *unless the person's parole is revoked. Parole revocation restitution*

1 fine moneys shall be deposited in the Restitution Fund in the State
2 Treasury.

3 *SEC. 16. Section 1463 of the Penal Code is amended to read:*

4 1463. All fines and forfeitures imposed and collected for crimes
5 shall be distributed in accordance with Section 1463.001.

6 The following definitions shall apply to terms used in this
7 chapter:

8 (a) “Arrest” means any law enforcement action, including
9 issuance of a notice to appear or notice of violation, which results
10 in a criminal charge.

11 (b) “City” includes any city, city and county, district, including
12 any enterprise special district, community service district, or
13 community service area engaged in police protection activities as
14 reported to the Controller for inclusion in the 1989–90 edition of
15 the Financial Transactions Report Concerning Special Districts
16 under the heading of Police Protection and Public Safety, authority,
17 or other local agency (other than a county) which employs persons
18 authorized to make arrests or to issue notices to appear or notices
19 of violation which may be filed in court.

20 (c) “City arrest” means an arrest by an employee of a city, or
21 by a California Highway Patrol officer within the limits of a city.

22 (d) “County” means the county in which the arrest took place.

23 (e) “County arrest” means an arrest by a California Highway
24 Patrol officer outside the limits of a city, or any arrest by a county
25 officer or by any other state officer.

26 (f) “Court” means the superior court or a juvenile forum
27 established under Section 257 of the Welfare and Institutions Code,
28 in which the case arising from the arrest is filed.

29 (g) “Division of moneys” means an allocation of base fine
30 proceeds between agencies as required by statute, including, but
31 not limited to, Sections 1463.003, 1463.9, 1463.23, and 1463.26
32 of this code, Sections 13001, 13002, and 13003 of the Fish and
33 Game Code, and Section 11502 of the Health and Safety Code.

34 (h) “Offense” means any infraction, misdemeanor, or felony,
35 and any act by a juvenile leading to an order to pay a financial
36 sanction by reason of the act being defined as an infraction,
37 misdemeanor, or felony, whether defined in this or any other code,
38 except any parking offense as defined in subdivision (i).

39 (i) “Parking offense” means any offense charged pursuant to
40 Article 3 (commencing with Section 40200) of Chapter 1 of

1 Division 17 of the Vehicle Code, including registration and
2 equipment offenses included on a notice of parking violation.

3 (j) “Penalty allocation” means the deposit of a specified part of
4 moneys to offset designated processing costs, as provided by
5 Section 1463.16 of this code and by Section 68090.8 of the
6 Government Code.

7 (k) “Total parking penalty” means the total sum to be collected
8 for a parking offense, whether as fine, forfeiture of bail, or payment
9 of penalty to the Department of Motor Vehicles (DMV). It may
10 include the following components:

11 (1) The base parking penalty as established pursuant to Section
12 40203.5 of the Vehicle Code.

13 (2) The DMV fees added upon the placement of a hold pursuant
14 to Section 40220 of the Vehicle Code.

15 (3) The surcharges required by Section 76000 of the Government
16 Code.

17 (4) The notice penalty added to the base parking penalty when
18 a notice of delinquent parking violations is given.

19 (l) “Total fine or forfeiture” means the total sum to be collected
20 upon a conviction, or the total amount of bail forfeited or deposited
21 as cash bail subject to forfeiture. It may include, but is not limited
22 to, the following components as specified for the particular offense:

23 (1) The “base fine” upon which the state penalty and additional
24 county penalty is calculated.

25 (2) The “county penalty” required by Section 76000 of the
26 Government Code.

27 (3) *The “DNA penalty” required by Sections 76104.6 and*
28 *76104.7 of the Government Code.*

29 (4) *The “emergency medical services penalty” authorized by*
30 *Section 76000.5 of the Government Code.*

31 ~~(3)~~

32 (5) The “service charge” permitted by Section 853.7 of the Penal
33 Code and Section 40508.5 of the Vehicle Code.

34 ~~(4)~~

35 (6) The “special penalty” dedicated for blood alcohol analysis,
36 alcohol program services, traumatic brain injury research, and
37 similar purposes.

38 ~~(5)~~

39 (7) The “state penalty” required by Section 1464.

40 *SEC. 17. Section 1464 of the Penal Code is amended to read:*

1 1464. (a) (1) Subject to Chapter 12 (commencing with Section
2 76000) of Title 8 of the Government Code, *and except as otherwise*
3 *provided in this section*, there shall be levied a state penalty; ~~in an~~
4 ~~the amount equal to~~ of ten dollars (\$10) for every ten dollars (\$10),
5 ~~or fraction thereof~~ *part of ten dollars (\$10)*, upon every fine,
6 penalty, or forfeiture imposed and collected by the courts for *all*
7 criminal offenses, including all offenses, except parking offenses
8 as defined in subdivision (i) of Section 1463, involving a violation
9 of a section of the Vehicle Code or any local ordinance adopted
10 pursuant to the Vehicle Code. ~~Any~~

11 (2) *Any* bail schedule adopted pursuant to Section 1269b *or bail*
12 *schedule adopted by the Judicial Council pursuant to Section*
13 *40310 of the Vehicle Code* may include the necessary amount to
14 pay the state penalties established by this section and Chapter 12
15 (commencing with Section 76000) of Title 8 of the Government
16 Code, *and the surcharge authorized by Section 1465.7*, for all
17 matters where a personal appearance is not mandatory and the bail
18 is posted primarily to guarantee payment of the fine.

19 (3) *The penalty imposed by this section does not apply to the*
20 *following:*

21 (A) *Any restitution fine.*

22 (B) *Any penalty authorized by Chapter 12 (commencing with*
23 *Section 76000) of Title 8 of the Government Code.*

24 (C) *Any parking offense subject to Article 3 (commencing with*
25 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

26 (D) *The state surcharge authorized by Section 1465.7.*

27 (b) Where multiple offenses are involved, the state penalty shall
28 be based upon the total fine or bail for each case. When a fine is
29 suspended, in whole or in part, the state penalty shall be reduced
30 in proportion to the suspension.

31 (c) When any deposited bail is made for an offense to which
32 this section applies, and for which a court appearance is not
33 mandatory, the person making the deposit shall also deposit a
34 sufficient amount to include the state penalty prescribed by this
35 section for forfeited bail. If bail is returned, the state penalty paid
36 thereon pursuant to this section shall also be returned.

37 (d) In any case where a person convicted of any offense, to
38 which this section applies, is in prison until the fine is satisfied,
39 the judge may waive all or any part of the state penalty, the

1 payment of which would work a hardship on the person convicted
2 or his or her immediate family.

3 (e) After a determination by the court of the amount due, the
4 clerk of the court shall collect the penalty and transmit it to the
5 county treasury. The portion thereof attributable to Chapter 12
6 (commencing with Section 76000) of Title 8 of the Government
7 Code shall be deposited in the appropriate county fund and 70
8 percent of the balance shall then be transmitted to the State
9 Treasury, to be deposited in the State Penalty Fund, which is hereby
10 created, and 30 percent to remain on deposit in the county general
11 fund. The transmission to the State Treasury shall be carried out
12 in the same manner as fines collected for the state by a county.

13 (f) The moneys so deposited in the State Penalty Fund shall be
14 distributed as follows:

15 (1) Once a month there shall be transferred into the Fish and
16 Game Preservation Fund an amount equal to 0.33 percent of the
17 state penalty funds deposited in the State Penalty Fund during the
18 preceding month, except that the total amount shall not be less
19 than the state penalty levied on fines or forfeitures for violation of
20 state laws relating to the protection or propagation of fish and
21 game. These moneys shall be used for the education or training of
22 department employees which fulfills a need consistent with the
23 objectives of the Department of Fish and Game.

24 (2) Once a month there shall be transferred into the Restitution
25 Fund an amount equal to 32.02 percent of the state penalty funds
26 deposited in the State Penalty Fund during the preceding month.
27 Those funds shall be made available in accordance with Section
28 13967 of the Government Code.

29 (3) Once a month there shall be transferred into the Peace
30 Officers' Training Fund an amount equal to 23.99 percent of the
31 state penalty funds deposited in the State Penalty Fund during the
32 preceding month.

33 (4) Once a month there shall be transferred into the Driver
34 Training Penalty Assessment Fund an amount equal to 25.70
35 percent of the state penalty funds deposited in the State Penalty
36 Fund during the preceding month.

37 (5) Once a month there shall be transferred into the Corrections
38 Training Fund an amount equal to 7.88 percent of the state penalty
39 funds deposited in the State Penalty Fund during the preceding

1 month. Money in the Corrections Training Fund is not continuously
2 appropriated and shall be appropriated in the Budget Act.

3 (6) Once a month there shall be transferred into the Local Public
4 Prosecutors and Public Defenders Training Fund established
5 pursuant to Section 11503 an amount equal to 0.78 percent of the
6 state penalty funds deposited in the State Penalty Fund during the
7 preceding month. The amount so transferred shall not exceed the
8 sum of eight hundred fifty thousand dollars (\$850,000) in any
9 fiscal year. The remainder in excess of eight hundred fifty thousand
10 dollars (\$850,000) shall be transferred to the Restitution Fund.

11 (7) Once a month there shall be transferred into the
12 Victim-Witness Assistance Fund an amount equal to 8.64 percent
13 of the state penalty funds deposited in the State Penalty Fund
14 during the preceding month.

15 (8) (A) Once a month there shall be transferred into the
16 Traumatic Brain Injury Fund, created pursuant to Section 4358 of
17 the Welfare and Institutions Code, an amount equal to 0.66 percent
18 of the state penalty funds deposited into the State Penalty Fund
19 during the preceding month. However, the amount of funds
20 transferred into the Traumatic Brain Injury Fund for the 1996–97
21 fiscal year shall not exceed the amount of five hundred thousand
22 dollars (\$500,000). Thereafter, funds shall be transferred pursuant
23 to the requirements of this section. Notwithstanding any other
24 provision of law, the funds transferred into the Traumatic Brain
25 Injury Fund for the 1997–98, 1998–99, and 1999–2000 fiscal years,
26 may be expended by the State Department of Mental Health, in
27 the current fiscal year or a subsequent fiscal year, to provide
28 additional funding to the existing projects funded by the Traumatic
29 Brain Injury Fund, to support new projects, or to do both.

30 (B) Any moneys deposited in the State Penalty Fund attributable
31 to the assessments made pursuant to subdivision (i) of Section
32 27315 of the Vehicle Code on or after the date that Chapter 6.6
33 (commencing with Section 5564) of Part 1 of Division 5 of the
34 Welfare and Institutions Code is repealed shall be utilized in
35 accordance with paragraphs (1) to (8), inclusive, of this subdivision.

36 *SEC. 18. Section 1465.8 of the Penal Code is amended to read:*

37 1465.8. (a) (1) To ensure and maintain adequate funding for
38 court security, a fee of twenty dollars (\$20) shall be imposed on
39 every conviction for a criminal offense, including a traffic offense,
40 except parking offenses as defined in subdivision (i) of Section

1 1463, involving a violation of a section of the Vehicle Code or
2 any local ordinance adopted pursuant to the Vehicle Code.

3 (2) For the purposes of this section, “conviction” includes the
4 dismissal of a traffic violation on the condition that the defendant
5 attend a court-ordered traffic violator school, as authorized by
6 Sections 41501 and 42005 of the Vehicle Code. This security fee
7 shall be deposited in accordance with subdivision (d), and may
8 not be included with the fee calculated and distributed pursuant to
9 Section 42007 of the Vehicle Code.

10 (b) This fee shall be in addition to the state penalty assessed
11 pursuant to Section 1464 and may not be included in the base fine
12 to calculate the state penalty assessment as specified in subdivision

13 (a) of Section 1464. *The penalties authorized by Chapter 12*
14 *(commencing with Section 76000) of Title 8 of the Government*
15 *Code, and the state surcharge authorized by Section 1465.7, do*
16 *not apply to this fee.*

17 (c) When bail is deposited for an offense to which this section
18 applies, and for which a court appearance is not necessary, the
19 person making the deposit shall also deposit a sufficient amount
20 to include the fee prescribed by this section.

21 (d) Notwithstanding any other provision of law, the fees
22 collected pursuant to subdivision (a) shall all be deposited in a
23 special account in the county treasury and transmitted therefrom
24 monthly to the Controller for deposit in the Trial Court Trust Fund.

25 (e) The Judicial Council shall provide for the administration of
26 this section.

27 ~~SEC. 7.~~

28 *SEC. 19.* Section 1538.5 of the Penal Code is amended to read:

29 1538.5. (a) (1) A defendant may move for the return of
30 property or to suppress as evidence any tangible or intangible thing
31 obtained as a result of a search or seizure on either of the following
32 grounds:

33 (A) The search or seizure without a warrant was unreasonable.

34 (B) The search or seizure with a warrant was unreasonable
35 because any of the following apply:

36 (i) The warrant is insufficient on its face.

37 (ii) The property or evidence obtained is not that described in
38 the warrant.

39 (iii) There was not probable cause for the issuance of the
40 warrant.

1 (iv) The method of execution of the warrant violated federal or
2 state constitutional standards.

3 (v) There was any other violation of federal or state
4 constitutional standards.

5 (2) A motion pursuant to paragraph (1) shall be made in writing
6 and accompanied by a memorandum of points and authorities and
7 proof of service. The memorandum shall list the specific items of
8 property or evidence sought to be returned or suppressed and shall
9 set forth the factual basis and the legal authorities that demonstrate
10 why the motion should be granted.

11 (b) When consistent with the procedures set forth in this section
12 and subject to the provisions of Sections 170 to 170.6, inclusive,
13 of the Code of Civil Procedure, the motion should first be heard
14 by the magistrate who issued the search warrant if there is a
15 warrant.

16 (c) (1) Whenever a search or seizure motion is made in the
17 superior court as provided in this section, the judge or magistrate
18 shall receive evidence on any issue of fact necessary to determine
19 the motion.

20 (2) While a witness is under examination during a hearing
21 pursuant to a search or seizure motion, the judge or magistrate
22 shall, upon motion of either party, do any of the following:

23 (A) Exclude all potential and actual witnesses who have not
24 been examined.

25 (B) Order the witnesses not to converse with each other until
26 they are all examined.

27 (C) Order, where feasible, that the witnesses be kept separated
28 from each other until they are all examined.

29 (D) Hold a hearing, on the record, to determine if the person
30 sought to be excluded is, in fact, a person excludable under this
31 section.

32 (3) Either party may challenge the exclusion of any person under
33 paragraph (2).

34 (4) Paragraph (2) does not apply to the investigating officer or
35 the investigator for the defendant, nor does it apply to officers
36 having custody of persons brought before the court.

37 (d) If a search or seizure motion is granted pursuant to the
38 proceedings authorized by this section, the property or evidence
39 shall not be admissible against the movant at any trial or other

1 hearing unless further proceedings authorized by this section,
2 Section 871.5, 1238, or 1466 are utilized by the people.

3 (e) If a search or seizure motion is granted at a trial, the property
4 shall be returned upon order of the court unless it is otherwise
5 subject to lawful detention. If the motion is granted at a special
6 hearing, the property shall be returned upon order of the court only
7 if, after the conclusion of any further proceedings authorized by
8 this section, Section 1238 or 1466, the property is not subject to
9 lawful detention or if the time for initiating the proceedings has
10 expired, whichever occurs last. If the motion is granted at a
11 preliminary hearing, the property shall be returned upon order of
12 the court after 10 days unless the property is otherwise subject to
13 lawful detention or unless, within that time, further proceedings
14 authorized by this section, Section 871.5 or 1238 are utilized; if
15 they are utilized, the property shall be returned only if, after the
16 conclusion of the proceedings, the property is no longer subject
17 to lawful detention.

18 (f) (1) If the property or evidence relates to a felony offense
19 initiated by a complaint, the motion shall be made only upon filing
20 of an information, except that the defendant may make the motion
21 at the preliminary hearing, but the motion shall be restricted to
22 evidence sought to be introduced by the people at the preliminary
23 hearing.

24 (2) The motion may be made at the preliminary examination
25 only if, at least five court days before the date set for the
26 preliminary examination, the defendant has filed and personally
27 served on the people a written motion accompanied by a
28 memorandum of points and authorities as required by paragraph
29 (2) of subdivision (a). At the preliminary examination, the
30 magistrate may grant the defendant a continuance for the purpose
31 of filing the motion and serving the motion upon the people, at
32 least five court days before resumption of the examination, upon
33 a showing that the defendant or his or her attorney of record was
34 not aware of the evidence or was not aware of the grounds for
35 suppression before the preliminary examination.

36 (3) Any written response by the people to the motion described
37 in paragraph (2) shall be filed with the court and personally served
38 on the defendant or his or her attorney of record at least two court
39 days prior to the hearing at which the motion is to be made.

1 (g) If the property or evidence relates to a misdemeanor
2 complaint, the motion shall be made before trial and heard prior
3 to trial at a special hearing relating to the validity of the search or
4 seizure. If the property or evidence relates to a misdemeanor filed
5 together with a felony, the procedure provided for a felony in this
6 section and Sections 1238 and 1539 shall be applicable.

7 (h) If, prior to the trial of a felony or misdemeanor, opportunity
8 for this motion did not exist or the defendant was not aware of the
9 grounds for the motion, the defendant shall have the right to make
10 this motion during the course of trial.

11 (i) If the property or evidence obtained relates to a felony offense
12 initiated by complaint and the defendant was held to answer at the
13 preliminary hearing, or if the property or evidence relates to a
14 felony offense initiated by indictment, the defendant shall have
15 the right to renew or make the motion at a special hearing relating
16 to the validity of the search or seizure which shall be heard prior
17 to trial and at least 10 court days after notice to the people, unless
18 the people are willing to waive a portion of this time. Any written
19 response by the people to the motion shall be filed with the court
20 and personally served on the defendant or his or her attorney of
21 record at least two court days prior to the hearing, unless the
22 defendant is willing to waive a portion of this time. If the offense
23 was initiated by indictment or if the offense was initiated by
24 complaint and no motion was made at the preliminary hearing, the
25 defendant shall have the right to fully litigate the validity of a
26 search or seizure on the basis of the evidence presented at a special
27 hearing. If the motion was made at the preliminary hearing, unless
28 otherwise agreed to by all parties, evidence presented at the special
29 hearing shall be limited to the transcript of the preliminary hearing
30 and to evidence that could not reasonably have been presented at
31 the preliminary hearing, except that the people may recall witnesses
32 who testified at the preliminary hearing. If the people object to the
33 presentation of evidence at the special hearing on the grounds that
34 the evidence could reasonably have been presented at the
35 preliminary hearing, the defendant shall be entitled to an in camera
36 hearing to determine that issue. The court shall base its ruling on
37 all evidence presented at the special hearing and on the transcript
38 of the preliminary hearing, and the findings of the magistrate shall
39 be binding on the court as to evidence or property not affected by
40 evidence presented at the special hearing. After the special hearing

1 is held, any review thereafter desired by the defendant prior to trial
2 shall be by means of an extraordinary writ of mandate or
3 prohibition filed within 30 days after the denial of his or her motion
4 at the special hearing.

5 (j) If the property or evidence relates to a felony offense initiated
6 by complaint and the defendant's motion for the return of the
7 property or suppression of the evidence at the preliminary hearing
8 is granted, and if the defendant is not held to answer at the
9 preliminary hearing, the people may file a new complaint or seek
10 an indictment after the preliminary hearing, and the ruling at the
11 prior hearing shall not be binding in any subsequent proceeding,
12 except as limited by subdivision (p). In the alternative, the people
13 may move to reinstate the complaint, or those parts of the complaint
14 for which the defendant was not held to answer, pursuant to Section
15 871.5. If the property or evidence relates to a felony offense
16 initiated by complaint and the defendant's motion for the return
17 or suppression of the property or evidence at the preliminary
18 hearing is granted, and if the defendant is held to answer at the
19 preliminary hearing, the ruling at the preliminary hearing shall be
20 binding upon the people unless, upon notice to the defendant and
21 the court in which the preliminary hearing was held and upon the
22 filing of an information, the people, within 15 days after the
23 preliminary hearing, request a special hearing, in which case the
24 validity of the search or seizure shall be relitigated de novo on the
25 basis of the evidence presented at the special hearing, and the
26 defendant shall be entitled, as a matter of right, to a continuance
27 of the special hearing for a period of time up to 30 days. The people
28 may not request relitigation of the motion at a special hearing if
29 the defendant's motion has been granted twice. If the defendant's
30 motion is granted at a special hearing, the people, if they have
31 additional evidence relating to the motion and not presented at the
32 special hearing, shall have the right to show good cause at the trial
33 why the evidence was not presented at the special hearing and why
34 the prior ruling at the special hearing should not be binding, or the
35 people may seek appellate review as provided in subdivision (o),
36 unless the court, prior to the time the review is sought, has
37 dismissed the case pursuant to Section 1385. If the case has been
38 dismissed pursuant to Section 1385, either on the court's own
39 motion or the motion of the people after the special hearing, the
40 people may file a new complaint or seek an indictment after the

1 special hearing, and the ruling at the special hearing shall not be
2 binding in any subsequent proceeding, except as limited by
3 subdivision (p). If the property or evidence seized relates solely
4 to a misdemeanor complaint, and the defendant made a motion for
5 the return of property or the suppression of evidence in the superior
6 court prior to trial, both the people and defendant shall have the
7 right to appeal any decision of that court relating to that motion to
8 the appellate division, in accordance with the California Rules of
9 Court provisions governing appeals to the appellate division in
10 criminal cases. If the people prosecute review by appeal or writ to
11 decision, or any review thereof, in a felony or misdemeanor case,
12 it shall be binding upon them.

13 (k) If the defendant's motion to return property or suppress
14 evidence is granted and the case is dismissed pursuant to Section
15 1385, or the people appeal in a misdemeanor case pursuant to
16 subdivision (j), the defendant shall be released pursuant to Section
17 1318 if he or she is in custody and not returned to custody unless
18 the proceedings are resumed in the trial court and he or she is
19 lawfully ordered by the court to be returned to custody.

20 If the defendant's motion to return property or suppress evidence
21 is granted and the people file a petition for writ of mandate or
22 prohibition pursuant to subdivision (o) or a notice of intention to
23 file a petition, the defendant shall be released pursuant to Section
24 1318, unless (1) he or she is charged with a capital offense in a
25 case where the proof is evident and the presumption great, or (2)
26 he or she is charged with a noncapital offense defined in Chapter
27 1 (commencing with Section 187) of Title 8 of Part 1, and the court
28 orders that the defendant be discharged from actual custody upon
29 bail.

30 (l) If the defendant's motion to return property or suppress
31 evidence is granted, the trial of a criminal case shall be stayed to
32 a specified date pending the termination in the appellate courts of
33 this state of the proceedings provided for in this section, Section
34 871.5, 1238, or 1466 and, except upon stipulation of the parties,
35 pending the time for the initiation of these proceedings. Upon the
36 termination of these proceedings, the defendant shall be brought
37 to trial as provided by Section 1382, and, subject to the provisions
38 of Section 1382, whenever the people have sought and been denied
39 appellate review pursuant to subdivision (o), the defendant shall
40 be entitled to have the action dismissed if he or she is not brought

1 to trial within 30 days of the date of the order that is the last denial
2 of the petition. Nothing contained in this subdivision shall prohibit
3 a court, at the same time as it rules upon the search and seizure
4 motion, from dismissing a case pursuant to Section 1385 when the
5 dismissal is upon the court's own motion and is based upon an
6 order at the special hearing granting the defendant's motion to
7 return property or suppress evidence. In a misdemeanor case, the
8 defendant shall be entitled to a continuance of up to 30 days if he
9 or she intends to file a motion to return property or suppress
10 evidence and needs this time to prepare for the special hearing on
11 the motion. In case of an appeal by the defendant in a misdemeanor
12 case from the denial of the motion, he or she shall be entitled to
13 bail as a matter of right, and, in the discretion of the trial or
14 appellate court, may be released on his or her own recognizance
15 pursuant to Section 1318. In the case of an appeal by the defendant
16 in a misdemeanor case from the denial of the motion, the trial court
17 may, in its discretion, order or deny a stay of further proceedings
18 pending disposition of the appeal.

19 (m) The proceedings provided for in this section, and Sections
20 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive
21 remedies prior to conviction to test the unreasonableness of a search
22 or seizure where the person making the motion for the return of
23 property or the suppression of evidence is a defendant in a criminal
24 case and the property or thing has been offered or will be offered
25 as evidence against him or her. A defendant may seek further
26 review of the validity of a search or seizure on appeal from a
27 conviction in a criminal case notwithstanding the fact that the
28 judgment of conviction is predicated upon a plea of guilty. Review
29 on appeal may be obtained by the defendant provided that at some
30 stage of the proceedings prior to conviction he or she has moved
31 for the return of property or the suppression of the evidence.

32 (n) This section establishes only the procedure for suppression
33 of evidence and return of property, and does not establish or alter
34 any substantive ground for suppression of evidence or return of
35 property. Nothing contained in this section shall prohibit a person
36 from making a motion, otherwise permitted by law, to return
37 property, brought on the ground that the property obtained is
38 protected by the free speech and press provisions of the United
39 States and California Constitutions. Nothing in this section shall
40 be construed as altering (1) the law of standing to raise the issue

1 of an unreasonable search or seizure; (2) the law relating to the
2 status of the person conducting the search or seizure; (3) the law
3 relating to the burden of proof regarding the search or seizure; (4)
4 the law relating to the reasonableness of a search or seizure
5 regardless of any warrant that may have been utilized; or (5) the
6 procedure and law relating to a motion made pursuant to Section
7 871.5 or 995, or the procedures that may be initiated after the
8 granting or denial of a motion.

9 (o) Within 30 days after a defendant's motion is granted at a
10 special hearing in a felony case, the people may file a petition for
11 writ of mandate or prohibition in the court of appeal, seeking
12 appellate review of the ruling regarding the search or seizure
13 motion. If the trial of a criminal case is set for a date that is less
14 than 30 days from the granting of a defendant's motion at a special
15 hearing in a felony case, the people, if they have not filed a petition
16 and wish to preserve their right to file a petition, shall file in the
17 superior court on or before the trial date or within 10 days after
18 the special hearing, whichever occurs last, a notice of intention to
19 file a petition and shall serve a copy of the notice upon the
20 defendant.

21 (p) If a defendant's motion to return property or suppress
22 evidence in a felony matter has been granted twice, the people
23 may not file a new complaint or seek an indictment in order to
24 relitigate the motion or relitigate the matter de novo at a special
25 hearing as otherwise provided by subdivision (j), unless the people
26 discover additional evidence relating to the motion that was not
27 reasonably discoverable at the time of the second suppression
28 hearing. Relitigation of the motion shall be heard by the same
29 judge who granted the motion at the first hearing if the judge is
30 available.

31 (q) The amendments to this section enacted in the 1997 portion
32 of the 1997–98 Regular Session of the Legislature shall apply to
33 all criminal proceedings conducted on or after January 1, 1998.

34 ~~SEC. 8.~~

35 *SEC. 20.* Section 6608.8 of the Welfare and Institutions Code
36 is amended to read:

37 6608.8. (a) For any person who is proposed for community
38 outpatient treatment under the forensic conditional release program,
39 the department shall provide to the court a copy of the written
40 contract entered into with any public or private person or entity

1 responsible for monitoring and supervising the patient’s outpatient
2 placement and treatment program. This subdivision does not apply
3 to subcontracts between the contractor and clinicians providing
4 treatment and related services to the person.

5 (b) The terms and conditions of conditional release shall be
6 drafted to include reasonable flexibility to achieve the aims of
7 conditional release, and to protect the public and the conditionally
8 released person.

9 (c) The court in its discretion may order the department to,
10 notwithstanding Section 4514 or 5328, provide a copy of the
11 written terms and conditions of conditional release to the sheriff
12 or chief of police, or both, that have jurisdiction over the proposed
13 or actual placement community.

14 (d) (1) Except in an emergency, the department or its designee
15 shall not alter the terms and conditions of conditional release
16 without the prior approval of the court.

17 (2) The department shall provide notice to the person committed
18 under this article and the district attorney or designated county
19 counsel of any proposed change in the terms and conditions of
20 conditional release.

21 (3) The court on its own motion, or upon the motion of either
22 party to the action, may set a hearing on the proposed change. The
23 hearing shall be held as soon as is practicable.

24 (4) If a hearing on the proposed change is held, the court shall
25 state its findings on the record. If the court approves a change in
26 the terms and conditions of conditional release without a hearing,
27 the court shall issue a written order.

28 (5) In the case of an emergency, the department or its designee
29 may deviate from the terms and conditions of the conditional
30 release if necessary to protect public safety or the safety of the
31 person. If a hearing on the emergency is set by the court or
32 requested by either party, the hearing shall be held as soon as
33 practicable. The department, its designee, and the parties shall
34 endeavor to resolve routine matters in a cooperative fashion without
35 the need for a formal hearing.

36 (e) Notwithstanding any provision of this section, including,
37 but not limited to, subdivision (d), matters concerning the
38 residential placement, including any changes or proposed changes
39 in the residence of the person, shall be considered and determined
40 pursuant to Section 6609.1.

1 ~~SEC. 9.~~

2 ~~SEC. 21.~~ The changes to Section 1538.5 of the Penal Code by
3 ~~Section 9 19~~ of this act are technical amendments that are not
4 intended to conflict with subdivision (d) of Section 28 of Article
5 1 of the California Constitution.

6 ~~SEC. 22.~~ *It is the intent of the Legislature, in enacting Sections*
7 ~~2 to 8, inclusive, and Sections 14 to 18, inclusive, of this act, to~~
8 ~~construe and clarify the meaning and effect of existing law and to~~
9 ~~reject the interpretation given to the law in People v. Chavez (2007)~~
10 ~~150 Cal.App.4th 1288.~~

11 ~~SEC. 10.~~ ~~Any section of any act other than Assembly Bill 299,~~
12 ~~which is enacted by the Legislature during the 2007 calendar year~~

13 ~~SEC. 23.~~ (a) *Any section of any other act, other than Assembly*
14 ~~Bill 299, that is enacted by the Legislature during the 2007~~
15 ~~calendar year, that takes effect on or before January 1, 2008, and~~
16 ~~that amends, amends and renumbers, adds, repeals and adds, or~~
17 ~~repeals any one or more of the sections affected by Section 1,~~
18 ~~Sections 9 to 13, inclusive, Section 19, or Section 20 of this act,~~
19 ~~shall prevail over this act, whether this act is enacted prior to, or~~
20 ~~subsequent to, the enactment of that act. The repeal, or repeal and~~
21 ~~addition, of any article, chapter, part, title, or division of any code~~
22 ~~by Section 1, Sections 9 to 13, inclusive, Section 19, or Section 20~~
23 ~~of this act shall not become operative if any section of any other~~
24 ~~act other than Assembly Bill 299 that is enacted by the Legislature~~
25 ~~during the 2007 calendar year and takes effect on or before January~~
26 ~~1, 2008, amends, amends and renumbers, adds, repeals and adds,~~
27 ~~or repeals, or repeals any section contained in that article, chapter,~~
28 ~~part, title, or division.~~

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